

TORONTO POLICE SERVICES BOARD STREET CHECKS SUB-COMMITTEE

Chronology of Board Minutes

April 5, 2012 (P56/12)	Collection of Demographic Statistics
July 19, 2012 (P187/12)	Costs & Operational Implications of Providing Copies of Contact Cards – Request for Extension to Submit Report
August 15, 2012 (P220/12)	Providing Contact Card Receipt to Individuals Stopped by Police
Nov. 14, 2012 (P271/12)	Issuing Receipts to Persons Stopped by Police
January 23, 2013 (P6/13)	Review of Form 208 and Form 306
February 19, 2013 (P43/13)	Street Checks Sub-Committee Update
March 27, 2013 (P50/13)	Toronto Police Service Street Checks and Receipts, Sub-Committee Update & Letter from Ontario Human Rights Commission
April 25, 2013 (P121/13)	Street Checks Sub-Committee Update, Implementation of Form 306 as an Interim Measure
June 20, 2013 (P160/13)	Interim Receipt Process and Deferral of Auditor General's Review of Police Collection of Demographic Data
Aug 13, 2013 (P209/13)	Community Inquiry Report and Interim Receipt Recommendation that the Chief provide written monthly progress reports on the ongoing development of the CIP and a comprehensive report detailing all aspects of its development and implementation. Deferred to September Board meeting.
Sep 12, 2013 (P220/13)	Community Inquiry Report and Interim Receipt As noted above. Deferred to October Board meeting.
Oct 7, 2013 (P239/13)	Community Inquiry Report and Interim Receipt Report deferred from August 13 th Board meeting.
Nov 18, 2013 (P277/13)	Police Carding and the Issue of Profiling Principles to be included in a Board policy

Chart of Summarized Written Deputations

Written Deputations Submitted to the Board on the following dates:

Apr 05/12
Jul 19/12
Aug 15/12
Nov 14/12
Jan 23/13
Mar 27/13
Apr 25/13
Jun 20/13
Aug 13/13
Sep 12/13
Oct 7/13
Nov 18/13

**THIS IS AN EXTRACT FROM THE MINUTES OF THE PUBLIC MEETING OF THE
TORONTO POLICE SERVICES BOARD HELD ON APRIL 05, 2012**

#P56. COLLECTION OF DEMOGRAPHIC STATISTICS

The Board was in receipt of the following report March 12, 2012 from Alok Mukherjee, Chair:

Subject: COLLECTION OF DEMOGRAPHIC STATISTICS

Recommendations:

It is recommended that:

- (1) the Board, in order to establish baseline data showing the pattern of contact between the police and members of the community in general, and young people from certain ethno-racial backgrounds in particular, request that the City of Toronto Auditor General conduct a project to collect and analyze data related to such contacts between the police and the community; and,
- (2) the Auditor General be requested to report to the Board in public on the results of the project, no later than the December 2013 meeting of the Board.

Financial Implications:

There are no financial implications of this project for the Board.

Background/Purpose:

In May 2011, the Board approved a policy entitled "Collection, Use and Reporting of Demographic Statistics" (appended) which provides, in part, that:

It is the policy of the Toronto Police Services Board that:

1. The Chief of Police will ensure that the Service establishes a procedure for the collection, use and reporting of 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 status or disability, and that the procedure include provisions to maintain appropriate degrees of confidentiality;
2. The Chief of Police will ensure that the statistics are not to be used by the Service, under any circumstances, to stigmatize, ascribe criminality to, make value judgments on or otherwise stereotype any community based on group characteristics;

3. The Chief of Police will report on the collection and use of statistics from time to time as may be required by the Board.

Board Members

4. The Board and Board Members will not use statistics under any circumstances, to stigmatize, ascribe criminality to, make value judgments on or otherwise stereotype any community based on group characteristics.

Discussion:

Section 1 of Ontario's *Police Services Act* (the *Act*) includes the following as some of the principles in accordance with which policing services will be provided:

Declaration of principles

1. Police services shall be provided throughout Ontario in accordance with the following principles:
2. The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.
3. The need for co-operation between the providers of police services and the communities they serve.
5. The need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society. R.S.O. 1990, c.P.15, s.1.

Further, at section 31.(1), the *Act* stipulates the following as some of the responsibilities of a police services board:

Responsibilities of Boards

31. (1) A board is responsible for the provision of adequate and effective police services in the municipality and shall,
 - (b) generally determine, after consultation with the chief of police, objectives and priorities with respect to police services in the municipality;
 - (c) establish policies for the effective management of the police force;
 - (e) direct the chief of police and monitor his or her performance;

This report is related to the Toronto Police Services Board's ability to discharge its statutory responsibilities consistent with the principles established in the *Act* in regard to one particular area, namely, police contact with members of the community.

For some time now, there has been widespread public concern about the nature of police contact with members of the community. In particular, it has been suggested that contact with young people from certain ethno-racial communities is disproportionate relative to all contacts.

The concern was articulated in a major series of articles by the *Toronto Star* in 2000 and, subsequently, in other reports and studies. One such study was commissioned by the Ontario government and prepared by former Chief Justice of Ontario, The Honourable Roy McMurtry, and former Speaker of Ontario Legislature, The Honourable Alvin Curling. The report, entitled "The Review of the Roots of Youth Violence," and presented to Premier Dalton McGuinty in November 2008, reiterated community concerns regarding police interactions with racialized youth.

In 2010, the *Toronto Star* carried out a follow-up to its 2000 study, using contact data from the Toronto Police Service. The *Star's* conclusion was that there had not been a significant change in the pattern it identified in 2000.

The Board itself has been committed to equitable and inclusive policing practices. To this end, the Board has taken several measures in the past eight years. These include:

- making diversity in hiring and promotion an organizational priority;
- requiring an employment systems review to identify and eliminate barriers in hiring and promotion practices;
- directing the Chief, and working with the province and the Service, to establish the summer Youth in Policing Initiative (YIPI);
- initiating a Human Rights Charter Project in partnership with the Chief of Police and the Chief Commissioner of the Ontario Human Rights Commission to promote equitable and inclusive service delivery practices through policies, procedures and training; and,
- establishing policies related to race and ethnocultural equity, human rights, accommodation and collection, use and reporting of demographic statistics.

The Board Policy on the Collection, Use and Reporting of Demographic Statistics was introduced in 2010 to replace the previous policy, which prohibited the dissemination of race-based data. The policy is attached for reference.

The rationale behind this new policy was that it would facilitate the development of programs and interventions based on concrete evidence rather than assumptions and conjectures. The Ontario Human Rights Commission advocates the collection and analysis of demographic data to determine whether services provided by a police service are equitable, inclusive and without discriminatory impact.

The policy provides very clear parameters to ensure that such data are not used inappropriately to stigmatize or criminalize any group or individual because of who they are.

Thus, a significant amount of effort has been made by the Board to respond to the concerns that have been raised over many years about the nature of police interactions with different groups that make up Toronto's diverse community. However, the Board does not have available to it a concrete quantitative database to assess objectively the impact or success of its initiatives as they relate to the above-cited principles of policing contained in the *Act*.

The Board has, as a result, no baseline or benchmark that it can use to determine outcomes or decide on future objectives, priorities or policies.

It is my view that such a baseline now needs to be established. Further, it is my belief that this exercise should be carried out by an external agency in order to ensure its independence and objectivity. I am, therefore, recommending the City of Toronto Auditor General be requested to undertake this project.

There is precedence for the Auditor General taking on such requests on behalf of the Board.

In 1999, the Auditor General, formerly the City Auditor, issued a report entitled "Review of the Investigation of Sexual Assaults – Toronto Police Service", which contained 57 recommendations. The Auditor General issued a follow-up report on the 57 recommendations to the Toronto Police Services Board in February 2005. This audit follow-up found the Toronto Police Service had not addressed all of the original audit recommendations and resulted in 25 additional recommendations. The Toronto Police Services Board requested the Auditor General to conduct a further follow-up audit on this matter. In June 2010, the Police Services Board received the following two reports issued by the Auditor General entitled "The Review of the Investigation of Sexual Assaults – A Decade Later, Toronto Police Service" and "The Auditor General's Second Follow-up Review on the Police Investigation of Sexual Assaults."

The Auditor General's Second Follow-up Review on the Police Investigation of Sexual Assaults found that, overall the Toronto Police Service has made significant strides to address issues raised in the 2004 follow-up report of the investigation of sexual assaults.

These reports dealt with a critical area of police service, that is, the investigation of sexual assaults in the context of the Board's statutory responsibility related to the management of the Service. They enabled the Board to work with the Service and the community to achieve the positive results that the Auditor General identified and acknowledged in his 2010 reports.

The issue of police contacts with members of the community, in general, and racialized young people specifically is one of significant and long-standing public concern. It is appropriate that the Board receive data, analysis and recommendations in regard to this issue in the same comprehensive and objective manner as it did on the issue of sexual assaults so that it can know whether the efforts made to date have been effective and what further efforts are required.

The project proposed to be undertaken by the Auditor General would, among other things:

- review data related to different types of contacts between the police and members of the community in general, and young people from certain ethno-racial groups in particular;

- assess whether there are variations in the contacts among groups;
- identify the reasons for these contacts;
- examine the impact of these contacts on public safety in the City;
- consider the implications of these contacts on different groups' perceptions of, relationship with and trust in the Service; and,
- make recommendations for actions to be taken by the Board and the Service to continue to enhance public safety in the City while increasing community trust in the Service.

Conclusion:

It is, therefore, recommended that:

- (1) the Board, in order to establish baseline data showing the pattern of contact between the police and members of the community in general, and young people from certain ethno-racial backgrounds in particular, request that the City of Toronto Auditor General conduct a project to collect and analyze data related to such contacts between the police and the community; and,
- (2) the Auditor General be requested to report to the Board in public on the results of the project, no later than the December 2013 meeting of the Board.

The following persons were in attendance and delivered deputations to the Board:

- **Nigel Barriffe, Board Director, Urban Alliance on Race Relations ***
- **John Sewell, Toronto Police Accountability Coalition ***
- **Noa Mendelsohn, Director, Equality Program, Canadian Civil Liberties Association ***
- **Moya Teku, Policy Research Lawyer, African Canadian Legal Clinic ***
- **Reuben Abib, Black Action Defence Committee ***

*** written submission also provided; copy on file in the Board office.**

The Board was also in receipt of written submissions from the following:

- **Frontline Partners with Youth Network**
- **Johanna Macdonald, Justice for Children and Youth**
- **Irwin Elman, Office of the Provincial Advocate for Children and Youth**
- **Miguel Avila**

Copies of the foregoing written submissions are on file in the Board office.

cont...d

The Board approved the foregoing report from the Chair and the following Motions:

- 1. THAT the Auditor General be requested to meet and consult with the Chief of Police and the Police Services Board in the development of terms of reference for this study and identify any procedural issues that may require the Board's direction;**
- 2. THAT police be requested to provide everyone stopped a copy of the contact card (Form 208) made by the officer, including the reason for the stop;**
- 3. THAT the Board request the Chief of Police to report on a quarterly basis on carding activities, including information about the race and ages of those carded;**
- 4. THAT the Board request the Chief to involve the TPS-Diversity Management Unit (DMU), being the subject matter experts in this area, to monitor all carding activities and where there appears to be discrimination that the Chief of Police ensure that the necessary steps are taken to address the matter;**
- 5. THAT the Board request the Chief of Police to provide a status report on steps taken to address the recommendations adopted by the Board and report back in six months;**
- 6. THAT the implementation of Motion Nos. 2 and 4 is subject to a report from the Chief of Police on the cost and operational implications that may arise from these Motions; and**
- 7. THAT the Board received the deputations and the written submissions.**

Reconsideration:

At its meeting on May 18, 2012, the Board approved a request to re-open the foregoing Minute pursuant to subsection 24(1) of By-Law 107 governing proceedings of the Board.

Chair Mukherjee advised the Board that, although the Minute is an accurate reflection of the decisions made by the Board on April 05, 2012 with respect to seven Motions that were approved by the Board, he requested that Motion No. 2 be amended given that, under the *Police Services Act*, the Board does not have the statutory authority to direct individual police officers. The Board subsequently agreed to revise Motion No. 2 as follows:

THAT the Chief of Police be requested to ensure that individuals for whom a contact card (Form 208) is created be provided a copy of the contact card, including the reason for the stop.



TORONTO POLICE SERVICES BOARD

COLLECTION, USE AND REPORTING OF DEMOGRAPHIC STATISTICS

DATE APPROVED	October 18, 2007	Minute No: P332/07
DATE(S) AMENDED	September 23, 2010 November 15, 2010 May 11, 2011	Minute No: P247/10 Minute No: P292/10 Minute No: P114/11
DATE REVIEWED	November 15, 2010 May 11, 2011	Minute No: P292/10 Minute No: P114/11
REPORTING REQUIREMENT	As set out below	
LEGISLATION	<i>Police Services Act</i> , R.S.O. 1990, c.P.15, as amended, s. 31(1)(c). <i>Ontario Human Rights Code</i> , R.S.O. 1990, c. H.19.	
DERIVATION	Rule 4.3.9 – Release of Statistics	

Toronto is one of the most diverse cities in the world. The Toronto Police Services Board embraces the diversity of the City of Toronto.

The Board is committed to ensuring that the Toronto Police Service will provide services in partnership with all the communities of the City and in a way that is equitable, respectful, inclusive and culturally competent.

The Board is committed to improving services to the public. Based on the principle that only what is measured can be effectively managed, the Board believes that it is important to collect, use and report statistics related to the grounds prohibited under the Ontario *Human Rights Code*.

The Board acknowledges that no single statistic is or should be determinative of how deployment decisions are made; rather, such decisions should be based on a combination of considerations because safety in a neighbourhood or the experience of policing by a community depends on an intersectionality of factors.

The Board categorically opposes the misuse of statistics in a manner that stigmatizes any community.

The Board requires that this policy be implemented in keeping with the Ontario *Human Rights Code* and the *Municipal Freedom of Information and Protection of Privacy Act*. Therefore, in developing and implementing this policy, the Board is committed to working in consultation with the Ontario Human Rights Commission and the Office of the Information and Privacy Commissioner.

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 status or disability, as necessary and appropriate.

It is the policy of the Toronto Police Services Board that:

1. The Chief of Police will ensure that the Service establishes a procedure for the collection, use and reporting of 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 status or disability, and that the procedure include provisions to maintain appropriate degrees of confidentiality;
2. The Chief of Police will ensure that the statistics are not to be used by the Service, under any circumstances, to stigmatize, ascribe criminality to, make value judgments on or otherwise stereotype any community based on group characteristics;
3. The Chief of Police will report on the collection and use of statistics from time to time as may be required by the Board.

Board Members

4. The Board and Board Members will not use statistics under any circumstances, to stigmatize, ascribe criminality to, make value judgments on or otherwise stereotype any community based on group characteristics.

Oral Presentation to the Toronto Police Services Board

March 22, 2012

My name is Ngel Barriffe, I'm a school teacher. I teach in the Toronto District School Board in one of the 13 Priority neighbourhoods for investment. I teach a grade 5 and 6 split class.

But the hat I wear here today is that of a member of the Board of Directors of the Urban Alliance on race Relations. The Urban Alliance On race Relations was formed in 1975 by a group of concerned Toronto ^{residents} ~~citizens~~. Our primary goal is to promote a stable and healthy multi-racial environment in the community. The Alliance is a non-profit charitable organization consisting of volunteers from all sectors of the multicultural and multiracial Canadian society.

In my community police harassment is well known. An often used expression in my community is DWB this stands for driving while black. And is experienced by people of all ages and gender of African heritage. And amounts to police pulling you over Questioning you...searching you and harassing you. Further and very serious, ongoing harassment from the police against young racialized youth, in areas like Rexdale where I work, stigmatizes these young people, creates resistance and mistrust against law enforcement, and sets up exactly the kind of negative dynamic in policing that makes young people more likely to be criminalized in future. Instead of community police making neighborhoods safer for all, youth become targeted for merely being visible in public space. The recent example of the killing of Trayvon Martin in Florida is just another example of acts that are far too common. While they did not make global headlines... in Toronto we have seen very similar impunity in shootings or death at the hands of Toronto police like those of Michael Eligon on February 3, of this year and of Junior Alejandro Manon in May 2010.

For the past 20 years the relationship between racial profiling by police and economic marginalization has been documented in report after report – from that of Stephen Lewis in 1992 to the recently released Metcalfe report *The working poor*. I have written an overview of these which I may leave with the committee at the end of the meeting, but I am sure that your membership is aware of this documentation. Now, however, I am going to give three concrete examples from Rexdale .

- 1) A ten year old student shared a story with me about the police in our neighborhood knocking down the door of his town home. They said they were looking for drugs; but left the doors and parts of the home in shambles. Everyone was at home, they had no warrant, they simply knocked down the door. This happened before Christmas.
- 2) In December, two boys were walking home from school. The police pulled their squad car in front of them. They questioned the boys about where they were going, why they were walking home in the period after school.
- 3) Elmbank community centre: I sit on the advisory board of the elmbank community center in Etobicoke North. Last summer we tried to organize a community event –fundraiser. The police actively discouraged the community for holding the event and gave them security conditions so oppressive that the advisory board at the time felt threatened and it was fiscally impossible for the community to hold the event.

The Urban Alliance on Race Relations recommends that:

Urban Alliance on Race Relations Deputation to the Toronto Police Services Board
Thursday, March 22, 2012

Given the persistence of this issue and the inability of the police to deal with it, we recommend that the Toronto Police Service Board establish a special task group with community and police participation, like the DMU¹, to ensure there will be action on this issue.

This group will be in a good position to look at what the auditor general recommends later.

We support Dr. Mukherjee's suggestion of asking the City auditor general to conduct a review of existing police data, including data obtained by the Star. In our view, the City Auditor General has credibility that should make the implementation of his recommendation more a reality, rather than sitting on the shelves again. However, Dec 2013 is much too long, half that time is more like it.

In conclusion:

Lewis' own position is stated exceptionally clearly, and he makes it on the third page of the report:

what we are dealing with, at root, and fundamentally, is anti-Black racism...It is Blacks who are being shot, it is the Black youth that is unemployed in excessive numbers, it is Black students

¹ **Mandate**

The primary focus of the Diversity Management Unit is to coordinate all human rights complaints and activities, build strategic cultural change, with the goal of facilitating a Service wide appreciation of diversity and a dedication to increasing opportunity for all members to implement these values in their work environment.

Responsibilities

The Diversity Management Unit is responsible for ensuring:

- That all human rights complaints and concerns are dealt with respectfully, strategically and effectively.
- The Service reflects the diverse community it serves at all levels/ranks.
- The Service provides all members with a healthy, respectful, inclusive and equitable work environment that is free from harassment and discrimination.
- All members provide a bias-free service to the community.
- All members develop and demonstrate effective diversity management skills.
- Progressive standards for Human Rights, diversity and inclusion are defined, implemented and monitored for compliance.

who are inappropriately streamed in schools, it is Black kids who are disproportionately dropping out, it is housing communities with large concentrations of Blacks where the sense of vulnerability and disadvantage is most acute...Just as the soothing balm of 'multiculturalism' cannot mask racism, so racism cannot mask its primary target (Lewis 1992, p.3).

Taken together, analyses produced over the past twenty years point to the systemic issues identified by Stephen Lewis in 1992: that racialized groups in Ontario are disproportionately represented in jails, in school dropout statistics and in lower income groups. Addressing these issues through meaningful policy reform and programming will be essential if racialized groups in Ontario are to be lifted out of poverty.

Thank you.

Appendix A-

Literature Review- A Historical Context of Reports on stigmatization and criminalization of Racialized youth over since 1992 to present.

To deepen understanding of structural poverty and dispossession, and to gain a historical context for why community organizing is so important in Etobicoke North, this section reviews a selection of policy documents concerning racialized and marginalized communities in the GTA and Ontario. I examine published reports and academic studies conducted over the past twenty years, beginning with Stephen Lewis' *Report of the Advisor on Race Relations to the Premier of Ontario* (1992). This material sheds light on how systemic racism has affected opportunities for youth and other sectors in communities like Toronto's so-called 'priority neighborhoods'. My objective with this review is ultimately to understand how income, to a certain degree racial inequality, affects the possibility for economic and political equity in Etobicoke-North.

The literature review begins with a discussion of the findings of some of the key reports published on the topic since 1992. In the second section I specify some of the policy recommendations made in these reports and how they have been implemented. My overall argument is that many of the policy recommendations have been insufficiently implemented, in part because the root causes of economic inequality and racism lie in broader economic processes which requires social resistance to overcome. Indeed over the past 20 years, neoliberal policies have in fact widened the gap between the rich and poor. As Van Jones (2008) and others have put it, to address these inequalities policy-makers, politicians and community organizers alike will have to look at developing a new green economy strong enough to lift all people out of poverty.

A number of reports produced in the 1990s looked critically at the relationship between structural inequality and racialization. A major document in this regard was the Stephen Lewis Report to the then premier of Ontario Bob Rae which is cited in much of the literature as crucial. His report was commissioned in response to the 1992 Yonge Street riots of black youth. These riots had been preceded by eight shootings over the previous four years. To many in the black community, such violent encounters with the police were seen as racially motivated. The report's

Urban Alliance on Race Relations Deputation to the Toronto Police Services Board
Thursday, March 22, 2012

overall focus is on race, racism in policing in particular and the criminalization of black youth, including the disproportionate numbers of blacks in the justice system. In appealing to public sentiment, Lewis stressed the climate of fear and apprehension faced by mothers in this community.

In the section on employment equity Lewis points out that every single minority grouping called for greater employment equity, yet despite an employment equity program in the Ontario Public Service since 1987 very little progress had been made. In his final section, on education, Lewis refers to educational disenfranchisement including low graduation rates among racialized youth, and makes references to institutional problems such as minimal black teachers in the school system. Lewis goes on to state that the educational system of the greater society at large is unrepresentative. He describes Faculties of Education in Ontario universities as insufficiently progressive and unsupportive of minority students. Significantly, Lewis calls for a kind of anti-racist pedagogy at the earliest levels, in elementary school.

In contrast to Bob Rae, who blamed the Yonge Street riots on hooliganism (Maychak 1992), Lewis' own position is stated exceptionally clearly, and he makes it on the third page of the report:

what we are dealing with, at root, and fundamentally, is anti-Black racism...It is Blacks who are being shot, it is the Black youth that is unemployed in excessive numbers, it is Black students who are inappropriately streamed in schools, it is Black kids who are disproportionately dropping out, it is housing communities with large concentrations of Blacks where the sense of vulnerability and disadvantage is most acute...Just as the soothing balm of 'multiculturalism' cannot mask racism, so racism cannot mask its primary target (Lewis 1992, p.3).

Also in 1992, the Ontario government established the Commission on Systemic Racism in the Ontario Criminal Justice System. The Commission studied all areas of criminal justice and in December 1995 issued a 450 page report with recommendations. The review reaffirmed the perception of racialized groups that "they are not treated equally by criminal justice institutions. Moreover, the findings also showed that the concern was not limited to police" (Commission on Systemic Racism, 1995, p. 14).

Less than a year following these reports, the Province of Ontario established the Royal Commission on Learning in May 1993. The full report released in 1995, entitled *For the Love of Learning*, was 500 pages long. It also emphasized the need to address the unfair treatment of racialized and marginalized communities (although the report doesn't use that exact language). Among the points made within is that Black, Portuguese and Hispanic students are disproportionately unsuccessful in Ontario schools, largely because the school system works best for those who come from wealthy families.

The report was intended to suggest a vision and action plan to guide the reform of elementary and secondary education. This would include values, goals and programs of schools, as well as systems of accountability and educational governance. It made an attempt to identify streaming as a barrier to children from racialized groups, leading to their under-representation in courses that give entry to post-secondary education (Royal Commission, p. 162).

The period from between 1995 to 2003 saw a change in the Ontario government from the left leaning New Democratic Party, then under Bob Rae to Mike Harris Progressive Conservative government. Unfortunately, the progressive direction in the area of social services and race relations promoted in these early 1990s reports saw an about face upon Harris' election in 1995. Harris opposed affirmative action and equity policies and derailed the recommendations made previously. His so-called 'Common-Sense' revolution has had long-term consequences. This period was characterized by increasing racial profiling from the police and disproportionate police violence against African Canadian and Aboriginal communities. Under Harris social programs (social welfare, health, education) suffered significant reductions in funding. In 2003, following the Walkerton scandal and confrontations with the teacher's union, Harris was swept out of power by the McGuinty Liberal government.

While discontent with Harris grew, civil society institutions continued to monitor growing social inequality. One example of this was the Ontario Human Rights Commission Report released in 2002 entitled *Paying the Price: The Human Cost of Racial Profiling*. It explained how racial profiling affected the individuals, families and communities that experience it. The report details the detrimental impact that profiling was having on societal institutions such as the education system, law enforcement agencies, service providers and so forth. In fact it outlines the business

case against profiling, arguing that it was reducing efficiency and costing society money. It was the Commission's view that racial profiling was primarily a mindset. "...at its heart, profiling was about stereotyping people based on preconceived ideas about a person's character."

Shortly thereafter Scott Wortly in his 130 page report to the Ipperwash Inquiry² (2003) sought to explain the overrepresentation of African Canadians and Aboriginals in police 'use of force' statistics. The report includes a comprehensive literature review, detailed analysis of racism in the justice system, and recommendations on how to avoid the disproportionate use of force against African Canadians and Aboriginal people. As we will see later in this paper, these problems remain as an important pivot for community concern in Etobicoke North. Most recently, police repression in the area has seen critique from the Toronto Police Services Review Board and the Board Chair Dr. Alok is seeking::

- *An independent review of existing police data, which would include data already obtained by the Star.*
- *An assessment of the impact the contacts may have on public safety.*
- *A look at how the police interactions affect public perception and trust in the service*

The Toronto Star reports:

"Black men, particularly young black men, who were interviewed for the current and past Star series say they feel harassed by police who stop and question them, and that whatever legitimate rights they may have to refuse to answer feel moot." Jim Rankin and Patty Winsa.

Downloaded Saturday, March 17, 2012- <http://www.thestar.com/news/insight/article/1147239--police-board-chair-seeks-race-based-probe-of-stops?bn=1>

Examining how such dynamics as those discussed by Wortly play out spatially, in 2004 The United Way of Toronto released their 92-page report *Poverty by Postal Code*. The report detailed

² "The Ipperwash Inquiry was established by the Government of Ontario on November 12, 2003, under the *Public Inquiries Act*. Its mandate was to inquire and report on events surrounding the death of Dudley George, who was shot in 1995 during a protest by First Nations representatives at Ipperwash Provincial Park and later died. The Inquiry was also asked to make recommendations that would avoid violence in similar circumstances in the future." <http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/index.html>

the dramatic increase in the number of poor Toronto neighbourhoods. It showed that Toronto had many more concentrated areas of poverty than it did 20 years earlier. *Poverty by Postal Code* indicated that the rapid and extensive growth in the number of neighbourhoods with a high proportion of families living in poverty not only undermined their strength – as well as of Toronto as a whole – it also made children, single parents, newcomers and racialized peoples particularly vulnerable. Etobicoke-North was one of the areas highlighted in the report. Shortly there-after, the City of Toronto identified Rexdale as a Priority Neighbourhood For Investment.

The 2000s have seen ongoing cases of racialized violence and a growing gap between rich and poor. A number of reports were commissioned as a result of the Jane Creba shooting in 2005, and the killing of Jordan Manners in 2007, a Black Canadian high school student shot in the halls of the Toronto School CW Jeffery's Collegiate.³

Shortly thereafter, in November 2008, Alvin Curling and Roy McMurtry released their provincially commissioned *Review of the Roots of Youth Violence* Report. They wrote,

The sense of nothing to lose and no way out that roils within such youth creates an ever-present danger... The very serious problems being encountered in neighbourhoods characterized by severe, concentrated and growing disadvantage are not being addressed because Ontario has not placed an adequate focus on these concentrations of disadvantage despite the very serious threat they pose to province's social fabric... Racism is becoming a more serious and entrenched problem than it was in the past because Ontario is not dealing with it. (Volume 2 – page 3).

Indeed, their report echoed much of what Stephen Lewis wrote almost twenty years earlier.

They write:

Deep concerns about this sad state of affairs pervaded our consultations. We were taken aback by the extent to which racism is alive & well and wreaking

³ A important document from this period is *The School Community Safety Advisory Panel Report*, released in 2008. Its 500- page, four volume report looked into the Manners' shooting. The panel was tasked to look at all the contributing factors that had led to this first ever case of a student being shot and killed in a public school in Ontario. The Panel interviewed parents, teachers, students and other educational stakeholders. It included survey results flowing from staff and students conducted at C.W. Jefferys and Westview Centennial. It concluded with 126 recommendations.

its deeply harmful effects on Ontarians and on the very fabric of this province.” (Volume 2 -- page 8)

Indeed, they explain, anti-racism is rarely addressed in the educational system. The focus is commonly on “multiculturalism” or “diversity”, which does not address access and inequality.

Through this period, Ontario educational institutions have started to recognize how inequalities and disparities are experienced by racialized groups. The Toronto District School Board released the *Achievement Gap Task Force* report in May 2010. Dr. Chris Spence, the first Black Director of Education, oversaw this report which acknowledges the disproportionate number of youth from Black/African heritage and other racialized/minority groups (Aboriginal, Hispanic, Portuguese and Middle Eastern) who do not graduate from high school. The task for released an updated report titled: the Opportunity Gap Action Plan⁴. The Task Force offers “directions for consideration to close the school achievement gap for students and to generate discussion and feedback”.

While educational institutions have been examining these problems in the school system, the Canadian Centre for Policy Alternatives (CCPA) has studied how the income gap is also racialized. In March 2011 the CCPA released a report on Canada’s racialized income gap by scholars Sheila Brock and Grace-Edwards Galabuzzi. The report makes the links between low-income jobs, the racialization of poverty, and the impacts both have on the health of racialized Canadians. It uses 2006 long-form Census data to compare work and income trends among racialized and non-racialized Canadians. Unfortunately it may be one of the last reports to have such data at its disposal given that the the Harper conservative Government is no longer collecting extensive information. The report found that during Canada’s economic high times of the mid-2000s, racialized workers experienced higher levels of unemployment and earned less income than white Canadians, and that equal access to employment opportunities were disproportionately lower for racialized workers. Co-writer Sheila Brock said of her findings that

⁴ The TDSB Opportunity Gap Action Plan strategic directions include “1) Identify disadvantage and intervene effectively. 2) Make every school an effective school. And 3) form strong and effective relationships and partnerships. It is the opinion of the researcher as a school teacher and community activists, that the report falls far short of the recommendations from both the *Roots of Youth Violence Report* and the *School Community Safety Advisory Panel*.”

“the work racialized Canadians are able to attain is more likely to be insecure, temporary and low paying.” (p. 2

Among their findings was that in 2006, racialized Canadians had an “unemployment rate of 8.6 per cent, as compared to 6.2 per cent for non-racialized workers”...

racialized workers were over-represented in industries with precarious low-paid jobs; they are under-represented in public administration and more likely to work in the hard-hit manufacturing sector... This colour code contributed to much higher poverty rates with 19.5 percent of racialized families living in poverty, compared to 6.4 per cent of non-racialized families (p 4).”

The income gap they discuss is exemplified in the neighbourhood of Etobicoke North/Rexdale as this electoral district has the highest unemployment rate and lowest average income in all of the GTA.) The need for a development strategy that would bring good, stable jobs for the neighborhood. was a key issue driving the creation of CORD. One of the interviewees (Danavan), was a founding member and his motivations and views on organizing are discussed further in the results and analysis section.

Taken together, analyses produced over the past twenty years point to the systemic issues identified by Stephen Lewis in 1992: that racialized groups in Ontario are disproportionately represented in jails, in school dropout statistics and in lower income groups. Addressing these issues through meaningful policy reform and programming will be essential if racialized groups in Ontario are to be lifted out of poverty. But an analysis of capitalism, and its manifestations over the past twenty years, indicates that this will only be possible if those most exploited and marginalized resist the processes that have put them in this position. It is to the structural roots of socio-economic exploitation, and consciousness raising and organizing to address it, that we now turn. **Community Organizing and Social Justice- David Harvey’s theory on ‘accumulation by dispossession’ and its applications to Etobicoke-North.**

The notion of accumulation by dispossession (Harvey 2004), applies Marx’s idea of ‘primitive accumulation’ to the contemporary period. It describes a series of different socio-economic, political, cultural processes inter-related under capitalism that lead to the labour of populations,

or the material goods that they have control over, being dispossessed in order for other people to accumulate capital.

This includes everything from expelling indigenous populations from their land in order to mine through Government mining contracts corporations, to the foreclosure of mortgages on lower and middle income populations in the U.S. during the 2008 financial crisis. In the US financial crisis this meant that all of the savings of these lower and middle income populations was 'lost' because they were not able to pay back the interest on their homes. In turn, large banks and their shareholders repossessed this wealth and property from others.

Further, certain populations are paid poorly to conduct certain types of activities that are essential to the further the accumulation and reproduction of capital. This means that lower paid populations are being dispossessed in a form allowing for their employers to accumulate wealth. This wealth accumulation could be channeled through the interest payments one makes for loans or credit into the interest savings of the wealth (from savings account or investment portfolios) as well as income from wages that are disproportionately paid to the highest earning sectors of society (cite Harvey and CCPA reports etc).

In Etobicoke-North this dispossession is visible in the disproportionate part of the population that is disproportionately underpaid compared to other parts of the Greater-Toronto area (United Way of Greater Toronto, 2004, ; Huchansky, 2009, Brock & Galabuzzi, 2011). Under neo-liberalism, the real wages of this population have fallen over the last 30 years (ibid.). This dispossession has also led to growing profits to the financial system whether through interest paid on credit by such people, or the increasing returns on investments in sectors where labour is poorly paid.

Today some parts of the population might say the service industry is absolutely essential to the production of capital. For instance, Rathika, the youngest research participant in this study works at a fast food establishment in Etobicoke-North, part of a sector that has grown immensely in the same period that real wages have fallen. Her work might be considered vital as a huge portion of the population relies upon services like hers in order for them to get a quick meal. This is so because the nature of contemporary capitalism does not allow the time or means for families to

do so. Where in the past, a gendered division of labour meant that the woman might frequently preparing the meal at home³ today all or most family members have entered the workforce.

So the activities of populations working in low-paying jobs are allowing for capital to be accumulated by wealthier portions of the population who hold money in investments and work in jobs that are much better remunerated. Further, the Canadian economy has become increasingly dependent on this precarious workforce (cite Hulchansy or the new Metcalfe report if appropriate). Precarious work means that you do not have stable income or job security and you have little choice but to accept working conditions that are considered much lower than earlier Canadian generations.

Another direct example of a form of dispossession includes racialized women working in the homes of relatively wealthy people as caregivers, nannies and/or cleaners at a relatively low wage. This allows the employer to reproduce themselves in a very comfortable manner and perhaps accumulate additional wealth, while public day care services are under-funded and insufficient to cover the needs of the two person work force. From farm labourers, where people from Mexico and the Caribbean come to Canada on temporary work permits, to new immigrants who do not have their professional designations recognized, all end up working in situations that allow capital to reproduce itself at their expense. All of these are contemporary mechanisms by which these populations allow for a certain kind of reproduction, production, accumulation of capital and lifestyle of certain populations by their very existence.¹

¹ These are exploitative dynamics and the researcher is well aware that many of these workers are very grateful for the opportunity to leave oppressive circumstances and take their chances in Etobicoke-North. But many of parts of these working class and precarious workers have left their home countries for reasons that include the dispossession of their lands by Northern/Canadian corporations. In Etobicoke-North, prior to the North American Free Trade Agreement (NAFTA), many residents were able to find well paying, unionized jobs right out of high school. Now, many of these same companies pay...

³ This is not to suggest that this gendered division of labour is 'just'. Clearly due to patriarchy many women continue to shoulder these tasks even once they have entered the labour force.

either relocated to Mexico, the US, overseas or have gone bankrupt. Many of the jobs available in Etobicoke-North are either in the retail or service industries.

Toronto Police Accountability Coalition
c/o Suite 206, 401 Richmond Street West, Toronto ON M5V 3A8.
416 977 5097. info@tpac.ca , www.tpac.ca

March 19, 2012.

To: Toronto Police Services Board

Please list Toronto Police Accountability Coalition on the March 22 agenda to speak to Chair Mukherjee's report titled 'Collection of Demographic Statistics'. This report refers to articles in the Toronto Star about racial data collected by the police and recommends that the city Auditor "conduct a project to collect and analyze data related to such contacts between the police and the community" and to report by December 2013.

The data in the Toronto Star article on March 10 are quite stunning. See <http://www.thestar.com/news/insight/article/1143536--known-to-police-toronto-police-stop-and-document-black-and-brown-people-far-more> The article reports on the data on cards recording police stops from 2008 to mid-2011, about 1.25 million cards.

While blacks account for 8.3 per cent of Toronto's population, 23.4 per cent of the cards were for people identified as black. The data shows there were 11 patrol areas where blacks were more than five times as likely as whites to be stopped by police; 31 areas where they were three to five times as likely to be stopped, and 24 where they were two to three times as likely. There were no patrol areas where blacks were less likely to be stopped by police as whites.

For young black men aged 15 – 24, the data are even more stunning. The number of black youth stopped by police is 3.4 times larger than the total number of black youth living in Toronto. For brown youth the number of stops is 1.83 times the number of brown youth living in Toronto. The number of white youths stopped is about equal to the total number of white youths living in Toronto.

This data generally confirm studies of carding data published by the Star in 2010 and 2007, showing that police behaviour in regard who they stop has been the same for at least the past decade. We believe the Star's analysis of the police carding data is reliable and sound.

We think the conclusions are clear to anyone who looks at the data:

- a) The data in the Star story make it very clear that racialized youth and men were stopped by police far more often than youth and men with white skin.
- b) This confirms the statements made by many racialized youth that they are very frequently stopped by police as they go about their law abiding lives.

We believe the following statements are self-evident:

- c) It is a fair presumption when some individuals are treated differently than others because of skin colour, such actions are discriminatory.
- d) Racialized youth and men are stopped more frequently, and thus treated differently by police than others, and that treatment is discriminatory.
- e) Racial discrimination is not permitted in Ontario and is subject to legal sanction.
- f) Police are as much subject to anti-discrimination laws as anyone else.
- g) Discrimination is not justified just because police think it is a good way of 'fighting crime'.
- h) Ways must be found to stop such discriminatory behaviour by police immediately.

It should also be noted that the Supreme Court of Canada has questioned the legal basis for these random stops where individuals feel they must submit to police commands. Pending a review of whether the police should in fact continue to make such stops, we recommend two changes:

- 1) The police must provide to everyone stopped a carbon copy of the card note made by the officer, including the reason for the stop. This will ensure that individuals can clearly indicate how many times they have been stopped and for what reason.
- 2) The police must provide to everyone stopped an information sheet indicating to those stopped their rights, particularly their rights not to co-operate. This information sheet should be drafted jointly by the police, Canadian Civil Liberties Association, the African Canadian Legal Clinic, and Justice for Children and Youth. Currently, most people stopped by police feel intimidated, and fear police will harm them if they do not do exactly as police say even though the police have no such powers.

Regarding the more general question of what this analysis shows about police behaviour, we do not believe it is useful to ask the City Auditor to further analyze this data and report in 19 months: as noted, the Star's analysis seems fair and reasonable, however critical or uncomfortable the conclusions.

We suggest the following as a reasonable course of action:

- 3) The Board should immediately state that it will not tolerate discriminatory stops by police officers.
- 4) The Board should require the chief to report to it on a monthly basis on carding activities including information about the races and ages of those carded.
- 5) The chief should require the Diversity Management Unit to monitor all carding activity, and where it is shown that results indicate that discrimination by race is occurring, the Unit shall counsel officers to change their behaviour, and where officers do not change their behaviour, the division commander shall immediately begin disciplinary actions.
- 6) The Diversity Management Unit should consider developing a structured interview/intervention process in cases where police stops may reasonably be warranted.

We considered asking the Ontario Human Rights Commission to work with the Board and police service to bring such widespread discriminatory action to an end but we note that the service and the OHRC worked together for almost three years on the recently completed Project Charter, and that process had nothing to say about discriminatory stops and arrests. It is not worth going that route again.

We considered the option of more training but that is not the answer: the issue is the police culture, and that can only be changed by different requirements and consequences. It is the same problem with recruitment: the police culture is so strong that hiring officers of different races (as has happened happily more frequently in recent years) has not changed police behaviour.

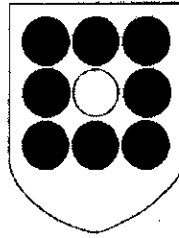
Like many other organizations and individuals – and we suspect, Board members - we want a police force that does not discriminate. We put forward these ideas and recommendations with the hope that they can help create the kind of change the Toronto police force needs.

Yours very truly,

A handwritten signature in black ink, appearing to read "J. Swell". The signature is written in a cursive style with a large, stylized initial "J" and "S".

Toronto Police Accountability Coalition.

CANADIAN
CIVIL LIBERTIES
ASSOCIATION



ASSOCIATION
CANADIENNE DES
LIBERTES CIVILES

Statement and Recommendations of

The Canadian Civil Liberties Association (CCLA)

1. We commend the Toronto Star and its reporters – Jim Rankin in particular – for their continued investigations into and reporting on the very serious issue of racial profiling of black male youth, and for creating public awareness about this.
2. We also commend the response of Toronto Police Services Board Chair Dr. Mukherjee for taking the issue seriously and moving to address it at this week's Board meeting.
3. The Canadian Civil Liberties Association is currently facilitating a project on Youth Rights and Policing. Sadly, the results described in the Toronto Star series come as no surprise. Preliminary data from our project corroborate the findings in the Toronto Star series.
4. **What is at issue for black male youth is not just the recording of their names and identities. It is also unwarranted police stops which in and of themselves violate the privacy, autonomy and dignity of the young people involved.**
5. Such stops can and do lead to random and unnecessary questioning, requests for identification, intimidation, illegal searches, and at times aggression on the part of police.
6. Chief Blair has been quoted as suggesting that the stops are a way for police officers to engage with people. He has also stated that the very purpose of this kind of policing is to make the neighbourhoods safer, so that young people can live there "without being fearful."
7. The positive interactions and relationships that certain officers may be attempting to forge, are undermined when stops and unconstitutional violations target specific racialized groups.

RECOMMENDATIONS

1. The practice of targeting black male youth (including unwarranted stops and /or questioning, demanding and recording of identities, intimidation, and searches) is unacceptable and unconstitutional. It undermines the goals of law enforcement and of the criminal justice system. It must be stopped.
2. We support the recommendation of the Chair, Dr. Mukherjee, to request of the City of Toronto Auditor General to investigate this practice. Steps must also be taken to stop it.
3. The Ontario Human Rights Commission also has the responsibility to conduct a full and thorough investigation of this issue and to make useful recommendations. Likewise the OIPRD, which also has the authority to conduct investigations of systemic issues. Barring effective action on these fronts, complaints could be lodged or legal action contemplated.
4. In the interim, the police are still responsible to deal with this urgent matter, and they must confront it proactively.

The Police Services Board should work without delay to create a policy prohibiting the practice of targeting black male youth (including unwarranted stops and/or questioning, demanding and recording identities, intimidation and searches).

Provisions in this policy should address enforcement of the policy through appropriate discipline. They should also address data collection and reporting requirements, and other recommendations.

Independent community-based groups should be consulted on this policy. CCLA would be happy to consult with the Board in this regard.

Noa Mendelsohn Aviv
Director, Equality Program, Canadian Civil Liberties Association

March 21, 2012

For more information: Penelope Chester; media@ccla.org; 416-363-0321 x225 OR 647-822-8764



March 20, 2012

VIA EMAIL

Deirdre Williams, Board Administrator
Toronto Police Service Board
40 College Street
Toronto ON, M5G 2J3
Email: deirdre.williams@tpsb.ca

Dear Ms. Williams:

RE: Deputation at Toronto Police Services Board Meeting

I am writing this letter on behalf of the African Canadian Legal Clinic ("ACLC") to request an appearance at the upcoming Board meeting, scheduled to take place on Thursday, March 22, 2012 at 1 pm.

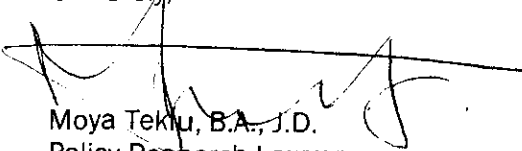
The meeting will address, *inter alia*, the articles in the *Toronto Star* about racial data collected by the police and the recommendation of Chair Mukherjee to the City's Auditor General about conducting a project to collect and analyze data related to such contacts between the police and the community.

I understand that the by-laws provide that written notice to the Board Administrator must be received no later than five working days prior to the next regularly scheduled Board meeting. I hope, however, that, given the importance of this issue to the African Canadian community and the recent date of publication of this data and Chair Mukherjee's recommendation, an allowance will be made in this instance.

Briefly, the ACLC would like the opportunity to suggest that it is not useful or cost-efficient to ask the City Auditor to further analyze this data and report in 19 months. First, the problem of racially biased policing in the Greater Toronto Area has been an issue of concern for over ten years. Second, the analysis conducted by the *Star* appears to be fairly analyzed and methodologically sound. The ACLC would also like to submit that rather than analyzing data, the Board's resources would be better used to address this long-standing problem. The ACLC would like to put before the Board its recommendations for the best practices to address racially biased policing.

The ACLC will provide a written version of our deputations upon receiving your response to this request to appear. Please do not hesitate to contact me if you have any questions, comments or concerns.

Sincerely,


Moya Teklu, B.A., J.D.
Policy Research Lawyer



African Canadian Legal Clinic

Written Submissions to the Toronto Police Services Board

**Recommendations of Chair Alok Mukherjee on the Collection of
Demographic Statistics**

April 5, 2012

Introduction

The African Canadian Legal Clinic (“ACLC”) would like to begin by commending the *Toronto Star* for its role in placing race based statistics on the policy agenda of the Toronto Police Services Board (“TPSB”). The ACLC also commends Chair Alok Mukherjee for taking the initiative to examine the “pattern of contact between the police and ... young people from certain ethno racial backgrounds.” The Clinic has long held that the collection and publication of race-based statistics by police services is a necessary instrument in the fight against anti-Black racism in the provision of police services. We encourage the TPSB to collect and analyze race-based statistics in order to evaluate the effectiveness and utility of its many anti-discrimination policies and practices and thereby ensure transparency, accountability, and real progress.

While the ACLC welcomes the renewed attention to the issue of racial profiling in policing, contact cards, and race based statistics, the ACLC, like the Toronto Police Accountability Coalition, questions the recommendations advanced by Mr. Mukherjee for a number of reasons. Firstly, we question the need to collect further data on the issue. The recommendations propose a data collection and analysis project that will not conclude until December 2013. We can hardly rationalize the need for another lengthy study before the TPSB takes action to reduce the disproportionate number of African Canadians who come into contact with police. Secondly, we question whether the Auditor General is the right person to conduct a review and analysis of the data. Thirdly, Mr. Mukherjee’s brief fails to make any recommendations that specifically aim to curb the disproportionate impact that police stops and 208 cards have on the African Canadian Community.

The Correct Response to the Statistical Analysis Presented by the *Toronto Star* is NOT another Lengthy Data Collection Project

The ACLC is opposed to another lengthy data collection project on the issue of racially-biased policing. The recent statistics published in the *Toronto Star* news series, “Known to Police,” are drawn from data collected by the Toronto Police Service (“TPS”). The data and analysis do not appear to be flawed and provide the necessary “concrete quantitative database” called for in the recommendations. Unless the TPSB can point to some error in the collection or analysis of the data, any re-analysis would be a waste of time and public money.

Anti-Black racism in our criminal justice system is a widely-recognized and well-researched phenomenon. It has been documented at all levels of court. In *R. v Spence*, for example, the Supreme Court noted that “racial prejudice against visible minorities is notorious and indisputable... [it is] a social fact not capable of reasonable dispute.”¹ In *R. v Parks*, a landmark decision of the Ontario Court of Appeal, the court acknowledged that there is support for the view that “widespread anti-Black racism is a grim reality in Canada and in particular in Metropolitan Toronto.” The phenomenon has also been studied in numerous reports. The TPSB is surely aware of the plethora of legal and social science studies that

¹ *R. v. Spence*, [2005] 3 S.C.R. 458 at para. 5.

over the past forty years have documented the strained relations between the police and the African Canadian community. The ACLC has identified at least 15 such reports that have been issued since the 1970s.

The Board's proposal of another study of racially biased policing in the TPS is very similar to the response of former Police Chief Julian Fantino and former TPSB Chair Norman Gardner to "Singled Out," the *Star* series on the same topic published in 2002. Ten years later, in 2012, the response of Toronto's African Canadian community is the same. We cannot afford to wait for yet another study. Our young men are being profiled, monitored, over-scrutinized, and (no matter how politely it is done) treated like criminals. Credible data on the issue is available. It has been studied and analyzed *ad nauseam*. Now is not the time for more analysis. Now is the time for action. Using the studies and the police stop data that is currently available, the TPSB is well-poised to adopt concrete measures, policies and guidelines to address this problem. The ACLC supports the submissions of the Toronto Police Accountability Coalition in this regard.

The Data Analysis Should Be Conducted By a Respected Social Scientist

If the Board determines that the *Toronto Star* data or analysis is in some way flawed and that the TPS data must be re-analyzed or analyzed anew, the ACLC submits that the City's Auditor General is not well-suited to the task.

First, the practice of racial profiling has created what has been described as a "toxic" relationship between the police and the African Canadian community. Heightened police scrutiny is a problem that is specific to the African Canadian community. As noted in "Known to Police," in all but one of the City's 72 police zones, African Canadians are more likely to be stopped than whites² – often 2 to 3 times more likely. Moreover, the likelihood that an African Canadian will be stopped increases in predominantly white neighbourhoods.³ In one predominantly white zone, for example, African Canadians are 17 times more likely to be stopped.⁴ The excessive monitoring of African Canadians in predominantly white neighbourhoods demonstrates that these statistics cannot be explained by pointing to the fact that African Canadians tend to make up a large segment of the population in some of Toronto's poorest and most crime ridden neighbourhoods. Rather, they suggest that regardless of where they live, if they have black skin, they will be viewed and treated as criminals. The toxicity and mistrust between these two groups must be reflected in the selection of an arm's length professional to conduct any additional analysis of this data. While the City's Auditor General is certainly more independent than someone within the TPS, the ACLC submits that, given the level of mistrust caused by the long-standing nature of this problem, the Auditor General is not independent enough.

² Hidy Ng, Jim Rankin, & Patty Winsa, "Police Patrol Zones Black and White: A Difference in Documentation" *Toronto Star* (undated) online: <http://www.thestar.com/staticcontent/760552>.

³ Jim Rankin & Patty Winsa, "Police board chair seeks race-based probe of stops" *Toronto Star*, (March 15, 2012), online: <http://www.thestar.com/news/insight/article/1147239--police-board-chair-seeks-race-based-probe-of-stops?bn=1>. [Patrol]

⁴ *Supra* note 2.

Second, the TPSB must make clear the end to which it seeks to analyze or re-analyze police stop and contact data. As noted earlier, if it is merely to verify the accuracy of the analysis published by the *Star*, the Board must make absolutely clear why the *Star* analysis and conclusions are perceived to be deficient. The Board must also ensure that any study is concluded within a reasonable amount of time. The ACLC proposes that any study should be concluded no later than December 2012.

If, however, the purpose of the analysis is purpose-driven – that is, to analyze trends, theorize as to causes, and come up with real solutions to the problem – this project should be undertaken by someone that is capable of more than statistical valuation. Specifically, a qualified social scientist that can contextualize the data, is well versed on issues affecting the African Canadian community, and is capable of crafting a solution to this problem that is sensitive to the community's concerns.

The Problem with 208 Cards and Current Police Stop Practices

Members of the TPS credit 208 cards with assisting police investigations.⁵ The TPS must acknowledge, however, that, regardless of their perceived utility, frequent police stops are an affront to the constitutionally protected freedoms of African Canadians.⁶ The Ontario Court of Justice has called the practice of stopping individuals and creating 208 cards “menacing” as it subjects innocent citizens to routine police scrutiny. In *R. v. Ferdinand*,⁷ the Ontario Court of Justice made the following pronouncement with respect to 208 cards,

Although I do not dispute that 208 cards might well be a useful and proper investigative tool for the police; in my view the manner in which the police currently use them makes them somewhat menacing. These cards are currently used by the police to track the movements – in some cases on a daily basis – of persons who must include innocent law-abiding residents.

One reasonable – although very unfortunate – impression that one could draw from the information sought on these 208 cards – along with the current manner in which they are being used – is that they could be a tool utilized for racial profiling.

... If the manner in which these 208 cards are currently being used continues, there will be serious consequences ahead. **They are but another means whereby subjective assessments based upon race – or some other**

⁵ Jim Rankin, “Race Matters: Blacks documented by police at high rate. Toronto Star” (February 06, 2010) online: <http://www.thestar.com/specialsections/raceandcrime/article/761343-race-matters-blacks-documented-by-police-at-high-rate>. In 2010, Mike McCormack police union president called the cards “invaluable... You’re recoding data setting up associations, knowing who’s involved (in gang activity). It puts people in certain locations.

⁶ Roger Rowe, “Allegations of Profiling: How Much disclosure of Investigative Records is Appropriate,” online: http://www.rogerrowelaw.com/document/pdf/Cases/Buckley_Trial_Paper_by_Roger_Allegations_of_Profiling.pdf.

⁷ *R. v. Ferdinand*, [2004] O.J. No. 3209 [*Ferdinand*] at paras.11-16.

irrelevant factor can be used to mask discriminatory conduct. If this is someday made out – this court for one will not tolerate it.⁸ [Emphasis added]

The Toronto Police Service cannot point to the effectiveness of 208 cards as a justification for their use. First, the practice is discriminatory and likely unconstitutional. 208 cards are being used to single out African Canadians, particularly our youth, for frequent and unnecessary stops. Second, it leads to strained community-police relations. Most persons that are stopped are not charged. David Tanovich, a law professor at the University of Windsor who is widely recognized for his expertise in racial profiling, has noted that documenting people in non-criminal encounters creates a “no walk list” for young men in poor neighbourhoods.⁹ This heightened form of surveillance is “exactly what the essence of racial profiling is all about” and can only lead to increased levels of mistrust and antagonism between the police and the African Canadian community.¹⁰ Third, and most important, there are other more collaborative and less demeaning ways of alleviating the crime rate. The TPS is encouraged to work with community groups that have lobbied for funding of after-school programs, worked to increase job opportunities, and generally worked to address the root causes of criminal involvement. The TPS must recognize the work of these community-based organizations and focus its efforts and resources on community-building and prevention (e.g. Youth in Policing Initiative) instead of increased policing and surveillance.

Recommendations

The ACLC makes the following recommendations for changes to police stop practices. These recommendations echo and add to the suggestions of the Toronto Police Accountability Coalition:

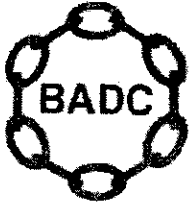
- 1) Stop and search data analysis and the creation of recommendations should be shaped by an anti-racist framework. To achieve this goal, the ACLC recommends that a social scientist or expert criminologist analyze the data. This should be completed no later than December 2012.
- 2) The TPSB should implement policies and guidelines that restrain an officer’s discretion to randomly stop individuals and create 208 cards. Such guidelines should include:
 - The Board should immediately state that it will not tolerate discriminatory stops by police officers.
 - The Chief should be required to report to the Board on a monthly basis regarding carding activities. This report should specifically comment on the rate at which African Canadians are stopped and carded.

⁸ *Ibid.*, at paras. 18-20.

⁹ *Supra* note 5 at page 5.

¹⁰ *Ibid.*

- Officers should be required to record the reason for stopping each individual.
 - The police must provide to everyone stopped a plain language information sheet indicating to those stopped their rights, particularly their right to refuse to provide personal information. The information sheet should be drafted in consultation with the African Canadian Legal Clinic and other equity seeking organizations.
 - The police must provide to everyone that is stopped a carbon copy of the card completed by the officer. This will ensure that individuals can document how many times they have been stopped and the reason for the stop.
- 3) The TPS and TPSB should consult and meet with members of the African Canadian community to ensure that the specific concerns of the community are addressed and reflected in whatever solution is adopted to address the problem of racial profiling.



BLACK ACTION DEFENSE COMMITTEE INC.

Comite' d'action pour la de'fense des Noirs Inc.

944A St. Clair Avenue West, Toronto, Ontario M6C 1C8 Tel: (416) 656-2232 Fax: (416) 656-2252

Chairman of the Toronto Police Services Board, Board members, Chief Bill Blair, other Presenters, Ladies & Gentlemen, My name is _____, I am a member of the Black Action Defense Committee and its Black Community Coalition, I am here to speak against the further collection of Demographic Statistics and all related scrutiny and information collection of our Communities.

First of all let us come to an understanding; the African-Caribbean Community feels harassment and degradation by the 24 hour a day, 7 day a week surveillance which your Officers are tasked to perform on our Communities as a result of your Demographic Statistics collection. We view Demographic Collection as a prime example of Anti-Community Policing and racial Profiling!

As long time Community activist Lennox Farrell suggested, "...Our community should take all young Black men and women on their 16th birthday to the police station and have them carded as a rite of passage."

The *Toronto Star's* recent series of articles on Racial Profiling & Carding as your Demographic Statistics collection is known in our communities have publicized the reality of policing Black and Brown people in Toronto.

We take the *Star's* analysis further to remind Canadians that the *United Nations Charter on Human Rights* and Section 11 of the *Canadian Charter of Rights and Freedoms* and the Ontario Human Rights Code affirm that **everyone** has the right to be free from unlawful search and seizure. The Toronto Police Services behave as though these rights do not apply to African-Caribbean people.

Racial profiling by police officers is not only a violation of human rights. It is another appalling demonstration that anti-Black racism is still pervasive in Toronto and indeed Canadian society in general. There is more and more research evidence that racism makes its targets ill; mentally and physically. Even more, it kills.

Your so-called Demographic Statistic collection is compromising the future of our Children; it causes them to fear Police, to have lower self-esteem and confidence and intimidates them when entering other Afrocentric Neighborhoods. This program seriously erodes our community's confidence and instead instills a lasting mistrust of Law Enforcement and ultimately the Judiciary system. The pressure felt by our Communities is tangible and has brought us to the limits of our patience!

In this regard the Toronto Police Service does not serve and protect the Toronto African-Caribbean people. It disses and profiles us. We condemn the reign of terror against our Communities and youth by police acting as an out-of-control occupying army now intent on playing sociologist and anthropologists.

In light of this reality, BADC and its Black Community Coalition DEMAND:

1. **An IMMEDIATE cessation of all Demographic Statistics collection by the Toronto Police Services** because it creates a conduit for Racial Profiling which harasses, stigmatizes and intimidates and has caused a significant Ratchet effect in most of our Communities, as is evident in our own realities reflected in the *Toronto Star's* report of March 22nd Black & White – A Difference in Documentation.

**BADC - Black Action Defense Committee & The Black Community Coalition
Deputation to the TPSB – April 5 2012 – Demographic Statistics – Racial Profiling & Carding**

2. **An IMMEDIATE cessation of vicarious Carding of people** as it is de-humanizing and degrading and is in contravention of our Charter and human Rights.
3. **An IMMEDIATE transformation in the attitude Toronto Police Services project toward people of African-Caribbean decent** from the current practice of Racial & Cultural indignation, to one of respect, dignity and ethno-cultural sensitivity.

Consequences to non-compliance of our above stated DEMANDS:

Honorable Chairman, Members of the Board, Chief Blair if there is not an immediate compliance to these demands you will force our Community's to begin our own campaign within-the-law of Non-Compliance and Non-Communication toward the Toronto Police Services.

The African-Caribbean Community is now and has always been a friend to the Toronto Police Services, we appreciate the ideals of the task you have to perform in our great city however, and we all should concede that there are very real systemic racism issues which prevent us from embracing each other further.

Until the harassment and stigmatization of the African-Canadian Community by the Toronto Police Services is transformed into Respect and Dignified Treatment, there can no longer be any spirit of cooperation between us.

Your collection of Demographic Statistics is concomitant with Racial Profiling, and your practice of vicarious Carding is an excuse to surveil and intimidate our youth and lifeblood, **AND WE WILL NO LONGER STAND IDLE WHILE YOU ENDANGER THE FUTURE OF OUR COMMUNITY.**

Honorable Chairman, Members of the Board, Chief Blair BADC & the Black Community Coalition implore you to accept this deputation in the spirit in which it has been given, that of respect, determination and ultimately concern for our Communities, our Families and our own person.

Thank you, good day.



frontline partners w/ youth network

To Whom It May Concern:

We are writing to express our support for the Toronto Police Accountability Coalition (TPAC) brief, which will be considered at your meeting on April 5th, 2012. This brief presents TPAC's conclusions based on the race data collected by *Toronto Star* on police dealings on racialized youth.

As a network of frontline workers (people who work directly with young people), we have been inundated with narratives on police dealings with people of colour. As many of the frontline workers we work with are also young people themselves, they too are subject to harassment. We have even had reports of police officers pressuring frontline workers to become "confidential informants" as a means of gathering information on the community. The struggle to develop positive relationships between law enforcement and racialized young people has been a point of contention for decades, marred by inequalities in power and complicated by poverty.

The *Toronto Star* article confirmed what we have been hearing for the past five years of our network's existence; it validated frontline workers' concerns that police-community interactions are highly racialized. The tensions created by these interactions have caused community suffering, and have increased the workload for frontline workers, who often find themselves "interrupting" violence on the ground. We are deeply concerned by the portrayal of young black men as "potential criminals" and the emotional and physical risk this dynamic has imposed on marginalized communities.

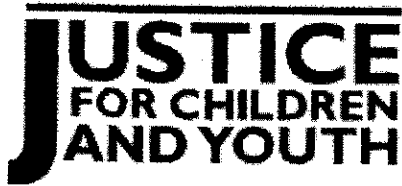
The TPAC brief has excellent recommendations that we strongly urge your Board to consider. These recommendations would help forge more equitable relationships between communities and the police. Every young person has the right to be honoured, cared for, and feels as if they belong to their communities. We know that the police are integral parts of the community, and often have great influence on young people's lives. We hope that the police can participate in developing healthy communities, where safety is not correlated to the colour of one's skin.

Please do not hesitate to contact us should you need our assistance. We look forward to your Board's deliberations on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Neema Alam, Chrissy Carroll'. The signature is written in a cursive style and spans across the width of the page.

On behalf of Frontline Partners with Youth Network



JOHANNA MACDONALD, STAFF LAWYER

PHONE: 416-920-1633

FAX: 416-920-5855

E-MAIL: macdonaj@lao.on.ca

March 21st, 2012

Deirdre Williams
Toronto Police Service Board

Attn: Toronto Police Services Board

Re: Endorsing Toronto Police Accountability Coalition's Deputation on 'Collection of Demographic Statistics', March 22nd, 2012, TPSB Meeting

I am the street youth legal services lawyer at Justice for Children and Youth. This letter endorses TPAC's deputation on the 'collection of demographic statistics' at your March 22nd, 2012 TPSB meeting.

For over ten years, the Street Youth Legal Services Program (SYLS) at Justice for Children and Youth has voiced concern over the harm that youth in Toronto have experienced at the hands of our police.

The Toronto Police Service contact cards statistics inform us of a deeply rooted problem of discriminatory police stops and data collection. Youth identifying as minorities experience a higher level of distrust of police, and when considering the real and statistical analysis of their interactions with law enforcement officers, it is not surprising.

Take the example of Tyrell, a 17 year old black youth living in the Jane-Finch neighbourhood. He knew a few officers, and was interested to go into law enforcement. One day, at the food court of his local mall, he was violently arrested, searched and questioned about the people he knew. He was then released without charge. This was done in public, and he was left extremely embarrassed and shameful. Now, instead of wanting to enter law enforcement, he tells me, looking down and in a sad voice, 'I hate them all'.

The weight of surveillance of our youth is crushing. It's hard to hear the pain, anger, and sounds of hopelessness in the voices of youth that are being stopped daily, sometimes questioned, sometimes searched, sometimes physically hurt. It's hard to hear because they are too fearful and too devastated, to speak out. Youth are also intuitively knowing that remedies are not available for their sufferings, as the OIPRD annual report highlights dismal accounts of successful resolution to complaints posed by civilians.

CANADIAN FOUNDATION FOR CHILDREN YOUTH AND THE LAW
415 YONGE ST., SUITE 1203

TORONTO, ONTARIO



JUSTICE FOR CHILDREN AND YOUTH

While Chief Blair asserts that Toronto Police Service methods balance rights and provide youth with a safer community, research studies and our clients tell a different story.

The 2010 publication, 'Surviving Crime and Violence: Street Youth and Victimization in Toronto', by authors Bill O'Grady, Stephen Gaetz and Kristy Buccieri, informs us that of 250 interviewed street involved youth: 76% of the youth have experienced criminal victimization in the last year, yet only 20% reported the crime to the police. Of all the youth the SYLS program interacts with, the resounding reason for not reporting is that they do not trust the police; feeling that the police would a) not believe them, or b) not protect them.

A review of the statistics by the General Auditor will do little to address these deeply rooted concerns around trusting relations between our youth and our officers tasked with protecting them. The recommendations in TPAC's brief will take steps in the right direction. Providing persons stopped with an information sheet on their rights and a carbon copy of the card note made by the officer will assist persons stopped to understand the reasons for their stop and the procedural rights they are entitled to.

The Board making statements about intolerance to discrimination will set the stage for the deeper work of rooting out discrimination and serving Toronto's youth in a humane manner, respecting human rights from the school room to the basketball court in the neighbourhood of Weston Mount Dennis. You must take action on this crucial matter of public safety. Please feel free to contact me for further discussions.

Regards,



Johanna Macdonald
Counsel, Justice for Children and Youth



**Office of the Provincial Advocate
for Children and Youth**

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Suite 2200, PO Box 2
Toronto, Ontario M7A 0A6

Tel.: (416) 325-5669
Toll Free: 1 800 263-2841
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TTY: (416) 325-2648

**Bureau de l'intervenant provincial
en faveur des enfants et des jeunes**

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Télé.: (416) 325-5681
ATS: (416) 325-2648

March 21, 2012

Toronto Police Services Board
c/o Deidre Williams
Board Secretary
40 College Street
Toronto Ontario M5G 2J3

Dear Friends:

I am writing to express my support for the brief submitted to you by the Toronto Police Accountability Coalition which is to be considered at your meeting of March 22, 2012. The brief centres on Chair Mukherjee's report "*Collection of Demographic Statistics*" and recent Toronto Star articles on "police stops" from 2008 to mid 2011.

Racialized young people in the mandate of my Office have time and again spoken about their desire to forge better relations with Police in their communities. They have often spoken about being unfairly labeled by Police which exacerbates tension between them and Officers and widens the gulf of mistrust. The Toronto Star articles, as delineated in the TPAC brief, make it clear that this concern is justified. For Black men aged 15 to 24 years the data is astounding. The number of Black youth stopped by Police is 3.4 times larger than the total number of Black youth living in Toronto.

The TPAC brief proposes a number of recommendations for the Board to consider. I would ask the Board to give great consideration to them. I believe that a robust and significant strategy is necessary to build strong relationships between Police forces and racialized youth. I believe we all want a day to come where youth are known to Police for positive, pro-social reasons rather than reasons of suspicion. The good news is that I believe young people wish for this day as well. We will not get there unless we set it as a goal and work towards it. I would submit to you that the practice of the Police as outlined in the Star articles runs contrary to building a bridge to that day.

I look forward to learning of the deliberations of your Board. If you feel my Office could be of assistance to you please do not hesitate to ask.

Sincerely,

Irwin Elman
Provincial Advocate



Deputation to Toronto Police Services Board By Miguel Avila

Agenda Item: COLLECTION, USE AND REPORTING OF DEMOGRAPHIC STATISTICS

April 05 2012

My Name is Miguel Avila, A Toronto Taxpayer and a proud Latino Canadian. I am a peaceful activist and a regular deputant at the Toronto Police Services Board.

Mr Alok Mukherjee is asking the board to decide today to request that the Toronto's Auditor-General Jeff Griffiths "collect and analyze" race-based data from the contact cards police fill out every time they come in contact with people, regardless of whether a crime has been committed.

Your request to have an independent review is a positive measure and your assertions that Youth are more affected by this interaction with your officers is something we have been telling you for years and not only the youth of this city, but the public in general, Torontonians, yes those Taxpayer's who contribute with their portion of our taxes to pay the salaries and benefits of your men and women of blue.

Mr Mukherjee, Racial profiling begins with changing the culture. The Culture of both the T.P.S and its Board. Quoting Mr Blair statements in an article. has acknowledged since becoming chief in 2005 that racial bias is a reality in policing.

As a Torontonian and a Taxpayer I will no longer stand for racial discrimination, particularly based on what people are wearing or speak, more often people who speak on behalf of the defenseless in Toronto are being victimized as in the case of last Friday April 30, 2012. ... Police are here to serve and protect, not to harass and neglect."

What is Racial Profiling?

The Ontario Human Rights Commission has this definition:

For the purposes of its inquiry, the Commission's definition for "racial profiling" is any action undertaken for reasons of safety, security or public protection, that relies on stereotypes about race, colour, ethnicity, ancestry, religion, or place of origin, or a combination of these, rather than on a reasonable suspicion, to single out an individual for greater scrutiny or different treatment.

Racial profiling is different from criminal profiling. Racial profiling is based on stereotypical assumptions because of one's race, colour, ethnicity, etc. Criminal profiling, on the other hand, relies on actual behaviour or on information about suspected activity by someone who meets the description of a specific individual.

Solutions:

Mr Blair has defended the documenting of citizens as good police work really?. T.A.V.I.S target areas plagued by violent crime, and that it has worked to reduce these crimes in those areas or is it the other way around? Most generated contact cards are produced by member of T.A.V.I.S. they are deployed in the city's 13 "priority" or at-risk neighbourhoods.

This are the areas where more single-family households, fewer meaningful jobs and less education and employment in these areas, which are home to more newcomers and non-whites. The interaction with Members the Police has created distrust and lack of confidence.

The 208 cards are also known as Filed Information Reports so hardly defended by the Chief and with the blessings of this board must be modified in order that in each and every interaction with the public a Toronto Taxpayer Citizen receives a COPY of such contact for comparison purposes should any unfortunate situation arises in the future. In other words each is protected from what I say and he said and vice versa.

To request that the T.P.S stop collecting demographic data that would be much harder, hopefully in time you will listen.

Miguel Avila
Ward 28

**THIS IS AN EXTRACT FROM THE MINUTES OF THE PUBLIC MEETING OF THE
TORONTO POLICE SERVICES BOARD HELD ON JULY 19, 2012**

**#P187. REQUEST FOR EXTENSION OF TIME TO SUBMIT REPORT: COSTS
AND OPERATIONAL IMPLICATIONS OF BOARD MOTIONS
RELATING TO CONTACT CARDS AND QUARTERLY REPORTS TO
THE BOARD**

The Board was in receipt of the following report July 06, 2012 from William Blair, Chief of Police:

Subject: REQUEST FOR EXTENSION OF TIME TO SUBMIT REPORTS; COSTS
AND OPERATIONAL IMPLICATIONS OF BOARD MOTIONS RELATING
TO CONTACT CARDS AND QUARTERLY REPORTS TO THE BOARD

Recommendation:

It is recommended that:

- (1) the Board approved a four-month extension of time for the submission of a report on the costs and operational implications of Board Motions Nos. 2 and 4 relating to contact cards; and
- (2) the Board approve delay in the implementation of the motion requesting that the Chief report quarterly on carding activities until after the submission of the Chief's report on the costs and operational implications of Board Motions Nos. 2 and 4 relating to contact cards.

Financial Implications:

There are no financial implications related to the recommendations contained within this report.

Background/Purpose:

The Board, at its meeting of April 5, 2012, approved six motions relating to contact cards that required action by the Chief of Police (Min No. P56/12 refers). The sixth motion recommended that the implementation of Motions Nos. 2 and 4 be subject to a report from the Chief on the costs and operational implications of those motions. Motion No. 3 requested that Chief of Police report to the Board quarterly on carding activities, including information on race and ages of those carded.

The purpose of this report is to obtain an extension of time to properly comply with the Board's requests.

Discussion:

In February 2012, I appointed a team of Service members to commence an Internal Organizational Review (CIOR) with the task of examining all aspects of police operations in order to prioritize service delivery, improve efficiencies in operations, and realize cost-savings.

As part of my CIOR, the procedure relating to the contact card (Form 208) and Field Information Report (FIR) is being examined in detail. The CIOR is in a favourable position to gather and assess information relating to contact cards since it is presently engaged with all areas of the Service as part of its review.

Work addressing all issues relating to these forms, including those contained in the motions approved by the Board, is ongoing. However, the completion, submission, analysis, and reporting of contact cards is a significant operational activity that has an impact on many areas of the Service and on the public. Capturing a comprehensive picture of this activity with all of its impacts and implications takes time. At this time, the review is not complete.

Conclusion:

The subject of the Board's motions is under review. However, a complete response that would properly inform the Board on the costs and operational implications of its motions will not be available for the Board's 2012 July meeting. Therefore, a four-month extension of time is being requested.

Deputy Chief Peter Sloly, Divisional Policing Command, will be in attendance to answer questions that the Board may have regarding this report.

The Board was also in receipt of a written submission from Noa Mendelsohn, Equality Program Director, Canadian Civil Liberties Association. A copy of Ms. Mendelsohn's submission is on file in the Board office.

The following persons were in attendance and delivered deputations to the Board:

- **Moya Teklu, Policy Research Lawyer, African Canadian Legal Clinic ***
- **John Sewell, Toronto Police Accountability Coalition ***
- **Miguel Avila**

*** written submission also provided; copy on file in the Board office.**

Following the deputations, Deputy Chief Mike Federico, Corporate Command, responded to questions by the Board.

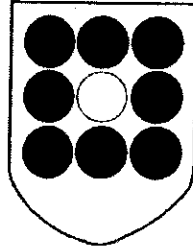
In response to an inquiry by the Board about the reason for additional time to submit the report, Deputy Chief Federico said that it is complex issue and that the TPS is examining operational and public safety requirements, collecting information from various sources and is engaged in conversations with the Auditor General about opportunities that are available within his schedule to meet with him to discuss this matter.

The Board referred to Mr. Sewell's deputation and, specifically, Mr. Sewell's recommendation that TPS officers provide a copy of the contact card in a form similar to the receipts that are issued by officers in the Manchester (UK) and Metropolitan London (UK) police forces. The Board asked Deputy Chief Federico whether or not the TPS could issue receipts similar to the receipts issued by the UK police forces. Deputy Chief Federico said that copies of the contact card information cannot be provided by TPS police officers because the information that is obtained by officers is recorded electronically and that there is no paper document.

The Board approved the foregoing Motions:

- 1. THAT the Board approve the foregoing report;**
- 2. THAT the Board receive the deputations and the written submissions; and**
- 3. THAT the Board request the Chief of Police to provide a walk-on report for the Board's August 15, 2012 meeting on the reasons why the TPS is unable to provide contact card receipts to individuals who are stopped.**

CANADIAN
CIVIL LIBERTIES
ASSOCIATION



ASSOCIATION
CANADIENNE DES
LIBERTES CIVILES

July 19, 2012

Submissions to the Toronto Police Services Board

Noa Mendelsohn Aviv, Equality Program Director
Canadian Civil Liberties Association

RE: Request for Extension of Time to Submit Report: Costs and Operational Implications of Board Motions Relating to Contact Cards and Quarterly Reports to the Board

The Canadian Civil Liberties Association (CCLA) is a national organization with thousands of supporters drawn from all walks of life. The CCLA was constituted to promote respect for and observance of fundamental human rights and civil liberties and to defend and foster the recognition of those rights and liberties. The CCLA's major objectives include the promotion and legal protection of individual freedom and dignity against unreasonable invasion by public authority, and the protection of procedural fairness. For almost 50 years, the CCLA has worked to advance these goals, regularly appearing before legislative bodies and all levels of court. It is in this capacity, as a defender of constitutional rights and an advocate for the rights and liberties of all individuals, that we make submissions to the Toronto Police Services Board (TPSB) with respect to the difficult problem of race-based harassment (commonly known as "racial profiling).

CCLA continues to be concerned about race-based harassment. Race-based harassment is generally defined as including any or a combination of any of the following actions by police against black male youth and/or others from racialized and/or marginalized communities: unwarranted – questioning, stops, identity collection, intimidation, searching, and aggression.

Race-based harassment is unacceptable in a society committed to equality before the law. While it could be that some community liaison officers have built successful relationships with many communities and individuals, the issue has not been resolved. It is incumbent on the TPSB to take the measures necessary to ensure that race-based harassment is stopped.

CCLA is encouraged by the decision of the TPSB to establish an investigation by the City Auditor General to look into racial profiling or race-based harassment. CCLA calls on the TPSB to adopt certain minimal terms of reference, as set out below. Any investigation into race-based harassment would benefit from being carried out in consultation with bodies with demonstrated expertise in policing, police complaints, and human rights matters, and with demonstrated sensitivity with respect to matters of race.

Recommendation #1:

CCLA calls on the TPSB to immediately denounce the practice of race-based harassment. Race-based harassment is defined as including any or a combination of any of the following actions by police against black male youth and/or others from racialized and/or marginalized communities: unwarranted – questioning, stops, identity collection, intimidation, searching, and aggression.

Recommendation #2:

CCLA also calls on the TPSB to promptly develop policies and programs to prevent, prohibit and address race-based harassment.

Recommendation #3:

The TPSB must ensure that the Investigator is given adequate resources to perform a thorough investigation in a timely manner.

Minimal standards for Terms of Reference

Recommendation #4:

CCLA calls on the TPSB to establish certain minimal guidelines and standards for the Investigation's Terms of Reference, as follows:

- 1. In the conduct of the investigation, there must be consultation with the Toronto Police Service (TPS), the police union, community groups, human rights, civil liberties and anti-racism groups, and academics with demonstrated knowledge about policing, police complaints, racism and other human rights issues.**
- 2. The Investigator must:**
 - Investigate TPS policies and practices regarding police questioning, stopping, identity collection, intimidation, searches and aggression.**
 - Investigate TPS policies and practices regarding any or a combination of any of the following actions by police against black male youth and/or others from racialized or marginalized communities: unwarranted – questioning, stops, identity collection, intimidation, searching, and aggression.**
 - Such an investigation should use data from past years as a baseline.**

Effective community policing requires the development of trust between the police and civilians. It is important that the officer's interactions with the community does not undermine that trust.

- 3. The Investigator must investigate how communities view the "community policing" practices of the TPS.**

4. These proposed policies should:

- a. Determine the best way to have ongoing and regular collection, independent analysis, and public disclosure of data concerning police questioning, stops, identity collection, searches, and more.**
- b. Determine the best procedures for engaging with the public in positive, constructive ways, for the purpose of positive community policing, interactions and engagement, while recognizing the dangers of police initiating questions into a person's whereabouts, destination, identity or actions in context of power differentials ;**
- c. Determine appropriate standards for police conduct for stopping and questioning individuals.**

Policies without accountability mechanisms will likely be ineffectual. Given the importance of dignity, and the fundamental right of all people to be free from discrimination, the TPSB should ensure that such policies and standards are observed, and that there is a regular, independent review of this matter.

5. The proposed policies should also consider issues of accountability, including:

- **The responsibility of superiors and managers whose officers are not adhering to the policies, and the responsibility of individual officers;**
- **The appropriate consequences, such as:**
 - **discipline**
 - **negative reviews**
 - **budget/resource allocations**

6. The Investigator must look into the extent, substance and effectiveness of training for officers and superiors with respect to issues of race and racism, youth, and human rights. Who is conducting the training should also be considered.

7. The Investigator must investigate the complaints mechanism for civilians who have experienced trouble with the police, and consider to what extent this mechanism is well-publicized, effective, and ensures that complainants are protected from reprisal.

8. The TPSB should ensure that there is a regular, independent review of this matter.

Toronto Police Accountability Coalition
c/o Suite 206, 401 Richmond Street West, Toronto ON M5V 3A8.
416 977 5097. info@tpac.ca , www.tpac.ca

July 18, 2012.

To: Toronto Police Services Board

Please list Toronto Police Accountability Coalition on the agenda of July 19 to speak to Item 24, the chief's request to delay reporting on the implementation of the carding motions passed by the Board on April 5, 2102, for another four months.

The data in the Toronto Star article on March 10, 2012, <http://www.thestar.com/news/insight/article/1143536--known-to-police-toronto-police-stop-and-document-black-and-brown-people-far-more> indicates there were 1.25 million cards recording police stops from 2008 to mid-2011, or about 400,000 stops for carding a year.

This means that since the Board motions in April, about 100,000 individuals, mostly youth of colour, have been stopped and carded by police. As we argued in our March 18 letter to the Board, racialized youth and men are stopped more frequently, and thus treated differently by police, than others and that treatment is discriminatory. We stated that ways must be found to stop such discriminatory behaviour by police immediately, and we noted that the Supreme Court of Canada has questioned the legal basis for these random stops where individuals feel they must submit to police commands.

We proposed at that time that pending a review of whether the police should in fact continue to make such stops, the police provide to everyone stopped a copy of the card note made by the officer, including the reason for the stop.

Other police forces provide a receipt when an individual is carded – two examples from the United Kingdom are the Metropolitan Police Service in London, (http://www.met.police.uk/stopandsearch/what_is.htm) and the Manchester Police Service (<http://www.gmpa.gov.uk/stop-search.htm>).

The receipt that police provide in Toronto every time an individual is stopped and carded should include similar information to that now provided by the Metropolitan Police, namely:

- the officer details
- the date, time and place of the stop and search
- the reason for the stop and search
- the outcome of the stop and search
- the individual's self-defined ethnicity
- the vehicle registration number (if relevant)
- what the officers were looking for and anything they found
- the individual's name or a description if he/she refuses to give name

This can easily be provided by the officer writing in hand on a prepared form, as occurs in London and Manchester. No complicated technology is required.

Providing a receipt should begin immediately – we suggest August 1, 2012 or September 1, 2012 at the latest. This receipt will provide transparency of police actions and will provide clear documentation to those affected of what the police are doing. The receipt will also ensure that police are much more civil and respectful to those who they stop.

There is no reason to delay providing such receipts while the Chief reports on other matters.

Yours very truly,



on behalf of
Toronto Police Accountability Coalition.

Mark - on report for
August 11/12

**THIS IS AN EXTRACT FROM THE MINUTES OF THE PUBLIC MEETING OF THE
TORONTO POLICE SERVICES BOARD HELD ON AUGUST 15, 2012**

**#P220. PROVIDING CONTACT CARD RECEIPTS TO INDIVIDUALS WHO
ARE STOPPED BY THE POLICE**

The Board was in receipt of the following report August 09, 2012 from William Blair, Chief of Police:

**Subject: PROVIDING CONTACT CARD RECEIPTS TO INDIVIDUALS WHO ARE
STOPPED BY THE POLICE**

Recommendation:

It is recommended that the Board receive this report.

Financial Implications:

There are no financial implications relating to the recommendation contained within this report.

Background/Purpose:

The Board, at its meeting of April 5, 2012, approved six motions relating to contact cards that required action by the Chief of Police (Min. No. P56/12 refers). The sixth motion recommended that the implementation of Motions Nos. 2 and 4 be subject to a report from the Chief on the costs and operational implications of those motions.

At its meeting of May 18, 2012, the Board revised Motion No. 2 as follows: "THAT the Chief of Police be requested to ensure that individuals for whom a contact card (Form 208) is created be provided a copy of the contact card, including the reason for the stop." (Min. No. P56/12 refers).

Further, at its meeting of July 19, 2012, the Board approved a four-month extension for the completion of the report on the cost and implications of Motions Nos. 2 and 4 at the request of the Chief of Police (Min. No. P187/12 refers). The report is now due to the Board at its November 2012 meeting.

At that meeting, the Board also received a deputation from Mr. John Sewell, in which the suggestion was put forward that Toronto Police Service (Service) officers provide a copy of the contact card to everyone stopped, in a form similar to receipts issued by the Metropolitan London and Manchester Police Services in the United Kingdom. As a result, the Board approved a motion requesting that the Chief of Police provide a walk-on report for the Board's August 15, 2012 meeting on the reasons why the TPS is unable to provide contact card receipts to individuals who are stopped (Min. No. P187/12 refers).

The purpose of this report is to respond to the Board's motion.

Discussion:

As reported in July, the procedure relating to the contact card (Form 208) and Field Information Report (FIR) is being examined in detail by Service Members involved in the Chief's Internal Organizational Review (CIOR). The review is examining Service Procedure 04-14 (Field Information Report) and all issues directly or indirectly related to it, including the rationale for conducting stops, the content and distribution of the forms, approaches to training, record retention, communication strategies, public consultation and feedback, measurement of effectiveness and impact, and cost.

At its meeting on July 19, 2012, the Board extended the due date of this report to November 2012 (Min. No. P187/12 refers). At this stage of its review, the CIOR team currently examining the FIR/Form 208 process is not prepared to make a recommendation on the necessity, purpose, content, or cost of issuing some form of receipt or record to individuals stopped by the police. Further work is required by the team to complete the review.

It should be noted that Mr. Sewell's suggestion is not currently part of the Service's procedure and is, in effect, a repetition of Motion #2 from the Board's May 18, 2012 meeting (Min. No. P56/12 refers). The Service is working to complete the review in time for its November due date, including the cost and impact of what providing a receipt is.

Conclusion:

The Service is unable to immediately provide contact card receipts to individuals who are stopped by the police while the entire process is under review, the report of which is due to the Board at its November 2012 meeting.

Deputy Chief Peter Sloly, Divisional Policing Command, will be in attendance to answer questions that the Board may have regarding this report.

The following persons were in attendance and delivered deputations to the Board:

- **Moya Teklu, Policy Research Lawyer, African Canadian Legal Clinic ***
- **Harvey Simmons, Toronto Police Accountability Coalition**

*** written submission also provided; copy on file in the Board office.**

In response to questions by the Board, Chief Blair and Deputy Chief Sloly emphasized that, despite the complexity of the review, the TPS is working as quickly as possible to examine all the significant operational and financial aspects of providing contact card receipts and that the additional time approved by the Board at its previous meeting is still required to complete this task. Chief Blair also advised that the November 2012 report will include an implementation plan detailing how a form of receipt or record will be provided to individuals who are stopped by the police.

The Board approved the following Motions:

- 1. THAT the Board request the Chief of Police to implement an interim measure, effective November 01, 2012, pending the outcome of the comprehensive review which will be provided to the Board at its November 2012 meeting; and**
- 2. THAT the Board receive the foregoing report, the depositions and Ms. Teklu's written submission.**

Reconsideration pursuant to subsection 24(1) of By-Law 107 governing proceedings of the Board:

At its meeting on October 15, 2012, the Board approved a request to re-open this matter in order to amend the last line in the Minute so that it accurately reflects what the Board was advised.

The last line originally indicated:

Chief Blair advised that the November 2012 report will include an implementation plan detailing how a form of receipt or record will be provided to individuals who are stopped by the police.

The Board agreed to amend the last line in the Minute as noted in italics below:

Chief Blair advised that the November 2012 report will include an implementation plan detailing the results of the TPS plan for individuals who are stopped by the police.



August 15, 2012

Chair and Members
Toronto Police Services Board
40 College Street
Toronto ON, M5G 2J3

RE: SUBMISSION OF THE ACLC TO THE TPSB ON CHIEF'S REQUEST FOR EXTENSION

One week ago, the *Toronto Star* published an article detailing an incident between four black boys and two TAVIS officers.

These four teens (aged 15 and 16) reported that they had been stopped and questioned by police on more than 50 occasions.

Having learned their right not to answer police questions, these young men tried to exercise their legal rights. The result? They were punched, arrested, strip searched, and charged with assaulting police, threatening death and assault with intent to resist arrest. The charges were withdrawn because footage from a security camera revealed that the police had seriously abused their power.

If these incidents had not been caught on a security camera, these four black boys who were on their way home from a mentoring session and who did nothing more than try to exercise their legal rights would today have criminal records.

Last month, when Chief Blair, instead of reporting back on the operational implications on the Board's motion relating to the provision of carbon copies and quarterly reports asked for a four month extension, the Toronto Police Accountability Coalition requested the provision of hand written receipts instead.

The provision of receipts and carbon copies to those that come into contact with the police creates accountability where, since at least 1965, there has been none; accountability, because young black boys are afraid to exercise their legal rights and because not every police interaction will be caught on camera.

The extent to which the police are accountable to the public they serve has been described as being no less than "the measure of a society's freedom".¹ Research evidence suggests that abuse of power is most discriminatory where police autonomy and discretion are greatest. Without formal safeguards, such as being held accountable, individuals with discriminatory tendencies are more likely to discriminate in practice since they know that their actions will go unchecked and will not subject them to unwanted repercussions.

¹ Institute of Race Relations 1987:vii

Police accountability (through the provision of receipts and carbon copies to every individual that is stopped and/or questioned) requires those who hold coercive and intrusive powers to think about and explain what actions they take and for what reasons. Additionally, where errors and abuses occur, systems of accountability provide responsible authorities with the opportunity to provide redress to injured parties and to analyze the errors made in order to avoid their recurrence.²

On October 29, 2002, the Council of the City of Toronto resolved that there was an URGENT need for all involved³ to come together to review racial profiling by the Toronto Police Service and pursue positive, measurable, and corrective action in an open, sensitive and non-judgmental manner; that the TPSB immediately review its operational practices and guidelines, recruitment policies, promotional practices, and diversity training programs to ensure police officers have the appropriate skills and training for policing diverse communities; and that the Chair of the TPSB submit a report to Council on the Board's compliance with the recommendations made in the following reports:

- the 1975 report of the late Authur Maloney to the Metropolitan Toronto Police;
- the 1976 Justice Donald Morand Commission report on Metropolitan Toronto Police Practices;
- the 1977 Walter Pitman report on incidents of conflict between Blacks and the Police;
- the 1979 Report to the Civic Authorities of Metropolitan Toronto on race and policing by Cardinal G. Emmett Carter;
- the 1980 Report of the Task Force on the Racial and Ethnic Implications of Police Hiring, Training, Promotion and Career Development by Dr. Reva Gerstein;
- the 1989 Report of the Race Relations and Policing Task Force, chaired by Clare Lewis;
- the 1992 Stephen Lewis Report to the Premier on Race Relations;
- the 1992 report of the Metro Auditor which documented systemic racism within the Toronto Police Force;
- the 1995 Studies for the Commission on Systemic Racism in the Ontario Criminal Justice System which found that Black men were particularly vulnerable to being stopped by the police;
- the 1999 research undertaken by Professor Scott Wortley; and
- the 1999 Goldfarb Survey which indicated that only 38% of respondents in the Black community felt that their community had been treated fairly by the Police

The Council also directed the CITY AUDITOR to undertake an updated audit of Police policies, procedures, programs and practices that impact on racial minorities.

² Benjamin Bowling et al., *Policing and Human Rights: Eliminating Discrimination, Xenophobia, Intolerance and the Abuse of Power from Police Work*, (Geneva: United Nations Research Institute for Social Development, 2004) at 17.

³ The Minister of Public Safety and Security, City of Toronto Council, Toronto Police Services Board, Canadian Race Relations Foundation, and other interested stakeholders.

The commissioning of this report came on the heels of yet another report – the Report of the Board/Service Race Relations Joint Working Group – ordered by former Police Chief Julian Fantino.

Councillors, the stalling tactics that we are witnessing today are not new.

At this point, I wish only to remind you of the following: as the Toronto Police Services Board, it is your job to oversee the Toronto Police Service. Please do your job. Do not permit yet another extension.



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Toronto police TAVIS stop of four teens ends in arrests, captured on video

Published on Tuesday August 07, 2012

Jim Rankin
Staff Reporter

Four teenaged men — three with braces in place to straighten smiles — drape their sprouting frames over chairs in a stuffy second-floor room overlooking a common area in the Neptune Dr. public housing complex, where a police encounter they had went dangerously wrong.

No, they agree, they will never again try to exercise their rights when confronted by police.

On Nov. 21, 2011, the teens — twin brothers, then 15, and two friends, aged 15 and 16 — were walking in the common area, on their way to an after dinner Pathways to Education mentoring session. The much-lauded program helps keep kids in at-risk neighborhoods in school.

The Neptune Dr. housing complex sits within the Lawrence Heights area, one of the city's 13 designated priority neighborhoods.

In an event that would quickly escalate to punches, a drawn gun, five backup cruisers and first-time arrests, an unmarked police van rolled into the parking area and two uniformed Toronto police officers with the Toronto Anti-Violence Intervention Strategy (TAVIS) unit emerged.

The officers, according to police records, were at the Neptune Dr. buildings to enforce the Trespass to Property Act on behalf of the Toronto Community Housing Corporation.

The four teens, all of whom live in the complex, had been stopped and questioned many times before by police. They had also all attended a moot court program, where they learned about their rights.

This encounter came off the rails when one of the teens attempted to exercise those rights and walk away.

Roderick Brereton, a youth worker and conflict management consultant who works in the Lawrence Heights area and knows the four teens well, said there had been noticeable improvement in the relationship between youth, the community and 32 Division police that patrol the area.

The arrests, he said, "pretty much crushes everything that had been built."

The incident highlights the tension between youth who are constantly being stopped and questioned and Toronto police officers who are using a policing strategy that Ontario premier Dalton McGuinty, in light of recent shootings, guaranteed would receive permanent funding.

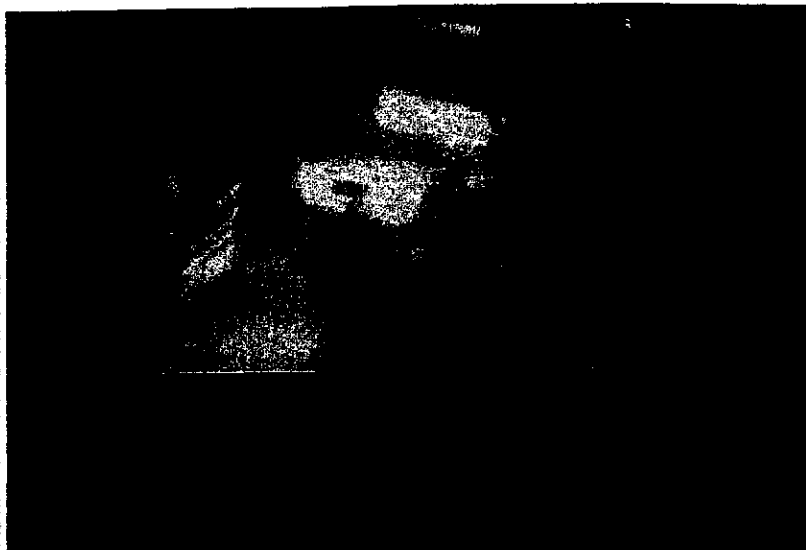
It also underscores how police, in each of the city's 72 patrol zones, disproportionately stop and document black and brown young men, as was explored in *Known to police*, a *Star* series earlier this year. Youth interviewed said they are stopped for no reason and feel criminalized.

In this case, all four of the teens are black.

They were each charged with assaulting police, and the young man who did not want to answer police questions was additionally charged with threatening death and assault with intent to resist arrest.

Although the charges against them were eventually withdrawn (in the cases for three of the four teens, a common law peace bond was sworn) they can't be identified under the Youth Criminal Justice Act.

What ensued can be seen but not heard on Toronto Community Housing Corporation security cameras. A shortened version of two of four camera views can be seen on [thestar.com](#).



Edited security video shows Toronto police TAVIS officers arresting four teens at a Toronto Community Housing Corporation complex on Neptune Dr. on Nov. 21, 2011

Moments after the police van pulls into the parking area, the teens exit one of the buildings and the officers, on foot, stop them. After a brief discussion, one of the officers pushes one of the twin brothers away from the three other teens and his partner. The officer punches the twin, pushes him further and the teen then drops to the ground.

Two of the teens make moves to help the twin brother, one of them getting close enough to touch the officer.

The officer then pulls his handgun and points it at the approaching teens, just as the other officer manages to grab hold of both of them and pull them back. He then appears to briefly point the gun at the twin on the ground, radios for backup and then holsters the firearm.

According to police records, that officer, Constable Adam Lourenco, considered the area to be a "high crime area" with drug activity and gun violence.

Lourenco, in his notes made after the incident, said he drew the gun because "I believe the males are going to attack me."

The twin brother he arrested, Lourenco wrote in his notes, would not answer his question about whether they lived in the complex. "I don't have to tell you s---," the teen replied, according to Lourenco's notes.

Lourenco wrote that he asked for identification and the teen refused and was "extremely excited and not listening to anything I'm saying." He told the teen he was under arrest and took hold of him, and alleges in his notes, that the teen then spat in his face.

None of this can be made out on the security video, which has a distant view of the interaction, and the teens' accounts of what happened differs from the police version.

There was no spitting and no swearing, said the teen who was punched.

"They stopped us and one officer came to the front and one officer came to the back," he told the *Star*.

"One officer came towards me and wanted to search me. He said there was some sort of robbery or something. I said I'm not doing anything wrong. I don't want to be searched, and that I'm going to be going, have a good day, or something like that.

"I was leaving. I just wanted to avoid the situation and just go. So, then he just got mad and said stop trying to act smart. He pretty much grabbed me and then started giving me shots to my stomach and punches, and he started pushing me.

"There was a balcony gate near me and he pretty much gave me one big haymaker and that brought me down."

The teen said the officer then cut his own thumb on something sharp on his utility belt.

"When I was on the ground he grabbed me and said I'm going to go to jail for assaulting him. I have (his blood) on my jacket, a fingerprint. He grabbed me like this and just started wiping his blood on me."

Police made no mention of a robbery in their notes. Lourenco did file an injury report and had a photo taken of his thumb, his notes indicate.

Lourenco did not respond to an email from the *Star*.

After Lourenco called for backup, a total of five cruisers responded. A small crowd of upset residents began to form. Parents and supporters later filled the lobby of 32 Division station, where the teens were being questioned.

"I've never seen anything like it in my entire life," said Brereton, who was at the station to offer his help. "We were treated as criminals. There were family members there and they were concerned and blatantly told to shut up and come back tomorrow."

The twin who was punched was strip-searched and held overnight.

He was offered a number of plea deals, none of which were acceptable, he said. The final offer, which came after the video was disclosed, involved community work, no criminal record and a promise to keep the peace.

Lawyer Craig Bottomley, who represented the twin, said the security videos helped in the withdrawal of the charges but were not a "smoking gun" due to poor quality.

"The fact that all four young people told an exact account of what happened that did not jive with the police account was pretty persuasive in my eyes," Bottomley said in an interview.

"This encounter never should have happened. My client was stopped leaving his home and investigated for trespassing. This was perverse.

"He rightly told the police that he did not have to co-operate with their investigation and the situation was quickly reduced to a violent encounter

where a 15-year-old boy was taken to the ground and his friends had a firearm put in their faces.

"This was a gross overstep by the police that has left my client shaken and disillusioned."

The teens are considering suing police.

"Given the possibility of a lawsuit, it wouldn't be appropriate to comment at this time," said Toronto police spokesperson Mark Pugash.

The teen who was punched said the arrest and charges caused people at his school to view him in a different light. He lost his job at a grocery store and his marks suffered because of interruptions for court appearances and meetings with his lawyer, he said.

He managed to get all of his credits by going to summer school.

In early July, he accepted the peace bond deal, mainly because it meant he could immediately hang out again with his two friends who were arrested. Part of the bail conditions were that he could not talk to them.

In late July, the four teens gathered at the complex for an interview, arranged by youth worker Brereton.

Before their arrests they had all taken a voluntary justice program, offered by the Ontario Justice Education Network. It ended with a mock trial before a real judge, and certificates were issued.

One thing the well-spoken young men said they learned is that they have rights during encounters with police.

"And then we learned that we didn't have them," said one of the teens, referring to the arrests.

"Everyone gets stopped in our area, because there's lots of black people," said the twin who was punched. "Lots of black people get stopped. Guys get stopped a lot more than girls."

Asked if he would ever try to walk away from police again, the twin who was punched replied: "I'm not walking away and getting beaten up and charged again. If that video camera wasn't there, I'd have no chance. It would be my word against police."

The others agree that would be a bad idea.

TAVIS officers, deployed in pockets of the city where violent crime is taking place, do stop, question and document citizens at a higher rate than normal patrol officers.

A *Star* analysis of contact card data obtained in a freedom of information request shows that of the 1.27 million citizen contacts between 2008 and mid-2011, TAVIS stops accounted for 120,000 — or almost one in 10 — of those. That's 32,000 more than the next highest police unit, which is a police division.

Chief Bill Blair has acknowledged in interviews with the *Star* that these encounters do not all go well. But he encourages all officers to proactively stop and document people and the people they are with.

Most of the contact stems from "general investigations," traffic stops and radio calls.

Blair and others credit the TAVIS initiative, in part, for reductions in violent crime in certain neighborhoods.

The initial political response to the recent shootings on Danzig St. was an announcement of permanent funding for TAVIS. To be sure, there has also been talk of funding for youth programming and other social investments, including recommendations that have repeatedly been made over the years but tend to get less action and attention.

Critics question whether the violent crime reductions are lasting and worry that the disproportionate policing and documenting of youth in violent neighbourhoods is impacting public trust.

That is one thing the Toronto Police Services Board, in the wake of the *Star* series, has asked the city auditor to examine.

The four teens from Neptune told the *Star* that, collectively, they have been stopped and documented by police in their neighborhood on more than 50 occasions.

"They stop you, you know everything you have to tell them," explained one of the teens. "Your height, your age, your weight, your address, your phone number, where you live, where are you going, where are you coming from."

"Sometimes, I don't have ID and that's when it's kind of scary. Now I have my health card and my driver's licence."

The data collected in the police stops becomes part of a massive internal database that is used to find links to possible witnesses and suspects following a crime. It is also used, on occasion, in obtaining search warrants.

TAVIS, which began in 2006 following a spate of gun homicides, is Blair's brainchild and is funded by the province.

In interviews with the *Star*, Blair has said that how these encounters turn out has much to do with the way officers approach those they choose to stop and document.

In February, a TAVIS officer was sentenced to a jail for assaulting and squeezing the testicles of a 21-year-old motorist he had pulled over in 2009 in what was deemed an unlawful search.

When the *Star* asked the four teens from Neptune Dr. — some have begun calling them the Neptune Four — if they notice a difference between TAVIS officers and regular patrol, they answered with an emphatic yes.

One said TAVIS officers are more "wild."

If you see TAVIS on the side of a cruiser, said one of the teens, "you go run and hide. If you see TAVIS, it's nightmares."

For Brereton, it's time to start over and help build back a more trusting relationship between the Neptune Dr. community and police.

"It paints the whole police force bad," he said. "It's just like certain people might paint our community as bad. You can't judge obviously the whole force by one person, and you can't judge our community by the acts of one or two people, either.

"But there's something police can do in their approach, because, as you can see in this case, nobody walked up and gave a handshake."

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Black leaders want a say

Published on Saturday October 26, 2002

Peter Small

Toronto Star

This story originally appeared in the Toronto Star Oct. 26, 2002.

Black community leaders say they should have been consulted before Toronto police Chief Julian Fantino announced a review of the force's race relations practices that was prompted The Star's stories on racial profiling.

"Nobody has come to the community and asked us what we want and that is an insult," Dudley Laws, of the Black Action Defence Committee, told a news conference at the Jamaican Canadian Centre yesterday.

"We are the ones - our children are being stopped by police, harassed by police officers - and we should have a say in how the process should take place."

In an earlier news conference at police headquarters, Fantino announced that he had asked Charles Dubin, retired chief justice of Ontario, to conduct the review and he pledged to move quickly on its recommendations.

The move follows Star stories that analyzed a police database recording more than 480,000 incidents. It concluded that blacks charged with simple drug possession received harsher treatment than whites facing the same charge and that a disproportionate number of blacks were ticketed for offences that would come to light only after a traffic stop was made - a pattern consistent with racial profiling.

Margaret Parsons, executive-director of the African Canadian Legal Clinic, said for Fantino to announce his review without consulting with members of the African-Canadian community flies in the face of any meaningful dialogue. "This speaks to a knee-jerk reaction," she said in a telephone interview.

"To be seen to be doing something isn't good enough. Something actually has to happen," and it has to involve the community, she said. Parsons also questioned whether Dubin has an adequate background in race relations to audit police policies.

Fantino said he will ask Dubin to invite input from community groups and individuals, but both Laws and Parsons said they have serious doubts about whether they will take part.

Parsons charged that Fantino is using the Dubin inquiry as a "buffer zone" instead of engaging in meaningful dialogue with the African-Canadian community. "It is a demonstration of his lack of commitment and will to really, really take matters in hand to show some leadership, to show some ownership of the issue."

Zanana Akande, president of the Urban Alliance on Race Relations, a multi-racial group, echoed concerns that her organization and others had not been consulted about the review and she expressed reservations about whether it will participate.

"I think this is a stall," Akande said in a telephone interview. "There are recommendations upon recommendations" from previous reports that have not been implemented, she said.

Valarie Steele, president of the Jamaican Canadian Association, said her group was reserving its decision about whether to take part in the Dubin audit.

"We have been studied to death," she told the news conference at the Jamaican Canadian Centre.

It's imperative that the chief work with the black community to fix a problem that its members know exists because they live with it every day, Steele said. "Denials and another study are not going to help," she said. "What we need are implementations of good policies that will enable us as a community to feel that we are safe."

The Jamaican Canadian Association, the African Canadian Legal Clinic, Black Action Defence Committee and the Black Business and Professional Association issued a joint statement yesterday saying that Fantino's "categorical denial of the existence of racial profiling" in the police force is "very troubling to Toronto's black community."

"The articles in The Star are not news to us," the statement says. "We have told Chief Fantino on many occasions that his front line officers are wreaking havoc on our community. It is important for Chief Fantino to take meaningful actions to ensure that this does not continue."

They thanked "The Toronto Star for having the courage to look at these numbers and bring it to the attention of the wider community."

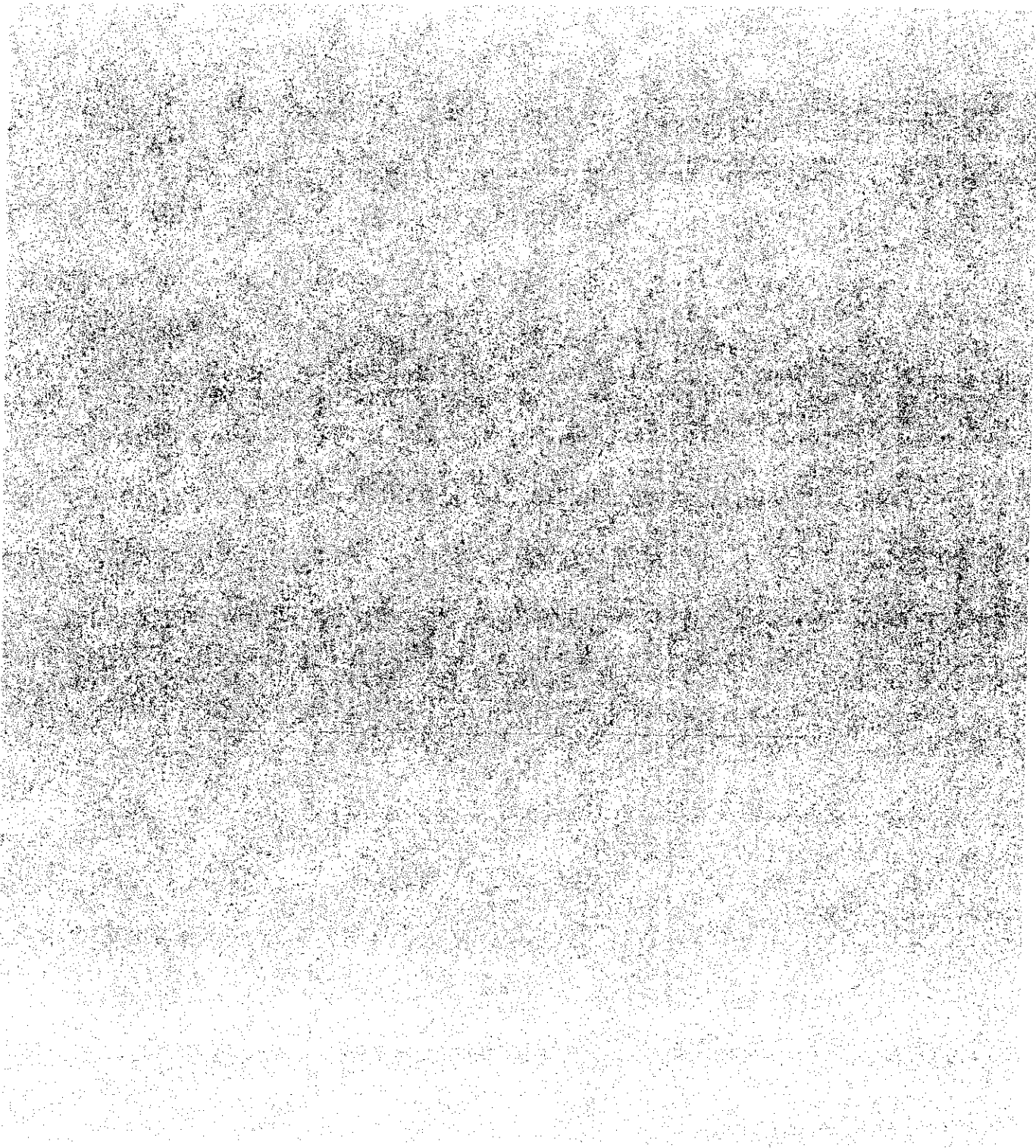
They commended former lieutenant-governor Lincoln Alexander's call for a race relations summit, but said Fantino's "denial of racial profiling in police ranks is not a good starting point."

But Alexander, who is also honorary Toronto police chief, welcomed the Dubin inquiry and said Fantino consulted him on the appointment.

"He's taking this very seriously and moving promptly," he told The Star.

Meanwhile Toronto's diversity advocate Sherene Shaw (Ward 39, Scarborough Agincourt) is urging city council to debate the issue of racial bias in the force at its meeting next week. Among her aims, she wants council to support Alexander's call for a summit; recommend that the police services board set up a race relations policy advisory committee made up of members of the board, city council and the community to report directly to the board; and direct the city auditor to update an audit of police policies, programs and practices that impact racial minorities that was done in 1992 by former Metro auditor Allan Andrews.

With files from John Deverell and Laurie Monsebraaten



**THIS IS AN EXTRACT FROM THE MINUTES OF THE PUBLIC MEETING OF THE
TORONTO POLICE SERVICES BOARD HELD ON NOVEMBER 14, 2012**

**#P271. ISSUING RECEIPTS TO PERSONS WHO ARE STOPPED BY THE
POLICE**

The Board was in receipt of the following report November 01, 2012 from William Blair, Chief of Police:

Subject: ISSUING RECEIPTS TO PERSONS WHO ARE STOPPED BY THE POLICE

Recommendation:

It is recommended that the Board receive this report.

Financial Implications:

The cost to implement a community-based receipt is estimated to be approximately \$33,000. Funds are available in the 2012 operating budget.

Background/Purpose:

The Board, at its meeting of April 5, 2012, approved six motions relating to contact cards that required action by the Chief of Police (Min. No. P56/12 refers). The sixth motion recommended that the implementation of Motions Nos. 2 and 4 be subject to a report from the Chief on the costs and operational implications of those motions.

At its meeting of May 18, 2012, the Board revised Motion No. 2 as follows: "THAT the Chief of Police be requested to ensure that individuals for whom a contact card (Form 208) is created be provided a copy of the contact card, including the reason for the stop." (Min. No. P56/12 refers).

Further, at its meeting of July 19, 2012, the Board approved a four-month extension for the completion of the report on the cost and implications of Motions Nos. 2 and 4 at the request of the Chief of Police (Min. No. P187/12 refers). The report is now due to the Board at its November 2012 meeting.

The Board approved a motion requesting that the Chief of Police provide a walk-on report for the Board's August 15, 2012 meeting on the reasons why the TPS is unable to provide contact card receipts to individuals who are stopped (Min. No. P187/12 refers).

At the meeting of August 15, 2012, the Chief reported to the Board in response to the above motion. The Board moved to request the Chief of Police to implement an interim measure, effective November 1, 2012, pending the outcome of the comprehensive review to be provided to the Board at its November 2012 meeting. The Chief advised that the November 2012 report

would include an implementation plan detailing results of the Service's plan for individuals who are stopped by the police (Min. No. P220/12 refers).

The purpose of this report is to outline the cost and operational implications of Motions Nos. 2 and 4, approved by the Board at its meeting of April, 2012. This report also provides an update on the current status of the Service's internal review of the procedure and connected issues relating to the contact card, lists the steps to be taken to implement the interim measure requested by the Board, and informs the Board of operational decisions approved by Command.

Discussion:

The first phase of the Chief's Internal Organizational Review (CIOR) of the procedures relating to contact cards focused on three distinct areas:

- the historical practice of completing a contact card;
- training and procedure surrounding contact cards; and
- external agency contact card practices and policies

The purpose of examining each area was to provide context to numerous issues relating to contact cards and to establish a benchmark for the Service, by which if necessary, modifications and/or improvements could be made to the contact card process. The CIOR review is currently before the Steering Committee for review and refinements.

In moving forward, the term used to describe an interaction between a police officer and a member of the public where a contact card (Form 208) or an electronic field investigation report (FIR) is completed will be referred to as a "Street Check." In so doing, the Service is adopting the common nomenclature in use by Police Services throughout the Province to refer to the practice sometimes referred to in the community as "carding."

The historical examination of contact cards highlighted the evolution of the contact card from being primarily an investigative tool to also being a means of measuring community engagement. Within the framework of interacting with the community from both an intelligence-gathering perspective and an engagement practice, the review focuses on the Service's commitment to ensuring individual rights and freedoms are protected, while balancing same with the Service's obligation to protect the community it serves.

In order to balance these interests, the review identifies the importance of training to ensure that Street Checks are carried out professionally, for clearly articulated purposes, in a manner sensitive to the needs of the community. Consultation with experts in the fields of sociology and criminology, as well as with community leaders, reveals concerns about the "first contact approach" by officers and also the community's general lack of understanding around the entire process. The review identifies that training of police officers in relation to contact cards and ongoing consultation with the community are both critically important to determining a point of reference by which officers can make informed decisions as to when and how to engage with members of the public, and toward finding means to educate the public to better understand the purpose and to accept the interaction.

The review also examines the practices of other police agencies both inside and outside of Canada, including jurisdictions where some form of receipt has been issued to a member of the public after being stopped and searched by the police. The review finds relative consistency between the Toronto Police Service street check practices and those of other Canadian and American police services. Where international jurisdictions have adopted a receipt-based interaction between the police and the public, the development of the practice followed extensive internal and external review and was subject to laws in force in those jurisdictions.

The full range of issues surrounding Street Checks touches on many different areas and carries significant operational implications. The CIOR Team examining this issue continues to address all areas where procedural changes may be required, and to assess the impact of those changes on all areas of Service operations. The work of the CIOR Team is ongoing. However, notwithstanding that the work is complex and will require more time, steps are currently underway to address the Motions of the Board.

In response to Board Motion No. 4, of April 5, 2012, the role of the Diversity Management Unit is being examined in the context of training, but the unit does not have the expertise nor the capability to "monitor" this activity for possible misconduct or to report to the Chief accordingly.

The following steps have been approved for action in accordance with the timelines indicated:

1. Community/Officer Contact Receipt

The Service will issue a receipt to members of the community who are the subject of a Street Check. The receipt will include the name of the person to whom the receipt is issued, the name of the officer issuing the receipt, the location, date & time, and the reason for the interaction.

On November 1, 2012, a Routine Order was published announcing the creation of the Community/Police Contact Receipt and detailing operational requirements for members.

Between the November 1 and November 30, 2012, the new form will be printed and distributed to the field units, appropriate amendments made to Service procedures, and the FIR interface and hard copy Form 208 modified. The receipt will be fully available for use on December 1, 2012.

2. Quarterly Street Check Report

The Service will produce a standardized quarterly report for the Board on street check practices beginning with the first quarter of 2013. Data from the first quarter will be extracted and analyzed for the first report to be available for the Board's meeting in May, 2013, and every three months thereafter for subsequent quarters.

The report will follow a standardized format that has yet to be fully developed but will include not only information about the age and race of persons stopped, as requested by the Board, but a wider array of information to enable an analysis to be made of the nature and quality of street check activity and its impact on community safety.

3. Ongoing Community Consultation

The Service will continue to foster on-going community and police relations, seeking consultation from a broad range of internal and external stakeholders and community groups, specific to the topic of Street Checks, in order to inform the CIOR Team and to help evaluate the effectiveness of the interim measure relating to the issuance of receipts after Street Checks.

These consultations are ongoing and will continue.

Conclusion:

The Chief's Internal Organizational Review Team is continuing with its comprehensive review of the Service's practices in relation to Street Checks with the objective of ensuring that the practice of collecting personal information from members of the public is carried out by officers in an efficient, effective, unbiased and non-discriminatory manner. In moving forward, the CIOR Team will continue to examine how to improve practices and training for officers to allow greater transparency and accountability with members of the public.

Immediate steps being undertaken to help achieve these objectives are the creation and issuance of a Community/Officer Contact Receipt, a quarterly report on Street Check Practices beginning in 2012, and ongoing broad-based community consultations.

Acting Deputy Chief Kimberly Greenwood, Divisional Policing Command, will be in attendance to answer questions that the Board may have regarding this report.

The following persons were in attendance and delivered deputations to the Board:

- **Anna Willats and John Sewell, Toronto Police Accountability Coalition ***
- **Howard Morton, Law Union of Ontario ***
- **Moya Teklu, African Canadian Law Clinic ***
- **Noa Mendelsohn, Canadian Civil Liberties Association ***
- **Miguel Avila**
- **Johanna Macdonald, Justice for Children and Youth and Youth and Police Advocacy Working Group ***
- **Osbourne Barnwell**
- **Doug Johnson Hatlem, Lazarus Rising Street Pastor, Mennonite Central Committee Ontario, Sanctuary Ministries ***
- **Odion Fayalo**
- **Yafet Tewelde**

* written submission also provided; copy on file in the Board office

Following the deputations, Chief William Blair and Deputy Chief Designate Mark Saunders responded to questions by the Board.

The Board asked to see a sample of the receipt that would be provided to members of the community who are the subject of a street check. Chief Blair said that, while the information to be included in the receipt is the same information that is noted in the foregoing report, he could provide a sample of a receipt to the Board at its December 2012 meeting.

Noting the distinction between the information that would be contained on the form compared with the information that would be contained on the receipt, the Board said that it wanted to be satisfied that the form addresses the concerns that were raised by some of the deputants.

The Board was advised that the new receipts and the modified Form 208 were currently being printed and that they would be circulated throughout the TPS as required in order to be fully available for use on December 01, 2012.

The Board acknowledged that its request to review the modified Form 208 and receipt would cause a delay in the implementation of the interim measure and, therefore, it would need to re-open the Minute in which the Board requested that the interim measure be effective as of November 01, 2012 (Min. No. P220/12 refers).

The Board agreed to re-open Minute No. P220/12 from its meeting on August 15, 2012 in accordance with subsection 24(1) of By-Law 107 governing proceedings of the Board.

The Board approved the following Motions:

1. THAT the Board request the Chief to defer the distribution of the receipts until the Board has had an opportunity to review the copy of the receipt, to consider the deputations received at its meeting today and to determine what direction the Board will provide to the Chief based on its deliberations at its meeting in December 2012;
2. THAT the Board request the Chief to review the Form 208 and any successor form to ensure that they are in compliance with the Board's policies including the Race and Ethno-Cultural Equity policy and that he provide a report to the Board on the results of the review for the December 14, 2012 meeting; and
3. THAT the Board receive the foregoing report from the Chief, the deputations and the written submissions.

Toronto Police Accountability Coalition
c/o Suite 206, 401 Richmond Street West, Toronto ON M5V 3A8.
416 977 5097. info@tpac.ca , www.tpac.ca

November 12, 2012.

To Toronto Police Services Board

Subject: Item 3, Receipts for carding, November 14 meeting

We wish to be a deputation on the above item.

While we are pleased the police will be documenting stops with a receipt, we have the following concerns:

1. More information is needed on what the receipt will contain. It should include the officer's number and division where the officer is based. The reason for the interaction should be specific and detailed, indicating what suspected criminal behaviour caused the stop to occur. It should not include generic reasons such as 'general investigation', which is not a legal reason for police to subject an individual to unwanted questioning and stopping. We think the receipt should be issued for all stops, on foot or in a vehicle.

We would like to see a mock-up of the receipt that is intended to be used.

2. Before the receipt program is implemented, the police should undertake a comprehensive communication strategy which will inform Torontonians, particularly racialized youth who bear the brunt of carding, that they can expect to be given a receipt if stopped, and what that receipt is about. The communication strategy should include radio, television, social media tools, police web site, TTC, etc., as well as presentations in schools. It should be developed after consultation with community agencies. We believe the roll-out of receipts should be delayed for a month or two to permit this communication strategy to be developed and to occur.

3. Some monitoring program is required to ensure the receipt program is effective in informing members of the public about what the police are doing. The chief indicates in his report that the Diversity Management Unit has neither the expertise nor capacity to do this task. It is unfortunate that there is no arm of the police service which can monitor such a basic activity as the police stopping and questioning individuals – it occurs almost half a million times a year – but some mechanism must be found without delay.

While TPAC believes it would be better if the police stopped carding, we understand this is not something the police force will do: accordingly, the receipt mechanism with the changes we suggest is the next best alternative.

Thank you.

A handwritten signature in black ink, appearing to read "J. Sewell". The signature is fluid and cursive, with a large initial "J" and "S".

John Sewell for
Toronto Police Accountability Coalition.

Howard F. Morton Q.C.
Barrister & Solicitor
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Toronto, Ontario M5R 2B2
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November 12, 2012

Toronto Police Services Board
40 College Street
Toronto, Ontario
M5G 2J3

ISSUING RECEIPTS TO PERSONS WHO ARE STOPPED BY THE POLICE
SUBMISSIONS ON BEHALF OF THE LAW UNION OF ONTARIO

1. The Law Union of Ontario offers its qualified support for the implementation of the three proposals advanced by Chief Blair in his Report.
2. However, neither the Chief's proposals nor the position taken by the Police Services Board of its April 5, May 18, and July 19, 2012 meetings do not even begin to address the paramount issues involving the current practice of "Carding" otherwise known as "Street Checks".
3. The design and use of Form 208 and in particular the manner in which the practice of "Carding" is deployed are both clear violations of the *Canadian Charter of Rights and Freedoms*. Specifically the individual rights guaranteed by *Sections 8 and 9* of the *Charter* are clearly infringed and denied and on a case by case analysis are violations of *Sections 2, 7, 10 and 15* of the *Charter*.
4. The manner in which this so-called form of "community engagement" is deployed warrants scrutiny by the Board. We have authenticated reports from individuals who state that when they decline to either provide identification or provide the information set out in Form 208 as in the absence of special circumstances is their absolute right to do, officers then resort to illegitimate ruses and stratagems such as the following:
 - a) Officers falsely state that they are involved in a criminal investigation and that the individual matches the description of the suspects.

It should be noted that some officers may wrongly believe that by so stating they bring themselves within the broader scope of "investigative detention" as set out in R. v. Mann.

- b) Officers attempt to circumvent and nullify the individuals assertion that they do not wish to identify themselves or provide the Form 208 information by implicitly threatening remarks such as:
 - i. What are you trying to hide!
 - ii. What do you have in your pocket!
 - iii. Do I have to take you to the Police Station?!
 - c) Officers engage in "pat down searches" of the individual which are clearly unlawful.
5. The approaching and stopping of persons without lawful cause followed by a request or demand for identification and answers to the information sought by Form 208 clearly constitute "detention" within the meaning of the *Charter of Rights*. Such demands or requests for identification and information clearly constitute a "search" within the meaning of the *Charter*.
 6. In the overwhelming majority of cases the persons which the police seek to "Card" are doing nothing that would lawfully warrant such police intervention.
 7. Not only is the practice of "Carding" in such a manner an unlawful violation of the *Charter*, it has resulted in community apprehension, sentiment and fear particularly in marginalized communities which undergo a disproportionate "Carding" presence.
 8. Further, individuals who are apparently targeted for "carding" are disproportionately racialized youth. The practice is viewed in these communities as racist policing. Often these are the very communities in which the police seek and need cooperation in the pursuit of legitimate law enforcement and criminal investigation purposes.
 9. The practice of "Carding" is a major obstacle to achieving community trust and cooperation.
 10. It is clear from the statistics obtained by the Toronto Star that the use and impact of "Carding" is primarily directed at youths, racial minorities and members of marginalized communities. However, this practice is one which all Torontonians are subject to.

11. In a free and democratic society a Police Service should not be stopping and demanding from innocent persons the personal and private information set out in Form 208.
12. "Carding" is not merely an unwarranted invasion of privacy, it is an intentional and clear violation of *Charter Rights and Freedoms* and contravenes Human Rights and Privacy legislation.
13. This form of "community engagement" as it is referred to in Chief Blair's Report is far removed from that envisioned by Elmer the Safety Elephant.
14. Chief Blair's Report fails to append either Form 208 or the proposed receipt. We urge you to examine the nature of the information being sought without cause from persons in our city.
15. We draw particular attention to the following: (Form 208 attached)
 - Age
 - Birth place
 - Address
 - Previous country
 - Information relating to associates
 - School attendance
 - Whether ones parents are divorced or separated
 - Mother and father's surnames
16. Although police officers are entitled to ask anyone questions in legitimate circumstances, this ability is trumped by the corresponding common law and *Charter Right* of individuals to decline to answer such questions. Absent special circumstances individuals can also refuse to provide identification.
17. However, that is not what is happening during an approach for the purpose of "Carding".
18. When Police officers refuse to respect *Charter Rights and Freedoms* and instead subvert the *Charter* by subterfuges, ruses, and outright lies they violate the Supreme law of Canada.
19. As early as 2004 the Board was put on notice by the highly respected Jurist that the practice of "Carding" was a threat to a free and democratic society.

20. In R. v. Ferdinand Superior Court Justice H. LaForme heard evidence that the investigating police officers regularly stopped individuals and filled out between 15-45 cards per shift. His Honour stated:

“Although I do not dispute that 208 cards might well be a useful and proper investigative tool for the police; in my view the manner in which the police currently use them make them somewhat menacing. These cards are currently being used by the police to track the movements – in some cases on a daily basis – of persons who must include innocent law-abiding residents.”

“One reasonable – although very unfortunate – impression that one could draw from the information sought on those 208 cards – along with the current manner in which they are being used – is that they could be a tool utilized for racial profiling.”

“... I make my observations only to express a profound note of caution. If the manner in which these 208 cards are currently being used continues; there will be serious consequences ahead. They are but another means whereby subjective assessments based upon race – or some other irrelevant factor – can be used to mask discriminatory conduct. ...”

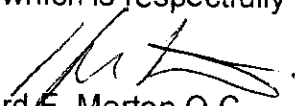
“This kind of daily tracking of the whereabouts of persons – including many innocent law – abiding persons – has an aspect to it that reminds me of former government regimes that I am certain all of us would prefer not to replicate.” (Emphasis added)

21. It should be noted that Justice LeForme did not have the benefit of being made aware of the use of the manner in which police operate when an individual declines to respond to police questioning.
22. Similarly, in R. v. Linton, now Superior Court Justice I. MacDonnell, in dismissing 4 charges of assault police observed that detaining individuals “for the purpose of requiring them to provide identification is unjustified and unlawful. He observed that such practice would give the police “a general warrant to detain for investigation anyone found in a troubled neighborhood.

THE LAW UNION OF ONTARIO

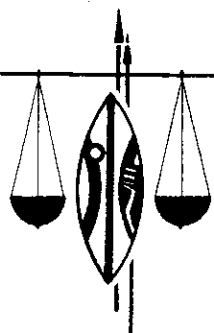
23. It is incumbent that the Board examines the entire practice of "Carding" and not simply concern itself with race based statistics and demographics as a reaction to the Toronto Star articles.
24. The Law Union of Ontario respectfully requests and urges the Board to undertake a comprehensive analysis of the practice of "Carding".
25. We request that as a first step in such analysis, the Board undertake the following:
 - 1) Immediately direct Board counsel or preferably independent counsel to review the existing practice of "Carding" as it is occurring daily on our streets. Counsel should complete and report on such review at the earliest possible date and no later than February 2013.
 - 2) Require Chief Blair to provide counsel all standing, routine or other orders with respect to "Carding".
 - 3) Require Chief Blair to provide counsel with all service policies or directives with respect to "Carding".
 - 4) Require Chief Blair to provide counsel with all training materials with respect to "Carding".
26. The current Board motions and recommendations completely ignore the real issue with respect to "Carding" and the concerns which communities in our city have.
27. On his Report to the Board on the *Charter* violations occurring during the infamous G-20 weekend, Justice Morden emphasized that the Board has as its primary obligation a duty to ensure that its Police Service operate in a lawful manner and in accord with our *Charter of Rights*.
28. To date the Board has failed in its responsibility as it relates to "Carding". The communities which have attended today both inside and outside the Chamber have lost both patience with and confidence in the Board. They see the practice of "Carding" as racist policing.

All of which is respectfully submitted.


Howard F. Morton Q.C.
HFM/dm
Encl.

FIELD INFORMATION / GARRY CONTACT DETAILS		ZONE	TPS	IPS208
DATE (YYY/MM/DD)		200805		
TIME (24 HOUR CLOCK)				
AT <input type="checkbox"/>	NEAR <input type="checkbox"/>	LOCATION/INTERSECTION		
LOCATION DETAILS		OFFICER NO. (S)		
PROJECT #	REFERENCE TYPE/REF NO.	NATURE OF CONTACT		
CIRCUMSTANCE OF INVESTIGATION				
PERSON INVESTIGATED				
BY <input type="checkbox"/> ON <input type="checkbox"/>				
SURNAME		G1		
G2		ALIAS/NICKNAME		
DOB (YYYY/MM/DD)	AGE	SEX	BIRTHPLACE	COLOR
APPEARANCE	EYES	HAIR (STYLE/LENGTH/COLOR)		FACIAL HAIR
HEIGHT	WEIGHT	IDENTIFIED BY (ID TYPE)	ID CONFIRMED YES <input type="checkbox"/> NO <input type="checkbox"/>	
ADDRESS <input type="checkbox"/> NFA <input type="checkbox"/>	SAME AS LOCATION		PREVIOUS/COUNTRY	
TELEPHONE NO <input type="checkbox"/>	CELL NO <input type="checkbox"/>	EMAIL <input type="checkbox"/>		
DRIVERS LICENCE NO		PROV/STATE	DRIVER <input type="checkbox"/> PASS. <input type="checkbox"/>	
RWN POLICE ACCOUNTABILITY REPRODUCTION JUNE 25/2011 fax: 416-365-9371				

ASSOCIATES' YES <input type="checkbox"/> NO <input type="checkbox"/> THIS SUBJECT IS PART OF A GROUP					
ENTER A SEPARATE TPS 208 FOR EACH ASSOCIATE AND ATTACH					
PRIMARY SURNAME TO LINK ASSOC'S					
				ASSOC. #	OF
GANG/CLUB AND DESCRIPTION				GANG MEMBER <input type="checkbox"/> ASSOCIATE <input type="checkbox"/>	
CLOTHING AND BODY MARKINGS					
PERSON COMMENTS					
YOUNG PERSON INFORMATION					
ATTENDING (SCHOOL, ETC)		GRADE	PARENTS ARE	DIVORCED <input type="checkbox"/> SEPARATED <input type="checkbox"/>	
FATHER SURNAME(GI)			CAREGIVER ADVISED	YES <input type="checkbox"/> NO <input type="checkbox"/>	
MOTHER SURNAME(GI)			YOUTH BUREAU NOTIFIED	YES <input type="checkbox"/> NO <input type="checkbox"/>	
VEHICLE INFORMATION					
LICENCE PLATE		PROV/STATE	PLATE (000) YES <input type="checkbox"/> NO <input type="checkbox"/>		LOGO DESIGN
YEAR (YYY)	MAKE	MODEL	COLOUR	STYLE	
VIN#					
VEHICLE DAMAGE					
DAMAGE LOCATION			DAMAGE DESCRIPTION		
DAMAGE COMMENT		EMAIL TO	F/R ENTERED B		
RWN POLICE ACCOUNTABILITY REPRODUCTION REVISED JULY 18/2012					
fax: 416-365-9371					



November 14, 2012

RE: ISSUING RECEIPTS TO PERSONS WHO ARE STOPPED BY THE POLICE

The African Canadian Legal Clinic ("ACLC") would like to begin by again commending the *Toronto Star* for its role in placing racial profiling on the agenda of the Toronto Police Services Board ("TPSB").

While the Clinic unequivocally opposes the police practice of documenting citizens in non-criminal encounters, we would also like to commend the TPSB for heeding our recommendations, and moving from study, analysis and paralysis to much needed action.

Racial profiling is more than a mere inconvenience, a hassle or an annoyance. It has real and direct emotional, psychological, physical and financial consequences; this includes loss of human dignity, the inability to obtain employment, mistrust of and hostility towards police, loss of respect for the law, and alienation and a diminished sense of citizenship. Equally important, it is contrary to the *Police Services Act*,¹ the *Ontario Human Rights Code*,² and the *Canadian Charter of Rights and Freedoms*.³

If properly implemented, the measures proposed by Chief Blair and the TPSB can lead to a level of transparency and accountability that to date has been lacking. In order to ensure that these measures are actually effective in reducing and eventually eliminating the practice of racial profiling, the ACLC makes the following recommendations:

- 1. The "reasons for the interaction" contained on contact cards and provided on receipts must be sufficiently precise, indicating, for example, the specific suspected criminal activity that preceded the stop.**

Chief Blair's report states that the receipts provided to those that are stopped and carded by police will include "the name of the person to whom the receipt is issued, the name of the officer issuing the receipt, the location, date and time, and the reason for the interaction."

The provision of receipts is a measure that is intended to address the questioning and harassment of members of the African Canadian community on the basis of nothing more than racist stereotypes about perceived criminality.

¹ *Police Services Act*, R.S.O. 1990, Chapter p.15, s. 1: Police services shall be provided throughout Ontario in accordance with the following principles: ... (2) The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*; (3) The need for co-operation between the providers of police services and the communities they serve; ... (5) The need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society; (6) The need to ensure that police forces are representative of the communities they serve.

² *Human Rights Code*, R.S.O. 1990, Chapter H.19, s. 1: Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

³ *Constitution Act*, 1982, 1982, c. 11 (U.K.), Schedule B., s. 15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

To date, the rights and freedoms of too many African Canadians have been violated because police officers have been permitted to stop and question individuals for such things as “general investigations” or “general information for the intelligence unit.”

Abuse of power is most discriminatory where police autonomy and discretion are greatest. Unless the “reasons for the interaction” are sufficiently precise, the requirement that reasons be provided will not achieve the objective of compelling officers to first think about whether the exercise of their police powers is racially motivated or is reasonably justified.

When providing reasons for stops, members of the TPS should be required to select from a list of precise justifications, indicating, for example, the specific suspected criminal activity that preceded the stop, as opposed to overbroad and essentially useless reasons such as “general investigations” or “community engagement.”

- 2. The issuing of receipts must be mandatory in every police interaction that results in the completion of a contact card. Failure by a member of the police service to issue a receipt must result in either discipline or the immediate destruction of the contact card.**
- 3. The receipts must include the race of the individual that has been stopped as it is recorded by the police officer on the contact card and as much information about the issuing officer as possible, including the officer’s name, badge number, and division.**

In the ACLC’s last presentation to the Board, we referred to an article in the *Toronto Star* that detailed an incident in which four African Canadian youths attempted to exercise their legal right not to answer police questions, and were assaulted, arrested, searched, and charged. If properly implemented, receipts have the potential to act as a public accountability measure and perhaps avoid such egregious abuses of police power.

Specifically, where a member of the public has a negative or discriminatory interaction with a member of the TPS, the identifying information provided on the receipt (including the officer’s badge number and division), can facilitate the filing of a complaint with the OIPRD or the Human Rights Tribunal against the officer in question. Also, this identifying information could be used internally to flag disproportionate stops and eventually correct, through discipline and/or training, the existence of racist policing practices among individual officers.

In order to create true accountability, however, the provision of receipts must be mandatory in every single police interaction that results in the creation of a contact card. Due to a lack of information about the right to receipts and the inherent power imbalance between members of the public and members of the police service, civilians cannot be expected to request these receipts.

Rather, if there is evidence that a contact card has been completed without the issuance of a corresponding receipt, either the issuing police officer must be disciplined or the contact card must be immediately destroyed. Anything less than this level of commitment and these receipts will become nothing more than an empty gesture.

4. The police service's public education campaign must include information on the public's right to refuse to provide personal information; the right to receive a receipt if carded; what the information provided in contact cards is used for, with whom the information can be shared; for how long it is maintained; the process by which the creation, maintenance and dissemination of this information can be challenged; and possible avenues of redress where there is a perceived abuse of police power.

While the ACLC does not believe that the provision of receipts needs to be pushed back in order to facilitate a public education strategy, we echo the recommendations of the Toronto Police Accountability Coalition that the TPS should undertake a comprehensive communication strategy to inform all Torontonians of their right to receive a receipt if stopped.

This public education campaign should also include information on the following:

- the public's right to refuse to provide personal information;
- for what the information provided in contact cards is used;
- with whom the information can be shared;
- for how long it is maintained;
- the process by which the creation, maintenance, dissemination of this information can be challenged; and
- possible avenues of redress where there is a perceived abuse of police power.

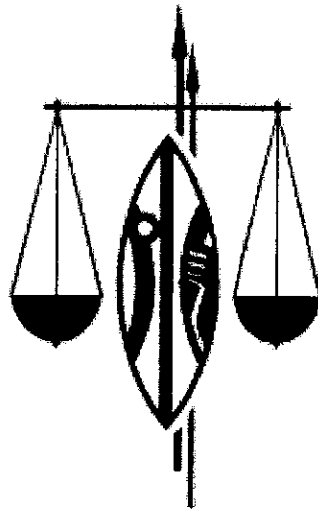
The ACLC recommends that the receipts themselves could serve as a useful public education tool and suggests that this information or references to resources containing this information be provided on the back of receipts. A copy of the ACLC's "Anti-Racial Profiling Toolkit" has been provided to you as an example of what this might look like. I refer you also to materials produced by Justice for Children and Youth that can be consulted in drafting this information.

Conclusion

We are by no means finished in addressing this longstanding and pernicious evil. But today, if our recommendations are heeded, we will have taken a step in the right direction – a step in the direction of continued increases in recruitment of racialized police officers; a step in the direction of increased cooperation and trust between racialized communities and police; a step in the direction of accountability and transparency; and a step in the direction of compliance with the *PSA*, the *Code*, and the *Charter*.

Anti-Racial Profiling Toolkit

An ACLC Public Legal Education
Resource



African Canadian Legal
Clinic

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What is Racial Profiling?

Racial profiling is any action undertaken for reasons of safety, security, or public protection that relies on stereotypes about race, colour, ethnicity, ancestry, religion, or place or origin rather than on reasonable suspicion, to single out an individual for greater scrutiny or different treatment (Ontario Human Rights Commission).

Steps to Take If You Believe You Have Been Subject to Racial Profiling

The police may approach you and ask you questions (as any person can), but they must let you go on your way unless they arrest you or have grounds to detain you.

Although you are not obligated to answer when stopped by the police, stay calm and be polite. Use discretion when answering questions. Seemingly innocent answers could be a reason to further question or detain you or they could prevent you from being further investigated by the police.

If you feel you have been the subject of racial profiling:

- Ask "Am I being detained?"
- If so, ask on *what grounds* (what basis) you are being detained.
- Ask for and write down the name, badge number, and squad car number of the officer. The police must provide that information upon request.
- Look to see if there were any witnesses to the situation and write down their names and phone numbers.
- Write down exactly what happened and what was said immediately after the incident.
- Write down the date, time of day, location, lighting, and any objective evidence such as the posted speed limit if you were driving, how fast you were driving, or if any signs are posted.

Proving Racial Profiling

There is an inherent problem with evidence in cases of racial profiling – they can rarely be proven by direct evidence. The profiling may be subtle and based on the circumstances. So make sure to write down and keep all relevant facts and circumstances, as well as how you felt during the situation (see previous page).

Race only needs to be one factor in the police officer's conduct. It need not be the main or major cause of the mistreatment, and racial profiling can be found to have occurred even if race was mixed in with other legitimate factors (e.g. speeding). There is no need to prove intent or motivation in a case of discrimination – the discriminatory effects of the act are sufficient. The officer's conduct can be the result of subconscious beliefs about members of a visible minority group.

To prove racial profiling:

- the person profiled must belong to a disadvantaged group;
- it must be shown that the person alleged to have profiled (e.g. the police officer), acting in a situation of authority, had some opportunity to observe or presume the race of the person profiled; and
- it must be determined whether this knowledge led the person alleged to have profiled to act in a discriminatory way, either consciously or subconsciously.

Relevant considerations:

- statements were made to indicate the existence of stereotyping or prejudice (e.g. racial slurs, asking "Do you speak English?", suggesting the person profiled is foreign: "In this country we don't...", comments indicative of stereotyping: "What are you doing in this neighbourhood?", etc.)

- a non-existent, contradictory, or changing story is given for why someone was subjected to greater scrutiny or differential treatment (e.g. says after-the-fact that the person profiled was speeding when they were not informed at the time that they were stopped for speeding)
- an explanation is offered that does not accord with common sense (e.g. in cases of unnecessary strip searches)
- the situation would have unfolded differently had the person been from a non-profiled group
- there were deviations from the normal practice (e.g. not telling you your Miranda rights/"reading your rights")
- an unprofessional manner was used or the person profiled was subjected to discourteous treatment (e.g. You ask for the officer's badge number and they reply "1234" or "666")
- a situation where law enforcement officers overstep statutory powers (e.g. using the *Highway Safety Act* to pursue a criminal investigation with regard to the passengers of the vehicle for no valid reason)

Systemic Racism:

- it may help your case to prove that the officer's behaviour and actions were part of a larger problem
- try to establish systemic or institutional racism by seeing if there is a *pattern* within the specific police service that was involved
- look at the training, policy, reports and overall internal culture of the police service where the officer works—was their conduct (partly) a result of training or internal policies?

Important Evidence and Information to Request (Disclosure)

Examples of Some Types of Evidence to Present:

- Copies of the employment record of the officers that relates to the incidents of racial discrimination;
- witness statements;
- copies of any complaints of unprofessional or unlawful conduct made by members of the public against the officers that relate to racial discrimination;
- copies of all policies and training materials dealing with racial discrimination, including confirmation of whether the officers successfully completed any such training;
- memorandum book notes, incident reports, surveillance videos, etc.;
- transcripts of dispatch (was there a call to the officer to look out for someone matching a particular description?); and
- statistical data illustrating the social context (ex. the overrepresentation of African Canadians in police stop, search, and arrest activities) can also help prove the discriminatory situations and prove systemic discrimination.

How to Get Disclosure of the Evidence Needed:

- In order to get this evidence, Requisition forms must be filled out at the appropriate court. In a human rights proceeding before the Human Rights Tribunal of Ontario, write to the respondents and request the information. If it is not provided, follow-up with a request for order during proceedings.
- Provided the information is arguably relevant, the police will then be obligated to make copies of the evidence you have requested and send them to you (including training and internal policies).

How to Prove Damages

After an incident involving racial profiling has occurred and the circumstances surrounding the situation has been documented, it is important to keep track of any **losses** that you incur as a result.

If you are suing the police in Small Claims Court, the Superior Court of Justice, or filing a complaint at the Human Rights Tribunal of Ontario, the Court or administrative tribunal may award damages—monetary value to compensate you for loss or suffering that has incurred. It is important to keep track of bills and receipts.

Damages can include:

- Medical bills or prescriptions;
- Therapist or psychiatrist appointments;
- Time taken off work to attend these appointments.

The Human Rights Tribunal has the jurisdiction to award damages for injury to dignity, feelings and self respect. Thus, it is also important to record damages to one's self-esteem, dignity, self-respect or routine, as well as any feelings of alienation or distrust that arise. For example:

- Someone stops driving at night because the situation that involved racial profiling occurred while driving at night;
- A person stops going to an area where she used to shop because she was the victim of racial profiling in that area;
- Someone doesn't allow their son to walk home from school or to a friend's house, but instead insists on driving him everywhere because he was the victim of racial profiling;
- You no longer feel like a contributing member of society (e.g. you don't return to school);
- Trust in police, or in society, is damaged or shattered;
- New feelings of fear upon seeing police.

Keep track of everything that has changed as a result of the incident, including how the incident made you feel and affected your sense of self-worth and dignity.

Office of the Independent Police Review Director (OIPRD)

What is the Office of the Independent Police Review Director?

The OIPRD is for complaints that concern matters that occurred on or after October 19, 2009.

The OIPRD is an arms-length agency of the Ontario Ministry of the Attorney General, staffed by civilians. The OIPRD is accountable to the Attorney General, but the Independent Police Review Director is responsible for the day-to-day decisions. Therefore decisions are separate from the government, the police and the community.

The OIPRD's goal is to provide an objective, impartial office to accept, process and oversee the investigation of public complaints against Ontario's police. In some cases the OIPRD will also investigate a public complaint.

Under the Police Services Act, police officers cannot discriminate, which includes racial profiling. Discrimination can lead to a finding of misconduct and subsequent discipline.

How to use the OIPRD

You may file a complaint on the OIPRD website, by fax, by mail or in person at the office (information below). You may also file your complaint at any police service in Ontario. Complaint forms can be found online or the OIPRD will send you a hard copy.

Complaints must be filed within six months after the incident took place. OIPRD complaint forms are available on the website, at all municipal, regional and provincial police services, at ServiceOntario locations throughout Ontario and in many community centres and legal clinics.

Outcomes include: the police may decide to improve or change their procedures; they may hold a disciplinary hearing; or they may take disciplinary action without a hearing.

Advantages

- You do not need a lawyer for this process, although you may appoint an agent to help you.
- It encourages local and informal resolution, which would be a great deal faster than going through the courts.
- If there is a finding against the officer, it will go on record.
- It is quick, flexible, and inexpensive.

Disadvantages

- There are no monetary awards. Outcomes of a successful complaint at the OIPRD are not compensatory to the person who has been a victim of racial profiling.
- Local or informal resolution may not appear in the officer's disciplinary record.
- You may not be able to proceed with a case at the Human Rights Tribunal. The Human Rights Tribunal will not hear a case if the substance of the application was already dealt with "appropriately" in another proceeding.

For more information about the OIPRD visit:

<https://www.oiprd.on.ca/CMS/Home.aspx>

Or call: 416.246.7071

Toll Free in Ontario: 1.877.411.4773

TTY: 1.877.414.4773

Fax: 416.327.8332 Toll-free fax: 1.877.415.4773

Or visit their office:

655 Bay Street, 10th Floor

Toronto, Ontario

M7A 2T4

*If the incident happened before October 19, 2009, contact the Professional Standards Division of the applicable Police Services Board.

Human Rights Tribunal of Ontario (HRTO)

Page 12

What is the Human Rights Tribunal of Ontario?

All claims of discrimination under the *Human Rights Code* are dealt with through applications filed directly with the Human Rights Tribunal of Ontario. The Tribunal's primary role is to provide an expeditious and accessible process to assist parties to resolve applications through mediation, and to decide those applications where the parties are unable to reach a resolution through settlement.

The amended *Code* established a new Human Rights Legal Support Centre (HRLSC) to provide advice, support and representation for applicants. The Human Rights Legal Support Centre gives free legal assistance to applicants to the Tribunal. The Centre can help you fill out your Application and also help you during the Tribunal process.

How to use the HRTO:

For complaints against the police, fill out the Goods, services, and facilities form (Form 1-C). Name the officer(s) in the complaint. The Ontario Human Rights Code includes a list of specific grounds of discrimination. These are listed on your Application.

After you've received documents you've requested the police department you've filed against, and they are not adequate, contact the HRLSC.

You can complete your application online.

You can also send you Application by mail to:

Richard Hennessy – Registrar
Human Rights Tribunal of Ontario
655 Bay St. 14th Floor
Toronto, ON M7A 2A3

Or you can send your Application by email at
HRTO.Registrar@ontario.ca

The limitation period for bringing a claim to the HRTO is one year from the time the last incident of discrimination occurred.

Damages awarded to successful claims range from \$2000 to \$20,000.



Advantages

- The HRTO is flexible in terms of remedy. You can request a number of remedies: financial, specific (e.g. getting one's job back), or public interest remedies to prevent similar discrimination from happening in the future (e.g. Ordering police services to develop new directives or training programs around racial profiling)
- You are also not limited to one remedy (you can get any or all).
- You can voluntarily choose mediation.
- The HRTO is experienced hearing cases dealing with incidents of racial profiling.
- Remedies at the HRTO take into account injury to dignity, self-respect, and feelings when assessing the amount.

Disadvantages

- It is difficult to represent yourself
- Damages may not be very high
- They may not hear your case again if you have already been through another proceeding

For more information about the HRTO visit: www.hrto.ca

Human Rights Tribunal of Ontario

655 Bay Street, 14th floor

Toronto, ON M7A 2A3

Or email: hrto.tdpo@ontario.ca

Call: 416.326.1312

Toll-free: 1.866.598.0322

TTY: 416.326.2027

TTY Toll-free: 1.866.607.1240

Fax 416.326.2199

Toll-free: 1.866.355.6099

For more information about the Human Rights Legal Support Centre:

www.hrlsc.on.ca

180 Dundas Street West,

8th Floor Toronto, ON M7A 0A1

Call: 416.597.4900

Toll Free: 1.866.625.5179

TTY: 416.597.4903

TTY Toll Free: 1.866.612.8627

Other Avenues

Although there are other avenues to seek redress from racial profiling incidents, such as suing in Small Claims Court or Superior Court, it is a lengthy process that is prohibitively expensive. There are only a handful of judgments in civil cases seeking a remedy for racial profiling—and recently the Ontario Court of Appeal has reviewed and rejected two cases (Falconer and Esmonde, 2008).

Courts are difficult to navigate without legal representation. There are many deadlines that must be met and forms that must be completed. There are also no public interest remedies, as opposed to going through the OIPRD or the Human Rights Tribunal.

If you still want to use Small Claims Court or Superior Court to sue the police service or officer(s) involved in the incident, you should enlist the services of a lawyer.

African Canadian Legal Clinic

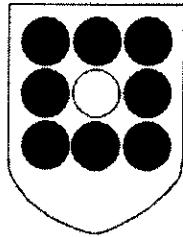
18 King Street East
Suite 901
Toronto, ON
M5C 1C4

Tel: 416-214-4747

Fax: 416-214-4748



CANADIAN
CIVIL LIBERTIES
ASSOCIATION



ASSOCIATION
CANADIENNE DES
LIBERTES CIVILES

November 14, 2012

Submissions to the Toronto Police Services Board

Nathalie Des Rosiers, General Counsel
Noa Mendelsohn Aviv, Equality Program Director
Canadian Civil Liberties Association

RE: Issuing Receipts to Persons who are Stopped by the Police

The Canadian Civil Liberties Association (CCLA) is a national non-profit, non-governmental organization with thousands of supporters drawn from all walks of life. The CCLA was constituted to promote respect for and observance of fundamental human rights and civil liberties and to defend and foster the recognition of those rights and liberties. The CCLA's major objectives include the promotion and legal protection of individual freedom and dignity against unreasonable invasion by public authority, and the protection of procedural fairness. For almost 50 years, the CCLA has worked to advance these goals, regularly appearing before legislative bodies and all levels of court. It is in this capacity, as a defender of constitutional rights and an advocate for the rights and liberties of all individuals, that we make the following submissions to the Toronto Police Services Board (TPSB) with respect to Chief Blair's report "Issuing Receipts to Persons who are Stopped by the Police:"

1. Issuing receipts to people about whom a contact card has been made is a positive and important step.

CCLA endorses this recommendation, but will have further recommendations concerning how and when police may (and may not) stop and record information about members of the public.

2. CCLA also supports the recommendation of the Chief to issue quarterly reports on this topic, but again will have further recommendations concerning these reports.
3. While the two recommendations above are important steps towards addressing racial profiling and other policing practices, further steps will be required including: adequate monitoring,

accountability and oversight mechanisms, recourse, community consultations, and the recommendations listed below.

4. Police stops and questioning:

- Protecting individuals' rights and freedoms is in itself a form of protecting the community.
- Police interactions with members of the community vary widely. Friendly exchanges, greetings, offers of help, responses to requests for assistance, and the like may be acceptable and of use in community engagement.

The stops and questioning which we will address, however, are those experienced as compelling compliance, such as when police initiate questioning, or people feel that they cannot go about their business. The Board is urged to recognize the perspective of the individuals stopped and questioned, the significant power imbalance between police and members of the public, the fact that many citizens are not aware of the precise limits of legal authority, the fact that many individuals will therefore err on the side of caution, and that such interactions are experienced as an involuntary "restraint of liberty"¹.

- The recording of a person's information into a police database is a further intrusion into a person's privacy, and may have further consequences and implications for the individual.
- When police stop individuals or question them as described above, and certainly when personal information is recorded, this may be experienced as intrusive, frightening, and intimidating, and can, when unwarranted, be an affront to the privacy and dignity of the person being stopped or questioned.
- Such stops and questioning of individuals – whether or not a contact card is created – should be limited to what is reasonably necessary – for example to question suspects or witnesses. The purpose and practice of police stops and questioning need to be reviewed and changed accordingly.
- It is unreasonable to expect communities to "accept" improper stops.

5. Receipts:

- Receipts issued should include the name, badge number and unit/division of the officer.
- Receipts issued should include printed information about individual rights: when stops and/or questioning are warranted, the right to remain silent and not provide identifying

¹ [1985] 1 S.C.R. 613 per Le Dain J. (dissenting).

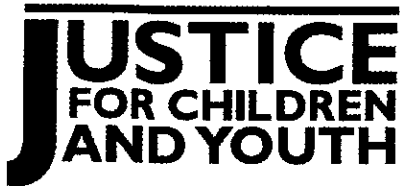
information, the right to be free from unreasonable search and seizure, etc. There should also be a link for complaints against police.

6. Other Measures:

- Measures recommended in the Chief's report such as training, monitoring and reporting (including the recommended quarterly reports) should relate not just to police stops where contact cards were created, but also stops where individuals are questioned, and stops where tickets were issued (e.g. for jaywalking). This would provide a more complete and accurate description of police interactions with individuals on the streets.
- Police training should be conducted from an anti-oppression, anti-discrimination perspective.
- The quarterly reports should be made public.
- Benchmarks can and should be established based on earlier contact card information.

7. Community Consultation:

- Ongoing community consultation is a welcome and useful recommendation.
- Community consultations should, where possible, be conducted so as to protect the confidentiality of community members and to protect them from retribution.
- Community perspectives and consultation should be incorporated into training, monitoring and reporting.



JOHANNA MACDONALD, STAFF LAWYER

PHONE: 416-920-1633

FAX: 416-920-5855

E-MAIL: macdonaj@lao.on.ca

November 14th, 2012

Deirdre Williams
Toronto Police Service Board

Attn: Toronto Police Services Board

**Re: Nov. 14th TPSB Meeting Agenda Item #3
Chief William Blair's report to the TPBS on issuing receipts to persons who are stopped
by the police**

On behalf of Justice for Children and Youth (JFCY), the Youth and Police Advocacy Working Group (YPAWG), and the youth we work with, this letter voices concern about three main areas of Chief Blair's report to you. We have five recommendations based on those concerns. To implement these recommendations, we ask that you continue to review, revise, and create Toronto Police Service Board (Board) policies that clarify police roles and responsibilities to provide non-discriminatory policing services to civilians in Toronto.

JFCY provides select legal representation to low-income children and youth in Toronto and vicinity. We are a non-profit legal aid clinic that specializes in protecting the rights of those facing conflicts with the legal system, education, social service or mental health systems. We give summary legal advice, information and assistance to young people, professionals, and community groups across Ontario.

The YPAWG is a collective of at-risk and street-involved youth serving organizations advocating for better interactions between youth and police in our city. YPAWG engages in community activities and education on issues relating to police and youth relations. Taking into account the power difference within the relationship between police and youth, YPAWG encourages and assists youth serving agencies, youth, and the Toronto Police Service to be respectful of their roles and responsibilities, and accountable for their actions.

Background

The Chief's report relates to motions passed during the April 5th, 2012 Board meeting. The original agenda item leading to the motions resulting in the Chief's report was about the collection of demographic statistics on persons being stopped by Toronto Police Service members. The collection and analysis of demographic statistics was requested by the Board so they may

CANADIAN FOUNDATION FOR CHILDREN YOUTH AND THE LAW

415 YONGE ST., SUITE 1203

TORONTO, ONTARIO

M5B 2E7

www.jfcy.org

potentially quantify the alarming reports and realities highlighted by Toronto Star journalists and community groups about the effects of racial profiling and the existence of discriminatory policing practices in Toronto, particularly between police service members and racialized young men in our city.

In addition to the Board requesting an auditor general's statistical report on potentially discriminatory conduct, community members asked the Board to also pass a policy requiring Police Service members to provide a contact receipt to those stopped and questioned by Service members. In a letter dated March 21st, 2012, JFCY importantly requested that the Board require Service members to provide civilians with BOTH a physical copy of the information recorded during the stop, **AND an information sheet on civilian rights during their stop.**

In consultation with youth, JFCY and YPAWG are concerned that civilians in Toronto continue to be stopped, questioned, and searched in a discriminatory manner based on their age and race and often other protected grounds of discrimination such as disability, sexual orientation or gender. In addition to such discrimination, the youth we work with report extremely negative interactions with the Toronto Police Service including illegal stops, searches, harassment, derogatory language, and physical assaults, for which available remedies for the experienced wrongs are far and few between.

In addition to our continued efforts to resolve these extremely serious grievances affecting our most vulnerable civilians, we depose that:

It is unacceptable that anyone in Toronto continues to be asked to answer questions posed by Toronto Police Service officers about their personal lives without any notification by officers about whether they are obliged to remain in the presence of the officer, whether they are required to answer any of the questions posed, or even whether they are being suspected of any criminal activity.

A. Creating policy that promotes protecting the community by safeguarding fundamental rights

Chief Blair reports that the Toronto Police Service is striving to find a balance between the role of officer's protecting the community, and the individual rights of those in the community being stopped (para 4-5 discussion portion).

The *Police Services Act* governing municipal police services like the Toronto Police requires that services shall be provided in accordance with safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*. Services shall also be provided in accordance with the need to ensure safety and security in neighbourhoods.

These two interests do not require a balance. Respect for individual rights and the safety and

security of the community are no in conflict. In fact, one supports the other. Our Toronto Police Service must do both.

Recommendation #1: The Board must create a strong policy tying these two obligations together – safeguarding individual rights and protecting the community.

We applaud the Toronto Police Service and Board for working to implement policy and procedures under by the *Police Services Act* to safeguard fundamental individual rights and protect communities, but regret that Chief Blair has drawn a divide and suggested that some kind of balancing of interests is required, instead of promoting a culture and practice where rights and safety are respected in concert. Indeed, these two interests must go hand in hand when working within a community with high police presence.

With the existence of clear and open communications and positive police interactions, community members will feel more trusting towards Toronto Police Service members and seek to report crime or more readily assist with investigations of crime. Police Service members must be called upon to treat people respectfully, with dignity and act within the limits of the law – this is the only way that police will successfully engage with community members and be able to provide meaningful safety and protection within the community.

B. Notification of stop purpose and information about public complaints

We are also concerned about the evolution of the use of "street checks", as described in Chief Blair's report. Paragraph 4 and 5 of the "Discussion" portion of the report summary states that the purpose of "street checks" is for investigative AND community engagement purposes.

This dual-purpose goal of investigative and community engagement raises several serious concerns:

- Is community engagement a policing duty that attracts the authority of the police to collect and retain mass databases of personal information about civilians on the street in Toronto?
- Under our *Municipal Freedom of Information and Protection of Privacy Act*, does the Toronto Police Service have lawful authority to collect non-law enforcement personal information about civilians?
- At a minimum, if for community engagement purposes and not investigative purposes, must the Toronto Police Service members notify the individual the purpose for collecting their personal information?

The dual-purpose goal of "street checks" to encompass both an investigative and community engagement role requires that Toronto Police Service member be even clearer about what their

communication with civilians on the street means, so that fundamental rights are safeguarded, as required by the *Police Services Act*.

Without procedural requirements outlining an officer's responsibility to notify civilians about the service they are providing when asking questions, providing a contact receipt of a stop does facilitate accountability, safeguard rights, or build safety in our community.

Recommendation #2: Board policy should require officers to inform people of their rights when being stopped (can they leave, if not, why?, and can they speak with a lawyer?)

Many of our clients who are questioned by Toronto Police Service members are unaware they have a right to refuse to answer questions. They feel threatened, intimidated, and obliged to respond. Regardless of whether a stop is conducted in a coercive, threatening, or even pleasant manner, the inherent power difference between law enforcement agents and youthful civilians begs the question of the true voluntariness of answered questions.

Unfortunately, even civilians who know their rights and responsibilities when questioned by a Toronto Police Service member often feel nervous and threatened in police presence. Many of our clients also feel that if they ask questions about the interaction or try to assert their rights, that they may be treated more harshly by the Toronto Police Service officer who is interacting with them.

It is in the Toronto Police Service's interest to communicate how the Service manages interactions between Service members and civilians, especially the conduct of communications when civilians choose not to share personal information with Service members.

Clear policy and procedural guidelines on how the Service members are required to inform civilians about their rights and obligations is crucial to the proper functioning of the Toronto Police Service in upholding their core service and duties under the *Police Services Act*.

Recommendation #3: Board policy should require officers to provide information about the complaints process directly to people they interact with during any stop

The Toronto Police Service should not and must not tolerate discriminatory conduct by Service members. A policy and operational procedure should be created for informing a civilian about their right to make a complaint about the Service they receive. Feedback from people who are stopped by Service members will allow the Toronto Police Service to identify the origin of complaints and take appropriate action.

C. Policy is required to ensure that the Service monitors compliance with the Ontario Human Rights Code and Canadian Charter of Rights and Freedoms

Recommendation #4: Board policy must be in place relating to the monitoring of compliance with the Human Rights Code and the Canadian Charter of Rights and Freedoms

Chief Blair reported that the Diversity Management Unit does not have the expertise nor capability to monitor the activities of the Service members for misconduct or report to the Chief accordingly. The monitoring of compliance with the *Ontario Human Rights Code* is a crucial goal of the Board and Service, as compliance with the *Code* is required under the *Police Services Act*.

As a crucial element to rectifying the widespread accounts of discriminatory policing in Toronto, if not the Diversity Management Unit, then who shall conduct this monitoring?

Recommendation #5: The Board should review, revise, and implement policy related to the access, retention, and destruction of information collected by the Police Service during a 'street check'

It is also important that the Board review existing policies and procedures relating to information collected by Service members. Some this review may be subsumed in a strong non-conviction police records access, disclosure, and purging policy, to be addressed at item 21 on the agenda, but these issues are also important to consider at the front-end of Police Service stops and record collection in order to evaluate compliance with privacy laws, the *Human Rights Code*, and *Canadian Charter of Rights and Freedoms* guarantees.

On behalf of JFCY and the YPAWG, thank you for your attention to this matter. I invite any comments or questions for further consideration.

Regards,



Johanna Macdonald
Counsel, Justice for Children and Youth

TPSB PROFILING DEPUTATION
DOUG JOHNSON HATLEM
November 14, 2012

The critical question for us today is whether the Toronto Police Services Board has the authority and resolve to tell Chief Bill Blair that he is required to obey rulings of the Canadian Supreme Court even when he disagrees with ~~it~~. Put differently, so long as the Toronto Police Services Board allows Chief Blair to break Canadian law or at least to push the line significantly, it risks losing multi-millions of tax payer dollars in class action lawsuits for its violations of basic Canadian Charter Rights on a regular and ongoing basis. Handing someone a receipt every time you violate a right as delimited by the Canadian Supreme Court does not make the violation of that right any less of a violation.

My name is Doug Johnson Hatlem and I am the Lazarus Rising Street Pastor with the Mennonite Central Committee Ontario, or MCC Ontario. MCC Ontario has seconded me to work with Sanctuary, a church, drop-in centre, health clinic, and arts collective at the heart of downtown Toronto. Our church building is located near Yonge and Bloor. As part of my work over the last seven years with MCC and Sanctuary, I have observed or encountered around 100 stops, searches, and/or CPIC checks by Toronto Police, what Chief Bill Blair's report would like to call "Street Checks." Many of these so-called Street Checks have lead to either carding or ticketing. I will not speak directly to the ticketing this month, but I would like to note that in nearly every one of the 100 or so stops that I have witnessed, Toronto Police have searched the Canadian Police Information Centre, or CPICed the community members I have worked with. I would also like to note that in at least five of the instances, I witnessed what was either clearly racial profiling of 1st Nations people, overheard racial slurs of 1st Nations people, or both.

I want to make one simple suggestion with respect to the Chief's report today. What Chief Blair has called STREET CHECKS are really STREET DETENTIONS, and the Board should order them to be deemed such in all policy relating to the detentions. From my observation, as well as from my readings of similar media accounts and conversations with friends of mine on the streets of Toronto, there is absolutely no way of distinguishing these so-called STREET CHECKS from Detentions. The difference is not just a word.

In an article available online from ten years ago, USING THE CHARTER TO STOP RACIAL PROFILING: THE DEVELOPMENT OF AN EQUALITY- BASED CONCEPTION OF ARBITRARY DETENTION, David Tanovich argued that all police stops should be considered detentions as a way of combatting the problem of racial profiling. As Tanovich put it, "Can it really be said, for example, that it is reasonable to expect that a young black man in Toronto would feel free to refuse an officer's request to "come over" or to "stop"?" I can say very clearly that the same is true for the people I work with who are homeless, panhandling or otherwise poor. There is no way they feel the freedom to leave these situations, and rightly fear from experience that they may be arrested or beaten if they try to leave the scene.

These stops are detentions plain and simple and should be labelled as such. Certainly, by the point a Toronto Police officer has taken someone's name or ID and plugged it into CPIC, there is no reasonable way of distinguishing what is happening from a detention.

What's the difference between a CHECK and a DETENTION? According to the Supreme Court of Canada's rulings, a person who has been Detained must be told that they are being detained, informed of the reason why they are being detained, and of their right to speak to a lawyer.

While I applaud the Board's decision to require the Chief to implement a system of receipting people who are being racially profiled at an unprecedented rate here in Toronto, until there are clear lines about what counts as a detention, and is therefore judicially reviewable and requires that police state the reason for the detention, we cannot end this problem.

AT THE VERY VERY LEAST, Toronto Police must be required to state not only the identifying marks of someone they have detained in the carding and receipting systems as described, THE BOARD MUST ALSO REQUIRE THAT THE REASON FOR THE DETENTION BE NOTED.

As pointed out in an Toronto Star editorial by a lawyer immediately after the "Known to Police" series ran, the Toronto Police have messed around with language three times to avoid the Supreme Court of Canada's attempts to rein in these Charter violating type of detentions.

This is beyond troubling to me, especially as I deal regularly with situations where the Toronto Police feel no need to honour the Supreme Court of Canada's rulings with respect to strip searches. If the Toronto Police Services Board is to fulfill its mandate to oversee Chief Blair and the Toronto Police Services, it must order the Chief to uphold the law with respect to illegal detentions and searches. I understand that Chief Blair feels that these regular carding stops are critical to reducing crime in Toronto. Regardless, Mr. Blair's feelings on this matter cannot be allowed any longer to trump Canada's Charter of Rights and Freedoms and explicit rulings of the Supreme Court of Canada regarding illegal detentions and searches. I urge the Board today to require that all stops on the street, and especially those with a CPIC component, not only require a receipt, but also that they be labelled for what they really are, STREET DETENTIONS.

Thank You.

**THIS IS AN EXTRACT FROM THE MINUTES OF THE PUBLIC MEETING OF THE
TORONTO POLICE SERVICES BOARD HELD ON JANUARY 23, 2013**

#P6. REVIEW OF FORM 208 AND FORM 306

The Board was in receipt of the following report December 07, 2012 from William Blair, Chief of Police:

Subject: REVIEW OF FORM 208 AND FORM 306

Recommendation:

It is recommended that the Board receives this report.

Financial Implications:

There are no financial implications relating to the recommendation contained within this report.

Background/Purpose:

The Board, at its meeting of November 14, 2012, considered a report from the Chief of Police entitled: 'Issuing Receipts to Persons Who Are Stopped by the Police' and subsequently approved two motions pertaining to the receipts that required further action by the Chief. (Min. No. P271/12 refers).

- (1) That the Board request the Chief to defer the distribution of the receipts until the Board has had an opportunity to review the copy of the receipt, to consider the deputations received at its meeting today and to determine what direction the Board will provide to the Chief based on its deliberations at its meeting in December; and
- (2) That the Board request the Chief to review the Form 208 and any successor form to ensure that they are in compliance with the Board's policies including the Race and Ethno-Cultural Equity policy and that he provide a report to the Board on results of the review for the December 14, 2012 meeting.

The purpose of this report is to provide the Board with the results of the Services' review of the Form 208 and any successor form to ensure that they are in compliance with the Board's policies and to provide the Board with a sample copy of the new 'Street Check' (Form 306) receipt as requested.

Discussion:

Form 208 Field Information Card and Form 306, Community/Officer Contact Receipt (Attachment 1 refers) have been reviewed and examined to ensure that they are in compliance

with the Board's policies entitled "Race and Ethno-Cultural Equity Policy", "Human Rights" and "Conduct of Service Members".

The Forms are in compliance with the Board's policies. The successor (modified) Form 208, would contain a simple addition indicating that a receipt (Form 306) issued to a person stopped by the police had been accepted or rejected by the person stopped; and therefore would not substantially alter the Form to the extent that it would no longer be in compliance with the policies of the Board.

The Service continues to comply with existing Procedure 04-14 (Field Information Report) when recording information about contacts with persons of interest.

Conclusion:

A review of Form 208 and proposed Form 306 found that they are in compliance with the policies of the Board. The Service will continue to apply its current procedure relating to contact cards until the Board has had an opportunity to review the copy of the receipt, in conjunction with the deputations made at the November 2012 meeting and provides further direction to the Chief.

Deputy Chief Mark Saunders, Specialized Operations Command, will be in attendance to answer any questions the Board may have regarding this report.

The following persons were in attendance and delivered deputations to the Board:

- **John Sewell, Toronto Police Accountability Coalition ***
- **Noa Mendelsohn Aviv, Director, Equality Program, Canadian Civil Liberties Association ***
- **Vickie McPhee, Executive Director, Rights Watch Network**
- **Paul Copeland, Lawyer ***
- **Odion Fayalo ***
- **Howard Morton, Law Union of Ontario ****

* written submission also provided; copy on file in the Board office.

** also provided two written submissions (dated November 12, 2012 and January 23, 2013); copies on file in the Board office.

The Board noted that Mr. Morton's written submission dated November 12, 2012 contained a reproduction of a Form 208.

In response to questions by the Board, Chief Blair explained the purpose for each section on the Form 208 and the types of circumstances in which the various sections of the form would be completed by a police officer.

Deputy Chief Mark Saunders, Specialized Operations Command, was also in attendance and responded to questions by the Board.

The Board approved the following Motions:

- 1. THAT the Board request the City Solicitor to review all the reports and deputations submitted to the Board on the issues of carding and issuance of receipts and report back to the Board at its meeting on March 27, 2013 on the legality of these practices;**
- 2. THAT the Board establish a subcommittee of three members (M. Tbompson, A. Pringle and M. Moliner) to review the reports and the deputations and to work with the Chief of Police to consider a course of action and propose a policy, taking into account the concerns that have been raised;**
- 3. THAT the Board receive the deputations and the written submissions; and**
- 4. THAT the Board receive the foregoing report from the Chief of Police.**



TPS 306, 2012/10

Community/Officer Contact Receipt

Name of Person: _____

You have been spoken to by:

1) _____
(Name, Badge No. & Unit)

2) _____
(Name, Badge No. & Unit)

on: _____ at: _____
(YYYY/MM/DD) (24 Hr. Clock)

Location: _____

For:

- | | |
|--|---|
| <input type="checkbox"/> Call for Service | <input type="checkbox"/> Federal Statute |
| <input type="checkbox"/> Community Engagment | <input type="checkbox"/> Provincial Statute |
| <input type="checkbox"/> General Investigation | <input type="checkbox"/> Bylaw |

THE
LAW UNION
OF ONTARIO

Please address reply to:

Howard F. Morton Q.C.
Barrister & Solicitor
31 Prince Arthur Avenue
Toronto, Ontario M5R 2B2
Tel. 416-964-7406 Ext. 155
Fax 416-960-5456

November 12, 2012

Toronto Police Services Board
40 College Street
Toronto, Ontario
M5G 2J3

ISSUING RECEIPTS TO PERSONS WHO ARE STOPPED BY THE POLICE

SUBMISSIONS ON BEHALF OF THE LAW UNION OF ONTARIO

1. The Law Union of Ontario offers its qualified support for the implementation of the three proposals advanced by Chief Blair in his Report.
2. However, neither the Chief's proposals nor the position taken by the Police Services Board of its April 5, May 18, and July 19, 2012 meetings do not even begin to address the paramount issues involving the current practice of "Carding" otherwise known as "Street Checks".
3. The design and use of Form 208 and in particular the manner in which the practice of "Carding" is deployed are both clear violations of the *Canadian Charter of Rights and Freedoms*. Specifically the individual rights guaranteed by *Sections 8 and 9* of the *Charter* are clearly infringed and denied and on a case by case analysis are violations of *Sections 2, 7, 10 and 15* of the *Charter*.
4. The manner in which this so-called form of "community engagement" is deployed warrants scrutiny by the Board. We have authenticated reports from individuals who state that when they decline to either provide identification or provide the information set out in Form 208 as in the absence of special circumstances is their absolute right to do, officers then resort to illegitimate ruses and stratagems such as the following:
 - a) Officers falsely state that they are involved in a criminal investigation and that the individual matches the description of the suspects.

It should be noted that some officers may wrongly believe that by so stating they bring themselves within the broader scope of "investigative detention" as set out in R. v. Mann.

- b) Officers attempt to circumvent and nullify the individuals assertion that they do not wish to identify themselves or provide the Form 208 information by implicitly threatening remarks such as:
 - i. What are you trying to hide!
 - ii. What do you have in your pocket!
 - iii. Do I have to take you to the Police Station?!
 - c) Officers engage in "pat down searches" of the individual which are clearly unlawful.
5. The approaching and stopping of persons without lawful cause followed by a request or demand for identification and answers to the information sought by Form 208 clearly constitute "detention" within the meaning of the *Charter of Rights*. Such demands or requests for identification and information clearly constitute a "search" within the meaning of the *Charter*.
 6. In the overwhelming majority of cases the persons which the police seek to "Card" are doing nothing that would lawfully warrant such police intervention.
 7. Not only is the practice of "Carding" in such a manner an unlawful violation of the *Charter*, it has resulted in community apprehension, sentiment and fear particularly in marginalized communities which undergo a disproportionate "Carding" presence.
 8. Further, individuals who are apparently targeted for "carding" are disproportionately racialized youth. The practice is viewed in these communities as racist policing. Often these are the very communities in which the police seek and need cooperation in the pursuit of legitimate law enforcement and criminal investigation purposes.
 9. The practice of "Carding" is a major obstacle to achieving community trust and cooperation.
 10. It is clear from the statistics obtained by the Toronto Star that the use and impact of "Carding" is primarily directed at youths, racial minorities and members of marginalized communities. However, this practice is one which all Torontonians are subject to.

11. In a free and democratic society a Police Service should not be stopping and demanding from innocent persons the personal and private information set out in Form 208.
12. "Carding" is not merely an unwarranted invasion of privacy, it is an intentional and clear violation of *Charter Rights and Freedoms* and contravenes Human Rights and Privacy legislation.
13. This form of "community engagement" as it is referred to in Chief Blair's Report is far removed from that envisioned by Elmer the Safety Elephant.
14. Chief Blair's Report fails to append either Form 208 or the proposed receipt. We urge you to examine the nature of the information being sought without cause from persons in our city.
15. We draw particular attention to the following: (Form 208 attached)
 - Age
 - Birth place
 - Address
 - Previous country
 - Information relating to associates
 - School attendance
 - Whether ones parents are divorced or separated
 - Mother and father's surnames
16. Although police officers are entitled to ask anyone questions in legitimate circumstances, this ability is trumped by the corresponding common law and *Charter Right* of individuals to decline to answer such questions. Absent special circumstances individuals can also refuse to provide identification.
17. However, that is not what is happening during an approach for the purpose of "Carding".
18. When Police officers refuse to respect *Charter Rights and Freedoms* and instead subvert the *Charter* by subterfuges, ruses, and outright lies they violate the Supreme law of Canada.
19. As early as 2004 the Board was put on notice by the highly respected Jurist that the practice of "Carding" was a threat to a free and democratic society.

20. In R. v. Ferdinand Superior Court Justice H. LaForme heard evidence that the investigating police officers regularly stopped individuals and filled out between 15-45 cards per shift. His Honour stated:

“Although I do not dispute that 208 cards might well be a useful and proper investigative tool for the police; in my view the manner in which the police currently use them make them somewhat menacing. These cards are currently being used by the police to track the movements – in some cases on a daily basis – of persons who must include innocent law-abiding residents.”

“One reasonable – although very unfortunate – impression that one could draw from the information sought on those 208 cards – along with the current manner in which they are being used – is that they could be a tool utilized for racial profiling.”

“... I make my observations only to express a profound note of caution. If the manner in which these 208 cards are currently being used continues; there will be serious consequences ahead. They are but another means whereby subjective assessments based upon race – or some other irrelevant factor – can be used to mask discriminatory conduct. ...”

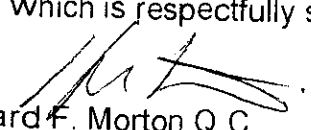
“This kind of daily tracking of the whereabouts of persons – including many innocent law – abiding persons – has an aspect to it that reminds me of former government regimes that I am certain all of us would prefer not to replicate.” (Emphasis added)

21. It should be noted that Justice LeForme did not have the benefit of being made aware of the use of the manner in which police operate when an individual declines to respond to police questioning.
22. Similarly, in R. v. Linton, now Superior Court Justice I. MacDonnell, in dismissing 4 charges of assault police observed that detaining individuals “for the purpose of requiring them to provide identification is unjustified and unlawful. He observed that such practice would give the police “a general warrant to detain for investigation anyone found in a troubled neighborhood.

THE LAW UNION OF ONTARIO

23. It is incumbent that the Board examines the entire practice of "Carding" and not simply concern itself with race based statistics and demographics as a reaction to the Toronto Star articles.
24. The Law Union of Ontario respectfully requests and urges the Board to undertake a comprehensive analysis of the practice of "Carding".
25. We request that as a first step in such analysis, the Board undertake the following:
 - 1) Immediately direct Board counsel or preferably independent counsel to review the existing practice of "Carding" as it is occurring daily on our streets. Counsel should complete and report on such review at the earliest possible date and no later than February 2013.
 - 2) Require Chief Blair to provide counsel all standing, routine or other orders with respect to "Carding".
 - 3) Require Chief Blair to provide counsel with all service policies or directives with respect to "Carding".
 - 4) Require Chief Blair to provide counsel with all training materials with respect to "Carding".
26. The current Board motions and recommendations completely ignore the real issue with respect to "Carding" and the concerns which communities in our city have.
27. On his Report to the Board on the *Charter* violations occurring during the infamous G-20 weekend, Justice Morden emphasized that the Board has as its primary obligation a duty to ensure that its Police Service operate in a lawful manner and in accord with our *Charter of Rights*.
28. To date the Board has failed in its responsibility as it relates to "Carding". The communities which have attended today both inside and outside the Chamber have lost both patience with and confidence in the Board. They see the practice of "Carding" as racist policing.

All of which is respectfully submitted.


Howard F. Morton Q.C.
HFM/dm
Encl.

FIELD INFORMATION CARD / CONTACT DETAILS		ZONE	TP3	IPS208
DATE (YYY/MM/DD)		TIME (24 HOUR CLOCK)		
AT <input type="checkbox"/>	NEAR <input type="checkbox"/>	LOCATION/INTERSECTION		
LOCATION DETAILS		OFFICER NO. (S)		
PROJECT #	REFERENCE TYPE/REF NO.	NATURE OF CONTACT		
CIRCUMSTANCE OF INVESTIGATION				
PERSON INVESTIGATED BY / OFFICER		IN VEHICLE <input type="checkbox"/>		PEDESTRIAN <input type="checkbox"/>
SURNAME		G1		
G2		ALIAS/NICKNAME		
DOB (YYYY/MM/DD)	AGE	SEX	BIRTHPLACE	COLOR
APPEARANCE	EYES	HAIR (STYLE/LENGTH/COLOR)		FACIAL HAIR
HEIGHT	WEIGHT	IDENTIFIED BY (ID TYPE)	ID CONFIRMED YES <input type="checkbox"/> NO <input type="checkbox"/>	
ADDRESS <input type="checkbox"/> NFA <input type="checkbox"/>	SAME AS LOCATION		PREVIOUS/COUNTRY	
TELEPHONE NO <input type="checkbox"/>	CELL NO <input type="checkbox"/>	EMAIL <input type="checkbox"/>		
DRIVERS LICENCE NO		PROV/STATE	DRIVER <input type="checkbox"/> PASS. <input type="checkbox"/>	
RWN POLICE ACCOUNTABILITY REPRODUCTION JUNE 25/2011 fax: 416-365-9371				

ASSOCIATES' YES NO THIS SUBJECT IS PART OF A GROUP

ENTER A SEPARATE TPS 208 FOR EACH ASSOCIATE AND ATTACH

PRIMARY SURNAME

TO LINK ASSOC'S

ASSOC.#

OF

GANG/CLUB AND DESCRIPTION

GANG MEMBER

ASSOCIATE

CLOTHING AND BODY MARKINGS

PERSON COMMENTS

YOUNG PERSON INFORMATION

ATTENDING (SCHOOL, ETC) GRADE

PARENTS
ARE

DIVORCED

SEPARATED

FATHER SURNAME(G)

CAREGIVER
ADVISED

YES

NO

MOTHER SURNAME(G)

YOUTH BUREAU
NOTIFIED

YES

NO

VEHICLE INFORMATION

LICENCE PLATE

PROV/STATE

PLATE (000)

YES NO

LOGO DESIGN

YEAR (YYY)

MAKE

MODEL

COLOUR

STYLE

VIN#

VEHICLE DAMAGE

DAMAGE LOCATION

DAMAGE DESCRIPTION

DAMAGE COMMENT

EMAIL TO

F/R ENTERED B

RWN POLICE ACCOUNTABILITY REPRODUCTION

REVISED JULY 18/2012

fax: 416-365-9371

Toronto Police Services Board
40 College Street
Toronto, Ontario
M5G 2J3

Issuing Receipts to Person who are Stopped by Police

Submissions on Behalf of the Law Union of Ontario

1. The Law Union of Ontario restates its position set out in our November 12, 2012 submission that this Board has an absolute obligation to undertake a comprehensive analysis of the practice of “carding”.
2. The Police Services Act of Ontario provides as follows:
 - s.1 Police services shall be provided throughout Ontario in accordance with the following principles:
 2. The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms and the Human Rights Code*.
 - s. 31(1) A board is responsible for the provision of adequate and effective police services in the municipality and shall:
3. Justice Morden in his June 29, 2012 *Report into INDEPENDENT CIVILIAN REVIEW INTO MATTERS RELATING TO THE G-20 SUMMIT* cites sections 1.2 and 31(1) finds as follows:

... The purpose of the provision is rather to remind those acting under the Police Services Act of the constant hearing of the *Charter* and the *Human Rights Code* on the performance of their duties. This is critically important because the exercise of so many police powers, for example, those of arrest, detention and search and seizure engage rights that are protected by the *Charter* and the *Human Rights Code*.

4. The Law Union of Ontario submits that both the design of Form 208 and the manner in which “carding” is deployed are clear violations of both the *Charter of Rights and Freedoms* and the *Human Rights and Freedoms* and the *Human Rights Code*.
5. In labeling street checks as form of “community engagement” Police claim they are a form of community policing. In reality, street checks are carried out as intelligence gathering of personal information from individuals who are not engaged in criminal or antisocial behavior and who are conducting themselves in a law abiding manner.
6. Many individuals, particularly youths, are unaware that they have the right to walk away. They feel intimidated and obliged to respond often arising out of the inherent power difference between the police and youths. Even if individuals are aware of this right they often fear reprisal of one form or another if they attempt to exercise their right. There are authenticated reports from individuals who claim that when they declined to produce identification and/or answer questions, officers resorted to illegitimate ruses and strategies such as the following:
 1. Officers falsely state that they are involved in a criminal investigation and that the individual matches the description of the suspect. It would seem that some officers wrongly believe that by so stating they bring themselves within the broader scope of investigative detention as prescribed in *R. v. Mann*.
 2. Officers attempt to circumvent the individuals assertion that they do not wish to identify themselves or answer questions by making implicitly threatening remarks such as:
 - What’s in your pockets?
 - What are you trying to hide?
 - Do I have to take you to the Police Station to straighten this out?
 - Have you been using drugs?
 - What is your criminal record?
 - What are you doing in this neighborhood?

7. Furthermore, street checks are most often carried out in neighborhoods and communities in which the police seek and require cooperation in their pursuit of legitimate law enforcement and criminal investigation purposes. However, community groups, legal clinics, and social justice groups allege that the basis for a street check policy is racist policing of persons who are often young, racialized, or marginalized.
8. In a series of articles in February 2010 and in March 2012 ² the Toronto Star published its analysis of all Form 208s filled out by the Toronto Police between 2003 -2008. The Star reported that a review of the data from over 1.3 million Form 208s obtained demonstrated that blacks were more than three times more likely than whites to be stopped and carded by police. In predominantly white areas African-Canadians were seventeen times more likely to be stopped. The Star reported that 41 percent of all Form 208s filled out by officers, involved black persons.
9. This latter statistic demonstrates that such disparity is not the result of blacks being a disproportionate segment of the population in either Toronto's poorest or most crime ridden neighborhoods. Rather they point to the likelihood of racial profiling and race-based policing.
10. The Toronto Police Service website carried a four page article titled **What to Expect When Stopped by Police**. It lists the "**Common Reasons to be Stopped**" yet makes no mention of carding as though such practice did not exist.
11. The scenario attached as Appendix A is a reflection of what has been reported by several community groups and individuals.
12. In its November 14, 2012 required the Chief to review the Form 208 in light of the Race and Ethno-Cultural Equity Police. There is no mention whatsoever of the *Charter* or the *Human Rights Code*.

13. It is incumbent on the Board to ensure that both the format of Form 208 and the means of deployment comply with the *Charter and Human Rights Code*.

All of which is respectfully submitted.

Howard F. Morton, Q. C.

SCENARIO

Two 17 year old black males X and Y are walking on the sidewalk in a residential area at 3pm in the afternoon. Neither youth is doing anything suggestive of wrongdoing. The youths are stopped by two officers who are on foot patrol. One officer states "we want to see ID" in a demanding tone and asks them why they are at that location. The youths, who at this point seem quite nervous, advise the officers that a lawyer had told them at a school function that they were not required to produce ID or answer any questions. One of the officers then falsely states that the youths match the description of gang members who had committed a series of break and enters one street over the day before. The officer then states "we can settle this here or: We will take you to the station and settle it there". The officers then conduct a pat down search of the youths while asking: "What do you have to hide? Are those drugs in your pocket?"

The youths become increasingly alarmed and provide their ID. One of the officers returns to his cruiser with the ID while the other stands beside the youths. On his return, the officer holds onto the ID and asks several questions such as where they live, where they attend school, where were they born, whether their parents are married and live together, and the names of their associates. The youths now very nervous, answer all of the questions. The second officer writes their responses on his notebook. After some twenty minutes they are given back their ID and told to be on their way and keep their noses clean. Subsequently the officer fills out a "Form 208".

The officers are clearly in violation of the *Charter* and the *Human Rights Code* for the following reasons:

1. The officers are on general patrol and are not in the course of a criminal investigation.

2. While the officers would be entitled to lawfully approach and stop the youths requesting identification and asking some questions that is not what occurred. The officers' expression was a demand rather than a request.
3. There is absolutely nothing in the conduct of X and Y which could cause an officer to have a reasonable suspicion that the youths were in any manner connected to a recent or ongoing crime. There is no suggestion of trespass.
4. Although there are some elements of a physical detention there is clearly psychological detention as per *Grant* in that a reasonable person in these circumstances would conclude that they had no choice but to provide identification and answer questions.
5. The physical contact involved in the pat down search.
6. The power imbalance between the police and the youths.
7. The youths are members of a racial minority.
8. The falsehoods and implicit threats made by the officers.
9. The duration of the interaction.

Toronto Police Accountability Coalition
c/o Suite 206, 401 Richmond Street West, Toronto ON M5V 3A8.
416 977 5097. info@tpac.ca , www.tpac.ca

January 16, 2013.

To: Toronto Police Services Board

Subject: Carding

We wish to be listed as a deputation on the above item at the Board meeting on January 23, 2013. This is an important issue and we would request more than the usual five minutes to present our deputation.

There are three matters that need to be addressed in respect to the Toronto police practice of stopping and carding individuals:

- a) the intrusive nature of such stops and whether they are authorized by law;
- b) the appropriateness of the information gathered by police on Form 208 given the nature of most stops; and
- c) the receipt to be issued by police.

A: The intrusive nature of carding stops.

Concern has been expressed in the courts about carding. In a 2004 Ontario court case, *R. v. Ferdinand*, Justice Harry LaForme referred to carding, stating:

Although I do not dispute that 208 cards might well be a useful and proper investigative tool for the police; in my view the manner in which the police currently use them make them somewhat menacing. These cards are currently being used by the police to track the movements – in some cases on a daily basis – of persons who must include innocent law-abiding residents.

One reasonable – although very unfortunate – impression that one could draw from the information sought on these 208 cards – along with the current manner in which they are being used – is that they could be a tool utilized for racial profiling.

... I make my observations only to express a profound note of caution. If the manner in which these 208 cards are currently being used continues; there will be serious consequences ahead. They are but another means whereby subjective assessments based upon race – or some other irrelevant factor – can be used to mask discriminatory conduct. ...

More recently, a New York Court has found a similar practise by New York City police to be contrary to the United States constitution. While no one would argue that American and Canadian law are exactly the same, there are many similarities, and the judge's comments are very applicable to carding by Toronto police. The case was reported in the *New York Times*, January 9, 2013, page A17 with the headline 'Police stop-and-frisk program in Bronx is ruled unconstitutional.' The following are excerpts from the article, with some of the judge's statements in bold:

Judge Shira Scheindlin of Federal District Court in Manhattan, said police officers were routinely stopping people outside buildings without reasonable suspicion that they were trespassing in front of buildings which had enrolled in the Trespass Affidavit Program where property managers asked police to patrol buildings and arrest trespassers.

"The fact that a person was merely seen entering or leaving a building was not enough to permit police to stop someone, 'even if the building is located in a high crime area, and regardless of the time of day,' the judge ruled. Nor was it enough for an officer to conduct a stop simply because the officer had observed the person move furtively, Judge Scheindlin said. (The forms that the police fill out after each street stop offer 'furtive' movements as a basis for the stop.)"

"For those of us who do not fear being stopped as we approach or leave our homes or those of our friends and families, it is difficult to believe that residents of one of our boroughs live under such a threat. In light of the evidence presented at this hearing, however, I am compelled to conclude this is the case."

"As a person exits a building, the ruling said, 'the police suddenly materialize, stop the person, demand identification, and question the person about where he or she is coming from and what he or she is doing.' "

"The decision continued: 'Attempts at explanation are met with hostility; especially if the person is a young black man, he is frisked, which often involved an invasive search of his pockets; in some cases the officers then detain the person in a police van.' "

"Judge Scheindlin also expressed concern over a department training video that she said incorrectly characterized what constituted an actual police stop. In the video, a uniformed narrator sates 'Usually just verbal commands such as Stop! Police! will not constitute a seizure.' The narrator explains that the encounter usually qualifies as an actual stop only if the officer takes further steps such as physically subduing a suspect, pointing a gun at him, or blocking his path. 'This misstates the law,' Judge Scheindlin said of the video, which has been shown to most of the patrol force."

" Judge Scheindlin called for a hearing to discuss possible remedies to the issues she raised. At that hearing, she said, she will consider requiring the Police Department to create a formal written policy 'specifying the limited circumstances in which it is possible to stop a person outside a TAP building on suspicion of trespass,' revise the training of officers and alter some training literature and videos use to teach officers how to conduct lawful stops."

Police commissioner Raymond Kelly said "Today's decision unnecessarily interferes with the department's efforts to use all of the crime-fighting tools necessary to keep building safe and secure."

One might argue that carding as described by Mr. Justice LaForme is contrary to the Charter of Rights and Freedoms or some other law; but in any case it is bad practise and if applied to most residents of the city (currently it is used most often in low income and disadvantaged neighbourhoods) would be found to be widely offensive.

We believe the best course of action for the Toronto police is to cease carding activities that involve random stops where there is no evidence of illegal activity.

B. The 208 form

The 208 form makes it clear that police believe these stops constitute an investigation, although there is no requirement for the officer to indicate the crime being investigated. It is clear from the data of the 250,000 cards that are filled out every year that the vast majority of stops are related to something other than criminal behaviour.

The information that the individual must provide police is of a very personal nature. It is hard to believe that most individuals would countenance a police officer, on a random stop, demanding to know whether one's parents were separated or divorced, their surnames, and whether the person was attending school. As well, gathering information on 'associates', with an implication that they are part of a gang, including their clothing and body markings, indicates an extraordinary prejudice on the part of police, particularly when no crime is being investigated.

That police wish to gather information about hair style, eye colour, birthplace, nickname, and more is also prejudicial where no crime is being investigated. Most Torontonians would find these questions inappropriate, and for good reasons.

We believe the 208 form needs to be changed to be clear that the stop has occurred because the police are investigating a crime. 'Circumstances of Investigation' should be replaced with two headings:

'Crime being investigated' and

'Why this person was stopped for this crime'

The section on the reverse side, 'Associates' and 'Young Person Information' should only be completed in cases of an investigation of a Criminal Code or Drug offence. These sections should not be completed in cases where the investigation is for an offence involving a municipal bylaw or a provincial statute.

C. The receipt

The receipt proposed by Chief Blair as Form 306 is not appropriate. It assumes that the stop and the carding exercise is for activities for which stops are not warranted. If carding is really a form of 'community engagement', then Toronto police have a false impression about how to successfully engage the community.

Worse, the proposed receipt does not indicate why the police had the authority to engage in the stop. As we know, when the authority of Toronto police to make these stops and get information is challenged by youth, they are often subject to punitive treatment by police, including detention and even criminal charges. What's needed is a receipt which provides clear justification for the stop. Where no clear justification exists, there should be no stop by police.

We think the best receipt is a carbon copy of the amended 208 form.

We also urge that the service undertake a broad publicity campaign before issuing receipts.

Recommendations:

1. **The best course of action for the Toronto police is to cease carding activities which involve random stops where there is no evidence of illegal activity.**

If the Board does not agree to cease carding activities, then:

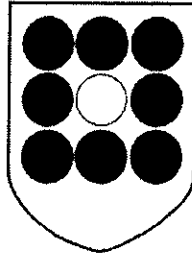
2. (a) **The 208 form should be modified by replacing 'Circumstances of Investigation' with two headings, 'Crime being investigated' and 'Why this person was stopped for this crime'; and**
(b) **The section on the reverse side, 'Associates' and 'Young Person Information' should only be completed in cases of an investigation of a Criminal Code or Drug offence.**
3. **A carbon copy of the amended 208 form should be given to everyone who is stopped and carded; and a broad publicity campaign should be undertaken before the receipt policy is implemented.**

Yours very truly,



John Sewell for
Toronto Police Accountability Coalition.

CANADIAN
CIVIL LIBERTIES
ASSOCIATION



ASSOCIATION
CANADIENNE DES
LIBERTES CIVILES

Submissions to the Toronto Police Services Board

Noa Mendelsohn Aviv, Equality Program Director
Canadian Civil Liberties Association

January 23, 2012

RE: Report of Chief Blair re Forms 208 and Proposed Form 306

CCLA

The Canadian Civil Liberties Association (CCLA) is a national organization with thousands of supporters drawn from all walks of life. The CCLA was constituted to promote respect for and observance of fundamental human rights and civil liberties and to defend and foster the recognition of those rights and liberties. The CCLA's major objectives include the promotion and legal protection of individual freedom and dignity against unreasonable invasion by public authority, and the protection of procedural fairness. For almost 50 years, the CCLA has worked to advance these goals, regularly appearing before legislative bodies and all levels of court. It is in this capacity, as a defender of constitutional rights and an advocate for the rights and liberties of all individuals, that we make submissions to the Toronto Police Services Board (TPSB) on the above-referenced matter.

The Chief's Report, the Forms, and Race-Based Harassment

As this Board is aware, the Chief's report, Form 208 and proposed Form 306 are all part of a larger discussion around race-based harassment (more commonly known as racial profiling), and certain police practices involving detention of individuals, certain lines of questioning, and the recording of individuals' personal information (known as "carding").

Form 306 is intended to be a receipt to inform people of the information recorded in the police database, and as a safeguard against racially motivated or unnecessary police interrogations outside of specific investigations. The concept of a "receipt" was intended to provide the individual a *copy* of the police contact card (subject to reasonable exclusions) which was to inform the individual what was recorded about them in the police database. If the police contact card was recorded on paper, this could have been done through a carbon copy; if electronic, through a print-out.

While certain information may be subject to reasonable exclusions for police investigatory purposes, much of the information the police take down in a “contact card” should be available to the person stopped and carded.

At a minimum:

1. **An individual’s personal information provided by them would presumptively be *not* confidential, and individuals have a right to receive a mirror copy of this.**
2. **Given the underlying issue of race-based harassment, it is critical that an individual who is stopped and carded should receive a receipt reflecting *how the police recorded in their own database* the person’s race or racial appearance.**
3. **The individual who was carded has a right to know the specific reason for the stop: the specific investigation, and (subject to reasonable exclusions) the person’s potential connection to it. (This too should be a mirror copy of the reasons recorded in the contact card.) For example, young people who are detained, questioned and carded by police are frequently told that the reason for the stop is that the individual matches the description of a suspect who committed an offence nearby. It is not asking too much to require that police record this same reason in the police database, and provide a copy to the individual.**

The recording and sharing of the above information with the affected individual will go a long way towards the transparency and accountability needed to begin to investigate and ultimately address race-based harassment. The information will be of use to anyone – including this Board – concerned about race-based harassment and seeking to monitor and end it.

Without providing this information as a copy of the contact card, Form 306 will be ineffective. More insidiously, the form may cause more damage to the community than good, as it appears to justify the violation of people’s rights for no good reason.

Proposed Form 306 in its current version appears to justify detaining, questioning, and recording the identity and personal information about a person for such “reasons” as “community engagement” and “general investigation.” These are insufficient reasons to justify measures that are intrusive and invade a person’s privacy.

The very notion of a “street check” is improper, and implies that it is legitimate for police to intrude into people’s time and space, invade their privacy, and violate their dignity for no reason. Proposed Form 306 makes it appear – both to police and to the community – that general “fishing expeditions” are acceptable. They are neither acceptable nor lawful in Canada.

In light of the above, proposed Form 306 should not be approved or put into use by the Toronto Police Service.

A final receipt should include as well information about a person's rights, and how to protect them. CCLA would be happy to consult with the TPSB on this matter.

At this time, CCLA urges the Board to desist from approving Form 306, and instead to require the Toronto Police Service to provide a "mirror copy" receipt that includes the minimum information listed above. This could be done on *an urgent interim basis*, before the details of a "final" receipt are worked out.

Speaking Notes for the Toronto Police Services Board meeting January 23, 2013

I plan to speak today concerning carding, or what is more formally known as the Field Information Reports. But before I do that I wanted to make reference to another occasion when we sought to influence the TPSB in its actions.

In the year 2000, the Toronto Police Association started endorsing political candidates, contrary to section 46 of the Police Services Act. Over the following years submissions were made to this Board to try and end that practice. The Board, then chaired by Norm Gardner, showed no interest in having the Police Association endorsing of candidates end. Then Police Chief Julian Fantino had no interest in ending the Police Association endorsing of candidates. The lack of action by Chief Fantino and Norm Gardner had not come as much of a surprise. The TPA, under Craig Bromell, was endorsing Progressive Conservatives, the party that both Fantino and Gardner supported.

The TPSB attitude on the Police Association endorsing candidates started to change in 2004 when Alan Heisey was chair of the Board. On December 16, 2004, when Counselor Pam McConnell was chair of the board, and you, Mr. Mukherjee, were Vice Chair, it all changed. The Board policy became:

- (1) The endorsement or opposition of political candidates by municipal police officers is prohibited by the Police Services Act and its Regulations
- (2) Members of the Toronto Police Association or its Executive are subject to the Police Services Act and its Regulations
- (3) The Chief of Police shall communicate with the Service each time an election campaign commences to reiterate that police officers are prohibited from using their status as police officers to endorse or oppose candidates during an election
- (4) The Chief of Police shall discipline any police officer who contravenes this policy

In 2006 this Board provided detailed information to the Ottawa Police Services Board and helped them stop the Ottawa Police Association from endorsing candidates.

Unfortunately I have not seen anything like the same quality of work done by this Board on the carding issue. Others have spoken and will speak about the propriety and constitutionality of the police gathering and storing information obtained by the police officers in Toronto using the Field Information Reports.

I have followed the debate and have been aware of the efforts by TPAC and the Law Union of Ontario to get the TPSB to deal with this carding issue. What I decided to do, while waiting to see if there will be any Board action on carding, was to prepare a two-page information sheet and make it as available as possible to the young people in our city. If this information is spread widely enough, those subject to carding, who are mainly the young ethnic minority people in our city, hopefully will have enough information to be able to exercise their free will when deciding whether to provide information to the police that will end up in the police computer system.

APPROACHED BY THE POLICE... KNOW YOUR RIGHTS

What do you do if you are stopped and questioned by the police?

You have a choice. When you are approached by the police, except in some very specific circumstances, some of which are listed below, you can decide whether you will speak with them and/or give them any information, tell them your name, or produce identification. For the most part, you do not have to answer questions asked of you by the police and cannot be arrested for refusing to answer. If you lie about your name or address, however, you can be charged with obstructing justice or the police.

In Toronto, if you give the police your name and/or produce your identification, it is likely that what you provide to them will be put on what the police call a **Form 208**, more formally called Field Information Reports. That form will indicate what your name is, where you were when the police spoke to you, the time and date when they spoke to you, what you said you were doing and who you were with and other personal information. All of that information, along with other kinds of police contact (like 911 calls) can go into the Toronto Police computer system and remain available to police for many years.

It is also likely that if you tell the police your name, they will run a police computer check on you through the RCMP Central Repository system known as CPIC. CPIC will tell the police officer you are dealing with whether there is a warrant for your arrest and whether you are on bail, or any other information police already have. If you are on bail, CPIC will tell the officer the terms of your bail. If you are violating the terms of your bail, the officer will likely arrest you and charge you for breaching your bail. You will be held for a show cause hearing, at which time a decision will be made whether you will be kept in jail pending your trial(s).

In general, the police can ask you any questions they want, but you do not have to talk to them, show them your identification or answer their questions. The main exceptions to this general rule are when you are stopped and questioned by the police as part of an investigative detention, when you are stopped on a bicycle for a traffic offence, when you are stopped while driving a motor vehicle or when you are being investigated for a non-criminal offence such as drinking in a public place.

According to a decision of the Supreme Court of Canada in a case called *R. v. Mann*, the police have no right or power to stop you unless they have reasonable grounds to believe you may have been involved in a criminal offence. If they have such reasonable grounds, they are entitled to briefly stop you for what is called an investigative detention. If the police approach you and tell you about a specific criminal offence they are looking into and that they believe you are involved in it, in that situation you may decide to cooperate with the police by giving them your name and producing identification. But before you give them any information, ask them why they have stopped you and get specific details of the offence they are investigating.

If you are the driver of a car stopped by the police, under the Highway Traffic Act, you must produce your driver's licence, car registration and insurance for the vehicle you are driving. But NOTE: passengers do not have to identify themselves or answer any questions asked by the police (unless the police are doing an investigative detention for a criminal offence).

Similarly, police issuing tickets for by-law offences (e.g. drinking in public, trespassing, Highway Traffic Act offences committed by bicyclists, etc.), can demand identification in order to ensure that they have a correct name and address. Failing to convince the police of your identity in this situation may give them the right to arrest you, even if the offence itself is not a serious one.

Once stopped or detained, the police do not have a general power to search you or to get you to show them what you have in your pockets, or to search your bag or knapsack. We recommend that you politely but firmly decline to be searched. If they have grounds to arrest you, police do have a general power to search you for any items that you might have that could be used to harm the police or provide evidence.

The police in our city have a difficult job to do. We recommend that you deal with them as politely as possible.

CAUTION

While we believe that it is not an offence to assert one's constitutional rights, please note that asserting one's rights around police may result in an aggressive response by the police, and possibly continued detention, arrest, or charges.

We encourage people to carefully consider the possible outcome of any encounter with police.

Paul D. Copeland
Law Union of Ontario
www.lawunion.ca

Good afternoon Mr. Chair and Board members:

I am here representing Black youth and the wider African Canadian community in the Greater Toronto Area on the issue of carding and contact receipts.

Before I speak to the discussion matters, I would like to make reference to the case of *R. v. Richards* at the Ontario Court of Appeal, where the African Canadian Legal Clinic defined racial profiling as the following:

“Racial profiling is criminal profiling based on race. Racial or colour profiling refers to that phenomenon whereby certain criminal activity is attributed to an identified group in society on the basis of race or colour resulting in the targeting of individual members of that group. In this context, race is illegitimately used as a proxy for the criminality or general criminal propensity of an entire racial group.”

My presence here today is to represent Black youth and the wider African Canadian community that are subject to racial stereotyping and stigmatization by police personnel and authorities, which results in the criminalization of an entire racial group. I am also here speaking on behalf of the Justice is NOT Colour-Blind campaign, that comprises a collection of individuals that are deeply concerned about racial profiling and police brutality.

My response to the discussion matters articulated in the chief's report is the following:

1. Laws or policies must be consonant with generally accepted moral, valuational and constitutional precepts and written with the mutual agreement of the people – including African Canadian people;
2. Police personnel and authorities must serve and learn to differentiate the criminal and noncriminal elements in the African Canadian community, and be perceived as even-handedly opposed to its criminal elements and as zealously protective of its citizens' lives and properties, as respective of their rights and humanity as they are the criminal elements, lives, properties, rights and humanity of other ethnic communities.
3. The police and criminal justice system establishments must respect the intelligence of the African Canadian community and exhibit full confidence in its capacity to know how best to solve its social problems. They therefore should be prepared to actively listen to the community and diligently support its efforts, not paternalistically and autocratically dictate solutions to its problems.

It must be stated in no uncertain terms that, Form 208 Field Information Cards and consequently, Form 306, Community/Officer Contact Receipts, is immoral and violates our right to be free from arbitrary detention or imprisonment. Additionally, it must be stated that if the Board and the service actively listens to the African Canadian community they would quickly come to the realization that this practice is not consented to by Black and *racialized* peoples.

Given the time constraints, I would like to point your attention to a November 30, 2012 article

written by Rachel Mendleson of the Toronto Star, entitled, "York University students allege racial profiling."

In the article, Mendleson highlights stories of students alleging racial profiling at the hands of Toronto police. Mendleson states that Alexandria Williams, president of the York United Black Student Alliance, said uniformed officers have stopped students who don't meet the descriptions (in reference to assaults at York University), which list the suspects as being between 5-foot-7 and 5-foot-10. She quotes Williams, as saying, "they're going up to young, black men who are no taller than 5-foot-3 or 5-foot-4, and asking them to empty their pockets, and show them their identification...under the pretext that they look too young to be on campus...[t]hat's when I start to have a problem, because that doesn't make me feel safe as a black woman, as a member of the black community."

In closing, it is imperative for this Board and the service to come to the realization that Black people feel less-than-human when the police and criminal justice system establishment treats the whole community as criminal. "Racial or colour profiling refers to that phenomenon whereby certain criminal activity is attributed to an identified group in society on the basis of race or colour resulting in the targeting of individual members of that group." Surely, if this Board and the service are interested in having positive relations with the African Canadian community, you will seriously consider that the chief discontinues carding and abandons the implementation of contact receipts – effectively immediately.

**THIS IS AN EXTRACT FROM THE MINUTES OF THE PUBLIC MEETING OF THE
TORONTO POLICE SERVICES BOARD HELD ON FEBRUARY 19, 2013**

#P43. STREET CHECK SUB-COMMITTEE - UPDATE

The Board was in receipt of the following report February 15, 2013 from Marie Moliner, Member:

Subject: STREET CHECK SUB-COMMITTEE - UPDATE

Recommendation:

It is recommended that the Board receive this report.

Financial Implications:

There are no financial implications arising from the Board's receipt of this report.

Background/Purpose:

At its meeting on January 23, 2013 the Board received a report from Chief Blair which contained the results of his review of Form 208 (Board Min. P6/13 refers). At its meeting on November 14, 2012 the Board had asked that the Chief review Form 208 to ensure that it is in compliance with the Board's policies. This report also included a sample copy of the new "Street Check receipt" (Form 306).

The Board received deputations on this matter, received the report from the Chief and approved the following motions:

1. THAT the Board request the City Solicitor to review all the reports and deputations submitted to the Board on the issues of carding and issuance of receipts and report back to the Board at its meeting on March 27, 2013 on the legality of these practices;
2. THAT the Board establish a subcommittee of three members (M. Thompson, A. Pringle and M. Moliner) to review the reports and the deputations and to work with the Chief of Police to consider a course of action and propose a policy, taking into account the concerns that have been raised;

Discussion:

The Street Check Sub-committee held a preliminary, organizational meeting via teleconference on Friday February 8, 2013. Councillor Thompson, Mr. Pringle and I participated in this discussion. We decided that I would act as Chair of the Sub-committee. In discussing the need

for additional advisors to participate in the Sub-committee, we were advised that Deputy Chief Mark Saunders would be available to work with the Sub-committee.

In terms of the next steps, the Sub-committee discussed the framework of a Terms of Reference document to guide the Sub-committee's deliberations. The Sub-committee will continue to work on the Terms of Reference at its next meeting. The Sub-committee discussed the importance of working in collaboration with Deputy Chief Saunders, Mr Albert Cohen, Board Solicitor, and City of Toronto Auditor General Jeff Griffiths. Board Members may recall that, at its meeting on April 5, 2012, the Board requested the City's Auditor General to conduct a project to collect and analyse data related to contacts between the police and the community (Board Min. P56/12 refers).

The Sub-committee also discussed the involvement of community stakeholders, specifically those individuals and groups which have demonstrated their interest in this issue by making deputations to the Board over the past year on the issue of contact with police and "contact cards".

The Sub-committee also discussed reviewing the following as part of its deliberations:

- An inventory of issues raised by deputants
- existing Board policies and Service procedures which may provide governance with respect to Street Checks
- relevant literature from other jurisdictions

Conclusion:

The Sub-committee will hold its next meeting in late February and I will ensure that the Board is kept updated on the progress of the Sub-committee's work.

The Board received the foregoing report.

**THIS IS AN EXTRACT FROM THE MINUTES OF THE PUBLIC MEETING OF THE
TORONTO POLICE SERVICES BOARD HELD ON MARCH 27, 2013**

#P50. TORONTO POLICE SERVICE STREET CHECKS AND RECEIPTS

The Board was in receipt of correspondence dated March 11, 2013 from Barbara Hall, Chief Commissioner, Ontario Human Rights Commission, with regard to street checks and receipts. A copy of Chief Commissioner Hall's correspondence is appended to this Minute for information.

The Board was also in receipt of the following report dated March 18, 2013 from Marie Moliner, Member:

Subject: STREET CHECK SUB-COMMITTEE - UPDATE

Recommendation:

It is recommended that the Board receive this report.

Financial Implications:

There are no financial implications arising from the Board's receipt of this report.

Background/Purpose:

At its meeting on January 23, 2013 the Board received a report from Chief Blair which contained the results of his review of Form 208 (Board Min. P6/13 refers). At its meeting on November 14, 2012 the Board had asked that the Chief review Form 208 to ensure that it is in compliance with the Board's policies. This report also included a sample copy of the new "Street Check receipt" (Form 306).

The Board received deputations on this matter, received the report from the Chief and approved the following motions:

1. THAT the Board request the City Solicitor to review all the reports and deputations submitted to the Board on the issues of carding and issuance of receipts and report back to the Board at its meeting on March 27, 2013 on the legality of these practices;
2. THAT the Board establish a subcommittee of three members (M. Thompson, A. Pringle and M. Moliner) to review the reports and the deputations and to work with the Chief of Police to consider a course of action and propose a policy, taking into account the concerns that have been raised;

Discussion:

The Street Check Sub-committee held a preliminary, organizational meeting via teleconference on Friday February 8, 2013. Councillor Thompson, Mr. Pringle and I participated in this discussion. We decided that I would act as Chair of the Sub-committee. In discussing the need for additional advisors to participate in the Sub-committee, we were advised that Deputy Chief Mark Saunders would be available to work with the Sub-committee.

In terms of the next steps, the Sub-committee discussed the framework of a Terms of Reference document to guide the Sub-committee's deliberations. The Sub-committee will continue to work on the Terms of Reference at its next meeting. The Sub-committee discussed the importance of working in collaboration with Deputy Chief Saunders, Mr Albert Cohen, Board Solicitor, and City of Toronto Auditor General Jeff Griffiths. Board Members may recall that, at its meeting on April 5, 2012, the Board requested the City's Auditor General to conduct a project to collect and analyse data related to contacts between the police and the community (Board Min. P56/12 refers).

The Sub-committee also discussed the involvement of community stakeholders, specifically those individuals and groups which have demonstrated their interest in this issue by making deputations to the Board over the past year on the issue of contact with police and "contact cards".

The Sub-committee also discussed reviewing the following as part of its deliberations:

- An inventory of issues raised by deputants
- existing Board policies and Service procedures which may provide governance with respect to Street Checks
- relevant literature from other jurisdictions

The Sub-Committee held a second meeting on Monday March 14, 2013. The Sub-Committee received a presentation from Deputy Chief Mark Saunders with respect to the work that he is leading within TPS on street checks and Field Information Reports (FIR) including: the history of street checks, quantitative research which is currently being conducted, the purpose of street checks, a review of the nature of information that is captured during street checks and a review of the street check practices in other jurisdictions.

The Sub-committee continued its discussion of the draft Terms of Reference.

The Sub-committee also received a detailed spread sheet including all issues raised by deputants.

With respect to the Board's request that the City Solicitor review all deputations and reports and provide advice to the Board, City Legal has undertaken legal research as well as identifying additional information that is required from the Service prior to preparing its report for submission to the Board. Since this research is on-going, a report will not be completed for the March 27, 2013 Board meeting.

Conclusion:

The Sub-committee will hold its next meeting in April and I will ensure that the Board is kept updated on the progress of the Sub-committee's work.

Key issues identified in Street Check deputations

The following individuals attended at and provided written submissions regarding Street Checks to the Toronto Police Services Board at its meetings held on April 5, 2012, July 19, 2012, August 15, 2012, November 14, 2012 and January 23, 2013. Board minute numbers P56/12, P187/12, P220/12, P271/12 and P6/13 pertain respectively.

Nigel Barriffe, Urban Alliance
John Sewell, Toronto Police Accountability Coalition
Noa Mendelsohn, CCLA
Moya Teklu, ACLC
Reuben Abib, BADC
Frontline Partners with Youth Network
Johanna Macdonald, Justice for Children and Youth
Irwin Elman, Office of the Provincial Advocate for Children and Youth
Miguel Avila
Harvey Simmons TPAC
Howard Morton, Law Union of Ontario
Dough Johnson Haltem, Lazarus Rising Street Pastor
Paul Copeland, Law Union of Ontario
Odion Fayalo
Randy Schmidt

Deputants discussed and highlighted a number of issues and concerns relating to Street Checks. There were a number of shared themes across deputations. Following is an overview of key themes as extrapolated from the information presented:

Discriminatory Practices

- ongoing police harassment of racialized youth
- Police are engaged in race based harassment
- racialized youth/men subject to discriminatory practices by police
- contact card statistics illustrates a deep routed problem of discriminatory police stops and data collection

Violation of Charter Rights

- within the meaning of the *Charter* Form 208 constitutes detention and search
- carding violates Charter Rights
- Board is urged to recognize compelling compliance, i.e. perspective held by stopped individuals that they have no choice but to comply

Breach of Privacy

- purpose and practice of police stops related to carding should be reviewed
- carding violates an individual's privacy
- review the type of personal information collected on Form 208

Community Relations

- Carding obstructs community trust
- carding has created an environment of mistrust, fear and undermines police-community relations
- Board should review actions and strategy used by police when an individual being carded 'rightly' refuse to provide information

Form 208

- carding should be discontinued
- if Form 208 continues it should be amended to include:
 - "Crime being Investigated" and "Why this Person was Stopped for this Crime"
 - associates and young person information should only be completed in cases of criminal code or drug offence investigation
- •a carbon copy of the amended Form 208 would make the best receipt

Form 306

- opposes implementation of receipt as it signals that carding is an acceptable practice
- if Form 306 is implemented there needs to be stringent conditions governing its implementation and use including community consultation and a comprehensive communication strategy
- Form 306 should include more information about the issuing officer

Governance

- Board needs to develop policy/programs to prevent, prohibit and address race based harassment
- Board should direct its counsel or independent counsel to examine Carding as it occurs on our Streets ...and require that the Chief cooperate with the analysis by providing key information
- Monitoring and reporting out of carding activities is required

cont...d

The following persons were in attendance and delivered deputations to the Board:

- **John Sewell, Toronto Police Accountability ***
- **Miguel Avila ***
- **Brittany Harris, Community and Legal Aid Services Programme (CLASP) ***
- **Roger Love, Black is NOT a Crime ***
- **James Roundell, Law Union of Ontario ***

***written submission also provided; copy on file in the Board office.**

The Board was also in receipt of a written submission dated March 14, 2013 from Rand Schmidt. A copy of Mr. Schmidt's submission is on file in the Board office.

Following the deputations, Ms. Moliner discussed the progress of the review of street checks (Form 208) and proposed receipts (Form 306). Ms. Moliner said that the Sub-committee's report would be completed soon and recommended that a copy of it be provided to each person who had made a deputation or provided a written submission to the Board on this matter over the past year.

Mr. Albert Cohen, City of Toronto – Legal Services, responded to questions about the status of the City Solicitor's report containing legal advice with respect to conducting street checks and issuing receipts (Min. No. P06/13 refers).

The Board approved the following Motions:

- 1. THAT the correspondence from Chief Commissioner Hall be received and forwarded to the TPSB Street Check Sub-committee for consideration;**
- 2. THAT the deputations and the written submissions be received and forwarded to the TPSB Street Check Sub-committee for consideration;**
- 3. THAT a copy of the Sub-committee's report be provided to all previous deputants prior to the April 25, 2013 Board meeting; and**
- 4. THAT the Board receive the foregoing report from Ms. Moliner.**

Moved by: M. Moliner

Ontario
Human Rights
Commission

9th Floor
180 Dundas Street West
Toronto, ON M7A 2R9

Commission
ontarienne des
droits de la personne

9^e étage
180, rue Dundas Ouest
Toronto (Ontario) M7A 2R9



March 11, 2013

Dr. Alok Mukherjee
Chair
Toronto Police Services Board
40 College Street
Toronto, Ontario
M5G 2J3

Dear Dr. Mukherjee:

I wish to commend the Toronto Police Services Board's (the "TPSB") approval of a project to collect and analyze data related to contact cards and the pattern of contact between the police and members of the community in general including young people from certain racialized communities.

I also understand that the TPSB is seeking an opinion from the City Solicitor on the legality of the practice of carding and the issuance of receipts, which engages the issue of human rights-based data collection and analysis.

This is important because although the current practice of carding may assist with investigations and community engagement, the TPSB must ensure that the manner in which it is being used is not contrary to the *Ontario Human Rights Code* (the "*Code*"). Thus, the TPSB must assess whether race is a factor in adverse treatment from carding. To this end, the Commission supports the TPSB's decision to assess its legality.

Collecting and analyzing human rights-based data for a *Code* consistent purpose itself *does not* violate the *Code*. If carding continues in any form, with or without receipts, it is the Commission's position that human rights-based data should be collected and analyzed to identify, monitor and remove potential systemic barriers, including possible patterns of behaviour that are consistent with racial profiling. Receipts can help ensure transparency and accountability in the process.

Reflecting our work together on the Human Rights Project Charter, we would be pleased to work with the Board and the Toronto Police Service to provide input on the practice of carding with a human rights lens and share our experience in human rights-based data collection and analysis.

Yours truly,

A handwritten signature in black ink, appearing to read "Barbara Hall".

Barbara Hall
Chief Commissioner

CCM# MGT2013-000081

c: Chief William Blair

Toronto Police Accountability Coalition
c/o Suite 206, 401 Richmond Street West, Toronto ON M5V 3A8.
416 977 5097. info@tpac.ca , www.tpac.ca

March 14, 2013.

To: Toronto Police Services Board

Subject: Carding

We wish to be listed as a deputation on the above item at the Board meeting on March 27, 2013.

The matter of carding was again discussed at the Board at its January meeting, and the decision was made then that a subcommittee was struck to recommend a course of action, and the lawyer would report on the legal implications of carding, both reports to be made at the March meeting.

It was at the Board meeting in April 2012 that the Board unanimously agreed that those carded should receive a carbon copy of the carding information. In spite of the fact the Board has made similar kinds of decisions on three other occasions since then, nothing has changed in respect to police practice. Young racialized residents continued to be stopped and carded by police.

Carding causes great damage to those who are stopped by police. A recent article in *Atlantic Magazine*, 'How Racism is Bad for Our Bodies', makes this clear <http://www.theatlantic.com/health/archive/2013/03/how-racism-is-bad-for-our-bodies/273911/>.

We want the Board to put in place interim measures to change carding while the final actions are debated and decided on. We think eleven months is too long for nothing to happen. As we proposed in our letter of January 23, 2013, we suggest the following:

As an interim measure, the Board should take the following action:

1. The 208 form should be modified by replacing 'Circumstances of Investigation' with two headings, 'Crime being investigated' and 'Why this person was stopped for this crime'; and

2. The section on the reverse side, 'Associates' and 'Young Person Information' should only be completed in cases of an investigation of a Criminal Code or Drug offence.

3. A carbon copy of the amended 208 form should be given to everyone who is stopped and carded.

Yours very truly,

A handwritten signature in black ink that reads "John Sewell". The signature is written in a cursive style with a large, stylized initial "J" and "S".

John Sewell for
Toronto Police Accountability Coalition.

DEPUTATION TO THE TORONTO POLICE SERVICES BOARD

By Miguel Avila

March 27, 2013

Item 6: Toronto Police Service Street Checks and Receipts

I must confess, I thought today 's meeting will put an end to the ongoing saga of the Carding process, Racial Profiling and Street Checks.

However, the letter dated March 11, 2013 by the Chief Commissioner of the Ontario Human Rights Mrs. Barbara Hall, has been added to the ongoing discussion in regards Carding and Street Checks that members of the community have spoken on in previous meetings which is fine. The Commissioner supports the Board for seeking for an opinion to the City Solicitor, and that is exactly we were told last January meeting. .

Well, the board has put the question to the City Solicitor, Mrs. Anna Kinastowski, if this practice is a constitutional violation of the Charter of Rights and Freedoms. The public does not know when the Solicitor will be coming to the Board to report back on its findings , **Question:** Would it be possible for the Board to request Mrs. Kinastowski to report back at a special board meeting next week?

Dear Board Members, You have hear loud and clear from members of the community such practice it is a clear violation of the charter. Moreover, the delaying tactics is causing mistrust on the board ability to put an end to this practice that involves Racial Profiling. Carding, or "Street Check" . In my opinion is a controversial system of information collection that the police say is an integral part of their work done in secret and with no assurances it will be protected from abuse by hot headed officers. (Ottawa Case)

As you are aware I am T.C.H.C resident and I know how this "street checks" are applied by member of T.A.V.I.S in a regular basis to residents of my community including myself. It appears that the "**Trespass Act**" has been modified to accommodate T.P.S officers to be the agents of the Corporation, to enforce and conduct street checks in T.C.H.C properties. I had witnessed T.P.S officers freely walk through the property hallways, corridors, parks, parking lots. You may say they are doing their "job" sure enough.

The stopping of residents at T.C.H.C building is in my view a disturbing practice, Residents feel they don't have to cooperate with the T.P.S since they are not being arrested or cited for an offense.

The stop and carding, it is an intrusive process of asking people's personal information, God Forbids.. if you get puffed up or agitated because of the simple act of telling officers that they have no right to be asking questions....oh boy... it can escalate from insults to the individual by the officers, to threaten with arrest, racist remarks, and at the end it result in physical interactions with residents by members of T.A.V.I.S .

Another detrimental part of this exercise is the ongoing practice of requesting a people's country of origin, Residents feel is a federal (Immigration Canada) matter, because they are aware of their rights not to reveal Immigration information to the T.P.S. most of the time, the individual is detained for not cooperating with the T.P.S. and in order to get released from Jail you need to reveal your country of resident and other personal information.

Dear board member T.C.H.C residents have a life, families , a school to attend to, a church they need to be at, a job interview the next day, a job to be at to feed their families , the right to freely walk in their communities but they are fearful at the sight of the T.P.S. and it is because of this fear and past experiences with marginalized youth that residents don't cooperate with the T.P.S to solve a crime or pinpoint a member of the community for fear of being jailed as well.

In the last few months the C.E.O of the T.C.H.C Mr. Eugene Jones, has hosted several small town hall meetings thorough the City , I have attended several of those meetings attended by City Councilors , MPP's and Residents, they have told Mr. Jones over and over complaining on issues of safety and security. Mr. Jones encourage residents to come forward with information to the Special Constables operating with the corporation or the T.P.S... the answer is always the same... the complains are always the same.. the remarks are the same.. and the message , please cooperate with the T.P.S to reduce criminal behavior and activities in buildings plagued by crime. Excuse me?? .. How are we supposed to cooperate with the T.P.S if we are treated without respect and dignity?? You need to shape up and make amendments with the community but that will be part of my deputation on Item 29 : Process to Report Judicial Comments Regarding Officer Dishonesty or Misconduct . Stay Tuned.

Thanks again for your time.

Miguel Avila

Board General Mailbox

From: Brittany Harris (CLASP) <bharris_clasp@osgoode.yorku.ca>
Sent: Wednesday March 20, 2013 15:28
To: Board General Mailbox
Subject: Toronto Police Services Board: Deputation Re: Toronto Police Service Street Checks and Receipts

This is an enquiry e-mail via <http://www.tpsb.ca> from:
Brittany Harris (CLASP) <bharris_clasp@osgoode.yorku.ca>

Hello Deidre

I am initiating a request to make a deputation at the March 27 Toronto Police Services Board in regards to the Toronto Police Service Street Checks and Receipts.

I will be making this deputation on behalf of the Community and Legal Aid Services Programme (CLASP).

Outline

Introduction

CLASP is a poverty law legal clinic at Osgoode Hall CLASP supports Toronto's low-income residents living in the Jane-Finch community.

Like those you've heard from we have concerns with the practice of carding.

Body

Stop the Practice Immediately

Until the issues with the carding program have been addressed and fully considered the program should be put on hold. Significant issues with the program have been raised including concerns from the community, charter concerns brought forward by lawyers, and concerns about the intrusive nature of this questioning. Continuing with a practice that is recognized as flawed and not fully understood makes little sense. Give us time to develop a series of best practices to this contentious issue.

Expectations & Standards

To hear that police are being evaluated based on the number of 208 cards is disappointing. This flies in the face of the numerous deputations and voices that have been put before the board. There are better ways to develop evaluation standards.

Best Practices: Stop the program

We believe that the best way of addressing the multiple problems associated with street checks is to stop the program entirely. It may be impossible to keep the intention of the program in tact while still holistically respecting charter rights. The intention of the street check and field information form is not to collect information in relation to investigations. Its purpose is to collect personal information for the police database. Some of that information may be used in future investigations for crimes that have not and may not occur.

Best Practices Alternatives

If stopping the program entirely is not possible at this junction, there are a number of other practices that could be taken up to improve the police street check. However, such suggestions do not necessarily address community concerns with racial profiling.

Change the Field Information Form so that the reasons for the stop are listed. Only stop people or complete a field information form in relation to investigations. Even when people are stopped for investigations and personal

information is gathered, police have to make sure that no negative designation will be entered in the system for that person (for example "P" - person of interest). Only collect detailed and personal information in 'the Associates' and 'Young Person Information' sections where the person questioned is reasonably believed to be a suspect. Issue a carbon copy to those who are stopped

Conclusion

Stop Carding Immediately while concerns are worked through and best practices developed.

Stop Carding Permanently

Alternatively :

- o Change the 208 form so that the reason for the stop is clearly stated
- o Stop people and complete 208 forms only during investigations
- o Collect detailed information only on suspects during investigations
- o Issue carbon copy receipts to those who are stopped and carded

Consider new holistic evaluation measures and standards.

Please let me know if you have any further questions about our deputation.

Sincerely, Brittany Harris



BLACK IS NOT A CRIME

A Public Service Accountability Project

March 21, 2013

VIA EMAIL

Deirdre Williams
40 College Street
Toronto ON, M5G 2J3
Email: deirdre.williams@tpsb.ca

RE: TORONTO POLICE SERVICES BOARD MEETING

Please be advised that the community organization, Black Is NOT A Crime, would like to present a deputation at the meeting of the Toronto Police Services Board (TPSB) scheduled for March 27, 2013.

Briefly, we will submit that, given the disproportionate rate at which members of the African Canadian community are carded, the practice of carding is illegal; it is violative of the *Ontario Human Rights Code*, the *Canadian Charter of Rights and Freedoms* and various international treaties. Black Is NOT A Crime will also submit that, contrary to Ms. Barbara Hall's letter, the TPSB does not need to assess whether race is a factor in adverse treatment from carding. We know that it is. Finally, Black Is NOT A Crime will seek clarification from the TPSB as to whether the City Solicitor's legal analysis will incorporate and/or be based on the data published by the *Toronto Star*.

The deputations will be presented by Mr. Roger Love. Please let me know if you have any questions, comments, or concerns.

Thank you,

Moya Teklu, B.A., J.D.
Black Is NOT A Crime

THE
LAW UNION
OF ONTARIO

Please address reply to:
James Roundell
647.706.1127
james.roundell@gmail.com

March 27, 2013

Toronto Police Services Board
40 College Street West
Toronto, Ontario
M5G 2J3

CONSTITUTIONALITY OF STREET CHECKS
SUBMISSIONS ON BEHALF OF THE LAW UNION OF ONTARIO

1. At the January 23, 2013 meeting, the Toronto Police Services Board resolved to request a report back from the City Solicitor on the legality of Street Checks for the March 27, 2013 meeting.
2. At the same meeting, a subcommittee was struck to reach out to the community and community organizations and propose a new policy governing Street Checks.
3. The Law Union of Ontario expresses its disappointment that neither report is complete.
4. The Law Union further expresses its disappointment that there is no mention of either item in the agenda for the March 27, 2013 meeting.
5. The Law Union of Ontario takes this opportunity to remind the Toronto Police Services Board of its responsibility to scrutinize the intelligence gathering Street Check policy both immediately and completely.


Law Union of Ontario

6. In his Report to the Board on the *Charter* violations occurring during the G-20, Justice Morden emphasized that the Board has as its primary obligation a duty to ensure that its Police Services operate in a lawful manner and in accordance with both our *Charter of Rights and Freedoms* and the Ontario *Human Rights Code*.
7. To this end, the Law Union of Ontario reiterates its submissions from the November 14, 2012 meeting and calls on the Toronto Police Services Board to newly resolve the following with respect to the report on the legality of the Street Checks:
 - i. That the Board retain independent counsel;
 - ii. That the Board require the Chief to provide counsel with the following with respect to Street Checks:
 1. All standing, routine, or other orders,
 2. All service policies and directives,
 3. All training materials,
 4. Any other document produced by Police Services concerning Street Checks;
 - iii. That the Board ensure that the report is made public; and
 - iv. That the Board ensure that the report is completed by the April 25, 2013 Board meeting.
8. It is incumbent upon the Board to examine the entire practice of Street Checks, and not simply examine race and other demographic statistics.
9. The Police Services' unlawful stopping and demanding of personal and private information from persons with respect to whom they have no suspicion of criminality has no place in a free and democratic society.
10. Street Checks are a clear and intentional violation of *Charter* rights. Their discriminatory application serves only to render them more deplorable.

Law Union of Ontario

11. While the Board allows months to pass into years of inaction, thousands of law-abiding community members are being stopped, intimidated, and documented without their permission, in violation of their rights and in a discriminatory manner, every day.

All of this respectfully submitted,

A handwritten signature in black ink, appearing to read 'James Roundell', written over the text 'All of this respectfully submitted,'.

James Roundell
Law Union of Ontario

March 14/2013

Ms. Deirdre Williams
Board Administrator
Toronto Police Services Board
40 College Street
Toronto, ON, M5G 2J3
deirdre.williams@tpsb.ca

Dear Ms. Williams:

Re. TPSB 'Contact Us' deputation: Method to speed up implementation of street check receipt system

Below is a close copy of the deputation sent to the Toronto Police Services Board 'Contact Us' message web site on Jan 16/13 10:08EST. It was intended to contribute to the Jan 23/13 regular Board meeting.

Hello to the Toronto Police Services Board,

Thank you for posting the Contact Receipt TPS 306 2012/10 well before the Jan 23/13 Board meeting. By using the Roger's video of Board meetings I have been able to follow your ongoing attempts to implement a 'street check' receipt policy.

Street checks (colloquially known as 'Carding') apparently occur up to 400,000 times annually, and have therefore led to significant public interest in regards to the efficiency, legality, and impact on citizen/police relationships. What Toronto is attempting with the street check receipt policy may also end up setting a trend for Canada. The Board is correct in its desire to create a document trail that should help adherence to legal principles and make street checks as mutually respectful as possible. While the police that are doing street checks have immediate goals like criminal investigations and also medium term crime suppression in mind, the Police Board must look to the longer term relationships between a community and their police.

However, while the Board's strong desire to 'get it right the first time' is admirable, that is not necessarily achievable or wise. I will attempt to explain why it is better to push ahead immediately with the present less than perfect 306 Contact Receipt, rather than lose still more time attempting to work out all the details before the first field deployment.

In scientific research, at which I make my living, it will inevitably take three tries to get an experiment or field procedure completely right. This is also true in almost all human endeavors, even if everyone involved is trying to make a success. Basically, the first time something complex is tried the results will show a few things that go right, and some unexpected or underestimated circumstances that don't. The people involved will then make the now obviously needed corrections to the material, practices or situation and carry out the second try. The second try will then go mostly right, but reveal several small improvements to make as the main problems are now out of the way. Those final smaller modifications are carried out and the third try approaches perfection.

New human endeavors that depend on interactions between disparate groups of people frequently are more complicated than described above and therefore getting things 'mostly right' is often as good as it gets. Note also that although receipting police interactions have been done in a few other countries, the legal and social systems vary enough that we cannot rely on those limited examples as a 'first try'.

At the Police Board there has been a focus on the written details of the receipt itself, but there are two other equally important components to the proposed street check receipting process. The second component, which has not been as publically discussed, is the actual process Toronto police will go through as they do a receipted street check. For example, how readily is the receipt given out, and is that after the street check is complete or part way through as consent is asked or implied? Will officers have to keep both hands busy while the receipt is written, or will the officers already have their names stamped, with the recipient filling out the details and the officer then signing at the bottom, etc.?

The third and less controllable component is how the recipient of the receipt responds or is affected. Do they respond positively or not, and what impact does this have on the police relationship in the neighbourhood. Initial and subsequent feedback from the recipients will need to be studied in order to adjust the receipting process in as positive a direction as possible.

So there are three components interacting during the projected street check, namely the receipt, the receipting process, and the response the receipting generates. These components will moderate back and forth with each other in ways not yet fully determined. Also, how officers feel about the process, and thereby compose themselves when receipting, is also going to be a major influence. It will take considerable time and several policy amendments to work this all out. Meanwhile, every month over 30,000 more street checks are carried out in Toronto.

The first version of the Contact Receipt TPS 306 2012/10 lacks sufficient detail on what happened during the street check, and on the articulable reason for the interaction. Fortunately, working out the receipting process and studying the recipient response can still be carried out in the field while using the present first version already printed 306 receipts. Simultaneously, the Board and interested parties can carry on considering what modifications are desired for a second version Contact Receipt. Therefore, please consider deploying the presently printed street check receipts immediately.

Sincerely,

Randy Schmidt

**THIS IS AN EXTRACT FROM THE MINUTES OF THE PUBLIC MEETING OF THE
TORONTO POLICE SERVICES BOARD HELD ON APRIL 25, 2013**

#P121. STREET CHECK SUBCOMMITTEE – UPDATE

The Board was in receipt of the following report June 18, 2007 from William Blair, Chief of Police:

Subject: STREET CHECK SUBCOMMITTEE - UPDATE

Recommendation:

It is recommended that the Board approve recommendations 1a) - g) and recommendation 2 as noted in the body of this report.

Financial Implications:

There are no financial implications arising from the Board's consideration of this report.

Background/Purpose:

In April 2012, in response to community concerns, the Board requested the City of Toronto Auditor General to conduct a project to collect and analyse data related to community contacts. The Board requested that the Auditor General report to the Board, in public, on the results of the project no later than the Board's December 2013 meeting (Min. P56/12 refers).

The Board also adopted a number of motions with respect to the use of Form 208, including a request, subject to a further report from the Chief, that individuals receive a carbon copy of the Form 208, a request for statistical reporting and, also subject to a further report from the Chief, a request that the Chief involve the TPS Diversity Management Unit in monitoring all Street Check activities and where there appears to be discrimination that the Chief ensure that steps are taken to address the matter.

In July, August, November and December 2012, the Board received reports responding to these motions.

The Board received, at its January 23, 2013 meeting, a copy of the proposed Form 306 Community/Officer Contact Receipt. The Board had previously directed that distribution of this receipt be deferred until the Board had an opportunity to review the copy of the receipt, to consider the deputations received at its meeting in November 2012 and to determine what direction the Board will provide to the Chief.

At its meeting on January 23, 2013, the Board also received a report from the Chief of Police responding to the Board's request that the Chief review Form 208 and any successor form to

ensure that they are in compliance with the Board's policies including the Race and Ethno Cultural Equity policy. The Chief's report indicated that his review of Form 306 was completed and confirmed that the forms are in compliance with the Board's policies (Min. P6/13 refers).

The Board received the Chief's report on Form 306, requested that the City Solicitor review all the reports and deputations on the issues of carding and the issuance of receipts and report back to the Board on March 27, 2013. The Board also created a Street Check Subcommittee (SCSC) comprised of Ms Marie Moliner, Mr Andy Pringle and Councillor Michael Thompson to review the reports and the deputations, to work with the Chief of Police to consider a course of action and prepare a policy taking into account the concerns that have been raised.

The Subcommittee provided update reports at the Board's February and March meetings (Mins. P43/13 and P50/13 refer). In the March update report, the Board was advised that City Legal's research is on-going and will not be completed in the timeframe requested by the Board.

The Subcommittee is mindful of the significant number of deputations (28) made to the TPSB on this issue over the past year. A summary of deputations is attached at Appendix A. The TPSB will create a section on the homepage of its website which links to all the TPS and TPSB reports on the subject of Street Checks since April 2012 and includes access to all deputations.

The mandate of the Street Check Subcommittee (SCSC) is described further in draft Terms of Reference which are still being considered by the Subcommittee (Draft Terms of Reference attached as Appendix B). These Terms of Reference focus on a number of areas which are addressed further below as part of the SCSC's on-going work.

At the March 27th, 2013 TPSB meeting, the Street Check Subcommittee Chair discussed the progress of the review of Street Checks (Form 208) and the proposed receipt (Form 306), indicated that the Subcommittee's report would be completed soon and further recommended that a copy of it be provided to each person who made a deputation or provided a written submission to the Board on this matter over the past year.

Discussion:

Members of the public have appropriately high expectations of the TPS, of the TPSB and of the work of Street Check Subcommittee. The Subcommittee is aware that it is unlikely that it will be able to respond adequately, in this report, to all community expectations.

The Sub-committee acknowledges the reputational risk to the Toronto Police Service given the perceived preponderance of such stops as they affect members of racialized communities.

The Subcommittee has carefully reviewed the request made by several deputants that the practice of Street Checks be stopped in its entirety. Given TPS operational requirements, the Subcommittee does not believe that stopping the practice of Street Checks is realistic. The Subcommittee believes that it is more practical to focus on the impact and purpose of Street Checks.

The Sub-committee's policy objective in developing the policy directions for the Chief is to ensure an approach to TPS Street Check practices and procedures which will permit verification

that Street Checks are justifiable, fair and not arbitrary. Additionally, the Sub-committee seeks to understand the training related to the practice and to provide the public with better information about the purpose and practices related to Street Checks. In so doing, the Sub-committee seeks to respond to the many deputations, who have identified concerns about the TPS practice of conducting Street Checks, and to protect the TPS and the Board from complaints or other challenges about the legality and appropriateness of Street Checks. As deputants have pointed out, the TPS has an opportunity to lead the way by establishing an approach which may be useful to other jurisdictions and police services.

In light of the preceding objectives, and in order to assist the Sub-committee in formulating a policy:

1. The Board requests:

- a. That, as an interim measure, the Chief immediately implement the use of Form 306, proposed by the Chief at the Board meeting in December 2012, for all stops where a FIR (208) is required to be completed.
- b. If the Form 306 continues to include a reference to “community engagement”, that the Chief provide the Board, for its’ information, a copy of the written instructions to TPS members defining what types of interactions constitute “community engagement”.
- c. That the Chief prepare a public communiqué to be posted on the TPS website and on Divisional web pages, which explains the purpose of the relevant Street Check forms and how they inter-relate. For ease of reference by the public, the current forms being used (208/FIR/306) should be posted to the website as part of this communiqué.
- d. That the Chief provide a report to the Board responding to the deputants’ requests for revisions to Form 208/FIR and to the viability of providing a carbon copy or equivalent record so that individuals are more fully informed of what has resulted from the stop and able to obtain appropriate information.
- e. That the Chief provide, to the Sub-committee, a list and summary of all materials the TPS has gathered on the collection of race-based data on stops.
- f. That, as offered by the Chief at the Board’s meeting in December 2012, the Chief produce a standardized quarterly report for the Board on Street Check practices beginning with the first quarter of 2013; including information about the implementation of Form 306, about the age and race of persons stopped and additional information which will enable an analysis of the nature and quality of Street Check activity and its impact on community safety (Min. P271/12 refers).
- g. That the Chief provide a status report at the June 2013 public Board meeting on the implementation of these directions.

2. Additionally, the Chief is requested to work closely with the Sub-committee to review the following:

Purpose of Street Checks:

- In what specific circumstances have the Checks demonstrated (a) a clear advantage to policing in Toronto and (b) an advantage that outweighs the negative individual and community consequences of the stops? How has this information been tracked and assessed to date?
- What are current written TPS policies on when an officer may (a) conduct a Street Check (b) record the Street Check on a Form 208/Field Information Report (FIR) (c) and must issue a receipt?

Data Collection:

- What information about stops that do not lead to charges is retained by TPS, why is it retained, for how long is it retained, under what circumstances is the information accessed by TPS and do individuals have the ability (and if so, are they told how) to verify information that is included on a Form 208/FIR? Can they obtain the information for this purpose other than by a formal MFIPPA request?

Training:street

- What are officers trained to consider specifically in exercising their discretion in relation to Street Checks? What accountability measures exist in relation to the conduct of Street Checks? Please provide a summary of training materials and curriculum calendar related to the exercise of discretion as it pertains to Street Checks.

Research:

- What research (other than the race-based statistics information requested in 1(f) above) has been undertaken by the TPS about Street Checks and other similar initiatives in other jurisdictions? Are there best practices in other jurisdictions which can inform the Street Check process at TPS?

Community Consultations:

- What are the results of any TPS consultations to date on Street Checks and are there any specific proposals for future consultations?

Conclusion:

Following receipt of this report from the Chief, the Sub-committee will evaluate this information, potentially identify further areas that may require analysis, research or action, consider appropriate monitoring mechanisms, and consider the drafting of a policy on Street Checks. In the interim, the Sub-committee will also determine how best to involve community stakeholders, including the Ontario Human Rights Commission.

The following persons were in attendance and delivered deputations to the Board:

- **Howard Morton, Law Union of Ontario***
- **Odion Fayalo, Justice is not Colour Blind***
- **Saneliso Moyo, Black is NOT a Crime***

***written submission also provided; copy on file in the Board office.**

The Board was also in receipt of a written submission dated April 24, 2013 from Noa Mendelsohn Aviv, Canadian Civil Liberties Association. A copy of Ms. Aviv's submission is on file in the Board office.

Following the deputations, Ms. Moliner discussed the Street Checks Sub Committee's progress of the review of street checks.

The Chief advised that the implementation of Form 306 requires changes to procedures and training. However, the form can be implemented by July 1, 2013. The Chief also advised that the CIOR is also engaged in reviewing issues around Street Checks in order to ensure that all aspects of this issue are taken into consideration. The Chief will also ensure that police officers' cautioning of individuals, as suggested by Mr. Morton, is considered by CIOR.

The Board received the deputations and the written submission and approved the report with the following Motion:

1. **THAT recommendation no. 1a. be amended to include the wording "the Chief implement by no later than July 1, 2013, the use of Form 306..." replacing "immediate implementation".**

Moved by: M. Moliner

Street Check Deputations – Appendix A

Reference	Deputants	Issues	Recommendations
P56/12 April 5, 2012	Nigel Barriffe Urban Alliance	<ul style="list-style-type: none"> •DWB -driving while black equates to police pulling you over, searching and harassing racialized individuals •ongoing harassment of racialized youth by police 	<ul style="list-style-type: none"> •Board to establish task force with police-community to address issue
	John Sewell Toronto Police Accountability Coalition	<ul style="list-style-type: none"> •data shows that racialized youth/men are stopped by police more often than white youth/men •racialized youth obeying the law experience frequent stops by police •racialized youth/men subject to discriminatory practices by police •discriminatory practices are not justified because police think this is a good way of "fighting crime" 	<ul style="list-style-type: none"> •provide carbon copy of card note made to person stopped •police should provide an information sheet indicating an individual rights, particularly their rights not to cooperate •Board should state it will not tolerate discriminatory stops •require Chief to provide monthly report on carding activities •DMU should monitor all carding activity and counsel officers to change behaviour if pattern of discrimination is evident •DMU should develop interview/intervention process in cases where stops are reasonably warranted
	Noa Mendelsohn CCLA	<ul style="list-style-type: none"> •unwarranted police stops that violate the privacy, autonomy and dignity of the young people involved •random and unnecessary questioning, request for i.d., intimidation, illegal searches and at times police aggression •undermines positive police/community relationships 	<ul style="list-style-type: none"> •practice of targeting black male youth must stop •support Auditor General conducting investigation •OHRC and OIPRD should conduct investigation •Board need to develop policy preventing the targeting of black male youth

Street Check Deputations – Appendix A

Reference	Deputants	Issues	Recommendations
P56/12 April 5, 2012 (cont'd)	Moya Teklu ACLC	<ul style="list-style-type: none"> •anti-black racism in the criminal justice system is well documented and another lengthy data collection project is not needed •questions whether the Auditor General is the right person to conduct review/analysis of the data •racial profiling has created a toxic relationship between police and black community •regardless of any perceived utility the Service must acknowledge that 208 cards contravene the Constitution 	<ul style="list-style-type: none"> •stop the collection of demographic statistics •stop vicarious carding as it contravenes the Charter and human rights •the Service's attitude towards African-Caribbean descendants is one of racial and cultural indignation which needs to change to one of respect, dignity and ethno-cultural sensitivity •supports TPAC recommendations
	Reuben Abib BADC	<ul style="list-style-type: none"> •demographic statistic collection compromises the future of "our" children and causes them to fear police, lowers self-esteem and confidence and intimidates •collection this of this data creates a conduit for racial profiling 	<ul style="list-style-type: none"> •police-community interactions are highly racialized •youth in Toronto experience harm at the hands of the police •contact card statistics illustrates a deep routed problem of discriminatory police stops and data collection •minorities experience a higher level of distrust of police
	Frontline Partners with Youth Network Johanna Macdonald Justice for Children and Youth		<ul style="list-style-type: none"> •police should provide an information sheet indicating individual's rights •carbon copy of the card will assist persons stopped to understand the reasons for stop •Board should state it will not

Street Check Deputations – Appendix A

Reference	Deputants	Issues	Recommendations
<p>P56/12 April 5, 2012 (cont'd)</p>	<p>Irwin Elman Office of the Provincial Advocate for Children and Youth Miguel Avila</p>	<ul style="list-style-type: none"> •youth are fearful and devastated to speak out •youth know that there are no remedies available for this issue •review of issue by the Auditor General will not address deeply rooted concerns of mistrust •police practice of issuing 208s run contrary to building bridges •most contact cards are produced by T.A.V.I.S 	<ul style="list-style-type: none"> tolerate discriminatory stops •supports TPAC recommendations •supports TPAC recommendations •supports independent assessment by Auditor General •supports providing persons stopped with copy of contact card
<p>P187/12 July 19, 2012</p>	<p>Noa Mendelsohn CCLA</p>	<ul style="list-style-type: none"> •concerned about race-based harassment 	<ul style="list-style-type: none"> •Board should denounce practice of race-based harassment •Board needs to develop policies/programs to prevent, prohibit and address race-based harassment •Board must ensure investigator is given adequate resources to perform thorough investigation in timely manner •Board should adopt certain minimal standards for terms of reference which should include: <ul style="list-style-type: none"> - consultations with bodies with demonstrated expertise in policing, police complaints and human rights (org listed in deputation) •demonstrated sensitivity with

Street Check Deputations – Appendix A

Reference	Deputants	Issues	Recommendations
<p>P187/12 July 19, 2012 (cont'd)</p>	<p>John Sewell Toronto Police Accountability Coalition</p>	<p>•pending review of this issue officers should provide a receipt to individuals that are stopped</p>	<p>respect to matters of race •investigator must investigate TPS policies, practices, regarding any or a combination of any police actions against black youth and/or others from racialized/marginalized communities regarding unwarranted questioning, stops, identity collection, intimidation, searches and aggression •investigate how communities view TPS community policing practices •Board should develop policy which addresses: -accountability, standards regarding data collection, positive engagement with the public •policies should consider issues of accountability •investigator should examine training as it pertains to race and racism... •investigator must investigate the complaints mechanism... •Board should ensure regular independent review of this matter</p>
<p>•receipt should include the following information: -officer details -date, time & place of stop/search</p>			

Street Check Deputations – Appendix A

Reference	Deputants	Issues	Recommendations
<p>P187/12 July 19, 2012 (cont'd)</p>			<ul style="list-style-type: none"> -reason for the stop/search -individual's self-defined ethnicity -vehicle registration if relevant -what officers were looking for and anything they found -individual's name or description, if name refused
<p>P220/12 August 15, 2012</p>	<p>Moya Teklu ACLC</p>	<ul style="list-style-type: none"> •in light of the Board's decision to extend the Chief's reporting back on this issue ACLC supports police accountability through the issuing of hand written receipts •Board needs to do its job of overseeing the Service and not provide an extension to the date the Chief's report is to be submitted •reiteration of previous deputation 	
<p>P271/12 November 14, 2012</p>	<p>John Sewell Toronto Police Accountability Coalition</p>		<ul style="list-style-type: none"> •mock-up of the receipt should be provided publicly •Board should undertake comprehensive communication strategy to provide information to the public about the receipt •monitoring program to ensure effectiveness of receipt
	<p>Howard Morton Law Union of Ontario</p>	<ul style="list-style-type: none"> •supports Chief's proposals discussed in Min. No. P271/12 -community/officer contact receipt -quarterly street check report -ongoing community consultation •design and use of Form 208 and Carding are clear violation of the Charter •Board needs to scrutinize officers' actions and strategies used when stopped individuals 	<ul style="list-style-type: none"> •Board must examine entire practice of Carding •Board should direct its counsel or independent counsel to examine Carding as it occurs on our streets, and report findings no later than February 2013 •the Board should require that the Chief cooperate with its counsel

Street Check Deputations – Appendix A

Reference	Deputants	Issues	Recommendations
<p>P271/12 November 14, 2012 (cont'd)</p>		<p>rightly refuse to provide Form 208 information</p> <ul style="list-style-type: none"> •within the meaning of the <i>Charter</i> Form 208 constitutes detention and search •carding is a violation of the <i>Charter</i> which has resulted in community apprehension, sentiment and fear •individuals carded are disproportionately racialized youth •Carding obstructs community trust •provide copy of Form 208 and the proposed receipt •information sought on Form 208 is unnecessary •police officers violate the supreme law of Canada when they refuse to respect <i>Charter</i> Rights •the Board was put on notice as early as 2004 that Carding is a threat to a free and democratic society •Superior Court opinion that states the manner in which Carding is being used is menacing and they could be a tool for racial profiling -serious consequences will ensue if Carding continues in its current form, they can be used for subjective assessment based on race or other irrelevant information •Board's recommendations ignore the real issue with respect to Carding •Board has failed its responsibility as it relates to Carding 	<p>by providing key information</p> <ul style="list-style-type: none"> •while the <i>Clinic</i> opposes police practice of •recommends that the reasons for

Moya Teklu

Street Check Deputations – Appendix A

Reference	Deputants	Issues	Recommendations
<p>P271/12 November 14, 2012 (cont'd)</p>	<p>ACLC</p>	<p>documenting citizens in non-criminal encounters it want to commend the Board for moving to needed action •if properly implemented the measures proposed by the Chief can lead to a level of transparency and accountability that to date has been lacking</p>	<p>interaction section on the contact cards and on receipts is sufficiently precise indicating specific criminal activity that preceded the stop •issuing of receipt must be mandatory •receipt must include race of individual stopped and detailed information about issuing officer •public education campaign that includes, right to refuse to provide information, right to receive receipt, how the information will be used, etc. •receipt issued should include information about issuing officer •receipt should include information about the individual's rights •Chief's measures (training, quarterly reports, monitoring) should not only relate to contact cards but to all stops where individuals are stopped and questioned •ongoing community consultation (ensure confidentiality of community members)</p>
	<p>Noa Mendelsohn CCLA</p>	<p>•issuing a receipt to an individual Carded is an important and positive step which the CCLA endorses •supports issuance of quarterly reports •Board is urged to recognize compelling compliance, i.e. perspective held by stopped individuals that they have no choice but to comply •the recording of personal information in the manner of Carding is intrusive, frightening and intimidating, it is an affront to privacy and dignity and can have further future consequence for the individual •purpose and practice of police stops should be reviewed</p>	<p>•Board must create policy that safeguard individual rights and</p>
	<p>Johanna Macdonald Justice for Children and Youth</p>	<p>•dual purpose of street checks raises questions -under what authority does police collect non-</p>	

Street Check Deputations – Appendix A

Reference	Deputants	Issues	Recommendations
<p>P271/12 November 14, 2012 (cont'd)</p>	<p>Dough Johnson Haltem Lazarus Rising Street Pastor</p>	<p>law enforcement personal information -does community engagement require that police collect and retain personal information</p>	<p>protect the community •policy must include provision about informing people of their rights when stopped policy must require that officers provide information about the complaints process •policy must include monitoring and compliance with the <i>Ontario Human Rights Code</i> and the <i>Charter</i> •create should govern the access, retention and destruction of street check information collected •reason for police detention must be recorded •receipts must be provided</p>
<p>P6/13 January 23, 2013</p>	<p>Howard Morton Law Union of Ontario</p>	<p>•street checks are street detention •fear of consequences if refuse to comply with police •reiterated its position as noted in November 14, 2012 Board meeting minutes (P271/12)</p>	<p>•format of Form 208 and its deployment must comply with the <i>Charter</i> and the <i>Ontario Human Rights Code</i> •stop carding activities that involve random stops where there is no evidence of illegal activity. If Board does not cease carding then: •Form 208 should be amended to include: -"Crime being Investigated" and "Why this Person was Stopped for this Crime" -associates and young person</p>
	<p>John Sewell Toronto Police Accountability Coalition</p>	<p>•carding is intrusive •Form 208 makes it clear that police believe such stops constitute an investigation •the type of information gathered on Form 208 indicates extraordinary prejudice on the part of police (esp. when no crime is being investigated) •proposed receipt assumes that stop and carding is for community engagement •receipt does not indicate why police had authority to engage in the stop</p>	

Street Check Deputations – Appendix A

Reference	Deputants	Issues	Recommendations
<p>P6/13 January 23, 2013 (cont'd)</p>	<p>Noa Mendelsohn CCLA</p>	<ul style="list-style-type: none"> • Form 306 appears to justify detaining, questioning and recording identity and personal information • the very notion of street check is improper and implies legitimacy for intrusive policing and opposes the approval or use of Form 306 	<p>information should only be completed in cases of criminal code or drug offence investigation</p> <ul style="list-style-type: none"> • a carbon copy of the amended Form 208 would make the best receipt • Board should engage in public campaign before beginning distribution of receipts • require police to provide "mirror copy" of contact cards that at a minimum includes information not deemed part of police investigation. For example: <ul style="list-style-type: none"> - personal information, race or racial appearance, specific reason for the stop - sharing this information ensures transparency and accountability • Board need to begin to investigate and address race based harassment
	<p>Paul Copeland Law Union of Ontario</p>	<ul style="list-style-type: none"> • mainly young ethnic minorities are subjected to carding. • prepared information sheet that informs people subjected to carding of their rights 	<ul style="list-style-type: none"> • carding information sheet entitled "Approached by the Police... Know your Rights" (attached to deputation)
	<p>Odion Fayalo</p>	<ul style="list-style-type: none"> • police must learn to differentiate the criminal and noncriminal elements in the African Canadian community... as they do with other ethnic communities • Form 208 and 306 is immoral and violates right to be free from arbitrary detention or 	

Street Check Deputations – Appendix A

Reference	Deputants	Issues	Recommendations
<p>P50/13 March 27, 2013</p>	<p>John Sewell Toronto Police Accountability Coalition</p>	<p>imprisonment <ul style="list-style-type: none"> • carding should be discontinued • opposed implementation of receipts <ul style="list-style-type: none"> • Board should put interim measure in place to change carding while the final actions are debated and decided on </p>	<ul style="list-style-type: none"> • Form 208 should be amended to replace "Circumstance of Investigation" with: <ul style="list-style-type: none"> - "Crime being Investigated" and "Why this Person was Stopped for this Crime" • "associates" and "young person information" should only be completed in cases of criminal code or drug offence investigation • a carbon copy of the amended Form 208 should be given to everyone stopped and carded
	<p>Brittany Harris CLASP</p>	<ul style="list-style-type: none"> • carding should be stopped until the issues with carding have fully considered and addressed • issues with the program includes community concerns, contravention of Charter rights and intrusive questions • the practice is flawed and not fully understood • police being evaluated on the basis of the number of 208s completed is unacceptable 	<ul style="list-style-type: none"> • change field information form so that reasons for stops are listed • only stop individuals or complete the form in investigative purposes • collect detailed information only on persons that are suspects • issue carbon copy receipts • consider new holistic evaluation measures and standards
	<p>Moya Teklu Black is not a Crime</p>	<ul style="list-style-type: none"> • given the disproportionate rate at which members of the African Canadian community are carded, the practice of carding is illegal 	

Street Check Deputations – Appendix A

Reference	Deputants	Issues	Recommendations
<p>P50/13 March 27, 2013 (Cont'd)</p>	<p>Rand Schmidt</p>	<ul style="list-style-type: none"> carding violates the <i>Charter, Ontario Human Rights Code</i> and various international treaties will the City Solicitor's legal analysis incorporate data published by the Toronto Star Board should immediately implement the "less than perfect" 306 	<ul style="list-style-type: none"> Board should consider the following components with respect to street checks: the receipt, the receipting process and the response to the receipt being issued draft version of the 306 lacks sufficient detail on what happened during the street check the present version of the 306 can be used while considering possible modifications
	<p>James Roundell Law Union of Ontario</p>	<ul style="list-style-type: none"> lack of Board action regarding report from City Solicitor and community engagement to draft new street checks policy Board has a duty to ensure that the police service operate in a lawful manner reiterates its submission of November 14, 2012 regarding the Board's retention of independent Counsel and the Chief's cooperation (see P271/12 above) Board must examine the entire practice of street checks, not just simply race and demographic statistics police service's unlawful stopping and 	

Street Check Deputations – Appendix A

Reference	Deputants	Issues	Recommendations
<p>P50/13 March 27, 2013 (Cont'd)</p>		<p>demanding of personal and private information from individuals that are not suspects is undemocratic</p> <ul style="list-style-type: none"> • street checks violates Charter rights • years of Board inaction has allowed the continued stops, intimidation, violation of rights and discrimination against law abiding community members 	
	<p>Miguel Avila</p>	<ul style="list-style-type: none"> • carding is intrusive • practice of officers asking for immigration information is intrusive • TCHC residents are afraid of TPS officers and are not treated with respect by them 	

April 19, 2013

February 27, 2013

Appendix B

**Toronto Police Services Board
Street Check Sub-committee**

Objective:

To review the reports and the depositions with respect to street checks and to work with the Chief of Police to consider a course of action and propose policy, taking into account the concerns that have been raised (Board Min. P6/13 refers).

Terms of Reference

In the course of its work the Sub-committee will consult with:

- Toronto Police Service – Deputy Chief Peter Sloy
- City of Toronto Legal Servicesⁱ - Albert Cohen
- City of Toronto Auditor Generalⁱⁱ
- Community stakeholders

The Sub-committee will review the following:

- Inventory of issues raised by deputants
- existing Board policies and Service procedures which may provide governance with respect to Street Checks
- relevant literature from other jurisdictions

The Sub-committee will address the following questions:

1. When did the practice of conducting street checks begin and why?

Sub-committee Members: M. Moliner (Chair), M. Thompson, A. Pringle

February 27, 2013

2. Is it necessary for TPS to conduct street checks? What does TPS seek to achieve in conducting street checks?
3. What are the appropriate circumstances in which an officer may (a) conduct a street check (b) record the street check on a Form 208/Field Information Report (FIR) (c) issue a receipt?
4. What is the scope of the questions/information fields on the Form 208/FIR entry?
5. What information is retained by TPS, why is it retained, for how long is it retained, under what circumstances is the information accessed by TPS and can individuals obtain the information via MFIPPA? Do individuals have the ability to verify information that is included on a Form 208/FIR?
6. How is the principle of discretion applied by police officers in the street check process? What are officers trained to consider in exercising their discretion in relation to street checks? What accountability measures exist in relation to the conduct of street checks?
7. Are there best practices in other jurisdictions which can inform the street check process at TPS?

ⁱ The Board requested that the City Solicitor review all the reports and depositions submitted to the Board on the issues of carding and issuance of receipts and report back to the Board at its meeting on March 27, 2012 on the legality of these practices

ⁱⁱ At its meeting on April 5, 2012, the Board, in order to establish baseline data showing the pattern of contact between the police and members of the community, in general and young people from certain ethno-racial backgrounds in particular, requested that the City of Toronto Auditor General conduct a project to collect and analyze data related to such contact between the police and the community; and request that the Auditor General to report to the Board in public on the results of the project, no later than the December 2013 meeting of the Board.

Sub-committee Members: M. Moliner (Chair), M. Thompson, A. Pringle

Good afternoon Mr. Chair and Board members:

I am here as a representative of Black youth and the wider African Canadian community in the Greater Toronto Area to speak to the Street Check Subcommittee report.

I would like to remind the Board that it was just over a month ago, on March 21 that the world observed the UN's International Day for the Elimination of Racial Discrimination. On that day, MPP Jagmeet Singh stated the following in the Legislative Assembly, "racial discrimination at its roots is a question of power. When there is a power imbalance, there will be discrimination. If we want to eliminate discrimination and racism, we need to eliminate the power imbalance which perpetuates this racism."

Indeed, it is the sense of powerlessness among those that are most affected by racial profiling that is just as dangerous as the sense of powerfulness among those that are responsible for this immoral and unconstitutional practice.

Speaking on behalf of the Justice IS NOT Colour-Blind Campaign, which comprises a collection of individuals and networks that are deeply concerned about racial profiling and police brutality, we respond to the report, raising the following issues and recommendations:

1. Toronto Police personnel should be taught to perceive and acquit themselves not as occupiers of the African Canadian community, not as its rulers or as enforcers of quasi-colonial laws such as street checks but as its servants, employees, as its representatives, and who along with the members of that community are mutually and co-equally concerned and involved in protecting its best interests.
2. Toronto Police personnel should reflect the ethnic compositions of the African Canadian communities they serve, and should employ at all levels a representative number of African Canadian personnel who possess a high level of Afrocentric consciousness and demeanour. It is not enough to have black faces in high and low places. Police units such as TAVIS which operate within the African Canadian community, the neighbourhoods and highways in general, should possess a sound working knowledge of the culture, history, and behavioural character of the African Canadian community and demonstrate an earnest respect for it.
3. Police personnel responsible for violating the rules of common decency and courtesy, for the use of racial slurs and epithets, for abuse of power and authority, the use of unnecessary force, other forms of harassment and injurious behaviour when dealing with African Canadian citizens, should be visited with certain, swift, and effective chastisement. The Chief has started doing this but needs to specifically address anti-Black racism within the Service.

Since this Board believes it is unrealistic to halt street checks, despite the racist manner in which it is being carried out, and appears poised to endorse contact receipts as a tool to evaluate this practice – it is our contention that the Board must begin the very serious work of implementing an African-centred

educational rehabilitation program for African Canadian police personnel, which will inoculate them with a deep knowledge of truth and of African history and culture.

The Christopher Dorner story in Los Angeles is an example of what can happen when White racism remains unchecked and is pervasive throughout a police organization. Even the story of a 16-year old Black boy named Kimani Gray is instructive. He was shot dead by two plainclothes police officers not far from his home in Brooklyn's East Flatbush neighbourhood. The community had had enough with racial profiling and police killings of youth by the NYPD, and rioted, according to the media, for several days.

We submit that you immediately pursue our recommendation to re-educate the Service's African Canadian police personnel while at the same time ensuring that White and non-Black police officers are taught to perceive and acquit themselves not as occupiers of the African Canadian community. This, in our estimation, in addition to implementing certain, swift, and effective chastisement whenever police personnel harass or injure African Canadians – can have a significant positive impact on the relations between police and the African Canadian community in which they are supposed to serve. Ultimately though, "if we want to eliminate discrimination and racism, we need to eliminate the power imbalance which perpetuates this racism."



BLACK IS NOT A CRIME

A Public Service Accountability Project

April 25, 2013

Deirdre Williams
40 College Street
Toronto ON, M5G 2J3
Email: deirdre.williams@tpsb.ca

RE: STREET CHECK SUB-COMMITTEE UPDATE

BLACK IS NOT A CRIME. is a community organization dedicated to addressing anti-Black racism in the provision of public services, including police services.

BLACK IS NOT A CRIME. commends the Street Check Sub-Committee of the Toronto Police Services Board for its update and interim recommendations.

As set out in the Sub-Committee's report, the African Canadian community – including members of BLACK IS NOT A CRIME. – has appeared before the Board on a number of occasions. We have asked for carbon copies or receipts of 208 cards, periodic reports of disaggregated race-based data, and a general recognition that the practice of carding by the Toronto Police Service amounts to racial profiling. We have argued that carding is illegal, ineffective and highly detrimental to community relations in general and the African Canadian community in particular. We have been unequivocal and unwavering in our demand that racial profiling by the Toronto Police Service must stop.

BLACK IS NOT A CRIME. is hopeful that the recommendations of the Sub-Committee will move us closer to this goal. We support these recommendations as measures of much needed accountability and transparency and are cautiously optimistic about the direction in which the Sub-Committee appears to be heading as evidenced by the recommendations made and the questions asked of Chief Blair.

However, we continue to have reservations about the Board's commitment to taking concrete action to eliminate the discriminatory practice of carding. The Sub-Committee's recommendations that the Chief provide quarterly reports on street check practices and carbon copies of 208 cards were originally passed by this Board in April 2012 – one full year ago. Similarly, the recommendation that the Chief provide receipts as an interim measure was originally passed by this Board in July 2012.

The community will not accept being back here a year from now asking yet again for the implementation of these same recommendations. As noted by the Sub-Committee, the reputation of the Toronto Police Service and the legitimacy of the Toronto Police Services Board will be measured by how quickly concrete action is taken.



BLACK IS NOT A CRIME.

A Public Service Accountability Project

With respect to the recommendations made, BLACK IS NOT A CRIME. would like to note its concern about the immediate implementation of Form 306 in its current form. As noted by previous deputants, if Form 306 does not provide information about the perceived race of the individual being stopped and the specific reason for the stop, it will be useless as a tool of public accountability and transparency.

Justifications like “Community Engagement” and “General Investigation” are catchall terms that are easily manipulated to legitimize racial profiling and other *Charter* violations. There is no need to record an individual’s name, birth date and other personal information to establish that an officer is building community relations (i.e. shaking hands and kissing babies).

Let us not forget why this interim measure was requested in the first place – because absolute discretion and lack of oversight led to abuse of police power and the harassment of young Black men for no reason other than the colour of their skin.

The Sub-Committee has asked the Chief about the current policies on “when an officer may (a) conduct a Street Check, (b) record the Street Check on a Form 208/Field Information Report (FIR), and (c) must issue a receipt?.” The Sub-Committee has also asked “What accountability measures exist in relation to the conduct of Street Checks?”

BLACK IS NOT A CRIME. requests that the Chief be asked to report specifically on the steps to be followed by the public if and when a receipt is not issued; where complaints can be made; and, most importantly, what consequences might befall an officer who is determined to have failed to issue a receipt (and ultimately a carbon copy).

It is ironic that the Sub-Committee has asked how best to involve community stakeholders. These are the community stakeholders that have already appeared before you: Urban Alliance on Race Relations, Toronto Police Accountability Coalition, Canadian Civil Liberties Association, African Canadian Legal Clinic, Black Action Defence Coalition, Front Line Partners with Youth Network, Justice for Children and Youth, Office of the Provincial Advocate for Children and Youth, Miguel Avila, the Law Union of Ontario, Justice is Not Colour Blind, Lazarus Rising Street Pastor, Community Legal Aid Service Program, Rand Schmidt, and BLACK IS NOT A CRIME. The community has been involved. We have made these and other recommendations time and time again. We will no longer continue to offer legitimacy to this Board by engaging in what has so far been a futile process.

We also note that the only stakeholder singled out for consultation in the Sub-Committee’s report is one that has not once appeared before this Board on this issue – the Ontario Human Rights Commission. The Commission’s position with respect to racial profiling is clear. We refer you to the Commission’s 2003 publication, “Paying the Price: The Human Cost of Racial Profiling,” which is readily available on the Commission’s website.



BLACK IS NOT A CRIME

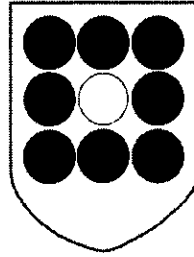
A Public Service Accountability Project

If you implement the recommendations that have been made and get answers to the questions that have been asked in a timely manner, the community will continue to provide our feedback and be engaged.

Sincerely,

BLACK IS NOT A CRIME.

CANADIAN
CIVIL LIBERTIES
ASSOCIATION



ASSOCIATION
CANADIENNE DES
LIBERTES CIVILES

Submissions to the Toronto Police Services Board

Noa Mendelsohn Aviv, Equality Program Director
Canadian Civil Liberties Association

April 25, 2012

RE: Report of the Toronto Police Services Board on "Street Check Committee – Update"

CCLA

The Canadian Civil Liberties Association (CCLA) is a national organization with thousands of supporters drawn from all walks of life. The CCLA was constituted to promote respect for and observance of fundamental human rights and civil liberties and to defend and foster the recognition of those rights and liberties. The CCLA's major objectives include the promotion and legal protection of individual freedom and dignity against unreasonable invasion by public authority, and the protection of procedural fairness.

Introduction

The Report and Recommendations raise significant concerns. They maintain the continuation of "street checks" for the purpose of "community engagement" without proper safeguards that would ensure their constitutionality, and they fail to create a tool that could help create transparency and accountability on the part of the Toronto Police Service.

I. "Street Checks"

The very notion of a "street check" is improper, and implies that it is legitimate for police to approach anyone anywhere, intrude into people's time and space, and invade their privacy without proper justification. "Community engagement" is not sufficient justification. Indeed, these stops often undermine the goals of law enforcement and of the criminal justice system.

When police stop individuals without justifiable reasons, ask questions, and particularly when they record people's names and identities, this constitutes an unconstitutional violation of those individuals' privacy, liberty and dignity. To the extent that the stops disproportionately

Without providing a carbon copy of this basic information, any receipt or form, including Form 306, will be ineffective.

More insidiously, Form 306 may cause more damage to the community than good, as it appears to justify the violation of people's rights for no good reason. It appears to justify "street checks" and detaining, questioning, and recording the identity and personal information about a person for such reasons as "community engagement" and "general investigation." These are insufficient reasons to justify measures that violate people's fundamental rights.

Recommendations regarding the "receipt" and Form 306:

3. Proposed Form 306 makes it appear – both to police and to the community – that general "fishing expeditions" are acceptable. They are neither acceptable nor lawful in Canada. Form 306 should not be approved or put into use by the Toronto Police Service.

4. Instead, the Board is urged to require the Toronto Police Service to provide a "mirror copy" as set out above, as a necessary tool for transparency and accountability. This copy should include as well information about a person's rights, and how to protect them. CCLA would be happy to consult with the TPSB on this matter.

III. Recommendation - General:

5. CCLA urges the Board adopt these recommendations promptly, and address these serious issues without further delay.

THE
LAW UNION
OF ONTARIO

Please address reply to:

Howard F. Morton, Q. C.
31 Prince Arthur Avenue
Toronto, Ontario M5R 1B2
Tel. 416-964-7406 Ext155
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April 24, 2013

Toronto Police Service Board
40 College Street
Toronto, Ontario
M5G 2J3

**SUBMISSIONS OF THE LAW UNION OF ONTARIO RE: STREET CHECK
SUBCOMMITTEE – UPDATE**

To recognize always that the power of the police to fulfill their functions and duties is dependent on public approval of their existence, actions and behavior, and on their ability to secure and maintain public respect.

To recognize always that to secure and maintain the respect and approval of the public means also the securing of willing cooperation of the public in the task of securing observance of laws.

To recognize always that the extent to which the cooperation of the public can be secured diminishes, proportionately, the necessity of the use of physical force and compulsion for achieving police objectives.

To seek and to preserve public favour, not by pandering to public opinion, but by constantly demonstrating absolutely impartial service to law, in complete independence of policy, and without regard to the justice or injustices of the substance of individual laws; by ready offering of individual service and friendship to

all members of the public without regard to their wealth or social standing; by ready exercise of courtesy and friendly good humour; and by ready offering of individual sacrifice in protecting and preserving life.

Sir Robert Peel, principles 2-5 of the nine Principles of Policing on the creation of the London Police Constabulary, 1829

It is respectfully submitted that the April 19, 2013 update by the subcommittee evolves from a conclusive underpinning which flies in the face of supreme law of Canada.

This conclusive and underpinning, rationale for the sub-committee's conclusions and recommendations is stated in paragraph 1 at page 3 of the Update as follows:

The Subcommittee has carefully reviewed the request made by several deputants that the practice of Street Checks be stopped in its entirety. Given TPS operational requirements, the Subcommittee does not believe that stopping the practice of Street Checks is realistic. The Subcommittee believes that it is more practical to focus on the impact and purpose of Street Checks. (Emphasis added)

The issue is not whether the use of Form 208 and the manner in which it is deployed are necessary in order that the TPS can meet its operational requirements.

The issue is whether such use and deployment are lawful.

The Law Union of Ontario continues to maintain that both Form 208 and the manner in which it is filled out, ie, street checks, are violations of the *Canadian Charter of Rights and Freedoms*, the *Ontario Human Rights Code*, and municipal and provincial privacy legislation.

Throughout the history of the common law many unlawful investigative stratagems have been used by police officers in free and democratic societies. These stratagems were often carried out under the guise of being necessary due to "operational requirements" to facilitate criminal investigations, prosecutions or intelligence gathering operations.

Some examples of such conduct are:

- Using physical or psychological force to obtain confessions or statements;
- Unlawful entry on property or buildings without a search warrant or exigent circumstances;
- Unlawful wiretap or other interception of communications without judicial authorization;
- The unlawful removal and replacement of private property for investigative purposes;

Even prior to the *Charter of Rights and Freedoms* such conduct was held by Courts to be unlawful requiring a cessation on their use. Under the *Charter of Rights and Freedoms* such practices have been held to be violations of the supreme law of Canada.

We appreciate that the legal opinion requested by the Board is not yet completed. We anxiously await to review it.

In the interim we are concerned that the “questions” set out in Appendix B of the Subcommittees Update fail to even mention the overriding issue before the Board, i.e.: **Are form 208 street checks lawful? Are they violations of Charter rights and freedoms? Do they violate the *Ontario Human Rights Code* and privacy legislation?**

The Law Union of Ontario restates its position set out in our November 12th, 2012 submission that this Board has an absolute obligation to undertake a comprehensive analysis of the practice of “carding” or street checks.

The *Police Services Act* of Ontario provides as follows:

- s.1 Police services shall be provided throughout Ontario in accordance with the following principles:
 - 2. The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.
- s. 31(1) A board is responsible for the provision of adequate and effective police services in the municipality and shall:
 - s.31 i(e) The board shall... direct the Chief of Police

Justice Morden in his June 29, 2012 *Report into Independent Civilian Review Into Matters Relating to the G-20 Summit* cites sections 1.2 and 31(1) and finds as follows:

... The purpose of the provision is rather to remind those acting under the *Police Services Act* of the constant bearing of the *Charter* and the *Human Rights Code* on the performance of their duties. This is critically important because the exercise of so many police powers, for example, those of arrest, detention and search and seizure engage rights that are protected by the *Charter* and the *Human Rights Code*.

Recommendation

In addition to the interim measure set out in the update, the Board should forthwith direct Chief Blair to issue a standing order or directive mandating that all officers caution persons approached for the purpose of 208 carding or street checks, advising such persons that they have the right to refuse to answer questions and are free to go.

Such a caution could read as follows:

I am a police officer.

I would like to ask you some questions.

You have the right to refuse to answer my questions and you are free to go.

The Law Union of Ontario is not attempting to discourage persons from co-operating with the police. We adopt Sir Robert Peels principles citing that public cooperation is essential to effective law enforcement.

However, just as the police have a right to ask pertinent questions in a professional manner, members of the public with extremely few exceptions have an absolute right to refuse to answer. It is difficult to imagine why law enforcement officers would oppose advising members of the public what the law is.

In our January 23rd, 2013 submission we stated the following:

“In labeling street checks as form of “community engagement” Police claim they are a form of community policing. In reality, street checks are carried out as intelligence gathering of personal information from of the tracking of individuals who are not engaged in criminal or antisocial behavior and who are conducting themselves in a law abiding manner.

Many individuals, particularly youths, are unaware that they have the right to walk away and not answer any questions. They feel intimidated and obliged to respond often arising out of the inherent power difference between the police and youths. Even if individuals are aware of this right they often fear reprisal of one form or another if they attempt to exercise their right. There are authenticated reports from individuals who claim that when they declined to produce identification and/or answer questions, officers resorted to illegitimate ruses and strategies such as the following:

1. Officers falsely state that they are involved in a criminal investigation and that the individual matches the description of the suspect. It would seem that some officers wrongly believe that by so stating they bring themselves

within the broader scope of investigative detention as prescribed in *R. v. Mann*.

2. Officers attempt to circumvent the individuals assertion that they do not wish to identify themselves or answer questions by making implicitly threatening remarks such as:
 - What's in your pockets?
 - What are you trying to hide?
 - Do I have to take you to the Police Station to straighten this out?
 - Have you been using drugs?
 - What is your criminal record?
 - What are you doing in this neighborhood?

Furthermore, street checks are most often carried out in neighborhoods and communities in which the police seek and require cooperation in their pursuit of legitimate law enforcement and criminal investigation purposes. Community groups, legal clinics, and social justice groups strongly believe that the reality of street check policy is racist policing of persons who are often young, racialized, or marginalized. This belief is supported by reports from persons who have been the subject of street checks and by statistics reported by the Toronto Star.

See also Appendix A (attached)

All of which is respectfully submitted on behalf of the Law Union of Ontario.

Howard F. Morton, Q.C.

SCENARIO

Two 17 year old black males X and Y are walking on the sidewalk in a residential area at 3pm in the afternoon. Neither youth is doing anything suggestive of wrongdoing. The youths are stopped by two officers who are on foot patrol. One officer states "we want to see ID" in a demanding tone and asks them why they are at that location. The youths, who at this point seem quite nervous, advise the officers that a lawyer had told them at a school function that they were not required to produce ID or answer any questions. One of the officers then falsely states that the youths match the description of gang members who had committed a series of break and enters one street over the day before. The officer then states "we can settle this here or: We will take you to the station and settle it there". The officers then conduct a pat down search of the youths while asking: "What do you have to hide? Are those drugs in your pocket?"

The youths become increasingly alarmed and provide their ID. One of the officers returns to his cruiser with the ID while the other stands beside the youths. On his return, the officer holds onto the ID and asks several questions such as where they live, where they attend school, where were they born, whether their parents are married and live together, and the names of their associates. The youths now very nervous, answer all of the questions. The second officer writes their responses in his notebook. After some twenty minutes they are given back their ID and told to be on their way and to keep their noses clean. Subsequently the officer fills out a "Form 208".

The officers are clearly in violation of the *Charter* and the *Human Rights Code* for the following reasons:

1. The officers are on general patrol and are not in the course of a criminal investigation.
2. While the officers may have been entitled to lawfully approach the youths and ask some questions, that is not what occurred. The officers' expression was a demand rather than a request.
3. There is absolutely nothing in the conduct of X and Y which could cause an officer to have a reasonable suspicion that the youths were in any manner connected to a recent or ongoing crime. There is no suggestion of trespass.
4. Although there are some elements of a physical detention there is clearly psychological detention as per *Grant* in that a reasonable person in these circumstances would conclude that they had no choice but to provide identification and answer questions.
5. The physical contact involved in the pat down search.
6. The power imbalance between the police and the youths.
7. The youths are members of a racial minority.
8. The falsehoods and implicit threats made by the officers.
9. The duration of the interaction.

**THIS IS AN EXTRACT FROM THE MINUTES OF THE PUBLIC MEETING OF THE
TORONTO POLICE SERVICES BOARD HELD ON JUNE 20, 2013**

**#P160. STREET CHECKS – INTERIM RECEIPT PROCESS & DEFERRAL OF
THE AUDITOR GENERAL’S REVIEW OF THE POLICE COLLECTION
OF DEMOGRAPHIC DATA**

The Board was in receipt of the following report June 07, 2013 from Marie Moliner, Board Member & Chair, Street Check Sub-Committee:

Subject: UPDATE - TORONTO POLICE SERVICES BOARD STREET CHECK SUB-COMMITTEE

Recommendation:

It is recommended that the Board receive the following report.

Financial Implications:

There are no financial implications arising from the Board’s receipt of this report.

Background/Purpose:

In its last update report to the Toronto Police Services Board, the Street Check Sub-Committee proposed a series of recommendations which were adopted, as amended, by the Board as follows:

- a. That, as an interim measure, the Chief implement by no later than July 1, 2013, the use of Form 306, proposed by the Chief at the Board meeting in December 2012, for all stops where a FIR (208) is required to be completed.
- b. If the Form 306 continues to include a reference to “community engagement”, that the Chief provide the Board, for its’ information, a copy of the written instructions to TPS members defining what types of interactions constitute “community engagement”.
- c. That the Chief prepare a public communiqué to be posted on the TPS website and on Divisional web pages, which explains the purpose of the relevant Street Check forms and how they inter-relate. For ease of reference by the public, the current forms being used (208/FIR/306) should be posted to the website as part of this communiqué.
- d. That the Chief provide a report to the Board responding to the deputants’ requests for revisions to Form 208/FIR and to the viability of providing a carbon copy or equivalent record so that individuals are more fully informed of what has resulted from the stop and able to obtain appropriate information.

- e. That the Chief provide, to the Sub-committee, a list and summary of all materials the TPS has gathered on the collection of race-based data on stops.
- f. That, as offered by the Chief at the Board's meeting in December 2012, the Chief produce a standardized quarterly report for the Board on Street Check practices beginning with the first quarter of 2013; including information about the implementation of Form 306, about the age and race of persons stopped and additional information which will enable an analysis of the nature and quality of Street Check activity and its impact on community safety (Min. P271/12 refers).
- g. That the Chief provide a status report at the June 2013 public Board meeting on the implementation of these directions.

The Board also approved a recommendation which requested that the Chief work closely with the Sub-Committee as it works through the various tasks enumerated in the Sub-Committee's draft Terms of Reference (Board Min. P121/13 refers).

Discussion:

Since the last update report the Street Check Sub-Committee has held two meetings.

On May 21, 2013, the Street Check Sub-Committee convened a meeting to which it invited City of Toronto Auditor General Jeff Griffiths and his staff. The Auditor General attended this meeting in light of the Board's 2012 request that he conduct an analysis of TPS community contacts. (Report from Auditor General filed separately)

The Sub-Committee received an update from Deputy Chief Peter Sloly who advised that extensive work is being done within the Toronto Police Service to review and substantially revise the current Field Information Report (FIR) process and to consider the most workable format for an interim receipt. The Sub-Committee was advised as to the complexity of this work and the challenges the Service is facing to complete its Street Check review and develop an appropriate receipt, print and distribute the receipt, and conduct training for Service members prior to the Board-approved July 1, 2013 implementation date.

Given the on-going review and revision process within the Service, the Sub-Committee determined that, with respect to items (a) through (g) in its April 25, 2013 report (cited above) it is reasonable to expect that, while most of the requested items can be addressed by July, items (e) and (f) will not be available to the Board until late 2013, at the earliest.

The Sub-Committee met again on May 28, 2013. At this meeting, the Sub-Committee invited a number of community stakeholders to hear Deputy Sloly and members of his team describe the revisions that are being contemplated to the Street Check process and the challenges presented by the timelines approved by the Board, particularly for the implementation of the receipt.

This Sub-Committee meeting was attended by several individuals, organizations and institutions interested in the issue including Mr. Alvin Curling, co-author of the Roots of Youth Violence Report, Mr. Doug Ewart, Policy Lead, Roots of Youth Violence Report, and a representative of the Jamaican Canadian Association.

The stakeholders were invited to attend because of the impending new developments in the TPS approach to Street Checks and because of the timelines with respect to the work of both the Street Check Sub-Committee and the Chief's internal review on police-community interaction in public places, being led by Deputy Sloly. Deputy Sloly outlined the proposed, revised process for Street Checks and explained the various challenges including those presented by the implementation schedule approved by the Street Check Sub-Committee and the Board.

Sub-Committee members expressed appreciation for the thoughtful input provided by the stakeholders. The Sub-Committee committed to providing the stakeholders with an update prior to the June 20, 2013 Board meeting.

Conclusion:

There has been significant work done over the past 6 weeks by Deputy Chief Peter Sloly and his team. The Street Check Sub-Committee looks forward to the Board's consideration of the report from Chief Blair at the June 20, 2013 Board meeting and to

The Board was also in receipt of the following report June 05, 2013 from Jeff Griffiths, Auditor General, City of Toronto:

SUBJECT: DEFERRAL OF AUDITOR GENERAL'S REVIEW OF POLICE COLLECTION OF DEMOGRAPHIC DATA

SUMMARY

The purpose of this report is to inform the Police Services Board of the deferral of the Auditor General's review of police collection of demographic data. The Auditor General determined that the deferral was necessary and appropriate given the Police Service's plan to implement significant changes to street checks conducted by officers.

In response to the Board's request to conduct a project on police collection of demographic data, the Auditor General assigned staff to begin planning for the requested project. In addition, the Auditor General held four separate meetings in April and May 2013 with the Chair of the Board, the Chief of Police, the Deputy Chief of Police, and the Director of the City's Legal Services Division to discuss the proposed terms of reference for the project.

The Auditor General also attended the Street Check Sub-Committee's May 21, 2013 meeting, and presented his draft project terms of reference to the Sub-Committee. During the meeting, Deputy Chief Sloly advised that the Service has been undertaking an internal review of the street check practice, and would be implementing significant changes that will take effect July 1, 2013. The planned changes, according to the Deputy Police Chief, would substantially alter and improve police policies and procedures, data collection and retention, officer training, and officer performance evaluation relating to street checks.

Conducting any audit when significant changes to policies and procedures are being implemented provides little to no value and results in the inefficient use of audit resources. In view of the latest information from the Police Service, the Auditor General has decided to defer the review until after the Service has implemented the planned changes. A review by the Auditor General may be contemplated after the new policies and procedures have been in effect for at least 12 months.

The decision to defer the Auditor General's review was supported by members of the Street Check Sub-Committee, the Director of the City's Legal Services Division, and the Deputy Police Chief at the Street Check Sub-Committee's May meeting. The Auditor General also consulted the Chair of the Board on the deferral prior to preparing this report.

RECOMMENDATION

The Auditor General recommends that:

1. This report be forwarded to the City's Audit Committee for information.

Financial Impact

The recommendations in this report have no financial impact.

DECISION HISTORY

At its April 5, 2012 meeting, the Toronto Police Services Board approved a report containing the following recommendations:

1. (that) the Board, in order to establish baseline data showing the pattern of contact between the police and members of the community in general, and young people from certain ethno-racial backgrounds in particular, request the City of Toronto Auditor General conduct a project to collect and analyze data related to such contacts between the police and the community; and
2. (that) the Auditor General be requested to report to the Board in public on the results of the project, no later than the December 2013 meeting of the Board.

The Board also approved, *inter alia*, the following Motion:

THAT the Auditor General be requested to meet and consult with the Chief of Police and the Police Services Board in the development of terms of reference for this study and identify any procedural issues that may require the Board's direction.

In response to the Board's request, the Auditor General included in his 2013 Audit Work Plan a review of police collection of demographic data. The 2013 Audit Work Plan was adopted by City Council at its November 2012 meeting. The 2013 Audit Work Plan is available at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.AU9.4>

COMMENTS

In accordance with the 2013 Audit Work Plan, audit staff began preliminary planning for the requested project in early 2013. Planning activities included reviews of the following information:

- relevant deputations and reports to the Board
- police policies and procedures governing street checks
- the form used to collect street check data
- related newspaper articles and other published studies
- consultation with academics with expertise in police services.

In addition, in accordance with the Board's request and the approved Motion, the Auditor General held separate meetings with the Chair of the Board, the Chief of Police, the Deputy Chief of Police, and the Director of the City Legal Services Division in April and May 2013 to discuss the development of the terms of reference for the requested project.

Based on results of preliminary audit reviews and consultations, the Auditor General decided to broaden the scope of the requested project to include other areas in addition to a quantitative analysis of street check statistics. The expanded scope included other aspects of street checks such as:

- the design and implementation of supervision and monitoring
- data collection and retention
- officer training
- performance evaluation.

A draft audit terms of reference had been developed based on the expanded scope.

The draft terms of reference was presented and discussed at the Street Check Sub-Committee's May 21, 2013 meeting by the Auditor General. During the meeting, Deputy Chief Sloy advised that the Service has been undertaking an extensive internal review of police street checks and would be implementing substantial changes to the practice starting July 1, 2013. The planned changes, according to the Deputy Chief, would significantly improve existing policies and procedures governing street checks, types of information collected, record retention, officer training, and the design of officer performance evaluation in relation to street checks.

After considering the latest information from the Deputy Police Chief, the Auditor General determined that a review should not be conducted during a time when the Service would be introducing significant changes to its street check practice. A review by the Auditor General may be considered after all of the changes have been in effect for at least 12 months.

With support from members of the Street Check Sub-Committee, the Director of the City's Legal Services Division, and the Deputy Police Chief, the Auditor General decided to defer the planned review until a later time when the Police Service has completed the implementation of changes to improve the street check practice. Prior to preparing this report, the Auditor General also consulted with the Chair of the Board on the deferral of the planned review.

CONTACT

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Jane Ying, Senior Audit Manager, Auditor General's Office

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The following persons were in attendance and delivered a presentation to the Board on the interim receipt process:

- **Deputy Chief Peter Sloly, Divisional Policing Command;**
- **Sgt. Aly Virji, FIR Review Team; and**
- **P.C. Ali Moosvi, FIR Review Team.**

A paper copy of the presentation is appended to this Minute for information.

The following persons were in attendance and delivered deputations to the Board:

- **Howard Morton and James Roundell, The Law Union of Ontario ***
- **Odion Fayalo, Justice is Not Colour Blind ***
- **John Sewell, Toronto Police Accountability Coalition**
- **Barbara Hall, Chief Commissioner, Ontario Human Rights Commission**
- **Roger Love, African Canadian Legal Clinic ***

*** written submission also provided; copy on file in the Board office.**

The Board was also in receipt of the following written submissions:

- **June 10, 2013 from Alvin Curling, Strategic Advisor on Youth Opportunities to the Minister of Children and Youth Services**
- **June 20, 2013 from Noa Mendelsohn Aviv, Equity Program Director, Canadian Civil Liberties Association**

Copies of the foregoing written submissions are on file in the Board office.

Following the presentation and the deputations, Chief Blair and Deputy Chief Sloly responded to questions by the Board.

The Board approved the following Motions:

- 1. THAT the Board receive the deputations and the written submissions and that the deputations be referred to the Board's Street Check Subcommittee;**
- 2. THAT the Board receive the report from Ms. Moliner;**
- 3. THAT the Board receive the presentation delivered by Deputy Chief Sloly, Sgt. Virji and PC Moosvi; and**
- 4. THAT the Board receive Mr. Griffiths' report and forward a copy to the City of Toronto - Audit Committee for information.**

Moved by: M. Moliner

June 20/13
P160

Please address reply to:

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Tel. 416-964-7406 Ext155
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June 20, 2013

Toronto Police Services Board
40 College Street
Toronto, Ontario
M5G 2J3

STREET CHECKS - CARDING

Submissions on Behalf of the Law Union of Ontario

1. The Law Union of Ontario remains of the strong view that both the Toronto Police Service policy with respect to "carding" and the manner in which it is carried out violate the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.

See Law Union written Submissions to the Board dated November 12, 2012, January 23, March 27 and April 24, 2013.
2. The Police Services Act of Ontario provides as follows:
 - s.1 Police services shall be provided throughout Ontario in accordance with the following principles:
 2. The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.
 - s. 31(1) A board is responsible for the provision of adequate and effective police services in the municipality and shall...
 - s. 31i(e) The board shall... direct the Chief of Police.

Justice Morden in his June 29, 2012 *Report into INDEPENDENT CIVILIAN REVIEW INTO MATTERS RELATING TO THE G-20 SUMMIT* cites sections 1.2 and 31(1) states as follows:

... The purpose of the provision is rather to remind those acting under the Police Services Act of the constant bearing of the *Charter* and the *Human Rights Code* on the performance of their duties. This is critically important because the exercise of so many police powers, for example, those of arrest, detention and search and seizure engage rights that are protected by the *Charter* and the *Human Rights Code*.

3. We appreciate that the Toronto Police Service is in the process of reviewing the practices, procedures, training and professionalism with respect to all interactions between officers and members of the public, of which “carding” is but one.
4. While we applaud this effort we are greatly concerned with the ever increasing, justified, fear, anger, and resentment which is growing daily in communities who view both carding and the manner in which it is carried out as racial profiling and racist.
5. The Law Union of Ontario has had several meetings with stakeholder community groups. There is a clear consensus among them that:
 - 1) The practice of carding is a major obstacle both to the community trust of the Toronto Police Service and to cooperation by community members in criminal investigations, and other legitimate police activities.
 - 2) The Toronto Police Services Board has demonstrated through its delay and fumbling on the issue that it is not prepared to address, not only the “carding: issue, but racial profiling in policing generally.

6. At its January 23, 2013 meeting, the Board appeared to recognize its obligation, pursuant to the Justice Morden Report, to ensure that the policy and practice of "carding" did not violate the *Charter* or Human Rights legislation. The Board requested the City Solicitor to provide a legal opinion on this issue for the March 27, 2013 meeting. This legal opinion has still not been provided and the delay seems indicative of the Board's lack of commitment to the public's concern and apprehension of this issue.

Recommendation 1

7. Given that the Board has had this issue before it for over one year and seems unable to respond to public concern and anger in a timely fashion, we urge the Board to direct Chief Blair to suspend the practice of "carding" until the Board reaches its conclusion with respect to whether the practice violates the *Charter* and Human Rights legislation.

Recommendation 2

8. In the event that the Board is unwilling to suspend "carding" until these issues have been resolved we urge the Board to forthwith direct Chief Blair to issue a standing order or directive mandating that all officers caution persons approached for the purpose of 208 carding or street checks, advising such persons that they have the right to refuse to answer questions and are free to go.

9. Such a caution could read as follows:

I am a police officer.

I would like to ask you some questions.


You have the right to refuse to answer my questions and you are free to go.

10. The Law Union of Ontario is not attempting to discourage persons from cooperating with the police. We adopt Sir Robert Peels principles citing that public cooperation is essential to effective law enforcement.
11. However, just as the police are entitled to ask pertinent questions in a professional manner, members of the public with extremely few exceptions have an absolute right to refuse to answer. It is difficult to imagine why law enforcement officers would oppose advising members of the public what the law is.
12. A decision to delay the Auditor General's report, the delivery of all TPS material and data related to the race-based nature of the stops, and the quarterly report on the nature and quality of Street Checks is illogical and will further exacerbate community and public frustration and anger.
13. The Auditor General refers to the significant changes being implemented on July 1 which would render the audit of little or no value. With respect, the Auditor General and the Street Check Subcommittee have misunderstood what the purpose of the request is. The purpose is to establish a baseline using the data from 2009 when the collection of demographic data on all police interactions was implemented, to the present.
14. The baseline is the only way to interpret the effectiveness of any future changes to police policy and operational changes. Implementing significant changes does

not reduce but increases the need for the report this board requested. A quarterly report on Street checks would serve a similar purpose, and need not wait for new changes or implementation of receipts.

15. Furthermore, although the request was in the context of the Toronto Star report on Street Checks showing the disproportionate targeting of racialized young men, the request is for an analysis of ALL police interactions with community members.
16. The provision of all existing Toronto Police Service material and data related to the race-based nature of stops will provide a baseline by which to determine the effectiveness of subsequent changes and improvements to "carding" should it be held to be lawful.

Recommendation 3

17. **That the Board direct the Auditor General to proceed with its audit as originally mandated and that no deferral be permitted.**
- 

All of which is respectfully submitted on behalf of the Law Union of Ontario.

Howard F. Morton, Q.C.
James Roundell

Adion Fayalo

P160/13
June 20th

Good afternoon Mr. Chair and Board members:

I am here as a representative of Black youth and the wider African Canadian community in the Greater Toronto Area to speak to the updated Street Check Subcommittee report.

Admittedly, it is difficult for me to speak to this report without at first acknowledging and validating the public claims made by members of the Somali community that have been further stigmatized by the actions of some officers during Project Traveller. Their stories concerning the use of unnecessary force by police are the same as the stories of Black youth and the wider African Canadian community.

The commonality of stories is definitely an indication that street checks are not the only problem. Certain conditions must inhere if the African Canadian community, in cooperation with the law enforcement and criminal justice establishments, is to commit itself effectively to the support of the nation's laws, their enforcement, and is to prevent or significantly reduce criminal activity in its midst.

Speaking as a Youth Outreach Worker that works to build the capacity of Black youth, that have disproportionate contact with police personnel in the York South-Weston community, and a member of the Justice IS NOT Colour-Blind Campaign, we think the Board must work towards bringing about the following outcomes in cooperation with the African Canadian community – in order to improve the enforcement of laws:

1. Authorities and police personnel must impartially enforce the laws and not permit themselves to be perceived as representatives and enforcers of discriminatory racial, class, institutional attitudes and practices. In this case, perception is actually reality, and street checks; delays by this Board, and raids, only hurt the image of the police since many members of the Black community already see the police as serving and protecting White, rich and powerful men, including this city's political leadership;
2. Police authorities and personnel must be equally and as speedily responsive to the needs of the African Canadian community as they are to non-African Canadian communities. Why are we subject to street checks and raids as forms of crime-reduction? Conversely, why are White ethnic communities mostly or totally free from such tactics?
3. The African Canadian community does by all means saliently demand the swift, sure and effective punishment of those of its constituents who dare victimize, in whatever manner and for whatever reasons, any other of its members. Culprits who commit Black-on-Black crime should be aware of the fact that the community will not tolerate, rationalize, countenance or in any way condone the victimization of one Black by another. People in the African Canadian community are ridding themselves of the internalized racist belief that African life is less precious than non-African life, especially White life. While doing this, we are actively committed to systemic change of the police and criminal justice establishments along the lines suggested above, and at previous deputations. The African Canadian community will unequivocally and loudly condemn, and vigorously pursue the fair-minded prosecution of those Blacks who harm

other Blacks, no matter their station in life, when police personnel and authorities serve and learn to differentiate the criminal and noncriminal elements in the African Canadian community.

At this point in time, the issue is more than street checks. The police and this Board are not respecting the intelligence of the African Canadian community and are exhibiting non-confidence in its capacity to know how best to solve its social problems. You are not actively listening to the community but are in fact paternalistically and autocratically dictating solutions to our problems. This must come to end. This is why we must reiterate again the importance of re-educating the Service's officers along an Afrocentric educational framework.

If police and criminal justice personnel continue to abuse their power and authority, and use unnecessary force against the community, then, there will be a point in time when the African Canadian community will realize that it has the *right* and duty to defend itself from its criminal elements if the government, to which it pays taxes, and whose officials it helps to elect, fails to do so. Ultimately, we cannot permit ourselves to be victimized by police who enforce discriminatory racial, class, institutional attitudes and practices. This is a complex problem that can only be solved when both the police and the African Canadian community cooperate in implementing racially representative and equitable policing in this city.



June 20, 2013

RE: SUBMISSION OF THE AFRICAN CANADIAN LEGAL CLINIC ("ACLC") TO THE TORONTO POLICE SERVICES BOARD ("TPSB") RE 2012 Annual Hate / Bias Crime Statistical Report

Since 1994, the African Canadian Legal Clinic ("ACLC") has been an advocate for African Canadian rights in groundbreaking cases before every level of the Canadian Justice system. We have been involved in cases involving racial profiling by law enforcement; the collection and reporting of disaggregated race-based data; and the impact of police record keeping practices. As early as March 2012, we have appeared before the Toronto Police Service Board ("TPSB"), and made countless recommendations which respect to the collection of 208 cards or field information reports. We have asked for carbon copies or receipts of 208 cards, periodic reports of disaggregated race-based data, a review of the existing carding statistics by independent academic with expertise in the area of race and policing, and a general recognition that the practice of carding by the Toronto Police Service amounts to racial profiling.

In March 2012, we advised the TPSB of the numerous legal and social science studies and reports on this issue that have been produced over the last thirty years. Over the past four decades, numerous reports documented the strained relations between the police and the African Canadian community. The ACLC has identified at least 15 reports issued since the 1970s dealing with police/minority relations in Canada. This is not a new issue. In order to move forward, TPS must use this information as the cornerstone of their analysis of carding practices. Similarly, the Auditor General must use this history as the starting point for any analysis of carding statistics.

We commend the Street Check Sub-Committee for advancing the long overdue recommendation that the Chief provide quarterly reports on street check practices and carbon copies or receipts of 208 cards. We applaud the recommendation that the Chief provide receipts as an interim measure in July 2012. Sadly over a year later, members of our community have been forced to wait for the implementation of any of these key recommendations. According to a Toronto Star report, the Auditor General will delay any analysis of carding statistics until TPS has completed a review of its policies and procedures with respect to carding.¹ This position shows no respect for the experiences of African Canadians and other marginalized groups who have lived through decades of discriminatory police practices. Furthermore it ignores the studies that have been conducted since the 1970's which have accurately documented this phenomenon.

The decision to delay the review, and Chief's status report will inevitably skew the investigative findings as officers may temporarily change their behaviour during the review period. While we are hopeful that the changes to the carding process suggested by Deputy Chief Slowly will spark some improvement, the internal efforts of TPS should not delay or stand in the place of an independent review. We can see no reason why a full review of the existing 208 data cannot be conducted. In light of the disproportionate rate at which black and brown Torontonians are stooped, and its impact on the legitimacy of our police services, prompt attention to the issue is necessary.

¹ Winsa, Patty and Rankin, Jim. "Carding Review Delayed a Year" *Toronto Star* 20 June 2013 Print.

In addition to the foregoing, we call for an end to the practice of tying an officers performance to the number of street checks conducted. As noted by a Toronto Star Report, "Officers with high [208] numbers climb higher at a steady pace" while low counts "can delay scheduled promotions".² The Star article also pointed to the well known fact that some officers are directed to meet a street check quota. This practice must be ended. As part of our analysis of this issue we have been advised that young girls in the Jane and Sheppard neigoubourhod have been stopped by officers and have observed officers handing out coupons to young children in exchange for personal information about themselves or other community members. There should be no reward for engaging in this type of conduct. This is not community engagement.

Further delay with respect to the implementation of Form 306, or the Auditor General's review will be highly detrimental to the community-police relations. These recommendations should be implemented immediately as part of a highly publicised pilot project. TPS should use the pilot project as an opportunity to correct any issues that may arise and hold further public consultations.

Recommendations:

1. The Auditor General should act in accordance with the Board's recommendation to perform a review of street check data at hand. The independent review, must be independent. It should be carried out irrespective of any ongoing analysis or review being conducted by the TPS. Any recommendations stemming from an immediate review should be submitted to TPS and used as part of an ongoing analysis of the issue.
2. Field Information Reports should no longer be used to measure police performance. Simply put, officers should not be rewarded for carding individuals.
3. The Toronto Police Service should conduct a highly publicized pilot project to advise the community that officers will issue receipts after each stop where personal information is documented in a Field Information Report.

Roger Love
Advice Counsel
African Canadian Legal Clinic

² Winsa, Patty and Rankin, Jim. "Carding Review Delayed a Year" *Toronto Star* 20 June 2013 Print.

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P110013
June 20th
Ontario

June 10, 2013

Ms. Marie Moliner
Chair, StreetCheck Subcommittee and
Member, Toronto Police Services Board
40 College Street
Toronto M5G 2J3

Dear Ms. Moliner

I appreciate very much having been invited to the meeting that you and Deputy Chief Peter Sloyly held on May 28th to advise a small group of community members of the plans that the Deputy Chief has been developing to improve the quality of the interactions between Toronto police officers and Toronto residents, particularly Black youth.

While the time available for responses to the Deputy Chief's thorough presentation did not permit much of a discussion of his plans, it was nonetheless very valuable to be brought up to speed on them. I know that those present from the community, and many others, would welcome further opportunities for meaningful engagement and consultation on the overall contents of the important new strategy that the Deputy Chief spoke about. In the meantime, I fully support the decision to proceed on July 1 with the proposed interim receipt.

In listening to the Deputy Chief, I was struck by how closely some of his comments reflected what my co-Chair, the Hon. Roy McMurtry, and I heard during the 18 months we spent consulting on and preparing our 2008 Review of the Roots of Youth Violence. In particular, I appreciated hearing his clear and well-articulated understanding of the often very negative impacts on racialized youth, their friends, families and community – and indeed their future prospects – that can flow from aggressive policing strategies, and his recognition of the need to change policing practices to reduce these kinds of impacts.

It was also gratifying to hear the recognition that at a policy level there is a need to balance the perceived benefits of strategies such as TAVIS against their potential to cause serious harms to individuals and communities.

I am taking the liberty of attaching to this letter some extracts from the Report on the Roots of Youth Violence that discuss this serious situation and propose some responses. The extracts include the following comments that I am setting out here (reordered for ease of reference) to highlight the need for effective and immediate action:

We fully appreciate that the neighbourhood conditions we described in chapters 4 and 5 create enormous challenges for those who police these communities as well as those who live in them. The same conditions that facilitate crime — rundown areas and buildings, limited through streets, poor sightlines, dead ends, dark stairwells and corridors,

overcrowding — all create risks for police officers as well as potentially hardening their attitudes to those who are forced to live in these conditions. In light of these conditions, we applaud the countless ways individual officers go beyond the call of duty to try to support youth and prevent crime, as well as to carry out their often-onerous enforcement obligations (page 280)...

Yes, youth may often be unresponsive, confrontational or rude. But it is the officer who is paid to be the adult and who can reasonably be expected to take the high road. Policing through intimidation has no place in a society. It alienates individuals, promotes disrespect of the police in large segments of communities and makes impossible the kind of relationships and community mobilization the police themselves say they need to make a difference. When it does so, it powerfully creates and reinforces the immediate risk factors for violence in entire communities (page 281-82)...

The seriousness of this situation needs to be noted. Senior police officers in this province and elsewhere have told us of how negative incidents on the front lines can undo months of positive work by other police officers to put or keep youth on the path to a positive future or to build trust with a community. This negative potential is magnified when a stop or intervention is seen as being the result of racial profiling. How can youth of colour see a positive and productive future in a society in which they and their friends, and sometimes their parents as well, are routinely, and often aggressively, stopped and questioned just because of the colour of their skin? This is not a minor inconvenience — it is a life lesson that race matters, and that it can and will count against some members of our community (page 78)...

Overly aggressive, belittling, discriminatory and other inappropriate conduct towards youth is an issue that permeated our discussions. It has been the subject of numerous previous reports. It is one of the most pressing issues put forward by youth, and it is a cause of concern to all who are trying to contain and prevent violence, including most senior police officers in this province and elsewhere, as well as government officials with whom we met. And yet it persists (page 77)...

Police conduct in particular matters a great deal because of the large number of youth it affects, including many who will have no other involvement with the justice system. When we have youth who already feel their chances in life are limited by their colour or by where they live, or both, and when these same youth have little to do and few mentors and role models, police targeting and overly aggressive behaviour can drive their spirit into the ground. Some react on the spot and get into deeper trouble; others seethe until they boil over for reasons even they cannot always articulate; and yet others retreat into shells, which permanently mar their prospects (page 77)...

This not only leads to heightened risks for criminal behaviour, but also builds sympathy in the community for those targeted by the police. It makes the community reluctant to trust the police and engage with them to address gang and crime issues (page 77).

More generally, it seems to me that the Board's consideration of the Deputy's strategy, and perhaps as well its overall approach to setting policies for the Toronto Police Service, could usefully be more informed than it has been by the conclusions that Mr. McMurtry and I drew in our Report. While our mandate was province-wide, and while policing was only one of many issues (including racism, concentrations of poverty, mental health, youth opportunity, education and several others) that we addressed, we did see the relationships between youth and the police as a key concern.

Although the advice that is found in the attached extracts was given to the province, I would suggest that it is readily translatable into independent action by the Board. Please feel free to make this letter part of the record of the Board's proceedings and to contact me should you wish to discuss this matter further.

Very best regards,



Dr. Alvin Curling
Strategic Advisor on Youth Opportunities to
the Minister of Children and Youth Services

Extracts from the Report on the Roots of Youth Violence

Pages 77-78 (emphasis added)

Overly aggressive, belittling, discriminatory and other inappropriate conduct towards youth is an issue that permeated our discussions. It has been the subject of numerous previous reports. It is one of the most pressing issues put forward by youth, and it is a cause of concern to all who are trying to contain and prevent violence, including most senior police officers in this province and elsewhere, as well as government officials with whom we met. And yet it persists.

Although most frequently raised in relation to front-line police officers, the issue is by no means restricted to them. It extends into the courtrooms and correctional facilities. It is apparent to us, as it has been to so many before us, that individuals at many levels within our justice system believe that aggressive suppression and control by physical dominance, and sometimes by demeaning treatment, will limit crime or "teach youth a lesson." **The sad reality is that if police stops or interventions are done discriminatorily or aggressively or in a degrading manner, or if youth are belittled in court or harassed while in custody, a deep sense of grievance and frustration can result. Where it does, a youth's self-esteem and sense of belonging or hope are undercut. Alienation and a sense of unfairness and oppression can easily follow.**

Police conduct in particular matters a great deal because of the large number of youth it affects, including many who will have no other involvement with the justice system. **When we have youth who already feel their chances in life are limited by their colour or by where they live, or both, and when these same youth have little to do and few mentors and role models, police targeting and overly aggressive behaviour can drive their spirit into the ground. Some react on the spot and get into deeper trouble; others seethe until they boil over for reasons even they cannot always articulate; and yet others retreat into shells, which permanently mar their prospects.**

There is a serious disconnect here with the action needed to address the roots of violence involving youth. **Not only do overly aggressive police practices nurture the roots of the immediate risk factors, but also they can quickly undercut major investments in other areas that may well have kept a youth on the path to a productive future.** Whatever progress we make in education, in building self-esteem and respect through mentoring or civic engagement, or in creating hope, opportunity and confidence through sports or the arts can be undone by aggressive and humiliating interactions that indicate to youth that they are inferior.

This not only leads to heightened risks for criminal behaviour, but also builds sympathy in the community for those targeted by the police. It makes the community reluctant to trust the police and engage with them to address gang and crime issues.

One officer's small win in a mano-a-mano encounter with a youth can all too easily produce one large step backwards for policing in a whole community...

The seriousness of this situation needs to be noted. Senior police officers in this province and elsewhere have told us of how negative incidents on the front lines can undo months

of positive work by other police officers to put or keep youth on the path to a positive future or to build trust with a community. **This negative potential is magnified when a stop or intervention is seen as being the result of racial profiling. How can youth of colour see a positive and productive future in a society in which they and their friends, and sometimes their parents as well, are routinely, and often aggressively, stopped and questioned just because of the colour of their skin? This is not a minor inconvenience — it is a life lesson that race matters, and that it can and will count against some members of our community.**

Pages 240-41 (emphasis added)

The need for race-based data is overwhelming, and the reassurance from how normalized this has become in Britain is telling. The need should be obvious: without data we can neither prove nor disprove the extent of racism in any particular part of our society. Nor can we focus limited resources on the areas most in need of action, nor design measures to achieve the most-needed results in the most efficient way, nor assess whether progress is being made as a result of those measures.

Indeed, it is hard to think of another domain where it would be controversial to seek evidence of a problem and, where a problem is found, go on to seek evidence of how best to address it and whether the efforts made to do so are bearing fruit...

We note in this specific connection that the collection of race-based data on policing in Britain goes back to at least 1992. In calling for Ontario to adopt this approach, including in what seems to be the most fraught area here: front-line policing, the British precedent is as reassuring as it is inspiring. After more than a decade of experience, we were advised by a senior police commander in London that, while some front-line officers consider it bureaucratic, it has widespread endorsement, especially among police leadership. It provides a vital tool to find areas needing improvement, develop approaches to secure that improvement and demonstrate the improvement to the public.

Pages 242-44

The most immediately pressing issues are those involving front-line policing. These have serious community-wide implications, as well as the potential to be flashpoints on a daily basis. In our view, action on them will have the greatest short-term impact on matters giving rise to violence involving youth.

We recognize that a long-term cultural shift, a more representative police force and a rethinking of some front-line police strategies will be necessary to fully come to grips with this issue. As the ongoing workplace issues in relation to racism among employees at Ontario's correctional facilities demonstrate, this will take sustained time and energy. In the meantime, we feel that tangible signals of a commitment to address these long-standing concerns need to be sent now to both police and residents in the priority neighbourhoods across the province.

We first suggest that the Province establish a fund, which communities and police could access to support highly localized police-youth issues committees in each priority neighbourhood across the province. Funds would support youth participation and provide for a neutral facilitator. The police would be represented by the local police commander and front-line officers engaged in policing in the area (not just liaison officers). These committees would open the kind of dialogue which wouldn't otherwise happen, and would be mandated to develop a neighbourhood-specific plan to improve interactions between

youth and front-line officers. They would also be involved in the design and delivery of the local training programs we propose below.

We agree with what the Ministry of Community Safety and Correctional Services said to us, when it called for "more opportunities for positive interaction between police and youth." We think that these committees can and will be positive. The opportunity to hear each other out, coupled with the obligation to work together to build a local plan on matters of direct and immediate relevance to their work and lives, should make these committees places of constructive engagement.

The second immediate initiative we propose would also be very local and would be centred in the priority neighbourhoods. It would see the Province provide funding for immediate, in-service, neighbourhood-based training on anti-racism for front-line officers in each of these neighbourhoods. We recommend this tight focus for reasons of expedition and cost, and also because we believe that service-related training is likely to be the most effective. We agree with what Stephen Lewis said in his 1992 report, specifically in the context of race-relations training:

If we really believe in investing in our justice system, then the people who are on the front-line deserve the best training possible (Lewis, 1992: 13).

We have been told repeatedly that the few hours of sensitivity training at the Police College before recruits begin their work as police officers does very little good. The training is of necessity generic and is divorced from experience in the field. We were often told that the training is very frequently overridden by police leaders and colleagues once recruits take up their duties.

What most of us know about adult education is that it is most effective when taught in a hands-on way and when it responds to issues we are actually facing in our work or our lives. We heard in England how they are now focusing race-relations training for the police on very specific job functions and using the orientation of improving the officer's functioning in their current assignment. The training, therefore, is not about sensitivity in some general way, but rather focuses on ways in which a better appreciation of anti-racism will improve the officer's performance in the particular job they are carrying out.

Our rationale for suggesting that the initial focus for this kind of job-specific training be on front-line officers is simple: it is interactions with front-line officers that can do the most damage to race relations and where addressing concerns about racism could do the most good. We understand that those are often difficult and sometimes dangerous situations for the officers themselves, and that many of the youth they deal with seem or can be aggressive and intimidating. Even though most youth stopped by the police do not meet this description, the reality that some do increases, rather than obviates, the need for this training.

As these short-term training measures are put in place, we believe that the Ministry of Community Safety and Correctional Services should carefully examine the recent British approach of requiring officers to be "assessed as competent" on issues of race. As described in the *Improving Opportunity, Strengthening Society* report to which we referred earlier, "[a] key goal of this program is to ensure that, by 2009, everyone in the Police Service is assessed as being competent about race and diversity...." (Department for Communities and Local Government, 2007). In the same vein, consideration could be given to including good community relations and support in measuring the performance of local police commanders.

This initiative applies nationwide and is overseen by a national board. Police forces are required to have a suitable number of trained assessors, and assessment has started in most police forces. What is attractive about this is that it goes beyond training to find out whether training has worked and, if not, to identify specifically where and what more is needed.

The last specific initiative we propose for the police is the establishment of a telephone hotline for the reporting of negative interactions between police and minority youth. Those interactions can take place anywhere in this province, and without recourse to a system such as this there will be neither the information nor the impetus to develop a sound way to deal with them, wherever they arise. This service could be established as part of the new independent police complaints oversight body, which is expected to be operational shortly after our report is published, or in some other independent body. In either event, it would provide a sound anchor, directly or indirectly, for the power in the new oversight system to undertake reviews of systemic issues arising in policing anywhere in Ontario.

Pages 280-82 (emphasis added)

We fully appreciate that the neighbourhood conditions we described in chapters 4 and 5 create enormous challenges for those who police these communities as well as those who live in them. **The same conditions that facilitate crime — rundown areas and buildings, limited through streets, poor sightlines, dead ends, dark stairwells and corridors, overcrowding — all create risks for police officers as well as potentially hardening their attitudes to those who are forced to live in these conditions.** In light of these conditions, we applaud the countless ways individual officers go beyond the call of duty to try to support youth and prevent crime, as well as to carry out their often-onerous enforcement obligations. We also applaud the balanced statements of senior police officers and of senior officials in the ministry responsible for policing in Ontario.

We nonetheless have three serious concerns about the way policing is carried out on the streets. Two of these have already been addressed above. The first, over-criminalization, is sometimes a structural resourcing question as opposed to an issue of how police discretion is used, although we believe that the value of strategic thinking about the consequences of their decisions should be more widely communicated to, and such thinking more generally expected from, front-line officers. **The second, systemic racism,** while by no means limited to policing, is a fundamental concern, which we have already addressed in some detail above. **The remaining issue is the aggressive approach sometimes taken to policing, both as it affects youth and their peers and as it affects whole communities. How far up the chain of command support for this aggressive “take control” approach extends is difficult to ascertain from one day to the next, but it is high enough that long-standing concerns about it remain unaddressed.**

While our focus in this section of our report as a whole is on youth justice, we do not in this particular connection confine our remarks about police conduct to interactions with youth as they are defined by the *Youth Criminal Justice Act*. Overly aggressive and uncivil police behaviour to any member of a community can send clear messages throughout that community about fairness, trust in the police and belonging to the wider community.

We emphasize that we are not debating the wisdom of policing strategies. We have published in Volume 4 an insightful paper by Prof. Doob and his colleagues on what the evidence tells us about some of those strategies and commend it to those who wish to

pursue this topic. For present purposes, we wish only to reflect on the concerns we often heard about how these strategies are implemented. The idea of policing by suppression — by a large show of force — may be the right short-term approach in some circumstances. But as the police themselves told us, suppression cannot be sustained. Inevitably, problems arise elsewhere, sometimes because the suppression itself has simply moved them. When it does, resources go elsewhere.

When they do, safety then turns in large measure on what the community is left to deal with when the extra police resources are withdrawn. **If the suppression efforts have been done with firmness, but also civility and respect, they may have achieved some lasting benefits without alienating youth and their community. But where they are carried out aggressively, with tactics that intimidate and often belittle, and where as a result the community is alienated and bridges between the police and the community are destroyed, then for the reasons we outlined in Chapter 4 these tactics have every potential to contribute to the growth of alienation, a sense of injustice and other roots of violence involving youth.**

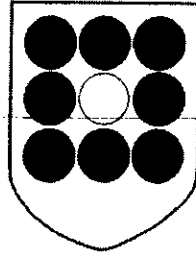
The issue of police attitude extends beyond how major suppression efforts are carried out, although that raises particular concerns. In our view, every officer must be trained, supported and expected to think about the impact of their attitude, as well as their actions, on the immediate risk factors for violence. Again, to avoid being taken out of context, we stress that this does not mean that an officer must refrain from intervening when crime is suspected or expose themselves or others to risk. We want simply to say that, apart from such situations, there is both time and a need for mature, strategic thinking about the roots of violence involving youth.

Yes, youth may often be unresponsive, confrontational or rude. But it is the officer who is paid to be the adult and who can reasonably be expected to take the high road. **Policing through intimidation has no place in a society. It alienates individuals, promotes disrespect of the police in large segments of communities and makes impossible the kind of relationships and community mobilization the police themselves say they need to make a difference. When it does so, it powerfully creates and reinforces the immediate risk factors for violence in entire communities.**

A long-run solution is a more representative police force, one with officers who come from and ideally live in and near the communities they serve. It also involves a culture shift to valuing and rewarding longer-term approaches to preventing crime by contributing to stronger, more involved communities and to youth seeing a positive future in them. And it **includes immediate actions by police leaders to curb unnecessarily aggressive and uncivil behaviour by their officers.**

P160/13
June 20th

CANADIAN
CIVIL LIBERTIES
ASSOCIATION



ASSOCIATION
CANADIENNE DES
LIBERTES CIVILES

Submissions to the Toronto Police Services Board

Noa Mendelsohn Aviv, Equality Program Director
Canadian Civil Liberties Association

June 20, 2013

RE: Report of the Street Check Sub-Committee and Deferral of Auditor General's Review

CCLA

The Canadian Civil Liberties Association (CCLA) is a national non-profit organization with thousands of supporters drawn from all walks of life. The CCLA was constituted to promote respect for and observance of fundamental human rights and civil liberties and to defend and foster the recognition of those rights and liberties. The CCLA's major objectives include the promotion and legal protection of individual freedom and dignity against unreasonable invasion by public authority, and the protection of procedural fairness.

Justice Delayed is Justice Denied

CCLA supports efforts of the Street Check Sub-Committee to review and reconsider the need for "street checks," and to monitor police encounters with the public and demand accountability of such (through such measures as a providing information on the TPS website, reporting to the Board, and considering a transparent carbon copy receipt following such encounters).

CCLA also supports the need for a review of police practices with respect to "street checks" and racial profiling, and the need for baseline data with respect to these, as was requested of the City Auditor General.

However CCLA is concerned that the most recent *Updates* by the Street Check Sub-Committee and the Report of the Auditor General represent in fact *a retreat* from the forward movement begun over a year ago.

Specifically:

- CCLA objects to the emphasis placed by the TPS as work done to “review and substantially revise the current Field Information Report (FIR) process and to consider the most workable format for an interim receipt.” CCLA’s position continues to be that what should be under consideration is not *how* to conduct a street check, but the legality and constitutionality of this practice that unjustifiably invades a person’s privacy and violates their dignity. The practice of random street checks is unlawful and should be stopped immediately.
- CCLA objects to the delay on items “e” and “f” of the Recommendations until the end of 2013. The Board and the public require this information for transparency and accountability with respect to police practices concerning “street checks” and racial profiling.
- CCLA objects to the deferral of the Auditor General’s Review of Police collection of demographic data. The review was requested in April 2012, and was intended to establish “*baseline data* showing the pattern of contact between the police and members of the community in general, and young people from certain ethno-racial backgrounds in particular.” (emphasis added) An initial review, as requested, is essential, and may provide baseline data and important information. No delay is justified. That said, this initial review can and should be followed up by reviews following the implementation of changes to police policies and practices.

Conclusion

The Board is urged to require that the Toronto Police Service immediately put a stop to the unlawful practice of random street checks.

The Board is also urged to reject the above-mentioned items, and to persevere in its requests:

- For data and reports from the Chief without delays, and
- For a Review to be concluded within this calendar year from the Auditor General.

Street Check Deputations

Reference	Deputants	Issues	Recommendations
P56/12 April 5, 2012	Nigel Barriffe Urban Alliance	<ul style="list-style-type: none"> •DWB -driving while black equates to police pulling you over, searching and harassing racialized individuals •ongoing harassment of racialized youth by police 	<ul style="list-style-type: none"> •Board to establish task force with police-community to address issue
	John Sewell Toronto Police Accountability Coalition	<ul style="list-style-type: none"> •data shows that racialized youth/men are stopped by police more often than white youth/men •racialized youth obeying the law experience frequent stops by police •racialized youth/men subject to discriminatory practices by police •discriminatory practices are not justified because police think this is a good way of "fighting crime" 	<ul style="list-style-type: none"> •provide carbon copy of card note made to person stopped •police should provide an information sheet indicating an individual rights, particularly their rights not to cooperate •Board should state it will not tolerate discriminatory stops •require Chief to provide monthly report on carding activities •DMU should monitor all carding activity and counsel officers to change behaviour if pattern of discrimination is evident •DMU should develop interview/intervention process in cases where stops are reasonably warranted
	Noa Mendelsohn Canadian Civil Liberties Association (CCLA)	<ul style="list-style-type: none"> •unwarranted police stops that violate the privacy, autonomy and dignity of the young people involved •random and unnecessary questioning, request for i.d., intimidation, illegal searches and at times police aggression •undermines positive police/community relationships 	<ul style="list-style-type: none"> •practice of targeting black male youth must stop •support Auditor General conducting investigation •OHRC and OIPRD should conduct investigation •Board need to develop policy preventing the targeting of black male youth
	Moya Teklu African Canadian Legal Clinic (ACLC)	<ul style="list-style-type: none"> •anti-black racism in the criminal justice system is well documented and another lengthy data collection project is not needed •questions whether the Auditor General is the right person to conduct review/analysis of the data •racial profiling has created a toxic relationship between police and black community •regardless of any perceived utility the Service must acknowledge that 208 cards contravene the Constitution 	
	Reuben Abib BADC	<ul style="list-style-type: none"> •demographic statistic collection compromises the future of "our" children and causes them to fear police, lowers self-esteem and confidence and intimidates •collection this of this data creates a conduit for racial profiling 	<ul style="list-style-type: none"> •stop the collection of demographic statistics •stop vicarious carding as it contravenes the Charter and human rights •the Service's attitude towards African-Caribbean descendants is one of racial and cultural indignation which

Street Check Deputations

Reference	Deputants	Issues	Recommendations
P56/12 April 5, 2012 (cont'd)			needs to change to one of respect, dignity and ethno-cultural sensitivity
	Frontline Partners with Youth Network	<ul style="list-style-type: none"> •police-community interactions are highly racialized 	<ul style="list-style-type: none"> •supports TPAC recommendations
	Johanna Macdonald Justice for Children and Youth	<ul style="list-style-type: none"> •youth in Toronto experience harm at the hands of the police •contact card statistics illustrates a deep rooted problem of discriminatory police stops and data collection •minorities experience a higher level of distrust of police •youth are fearful and devastated to speak out •youth know that there are no remedies available for this issue •review of issue by the Auditor General will not address deeply rooted concerns of mistrust 	<ul style="list-style-type: none"> •police should provide an information sheet indicating individual's rights •carbon copy of the card will assist persons stopped to understand the reasons for stop •Board should state it will not tolerate discriminatory stops •supports TPAC recommendations
	Irwin Elman Office of the Provincial Advocate for Children and Youth	<ul style="list-style-type: none"> •police practice of issuing 208s run contrary to building bridges 	<ul style="list-style-type: none"> •supports TPAC recommendations
	Miguel Avila	<ul style="list-style-type: none"> •most contact cards are produced by T.A.V.I.S 	<ul style="list-style-type: none"> •supports independent assessment by Auditor General •supports providing persons stopped with copy of contact card
P187/12 July 19, 2012	Noa Mendelsohn CCLA	<ul style="list-style-type: none"> •concerned about race-based harassment 	<ul style="list-style-type: none"> •Board should denounce practice of race-based harassment •Board needs to develop policies/programs to prevent, prohibit and address race-based harassment •Board must ensure investigator is given adequate resources to perform thorough investigation in timely manner •Board should adopt certain minimal standards for terms of reference which should include: <ul style="list-style-type: none"> - consultations with bodies with demonstrated expertise in policing, police complaints and human rights (org listed in deputation) •demonstrated sensitivity with respect to matters of race •investigator must investigate TPS policies, practices, regarding any or a combination of any police actions against

Street Check Deputations

Reference	Deputants	Issues	Recommendations
P187/12 July 19, 2012 (cont'd)			black youth and/or others from racialized/marginalized communities regarding unwarranted questioning, stops, identity collection, intimidation, searches and aggression •investigate how communities view TPS community policing practices •Board should develop policy which addresses: -accountability, standards regarding data collection, positive engagement with the public •policies should consider issues of accountability •investigator should examine training as it pertains to race and racism... •investigator must investigate the complaints mechanism... •Board should ensure regular independent review of this matter
	John Sewell Toronto Police Accountability Coalition	•pending review of this issue officers should provide a receipt to individuals that are stopped	•receipt should include the following information: -officer details -date, time & place of stop/search -reason for the stop/search -individual's self-defined ethnicity -vehicle registration if relevant -what officers were looking for and anything they found -individual's name or description, if name refused
P220/12 August 15, 2012	Moya Teklu ACLC	•in light of the Board's decision to extend the Chief's reporting back on this issue ACLC supports police accountability through the issuing of hand written receipts •Board needs to do its job of overseeing the Service and not provide an extension to the date the Chief's report is to be submitted	
P271/12 November 14, 2012	John Sewell Toronto Police Accountability Coalition	•reiteration of previous deputation	•mock-up of the receipt should be provided publicly •Board should undertake comprehensive communication strategy to provide information to the public about the receipt •monitoring program to ensure effectiveness of receipt

Street Check Deputations

Reference	Deputants	Issues	Recommendations
<p>P271/12 November 14, 2012 (cont'd)</p>	<p>Howard Morton The Law Union of Ontario</p>	<ul style="list-style-type: none"> •supports Chief's proposals discussed in Min. No. P271/12 -community/officer contact receipt -quarterly street check report -ongoing community consultation •design and use of Form 208 and Carding are clear violation of the Charter •Board needs to scrutinize officers' actions and strategies used when stopped individuals rightly refuse to provide Form 208 information •within the meaning of the <i>Charter</i> Form 208 constitutes detention and search •carding is a violation of the Charter which has resulted in community apprehension, sentiment and fear •individuals carded are disproportionately racialized youth •Carding obstructs community trust •provide copy of Form 208 and the proposed receipt •information sought on Form 208 is unnecessary •police officers violate the supreme law of Canada when they refuse to respect Charter Rights •the Board was put on notice as early as 2004 that Carding is a threat to a free and democratic society •Superior Court opinion that states the manner in which Carding is being used is menacing and could be a tool for racial profiling -serious consequences will ensue if Carding continues in its current form, they can be used for subjective assessment based on race or other irrelevant information •Board's recommendations ignore the real issue with respect to Carding •Board has failed its responsibility as it relates to Carding 	<ul style="list-style-type: none"> •Board must examine entire practice of Carding •Board should direct its counsel or independent counsel to examine Carding as it occurs on our streets, and report findings no later than February 2013 •the Board should require that the Chief cooperate with its counsel by providing key information

Street Check Deputations

Reference	Deputants	Issues	Recommendations
P271/12 November 14, 2012 (cont'd)	Moya Teklu ACLC	<ul style="list-style-type: none"> •while the Clinic opposes police practice of documenting citizens in non-criminal encounters it want to commend the Board for moving to needed action •if properly implemented the measures proposed by the Chief can lead to a level of transparency and accountability that to date has been lacking 	<ul style="list-style-type: none"> •recommends that the reasons for interaction section on the contact cards and on receipts is sufficiently precise indicating specific criminal activity that preceded the stop •issuing of receipt must be mandatory •receipt must include race of individual stopped and detailed information about issuing officer •public education campaign that includes, right to refuse to provide information, right to receive receipt, how the information will be used, etc.
	Noa Mendelsohn CCLA	<ul style="list-style-type: none"> •issuing a receipt to an individual Carded is an important and positive step which the CCLA endorses •supports issuance of quarterly reports •Board is urged to recognize compelling compliance, i.e. perspective held by stopped individuals that they have no choice but to comply •the recording of personal information in the manner of Carding is intrusive, frightening and intimidating, it is an affront to privacy and dignity and can have further future consequence for the individual •purpose and practice of police stops should be reviewed 	<ul style="list-style-type: none"> •receipt issued should include information about issuing officer •receipt should include information about the individual's rights •Chief's measures (training, quarterly reports, monitoring) should not only relate to contact cards but to all stops where individuals are stopped and questioned •ongoing community consultation (ensure confidentiality of community members)
	Johanna Macdonald Justice for Children and Youth	<ul style="list-style-type: none"> •dual purpose of street checks raises questions -under what authority does police collect non-law enforcement personal information -does community engagement require that police collect and retain personal information 	<ul style="list-style-type: none"> •Board must create policy that safeguard individual rights and protect the community •policy must include provision about informing people of their rights when stopped policy must require that officers provide information about the complaints process •policy must include monitoring and compliance with the <i>Ontario Human Rights Code</i> and the <i>Charter</i> •create policy that govern the access, retention and destruction of street check information collected
	Dough Johnson Haltem	<ul style="list-style-type: none"> •street checks are street detention 	<ul style="list-style-type: none"> •reason for police detention must be recorded

Street Check Deputations

Reference	Deputants	Issues	Recommendations
P6/13 January 23, 2013	Lazarus Rising Street Pastor	<ul style="list-style-type: none"> •fear of consequences if refuse to comply with police 	<ul style="list-style-type: none"> •receipts must be provided
	Howard Morton The Law Union of Ontario	<ul style="list-style-type: none"> •reiterated its position as noted in November 14, 2012 Board meeting minutes (P271/12) 	<ul style="list-style-type: none"> •format of Form 208 and its deployment must comply with the <i>Charter</i> and the <i>Ontario Human Rights Code</i>
	John Sewell Toronto Police Accountability Coalition	<ul style="list-style-type: none"> •carding is intrusive •Form 208 makes it clear that police believe such stops constitute an investigation •the type of information gathered on Form 208 indicates extraordinary prejudice on the part of police (esp. when no crime is being investigated) •proposed receipt assumes that stop and carding is for community engagement •receipt does not indicate why police had authority to engage in the stop 	<ul style="list-style-type: none"> •stop carding activities that involve random stops where there is no evidence of illegal activity. If Board does not cease carding then: •Form 208 should be amended to include: <ul style="list-style-type: none"> - "Crime being Investigated" and "Why this Person was Stopped for this Crime" - associates and young person information should only be completed in cases of criminal code or drug offence investigation •a carbon copy of the amended Form 208 would make the best receipt •Board should engage in public campaign before beginning distribution of receipts
	Noa Mendelsohn CCLA	<ul style="list-style-type: none"> •Form 306 appears to justify detaining, questioning and recording identity and personal information •the very notion of street check is improper and implies legitimacy for intrusive policing •opposes the approval or use of Form 306 	<ul style="list-style-type: none"> •require police to provide "mirror copy" of contact cards that at a minimum includes information not deemed part of police investigation. For example: <ul style="list-style-type: none"> -personal information, race or racial appearance, specific reason for the stop -sharing this information ensures transparency and accountability •Board need to begin to investigate and address race based harassment
	Paul Copeland Law Union of Ontario	<ul style="list-style-type: none"> •mainly young ethnic minorities are subjected to carding •prepared information sheet that informs people subjected to carding of their rights 	<ul style="list-style-type: none"> •carding information sheet entitled "Approached by the Police...Know your Rights" (attached to deputation)
Odion Fayalo	<ul style="list-style-type: none"> •police must learn to differentiate the criminal and noncriminal elements in the African Canadian community...as they do with other ethnic communities •Form 208 and 306 is immoral and violates right to be free from arbitrary detention or imprisonment •carding should be discontinued 		

Street Check Deputations

Reference	Deputants	Issues	Recommendations
P50/13 March 27, 2013		<ul style="list-style-type: none"> •opposes implementation of receipts 	
	John Sewell Toronto Police Accountability Coalition	<ul style="list-style-type: none"> • Board should put interim measure in place to change carding while the final actions are debated and decided on 	<ul style="list-style-type: none"> •Form 208 should be amended to replace “Circumstance of Investigation” with: -“Crime being Investigated” and “Why this Person was Stopped for this Crime” •”associates” and “young person information” should only be completed in cases of criminal code or drug offence investigation •a carbon copy of the amended Form 208 should be given to everyone stopped and carded
	Brittany Harris CLASP	<ul style="list-style-type: none"> • carding should be stopped until the issues with carding have fully considered and addressed • issues with the program includes community concerns, contravention of Charter rights and intrusive questions • the practice is flawed and not fully understood • police being evaluated on the basis of the number of 208s completed is unacceptable 	<ul style="list-style-type: none"> • change field information form so that reasons for stops are listed • only stop individuals or complete the form in investigative purposes • collect detailed information only on persons that are suspects • issue carbon copy receipts • consider new holistic evaluation measures and standards
	Moya Teklu Black is not a Crime	<ul style="list-style-type: none"> • given the disproportionate rate at which members of the African Canadian community are carded, the practice of carding is illegal • carding violated the Charter, Ontario Human Rights Code and various international treaties • will the City Solicitor’s legal analysis incorporate data published by the Toronto Star 	
	Rand Schmidt	<ul style="list-style-type: none"> • Board should immediately implement the “less than perfect” 306 	<ul style="list-style-type: none"> • Board should consider the following components with respect to street checks: the receipt, the receipting process and the response to the receipt being issued • draft version of the 306 lacks sufficient detail on what happened during the street check • the present version of the 306 can be used while considering possible modifications
James Roundell Law Union of Ontario	<ul style="list-style-type: none"> • lack of Board action regarding report from City Solicitor and community engagement to draft new 		

Street Check Deputations

Reference	Deputants	Issues	Recommendations
P50/13 March 27, 2013 (Cont'd)		<ul style="list-style-type: none"> street checks policy • Board has a duty to ensure that the police service operate in a lawful manner • reiterates its submission of November 14, 2012 regarding the Board's retention of independent Counsel and the Chief's cooperation (see P271/12 above) • Board must examine the entire practice of street checks, not just simply race and demographic statistics • police service's unlawful stopping and demanding of personal and private information from individuals that are not suspects is undemocratic • street checks violates Charter rights • years of Board inaction has allowed the continued stops, intimidation, violation of rights and discrimination against law abiding community members 	
	Miguel Avila	<ul style="list-style-type: none"> • carding is intrusive • practice of officers asking for immigration information is intrusive • TCHC residents are afraid of TPS officers and are not treated with respect by them 	
P121/13 April 25, 2013	Odion Fayalo Justice is not Colour Blind	<ul style="list-style-type: none"> • Toronto Police along with members of the community should be mutually and do-equally concerned and involved in protecting its best interests • police personnel should reflect the ethnic composition of the African Canadian communities they serve at all level of the organization; and who possess a high level of Afrocentric consciousness and demeanour • Chief needs to address anti-Black racism within Serv 	<ul style="list-style-type: none"> • Board must implement an African-centred educational rehabilitation program for African Canadian police personnel
	Saneliso Moyo Black is not a Crime	<ul style="list-style-type: none"> • support Sub-Committee's recommendations as a measure of transparency and accountability • continue to have reservations about the Board's commitment to take concert action to eliminate the 	<ul style="list-style-type: none"> • that the Chief be asked to report specifically on the steps to be followed by the public is a receipt is not issued

Street Check Deputations

Reference	Deputants	Issues	Recommendations
P121/13 April 25, 2013 Cont'd		discriminatory practice of carding • concerned about the implementation of Form 306 in its current form – language such as “community Engagement and “General Investigation” are catchall terms that can be easily manipulated	
	Noa Mendelsohn Aviv CCLA	• the notion of street check is improper and implies legitimacy for intrusive policing • community engagement is not sufficient justification for street checks • any receipt/form including Form 306 will be ineffective without providing a carbon copy • Form 306 may cause more damage than good to the community as it appears to justify the violation of people’s rights	• Form 306 should not be approved or used by Toronto Police Service • a mirrored copy of the form should be provided as a necessary tool for transparency and accountability and should include information about a person’s rights
	Howard Morton The Law Union of Ontario	• the use and deployment of Form 208 is lawful as it violates the <i>Charter</i> , the <i>Ontario Human Rights Code</i> and provincial privacy legislation • unlawful investigative stratagem • Board fails to address the issue of whether or not Form 208 is lawful • Street Checks are a form of intelligence gathering of personal information of people not engaged in criminal/anti-social behaviour • community groups/organizations believe that street check policy is racist policing of person who are young, racialized or marginalized	• Board has an absolute obligation to undertake a comprehensive analysis of the practice of “carding” or street checks • Board should direct the Chief to issue a standing order to officers that they must caution persons approached for 208’s that they have the right to refuse to answer questions and are free to go
P160/13 June 20, 2013	Howard Morton The Law Union of Ontario	• Street Checks violates the <i>Charter</i> , the <i>Ontario Human Rights Code</i> (see previous submissions dated Nov. 12, 2012, January 23, March 27 and April 24, 2013 • carding is a major obstacle to community trust of the police • the Board has demonstrated through its delay and fumbling on the issue that it is not prepared to address	• given that the Board is unable to respond to public concerns in a timely manner the Board should direct the Chief to suspend the practice of carding • if carding is not suspended the Board should direct the Chief to issue a standing order to officers that they must caution persons approached for 208’s that they have the right to refuse to answer questions and are free to go • Board direct Auditor General to proceed with the audit

Street Check Deputations

Reference	Deputants	Issues	Recommendations
P160/13 June 20, 2013 Cont'd		<ul style="list-style-type: none"> carding or racial profiling in policing generally • delaying the Auditor General’s report is illogical • purpose of Auditor’s report is to establish baseline data to interpret the effectiveness of any future changes to policy/operations 	
	Odion Fayalo Justice is not Colour Blind	<ul style="list-style-type: none"> • Police must impartially enforce the law • Police must equally and speedily respond to the needs of the African Canadian community as they do to non-African Canadian communities 	
	Roger Love ACLCL	<ul style="list-style-type: none"> • TPS must use four decades of social science research as the cornerstone of their analysis of carding practices • support the recommendations that quarterly reports on street checks be provided and the provision of carbon copies of Form 208’s • delay of the Auditor General’s report and the implementation of Form 306 will be detrimental to community-police relations 	<ul style="list-style-type: none"> • Auditor General should act in accordance with Board recommendation to review street check data • Field Information Reports (FIR) should not be used to measure police performance • conduct a highly publicized pilot project regarding officers issuing receipts when information is documented in FIR’s
	Alvin Curling Strategic Advisor on Youth Opportunities Minister of Children and Youth Services	<ul style="list-style-type: none"> • policing through intimidation has no place in society, it alienates individuals and promotes disrespect and makes impossible positive community-police relationships • “overly aggressive, belittling, discriminatory and other inappropriate conduct towards youth ...is one of the most pressing issues put forward by youth...and yet it persist” 	<ul style="list-style-type: none"> • Board approach to setting policies could usefully be more informed than it has been by the conclusions of the Report • extract from Roots of Youth Violence Report attached to deputation
	Noa Mendelsohn Aviv CCLA	<ul style="list-style-type: none"> • support Street Checks Sub-Committee efforts to review the need for street checks and to monitor police encounters with the public • supports the need for a review of police practices with respect to street checks and racial profiling and the need for baseline data • concerned that recent updates from the Street Checks Sub-Committee and the Auditor General’s report 	<ul style="list-style-type: none"> • Board should require that the Service stop the unlawful practice of random street checks

Street Check Deputations

Reference	Deputants	Issues	Recommendations
P160/13 June 20, 2013 Cont'd		<ul style="list-style-type: none"> represents a retreat of the forward movement that has begun • what should be under consideration is the legality and constitutionality of street checks • objects to the deferral of the Auditor General's review 	
P209/13 August 13, 2013	Miguel Avila	<ul style="list-style-type: none"> • Residents of TCHC are being stopped and checked by TAVIS • The details of Form 306 should be released to the public • New York City's judicial decision regarding its "Stop and Frisk" program should be adopted by the Board 	<ul style="list-style-type: none"> • officers should wear body cameras • Disarm officers of guns and tasers except sergeants with proper training
P220/13 September 12, 2013	Roger Love ACLCL	<ul style="list-style-type: none"> • Create a comprehensive framework that can be used as the basis for collection and monitoring of disaggregated race-based statistics with the objective of eliminating disproportionate carding of racialized communities • Implement education campaign regarding changes to carding process • Revise complaints process • Renewed oversight of carding and receipting process by supervisory officers 	
P239/13 October 7, 2013	Irwin Elman Office of the Provincial Advocate for Children and Youth	<ul style="list-style-type: none"> • Support monthly updates on the on-going development of the community inquiry process • Board should seek monthly update from the City Solicitor regarding the progress on providing an opinion on the legality of street checks • Community consultation with young people • Public disclosure of Form 306 	
P277/13 November 18, 2013	John Sewell TPAC	<ul style="list-style-type: none"> • 	
	Veronica Salvatierra	<ul style="list-style-type: none"> • Hold officers accountable, educate the public • Receipts should be mandatory and clear • 6 month maximum retention period • Should continue with community consultation 	

Street Check Deputations

Reference	Deputants	Issues	Recommendations
P277/13 November 18, 2013 Cont'd	Peter Rosenthal	<ul style="list-style-type: none"> • There is resentment of the police; this contributes to it • Carding should be stopped immediately • Carding violates the Charter and the Human Rights Code 	
	Howard Morton The Law Union of Ontario	<ul style="list-style-type: none"> • Fifth submission on this topic • Carding violates the Charter and the Human Rights Code • Just because it is useful to police doesn't mean it is ok • Chair's report does not mention the Charter • Want to see legal opinions • People should be told they do not have to answer/free to go • It either violates the Charter or it does not 	
	Wyndham Bettencourt-McCarthy	<ul style="list-style-type: none"> • People can be stopped for vague reasons • Racial profiling • Decreases public safety • PACER doesn't make enough changes • Suggested a different policing model – “focused deterrence” – created in Boston • Stops violent crimes from happening • TAVIS should be restructured 	
	Derek Moran	<ul style="list-style-type: none"> • Ontario is a common law jurisdiction • TPS is applying admiralty law 	
	Dianne Carter, Executive Director, Ontario Human Rights Commission	<ul style="list-style-type: none"> • Several positive steps in PACER • Need clear and lawful criteria • Carding has a disproportionate effect on African Canadians • Need to undertake a review • Need to establish what is meant by bona fide criteria • Offers assistance of the Human Rights Commission to the Service • (in answer to question) Only Toronto does carding as a formal program but other police services do street 	

Street Check Deputations

Reference	Deputants	Issues	Recommendations
P277/13 November 18, 2013 Cont'd	Joy Bullen	<ul style="list-style-type: none"> • checks • Chair’s report provides a starting point • Scared for her son at night • Carding violates the Charter (ss. 7, 8, 9, 15) • Take immediate and meaningful action to stop carding • Carding unfairly targets young black males • Demographics of City are changing; members of minorities are moving into power positions • Carding drives a wedge between communities • Opportunity for police to redefine community engagement • Can’t apply these measures in an atmosphere of mistrust 	
	Maurice Stone	<ul style="list-style-type: none"> • Concerns about intimidation and aggression • No practical use to carding • We want the receipt 	
	Knia Singh	<ul style="list-style-type: none"> • Disappointed Chief is not here for this important matter • Disproportionate bias • Problem goes back to colonialism and roots of slavery • Compared to apartheid/Nazi Germany • Vicious racial prosecution • Duty and responsibility should have no personal bias • Can end up with abusive power situation • Community engagement is not the right term • Impacts psyche of the youth – start to develop opposition to the police • Officers should inform people of right not to answer questions • Concept of psychological detention • “Rebranding” of contact process • Do not eliminate receipts 	

Street Check Deputations

Reference	Deputants	Issues	Recommendations
P277/13 November 18, 2013 Cont'd	Knia Singh Osgoode Society Against Institutional Injustice	<ul style="list-style-type: none"> • Written deputation not received 	
	Emma Julian	<ul style="list-style-type: none"> • Lack of transparency • Need to identify bona fide criteria • It is unclear what the current policy is 	
	Bev Salmon Former City Councillor	<ul style="list-style-type: none"> • Strong opposition to this practice • Sets back community relations years • This is not the time to turn back the clock • No amount of tweaking can fix this • Totally deplorable 	
	Noa Mendelsohn Aviv, Director, Equality Program, CCLA	<ul style="list-style-type: none"> • CCLA shares concerns of others • Service needs to change not just what it is communication but what it is doing • Need both internal and external/independent accountability • Denunciation of practice is important • Carding must be prohibited • Not really a voluntary stop as there is a power imbalance (weapons, lack of knowledge, etc.) • Officers should have to tell people that they have a right to leave/be silent • Need better accountability tools • Need external, independent audit • Receipt – need copy – exact printout, with cross-reference to specific offences • Need ongoing monitoring • (in answer to question) No opinion on body cameras at this time but would be happy to look into it 	
	Paul Copeland	<ul style="list-style-type: none"> • Sent letter to the Board • Sub-Committee had requested legal opinion from Albert Cohen; status? • PACER represents attempt by police to continue carding 	

Street Check Deputations

Reference	Deputants	Issues	Recommendations
P277/13 November 18, 2013 Cont'd		<ul style="list-style-type: none"> • The Chief received legal opinion from three eminent jurists and we don't even know the names • Privilege here belongs to the Service; it can consent to the release of the opinions • They can be released in a redacted form • Morden said the Board should get its own lawyer • Board not just supposed to rubberstamp 	
	Desmond Cole	<ul style="list-style-type: none"> • Journalist who writes about this issue • When confronted by police, easiest to just to give ID • The number of contact cards is staggering • Compared number of contact cards with school suspensions; rates so much higher for certain groups • Police intention to discriminate is not the issue, people feel the impact the same way regardless • Thanked Dave McLeod and Peter Sloly for their work on this 	
	William Rosenberg	<ul style="list-style-type: none"> • "fixing" Carding is basically legitimizing it 	
	Kingsley Gilliam, BADC	<ul style="list-style-type: none"> • Service and the Board are both negligent • Growing future generations of police haters 	
	Anna Willats TPAC	<ul style="list-style-type: none"> • Board must take leadership role • Should declare no more carding; put senior managers in place to ensure this is the case • Even with PACER recommendations carding is <ul style="list-style-type: none"> ○ discriminatory ○ violates the law ○ as a strategy for gathering information its defective and offensive • Getting rid of 208 & 306 inhibits FOI requests, lacks transparency and accountability • Lack of transparency around legal opinions • Major power imbalance • Carding involves coercion; cannot be voluntary • Inefficient and offensive • Carding creates insecurities 	

Street Check Deputations

Reference	Deputants	Issues	Recommendations
P277/13 November 18, 2013 Cont'd	Ben Lau, Co-Cair, Chinese Community Consultative Committee	<ul style="list-style-type: none"> • Consultation meetings are important • Need bias-free carding process • Embracing diversity important for new police applicants, as well as promotions • Need standing advisory committee on carding • Need effective communication re: bona fide criteria • TAVIS is a good program • Parents need to take responsibility for their children 	
	Kris Lagenfeld	<ul style="list-style-type: none"> • Want to amend PACER report • Why are the legal opinions not being released? • Cease street check practice • No reason for the police to have this information • Why are police building this giant database? 	
	Audrey Nakintu Justice is Not Colour Blind	<ul style="list-style-type: none"> • Racial profiling is contrary to the Charter • Service/Board have not lived up to their commitments • Racism in TPS is inherent • Chief is a privileged white man • Police involved in brutality, murder, surveillance, torture, etc. • Referenced class action lawsuit 	
	Roger Love, Advice Counsel ACLIC	<ul style="list-style-type: none"> • Has spoken many times about the negative impact of carding • Message has remained unchanged • Carding cannot be legitimized, lacks transparency • None of the recommendations targets the harm • Referenced Toronto Star reports • What about the denied employment opportunities as a result of carding? • African Canadian youth are still not being given receipts • Power imbalance • Need to end carding 	
	Miguel Avila	<ul style="list-style-type: none"> • Take drastic steps 	

Street Check Deputations

Reference	Deputants	Issues	Recommendations
P277/13 November 18, 2013 Cont'd		<ul style="list-style-type: none"> • Fire the “bad cops” 	
	Dahn Batchelor	<ul style="list-style-type: none"> • Vast majority of law abiding black males in Toronto subjected to improper detention • Carding innocent people may in fact increase crime <ul style="list-style-type: none"> ○ Creates mistrust, non-cooperation • Collecting race bases statistics will expose systematic biases 	<ul style="list-style-type: none"> •
	Rand Schmidt	<ul style="list-style-type: none"> • Needs independent confirmation regarding the constitutionality of street checking/carding • Survey those stopped to create baseline for future comparisons • Long term solution is to change police culture • Immediate short term solution is for Board to: <ul style="list-style-type: none"> ○ clarify the voluntary cooperation aspect to street checks ○ close supervision of TAVIS ○ independent legal advise ○ deployment of body cameras 	<ul style="list-style-type: none"> •
	Bill Closs	<ul style="list-style-type: none"> • Cards can be used as enabler or public relations tactics if the correct information is not captured • There are a number of existing Provincial and Federal Statutes that can be used to justify street checks • Critical issues are capturing the real reason for the stop and training 	
	Jim Roche	<ul style="list-style-type: none"> • Success of policing in any community is related to the type of relationship the police have with the community • Real community policing will reduce the need for street checks <ul style="list-style-type: none"> ○ as well reduction of equipment needed i.e. guns, body armour, etc • the number of officers involved in an interaction could be intimidating • 	

Street Check Deputations

Reference	Deputants	Issues	Recommendations
P277/13 November 18, 2013 Cont'd	Jordanna Lewis	<ul style="list-style-type: none"> • Street checks/carding is inherently discriminatory and dehumanizing • Disingenuous to refer to this police tactic as community engagement • Form of state intimidation • Violation of human rights and should be eliminated • Policing poor and at risk communities involves establishing legitimacy and communicating genuine concern 	

November 22, 2013

Oral Presentation to the Toronto Police Services Board

March 22, 2012

My name is Ngel Barriffe, I'm a school teacher. I teach in the Toronto District School Board in one of the 13 Priority neighbourhoods for investment. I teach a grade 5 and 6 split class.

But the hat I wear here today is that of a member of the Board of Directors of the Urban Alliance on race Relations. The Urban Alliance On race Relations was formed in 1975 by a group of concerned Toronto ^{residents} ~~citizens~~. Our primary goal is to promote a stable and healthy multi-racial environment in the community. The Alliance is a non-profit charitable organization consisting of volunteers from all sectors of the multicultural and multiracial Canadian society.

In my community police harassment is well known. An often used expression in my community is DWB this stands for driving while black. And is experienced by people of all ages and gender of African heritage. And amounts to police pulling you over Questioning you...searching you and harassing you. Further and very serious, ongoing harassment from the police against young racialized youth, in areas like Rexdale where I work, stigmatizes these young people, creates resistance and mistrust against law enforcement, and sets up exactly the kind of negative dynamic in policing that makes young people more likely to be criminalized in future. Instead of community police making neighborhoods safer for all, youth become targeted for merely being visible in public space. The recent example of the killing of Trayvon Martin in Florida is just another example of acts that are far too common. While they did not make global headlines... in Toronto we have seen very similar impunity in shootings or death at the hands of Toronto police like those of Michael Eligon on February 3, of this year and of Junior Alejandro Manon in May 2010.

For the past 20 years the relationship between racial profiling by police and economic marginalization has been documented in report after report – from that of Stephen Lewis in 1992 to the recently released Metcalfe report *The working poor*. I have written an overview of these which I may leave with the committee at the end of the meeting, but I am sure that your membership is aware of this documentation. Now, however, I am going to give three concrete examples from Rexdale .

- 1) A ten year old student shared a story with me about the police in our neighborhood knocking down the door of his town home. They said they were looking for drugs; but left the doors and parts of the home in shambles. Everyone was at home, they had no warrant, they simply knocked down the door. This happened before Christmas.
- 2) In December, two boys were walking home from school. The police pulled their squad car in front of them. They questioned the boys about where they were going, why they were walking home in the period after school.
- 3) Elmbank community centre: I sit on the advisory board of the elmbank community center in Etobicoke North. Last summer we tried to organize a community event –fundraiser. The police actively discouraged the community for holding the event and gave them security conditions so oppressive that the advisory board at the time felt threatened and it was fiscally impossible for the community to hold the event.

The Urban Alliance on Race Relations recommends that:

Urban Alliance on Race Relations Deputation to the Toronto Police Services Board
Thursday, March 22, 2012

Given the persistence of this issue and the inability of the police to deal with it, we recommend that the Toronto Police Service Board establish a special task group with community and police participation, like the DMU¹, to ensure there will be action on this issue.

This group will be in a good position to look at what the auditor general recommends later.

We support Dr. Mukherjee's suggestion of asking the City auditor general to conduct a review of existing police data, including data obtained by the Star. In our view, the City Auditor General has credibility that should make the implementation of his recommendation more a reality, rather than sitting on the shelves again. However, Dec 2013 is much too long, half that time is more like it.

In conclusion:

Lewis' own position is stated exceptionally clearly, and he makes it on the third page of the report:

what we are dealing with, at root, and fundamentally, is anti-Black racism...It is Blacks who are being shot, it is the Black youth that is unemployed in excessive numbers, it is Black students

¹ **Mandate**

The primary focus of the Diversity Management Unit is to coordinate all human rights complaints and activities, build strategic cultural change, with the goal of facilitating a Service wide appreciation of diversity and a dedication to increasing opportunity for all members to implement these values in their work environment.

Responsibilities

The Diversity Management Unit is responsible for ensuring:

- That all human rights complaints and concerns are dealt with respectfully, strategically and effectively.
- The Service reflects the diverse community it serves at all levels/ranks.
- The Service provides all members with a healthy, respectful, inclusive and equitable work environment that is free from harassment and discrimination.
- All members provide a bias-free service to the community.
- All members develop and demonstrate effective diversity management skills.
- Progressive standards for Human Rights, diversity and inclusion are defined, implemented and monitored for compliance.

who are inappropriately streamed in schools, it is Black kids who are disproportionately dropping out, it is housing communities with large concentrations of Blacks where the sense of vulnerability and disadvantage is most acute...Just as the soothing balm of 'multiculturalism' cannot mask racism, so racism cannot mask its primary target (Lewis 1992, p.3).

Taken together, analyses produced over the past twenty years point to the systemic issues identified by Stephen Lewis in 1992: that racialized groups in Ontario are disproportionately represented in jails, in school dropout statistics and in lower income groups. Addressing these issues through meaningful policy reform and programming will be essential if racialized groups in Ontario are to be lifted out of poverty.

Thank you.

Appendix A-

Literature Review- A Historical Context of Reports on stigmatization and criminalization of Racialized youth over since 1992 to present.

To deepen understanding of structural poverty and dispossession, and to gain a historical context for why community organizing is so important in Etobicoke North, this section reviews a selection of policy documents concerning racialized and marginalized communities in the GTA and Ontario. I examine published reports and academic studies conducted over the past twenty years, beginning with Stephen Lewis' *Report of the Advisor on Race Relations to the Premier of Ontario* (1992). This material sheds light on how systemic racism has affected opportunities for youth and other sectors in communities like Toronto's so-called 'priority neighborhoods'. My objective with this review is ultimately to understand how income, to a certain degree racial inequality, affects the possibility for economic and political equity in Etobicoke-North.

The literature review begins with a discussion of the findings of some of the key reports published on the topic since 1992. In the second section I specify some of the policy recommendations made in these reports and how they have been implemented. My overall argument is that many of the policy recommendations have been insufficiently implemented, in part because the root causes of economic inequality and racism lie in broader economic processes which requires social resistance to overcome. Indeed over the past 20 years, neoliberal policies have in fact widened the gap between the rich and poor. As Van Jones (2008) and others have put it, to address these inequalities policy-makers, politicians and community organizers alike will have to look at developing a new green economy strong enough to lift all people out of poverty.

A number of reports produced in the 1990s looked critically at the relationship between structural inequality and racialization. A major document in this regard was the Stephen Lewis Report to the then premier of Ontario Bob Rae which is cited in much of the literature as crucial. His report was commissioned in response to the 1992 Yonge Street riots of black youth. These riots had been preceded by eight shootings over the previous four years. To many in the black community, such violent encounters with the police were seen as racially motivated. The report's

Urban Alliance on Race Relations Deputation to the Toronto Police Services Board
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overall focus is on race, racism in policing in particular and the criminalization of black youth, including the disproportionate numbers of blacks in the justice system. In appealing to public sentiment, Lewis stressed the climate of fear and apprehension faced by mothers in this community.

In the section on employment equity Lewis points out that every single minority grouping called for greater employment equity, yet despite an employment equity program in the Ontario Public Service since 1987 very little progress had been made. In his final section, on education, Lewis refers to educational disenfranchisement including low graduation rates among racialized youth, and makes references to institutional problems such as minimal black teachers in the school system. Lewis goes on to state that the educational system of the greater society at large is unrepresentative. He describes Faculties of Education in Ontario universities as insufficiently progressive and unsupportive of minority students. Significantly, Lewis calls for a kind of anti-racist pedagogy at the earliest levels, in elementary school.

In contrast to Bob Rae, who blamed the Yonge Street riots on hooliganism (Maychak 1992), Lewis' own position is stated exceptionally clearly, and he makes it on the third page of the report:

what we are dealing with, at root, and fundamentally, is anti-Black racism...It is Blacks who are being shot, it is the Black youth that is unemployed in excessive numbers, it is Black students who are inappropriately streamed in schools, it is Black kids who are disproportionately dropping out, it is housing communities with large concentrations of Blacks where the sense of vulnerability and disadvantage is most acute...Just as the soothing balm of 'multiculturalism' cannot mask racism, so racism cannot mask its primary target (Lewis 1992, p.3).

Also in 1992, the Ontario government established the Commission on Systemic Racism in the Ontario Criminal Justice System. The Commission studied all areas of criminal justice and in December 1995 issued a 450 page report with recommendations. The review reaffirmed the perception of racialized groups that "they are not treated equally by criminal justice institutions. Moreover, the findings also showed that the concern was not limited to police" (Commission on Systemic Racism, 1995, p. 14).

Less than a year following these reports, the Province of Ontario established the Royal Commission on Learning in May 1993. The full report released in 1995, entitled *For the Love of Learning*, was 500 pages long. It also emphasized the need to address the unfair treatment of racialized and marginalized communities (although the report doesn't use that exact language). Among the points made within is that Black, Portuguese and Hispanic students are disproportionately unsuccessful in Ontario schools, largely because the school system works best for those who come from wealthy families.

The report was intended to suggest a vision and action plan to guide the reform of elementary and secondary education. This would include values, goals and programs of schools, as well as systems of accountability and educational governance. It made an attempt to identify streaming as a barrier to children from racialized groups, leading to their under-representation in courses that give entry to post-secondary education (Royal Commission, p. 162).

The period from between 1995 to 2003 saw a change in the Ontario government from the left leaning New Democratic Party, then under Bob Rae to Mike Harris Progressive Conservative government. Unfortunately, the progressive direction in the area of social services and race relations promoted in these early 1990s reports saw an about face upon Harris' election in 1995. Harris opposed affirmative action and equity policies and derailed the recommendations made previously. His so-called 'Common-Sense' revolution has had long-term consequences. This period was characterized by increasing racial profiling from the police and disproportionate police violence against African Canadian and Aboriginal communities. Under Harris social programs (social welfare, health, education) suffered significant reductions in funding. In 2003, following the Walkerton scandal and confrontations with the teacher's union, Harris was swept out of power by the McGuinty Liberal government.

While discontent with Harris grew, civil society institutions continued to monitor growing social inequality. One example of this was the Ontario Human Rights Commission Report released in 2002 entitled *Paying the Price: The Human Cost of Racial Profiling*. It explained how racial profiling affected the individuals, families and communities that experience it. The report details the detrimental impact that profiling was having on societal institutions such as the education system, law enforcement agencies, service providers and so forth. In fact it outlines the business

case against profiling, arguing that it was reducing efficiency and costing society money. It was the Commission's view that racial profiling was primarily a mindset. "...at its heart, profiling was about stereotyping people based on preconceived ideas about a person's character."

Shortly thereafter Scott Wortly in his 130 page report to the Ipperwash Inquiry² (2003) sought to explain the overrepresentation of African Canadians and Aboriginals in police 'use of force' statistics. The report includes a comprehensive literature review, detailed analysis of racism in the justice system, and recommendations on how to avoid the disproportionate use of force against African Canadians and Aboriginal people. As we will see later in this paper, these problems remain as an important pivot for community concern in Etobicoke North. Most recently, police repression in the area has seen critique from the Toronto Police Services Review Board and the Board Chair Dr. Alok is seeking::

- *An independent review of existing police data, which would include data already obtained by the Star.*
- *An assessment of the impact the contacts may have on public safety.*
- *A look at how the police interactions affect public perception and trust in the service*

The Toronto Star reports:

"Black men, particularly young black men, who were interviewed for the current and past Star series say they feel harassed by police who stop and question them, and that whatever legitimate rights they may have to refuse to answer feel moot." Jim Rankin and Patty Winsa.

Downloaded Saturday, March 17, 2012- <http://www.thestar.com/news/insight/article/1147239--police-board-chair-seeks-race-based-probe-of-stops?bn=1>

Examining how such dynamics as those discussed by Wortly play out spatially, in 2004 The United Way of Toronto released their 92-page report *Poverty by Postal Code*. The report detailed

² "The Ipperwash Inquiry was established by the Government of Ontario on November 12, 2003, under the *Public Inquiries Act*. Its mandate was to inquire and report on events surrounding the death of Dudley George, who was shot in 1995 during a protest by First Nations representatives at Ipperwash Provincial Park and later died. The Inquiry was also asked to make recommendations that would avoid violence in similar circumstances in the future." <http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/index.html>

the dramatic increase in the number of poor Toronto neighbourhoods. It showed that Toronto had many more concentrated areas of poverty than it did 20 years earlier. *Poverty by Postal Code* indicated that the rapid and extensive growth in the number of neighbourhoods with a high proportion of families living in poverty not only undermined their strength – as well as of Toronto as a whole – it also made children, single parents, newcomers and racialized peoples particularly vulnerable. Etobicoke-North was one of the areas highlighted in the report. Shortly there-after, the City of Toronto identified Rexdale as a Priority Neighbourhood For Investment.

The 2000s have seen ongoing cases of racialized violence and a growing gap between rich and poor. A number of reports were commissioned as a result of the Jane Creba shooting in 2005, and the killing of Jordan Manners in 2007, a Black Canadian high school student shot in the halls of the Toronto School CW Jeffery's Collegiate.³

Shortly thereafter, in November 2008, Alvin Curling and Roy McMurtry released their provincially commissioned *Review of the Roots of Youth Violence* Report. They wrote,

The sense of nothing to lose and no way out that roils within such youth creates an ever-present danger... The very serious problems being encountered in neighbourhoods characterized by severe, concentrated and growing disadvantage are not being addressed because Ontario has not placed an adequate focus on these concentrations of disadvantage despite the very serious threat they pose to province's social fabric... Racism is becoming a more serious and entrenched problem than it was in the past because Ontario is not dealing with it. (Volume 2 – page 3).

Indeed, their report echoed much of what Stephen Lewis wrote almost twenty years earlier.

They write:

Deep concerns about this sad state of affairs pervaded our consultations. We were taken aback by the extent to which racism is alive & well and wreaking

³ A important document from this period is *The School Community Safety Advisory Panel Report*, released in 2008. Its 500- page, four volume report looked into the Manners' shooting. The panel was tasked to look at all the contributing factors that had led to this first ever case of a student being shot and killed in a public school in Ontario. The Panel interviewed parents, teachers, students and other educational stakeholders. It included survey results flowing from staff and students conducted at C.W. Jefferys and Westview Centennial. It concluded with 126 recommendations.

its deeply harmful effects on Ontarians and on the very fabric of this province.” (Volume 2 -- page 8)

Indeed, they explain, anti-racism is rarely addressed in the educational system. The focus is commonly on “multiculturalism” or “diversity”, which does not address access and inequality.

Through this period, Ontario educational institutions have started to recognize how inequalities and disparities are experienced by racialized groups. The Toronto District School Board released the *Achievement Gap Task Force* report in May 2010. Dr. Chris Spence, the first Black Director of Education, oversaw this report which acknowledges the disproportionate number of youth from Black/African heritage and other racialized/minority groups (Aboriginal, Hispanic, Portuguese and Middle Eastern) who do not graduate from high school. The task for released an updated report titled: the Opportunity Gap Action Plan⁴. The Task Force offers “directions for consideration to close the school achievement gap for students and to generate discussion and feedback”.

While educational institutions have been examining these problems in the school system, the Canadian Centre for Policy Alternatives (CCPA) has studied how the income gap is also racialized. In March 2011 the CCPA released a report on Canada’s racialized income gap by scholars Sheila Brock and Grace-Edwards Galabuzzi. The report makes the links between low-income jobs, the racialization of poverty, and the impacts both have on the health of racialized Canadians. It uses 2006 long-form Census data to compare work and income trends among racialized and non-racialized Canadians. Unfortunately it may be one of the last reports to have such data at its disposal given that the the Harper conservative Government is no longer collecting extensive information. The report found that during Canada’s economic high times of the mid-2000s, racialized workers experienced higher levels of unemployment and earned less income than white Canadians, and that equal access to employment opportunities were disproportionately lower for racialized workers. Co-writer Sheila Brock said of her findings that

⁴ The TDSB Opportunity Gap Action Plan strategic directions include “1) Identify disadvantage and intervene effectively. 2) Make every school an effective school. And 3) form strong and effective relationships and partnerships. It is the opinion of the researcher as a school teacher and community activists, that the report falls far short of the recommendations from both the *Roots of Youth Violence Report* and the *School Community Safety Advisory Panel*.”

“the work racialized Canadians are able to attain is more likely to be insecure, temporary and low paying.” (p. 2

Among their findings was that in 2006, racialized Canadians had an “unemployment rate of 8.6 per cent, as compared to 6.2 per cent for non-racialized workers”...

racialized workers were over-represented in industries with precarious low-paid jobs; they are under-represented in public administration and more likely to work in the hard-hit manufacturing sector... This colour code contributed to much higher poverty rates with 19.5 percent of racialized families living in poverty, compared to 6.4 per cent of non-racialized families (p 4).”

The income gap they discuss is exemplified in the neighbourhood of Etobicoke North/Rexdale as this electoral district has the highest unemployment rate and lowest average income in all of the GTA.) The need for a development strategy that would bring good, stable jobs for the neighborhood. was a key issue driving the creation of CORD. One of the interviewees (Danavan), was a founding member and his motivations and views on organizing are discussed further in the results and analysis section.

Taken together, analyses produced over the past twenty years point to the systemic issues identified by Stephen Lewis in 1992: that racialized groups in Ontario are disproportionately represented in jails, in school dropout statistics and in lower income groups. Addressing these issues through meaningful policy reform and programming will be essential if racialized groups in Ontario are to be lifted out of poverty. But an analysis of capitalism, and its manifestations over the past twenty years, indicates that this will only be possible if those most exploited and marginalized resist the processes that have put them in this position. It is to the structural roots of socio-economic exploitation, and consciousness raising and organizing to address it, that we now turn. **Community Organizing and Social Justice- David Harvey’s theory on ‘accumulation by dispossession’ and its applications to Etobicoke-North.**

The notion of accumulation by dispossession (Harvey 2004), applies Marx’s idea of ‘primitive accumulation’ to the contemporary period. It describes a series of different socio-economic, political, cultural processes inter-related under capitalism that lead to the labour of populations,

or the material goods that they have control over, being dispossessed in order for other people to accumulate capital.

This includes everything from expelling indigenous populations from their land in order to mine through Government mining contracts corporations, to the foreclosure of mortgages on lower and middle income populations in the U.S. during the 2008 financial crisis. In the US financial crisis this meant that all of the savings of these lower and middle income populations was 'lost' because they were not able to pay back the interest on their homes. In turn, large banks and their shareholders repossessed this wealth and property from others.

Further, certain populations are paid poorly to conduct certain types of activities that are essential to the further the accumulation and reproduction of capital. This means that lower paid populations are being dispossessed in a form allowing for their employers to accumulate wealth. This wealth accumulation could be channeled through the interest payments one makes for loans or credit into the interest savings of the wealth (from savings account or investment portfolios) as well as income from wages that are disproportionately paid to the highest earning sectors of society (cite Harvey and CCPA reports etc).

In Etobicoke-North this dispossession is visible in the disproportionate part of the population that is disproportionately underpaid compared to other parts of the Greater-Toronto area (United Way of Greater Toronto, 2004, ; Huchansky, 2009, Brock & Galabuzzi, 2011). Under neo-liberalism, the real wages of this population have fallen over the last 30 years (ibid.). This dispossession has also led to growing profits to the financial system whether through interest paid on credit by such people, or the increasing returns on investments in sectors where labour is poorly paid.

Today some parts of the population might say the service industry is absolutely essential to the production of capital. For instance, Rathika, the youngest research participant in this study works at a fast food establishment in Etobicoke-North, part of a sector that has grown immensely in the same period that real wages have fallen. Her work might be considered vital as a huge portion of the population relies upon services like hers in order for them to get a quick meal. This is so because the nature of contemporary capitalism does not allow the time or means for families to

do so. Where in the past, a gendered division of labour meant that the woman might frequently preparing the meal at home³ today all or most family members have entered the workforce.

So the activities of populations working in low-paying jobs are allowing for capital to be accumulated by wealthier portions of the population who hold money in investments and work in jobs that are much better remunerated. Further, the Canadian economy has become increasingly dependent on this precarious workforce (cite Hulchansy or the new Metcalfe report if appropriate). Precarious work means that you do not have stable income or job security and you have little choice but to accept working conditions that are considered much lower than earlier Canadian generations.

Another direct example of a form of dispossession includes racialized women working in the homes of relatively wealthy people as caregivers, nannies and/or cleaners at a relatively low wage. This allows the employer to reproduce themselves in a very comfortable manner and perhaps accumulate additional wealth, while public day care services are under-funded and insufficient to cover the needs of the two person work force. From farm labourers, where people from Mexico and the Caribbean come to Canada on temporary work permits, to new immigrants who do not have their professional designations recognized, all end up working in situations that allow capital to reproduce itself at their expense. All of these are contemporary mechanisms by which these populations allow for a certain kind of reproduction, production, accumulation of capital and lifestyle of certain populations by their very existence.¹

¹ These are exploitative dynamics and the researcher is well aware that many of these workers are very grateful for the opportunity to leave oppressive circumstances and take their chances in Etobicoke-North. But many of parts of these working class and precarious workers have left their home countries for reasons that include the dispossession of their lands by Northern/Canadian corporations. In Etobicoke-North, prior to the North American Free Trade Agreement (NAFTA), many residents were able to find well paying, unionized jobs right out of high school. Now, many of these same companies have

³ This is not to suggest that this gendered division of labour is 'just'. Clearly due to patriarchy many women continue to shoulder these tasks even once they have entered the labour force.

either relocated to Mexico, the US, overseas or have gone bankrupt. Many of the jobs available in Etobicoke-North are either in the retail or service industries.

Toronto Police Accountability Coalition
c/o Suite 206, 401 Richmond Street West, Toronto ON M5V 3A8.
416 977 5097. info@tpac.ca , www.tpac.ca

March 19, 2012.

To: Toronto Police Services Board

Please list Toronto Police Accountability Coalition on the March 22 agenda to speak to Chair Mukherjee's report titled 'Collection of Demographic Statistics'. This report refers to articles in the Toronto Star about racial data collected by the police and recommends that the city Auditor "conduct a project to collect and analyze data related to such contacts between the police and the community" and to report by December 2013.

The data in the Toronto Star article on March 10 are quite stunning. See <http://www.thestar.com/news/insight/article/1143536--known-to-police-toronto-police-stop-and-document-black-and-brown-people-far-more> The article reports on the data on cards recording police stops from 2008 to mid-2011, about 1.25 million cards.

While blacks account for 8.3 per cent of Toronto's population, 23.4 per cent of the cards were for people identified as black. The data shows there were 11 patrol areas where blacks were more than five times as likely as whites to be stopped by police; 31 areas where they were three to five times as likely to be stopped, and 24 where they were two to three times as likely. There were no patrol areas where blacks were less likely to be stopped by police as whites.

For young black men aged 15 – 24, the data are even more stunning. The number of black youth stopped by police is 3.4 times larger than the total number of black youth living in Toronto. For brown youth the number of stops is 1.83 times the number of brown youth living in Toronto. The number of white youths stopped is about equal to the total number of white youths living in Toronto.

This data generally confirm studies of carding data published by the Star in 2010 and 2007, showing that police behaviour in regard who they stop has been the same for at least the past decade. We believe the Star's analysis of the police carding data is reliable and sound.

We think the conclusions are clear to anyone who looks at the data:

- a) The data in the Star story make it very clear that racialized youth and men were stopped by police far more often than youth and men with white skin.
- b) This confirms the statements made by many racialized youth that they are very frequently stopped by police as they go about their law abiding lives.

We believe the following statements are self-evident:

- c) It is a fair presumption when some individuals are treated differently than others because of skin colour, such actions are discriminatory.
- d) Racialized youth and men are stopped more frequently, and thus treated differently by police than others, and that treatment is discriminatory.
- e) Racial discrimination is not permitted in Ontario and is subject to legal sanction.
- f) Police are as much subject to anti-discrimination laws as anyone else.
- g) Discrimination is not justified just because police think it is a good way of 'fighting crime'.
- h) Ways must be found to stop such discriminatory behaviour by police immediately.

It should also be noted that the Supreme Court of Canada has questioned the legal basis for these random stops where individuals feel they must submit to police commands. Pending a review of whether the police should in fact continue to make such stops, we recommend two changes:

- 1) The police must provide to everyone stopped a carbon copy of the card note made by the officer, including the reason for the stop. This will ensure that individuals can clearly indicate how many times they have been stopped and for what reason.
- 2) The police must provide to everyone stopped an information sheet indicating to those stopped their rights, particularly their rights not to co-operate. This information sheet should be drafted jointly by the police, Canadian Civil Liberties Association, the African Canadian Legal Clinic, and Justice for Children and Youth. Currently, most people stopped by police feel intimidated, and fear police will harm them if they do not do exactly as police say even though the police have no such powers.

Regarding the more general question of what this analysis shows about police behaviour, we do not believe it is useful to ask the City Auditor to further analyze this data and report in 19 months: as noted, the Star's analysis seems fair and reasonable, however critical or uncomfortable the conclusions.

We suggest the following as a reasonable course of action:

- 3) The Board should immediately state that it will not tolerate discriminatory stops by police officers.
- 4) The Board should require the chief to report to it on a monthly basis on carding activities including information about the races and ages of those carded.
- 5) The chief should require the Diversity Management Unit to monitor all carding activity, and where it is shown that results indicate that discrimination by race is occurring, the Unit shall counsel officers to change their behaviour, and where officers do not change their behaviour, the division commander shall immediately begin disciplinary actions.
- 6) The Diversity Management Unit should consider developing a structured interview/intervention process in cases where police stops may reasonably be warranted.

We considered asking the Ontario Human Rights Commission to work with the Board and police service to bring such widespread discriminatory action to an end but we note that the service and the OHRC worked together for almost three years on the recently completed Project Charter, and that process had nothing to say about discriminatory stops and arrests. It is not worth going that route again.

We considered the option of more training but that is not the answer: the issue is the police culture, and that can only be changed by different requirements and consequences. It is the same problem with recruitment: the police culture is so strong that hiring officers of different races (as has happened happily more frequently in recent years) has not changed police behaviour.

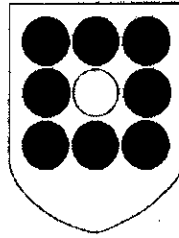
Like many other organizations and individuals – and we suspect, Board members - we want a police force that does not discriminate. We put forward these ideas and recommendations with the hope that they can help create the kind of change the Toronto police force needs.

Yours very truly,

A handwritten signature in black ink, appearing to read "J. Swell". The signature is written in a cursive style with a large, stylized initial "J" and "S".

Toronto Police Accountability Coalition.

CANADIAN
CIVIL LIBERTIES
ASSOCIATION



ASSOCIATION
CANADIENNE DES
LIBERTES CIVILES

Statement and Recommendations of

The Canadian Civil Liberties Association (CCLA)

1. We commend the Toronto Star and its reporters – Jim Rankin in particular – for their continued investigations into and reporting on the very serious issue of racial profiling of black male youth, and for creating public awareness about this.
2. We also commend the response of Toronto Police Services Board Chair Dr. Mukherjee for taking the issue seriously and moving to address it at this week's Board meeting.
3. The Canadian Civil Liberties Association is currently facilitating a project on Youth Rights and Policing. Sadly, the results described in the Toronto Star series come as no surprise. Preliminary data from our project corroborate the findings in the Toronto Star series.
4. **What is at issue for black male youth is not just the recording of their names and identities. It is also unwarranted police stops which in and of themselves violate the privacy, autonomy and dignity of the young people involved.**
5. Such stops can and do lead to random and unnecessary questioning, requests for identification, intimidation, illegal searches, and at times aggression on the part of police.
6. Chief Blair has been quoted as suggesting that the stops are a way for police officers to engage with people. He has also stated that the very purpose of this kind of policing is to make the neighbourhoods safer, so that young people can live there "without being fearful."
7. The positive interactions and relationships that certain officers may be attempting to forge, are undermined when stops and unconstitutional violations target specific racialized groups.

RECOMMENDATIONS

1. The practice of targeting black male youth (including unwarranted stops and /or questioning, demanding and recording of identities, intimidation, and searches) is unacceptable and unconstitutional. It undermines the goals of law enforcement and of the criminal justice system. It must be stopped.
2. We support the recommendation of the Chair, Dr. Mukherjee, to request of the City of Toronto Auditor General to investigate this practice. Steps must also be taken to stop it.
3. The Ontario Human Rights Commission also has the responsibility to conduct a full and thorough investigation of this issue and to make useful recommendations. Likewise the OIPRD, which also has the authority to conduct investigations of systemic issues. Barring effective action on these fronts, complaints could be lodged or legal action contemplated.
4. In the interim, the police are still responsible to deal with this urgent matter, and they must confront it proactively.

The Police Services Board should work without delay to create a policy prohibiting the practice of targeting black male youth (including unwarranted stops and/or questioning, demanding and recording identities, intimidation and searches).

Provisions in this policy should address enforcement of the policy through appropriate discipline. They should also address data collection and reporting requirements, and other recommendations.

Independent community-based groups should be consulted on this policy. CCLA would be happy to consult with the Board in this regard.

Noa Mendelsohn Aviv
Director, Equality Program, Canadian Civil Liberties Association

March 21, 2012

For more information: Penelope Chester; media@ccla.org; 416-363-0321 x225 OR 647-822-8764



March 20, 2012

VIA EMAIL

Deirdre Williams, Board Administrator
Toronto Police Service Board
40 College Street
Toronto ON, M5G 2J3
Email: deirdre.williams@tpsb.ca

Dear Ms. Williams:

RE: Deputation at Toronto Police Services Board Meeting

I am writing this letter on behalf of the African Canadian Legal Clinic ("ACLC") to request an appearance at the upcoming Board meeting, scheduled to take place on Thursday, March 22, 2012 at 1 pm.

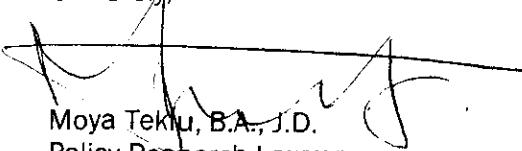
The meeting will address, *inter alia*, the articles in the *Toronto Star* about racial data collected by the police and the recommendation of Chair Mukherjee to the City's Auditor General about conducting a project to collect and analyze data related to such contacts between the police and the community.

I understand that the by-laws provide that written notice to the Board Administrator must be received no later than five working days prior to the next regularly scheduled Board meeting. I hope, however, that, given the importance of this issue to the African Canadian community and the recent date of publication of this data and Chair Mukherjee's recommendation, an allowance will be made in this instance.

Briefly, the ACLC would like the opportunity to suggest that it is not useful or cost-efficient to ask the City Auditor to further analyze this data and report in 19 months. First, the problem of racially biased policing in the Greater Toronto Area has been an issue of concern for over ten years. Second, the analysis conducted by the *Star* appears to be fairly analyzed and methodologically sound. The ACLC would also like to submit that rather than analyzing data, the Board's resources would be better used to address this long-standing problem. The ACLC would like to put before the Board its recommendations for the best practices to address racially biased policing.

The ACLC will provide a written version of our depositions upon receiving your response to this request to appear. Please do not hesitate to contact me if you have any questions, comments or concerns.

Sincerely,


Moya Teklu, B.A., J.D.
Policy Research Lawyer



African Canadian Legal Clinic

Written Submissions to the Toronto Police Services Board

**Recommendations of Chair Alok Mukherjee on the Collection of
Demographic Statistics**

April 5, 2012

Introduction

The African Canadian Legal Clinic (“ACLC”) would like to begin by commending the *Toronto Star* for its role in placing race based statistics on the policy agenda of the Toronto Police Services Board (“TPSB”). The ACLC also commends Chair Alok Mukherjee for taking the initiative to examine the “pattern of contact between the police and ... young people from certain ethno racial backgrounds.” The Clinic has long held that the collection and publication of race-based statistics by police services is a necessary instrument in the fight against anti-Black racism in the provision of police services. We encourage the TPSB to collect and analyze race-based statistics in order to evaluate the effectiveness and utility of its many anti-discrimination policies and practices and thereby ensure transparency, accountability, and real progress.

While the ACLC welcomes the renewed attention to the issue of racial profiling in policing, contact cards, and race based statistics, the ACLC, like the Toronto Police Accountability Coalition, questions the recommendations advanced by Mr. Mukherjee for a number of reasons. Firstly, we question the need to collect further data on the issue. The recommendations propose a data collection and analysis project that will not conclude until December 2013. We can hardly rationalize the need for another lengthy study before the TPSB takes action to reduce the disproportionate number of African Canadians who come into contact with police. Secondly, we question whether the Auditor General is the right person to conduct a review and analysis of the data. Thirdly, Mr. Mukherjee’s brief fails to make any recommendations that specifically aim to curb the disproportionate impact that police stops and 208 cards have on the African Canadian Community.

The Correct Response to the Statistical Analysis Presented by the *Toronto Star* is NOT another Lengthy Data Collection Project

The ACLC is opposed to another lengthy data collection project on the issue of racially-biased policing. The recent statistics published in the *Toronto Star* news series, “Known to Police,” are drawn from data collected by the Toronto Police Service (“TPS”). The data and analysis do not appear to be flawed and provide the necessary “concrete quantitative database” called for in the recommendations. Unless the TPSB can point to some error in the collection or analysis of the data, any re-analysis would be a waste of time and public money.

Anti-Black racism in our criminal justice system is a widely-recognized and well-researched phenomenon. It has been documented at all levels of court. In *R. v Spence*, for example, the Supreme Court noted that “racial prejudice against visible minorities is notorious and indisputable... [it is] a social fact not capable of reasonable dispute.”¹ In *R. v Parks*, a landmark decision of the Ontario Court of Appeal, the court acknowledged that there is support for the view that “widespread anti-Black racism is a grim reality in Canada and in particular in Metropolitan Toronto.” The phenomenon has also been studied in numerous reports. The TPSB is surely aware of the plethora of legal and social science studies that

¹ *R. v Spence*, [2005] 3 S.C.R. 458 at para. 5.

over the past forty years have documented the strained relations between the police and the African Canadian community. The ACLC has identified at least 15 such reports that have been issued since the 1970s.

The Board's proposal of another study of racially biased policing in the TPS is very similar to the response of former Police Chief Julian Fantino and former TPSB Chair Norman Gardner to "Singled Out," the *Star* series on the same topic published in 2002. Ten years later, in 2012, the response of Toronto's African Canadian community is the same. We cannot afford to wait for yet another study. Our young men are being profiled, monitored, over-scrutinized, and (no matter how politely it is done) treated like criminals. Credible data on the issue is available. It has been studied and analyzed *ad nauseam*. Now is not the time for more analysis. Now is the time for action. Using the studies and the police stop data that is currently available, the TPSB is well-poised to adopt concrete measures, policies and guidelines to address this problem. The ACLC supports the submissions of the Toronto Police Accountability Coalition in this regard.

The Data Analysis Should Be Conducted By a Respected Social Scientist

If the Board determines that the *Toronto Star* data or analysis is in some way flawed and that the TPS data must be re-analyzed or analyzed anew, the ACLC submits that the City's Auditor General is not well-suited to the task.

First, the practice of racial profiling has created what has been described as a "toxic" relationship between the police and the African Canadian community. Heightened police scrutiny is a problem that is specific to the African Canadian community. As noted in "Known to Police," in all but one of the City's 72 police zones, African Canadians are more likely to be stopped than whites² – often 2 to 3 times more likely. Moreover, the likelihood that an African Canadian will be stopped increases in predominantly white neighbourhoods.³ In one predominantly white zone, for example, African Canadians are 17 times more likely to be stopped.⁴ The excessive monitoring of African Canadians in predominantly white neighbourhoods demonstrates that these statistics cannot be explained by pointing to the fact that African Canadians tend to make up a large segment of the population in some of Toronto's poorest and most crime ridden neighbourhoods. Rather, they suggest that regardless of where they live, if they have black skin, they will be viewed and treated as criminals. The toxicity and mistrust between these two groups must be reflected in the selection of an arm's length professional to conduct any additional analysis of this data. While the City's Auditor General is certainly more independent than someone within the TPS, the ACLC submits that, given the level of mistrust caused by the long-standing nature of this problem, the Auditor General is not independent enough.

² Hidy Ng, Jim Rankin, & Patty Winsa, "Police Patrol Zones Black and White: A Difference in Documentation" *Toronto Star* (undated) online: <http://www.thestar.com/staticcontent/760552>.

³ Jim Rankin & Patty Winsa, "Police board chair seeks race-based probe of stops" *Toronto Star*, (March 15, 2012), online: <http://www.thestar.com/news/insight/article/1147239--police-board-chair-seeks-race-based-probe-of-stops?bn=1>. [Patrol]

⁴ *Supra* note 2.

Second, the TPSB must make clear the end to which it seeks to analyze or re-analyze police stop and contact data. As noted earlier, if it is merely to verify the accuracy of the analysis published by the *Star*, the Board must make absolutely clear why the *Star* analysis and conclusions are perceived to be deficient. The Board must also ensure that any study is concluded within a reasonable amount of time. The ACLC proposes that any study should be concluded no later than December 2012.

If, however, the purpose of the analysis is purpose-driven – that is, to analyze trends, theorize as to causes, and come up with real solutions to the problem – this project should be undertaken by someone that is capable of more than statistical valuation. Specifically, a qualified social scientist that can contextualize the data, is well versed on issues affecting the African Canadian community, and is capable of crafting a solution to this problem that is sensitive to the community's concerns.

The Problem with 208 Cards and Current Police Stop Practices

Members of the TPS credit 208 cards with assisting police investigations.⁵ The TPS must acknowledge, however, that, regardless of their perceived utility, frequent police stops are an affront to the constitutionally protected freedoms of African Canadians.⁶ The Ontario Court of Justice has called the practice of stopping individuals and creating 208 cards “menacing” as it subjects innocent citizens to routine police scrutiny. In *R. v. Ferdinand*,⁷ the Ontario Court of Justice made the following pronouncement with respect to 208 cards,

Although I do not dispute that 208 cards might well be a useful and proper investigative tool for the police; in my view the manner in which the police currently use them makes them somewhat menacing. These cards are currently used by the police to track the movements – in some cases on a daily basis – of persons who must include innocent law-abiding residents.

One reasonable – although very unfortunate – impression that one could draw from the information sought on these 208 cards – along with the current manner in which they are being used – is that they could be a tool utilized for racial profiling.

... If the manner in which these 208 cards are currently being used continues, there will be serious consequences ahead. **They are but another means whereby subjective assessments based upon race – or some other**

⁵ Jim Rankin, “Race Matters: Blacks documented by police at high rate. Toronto Star” (February 06, 2010) online: <http://www.thestar.com/specialsections/raceandcrime/article/761343-race-matters-blacks-documented-by-police-at-high-rate>. In 2010, Mike McCormack police union president called the cards “invaluable... You’re recoding data setting up associations, knowing who’s involved (in gang activity). It puts people in certain locations.

⁶ Roger Rowe, “Allegations of Profiling: How Much disclosure of Investigative Records is Appropriate,” online: http://www.rogerrowelaw.com/document/pdf/Cases/Buckley_Trial_Paper_by_Roger_Allegations_of_Profiling.pdf.

⁷ *R. v. Ferdinand*, [2004] O.J. No. 3209 [*Ferdinand*] at paras.11-16.

irrelevant factor can be used to mask discriminatory conduct. If this is someday made out – this court for one will not tolerate it.⁸ [Emphasis added]

The Toronto Police Service cannot point to the effectiveness of 208 cards as a justification for their use. First, the practice is discriminatory and likely unconstitutional. 208 cards are being used to single out African Canadians, particularly our youth, for frequent and unnecessary stops. Second, it leads to strained community-police relations. Most persons that are stopped are not charged. David Tanovich, a law professor at the University of Windsor who is widely recognized for his expertise in racial profiling, has noted that documenting people in non-criminal encounters creates a “no walk list” for young men in poor neighbourhoods.⁹ This heightened form of surveillance is “exactly what the essence of racial profiling is all about” and can only lead to increased levels of mistrust and antagonism between the police and the African Canadian community.¹⁰ Third, and most important, there are other more collaborative and less demeaning ways of alleviating the crime rate. The TPS is encouraged to work with community groups that have lobbied for funding of after-school programs, worked to increase job opportunities, and generally worked to address the root causes of criminal involvement. The TPS must recognize the work of these community-based organizations and focus its efforts and resources on community-building and prevention (e.g. Youth in Policing Initiative) instead of increased policing and surveillance.

Recommendations

The ACLC makes the following recommendations for changes to police stop practices. These recommendations echo and add to the suggestions of the Toronto Police Accountability Coalition:

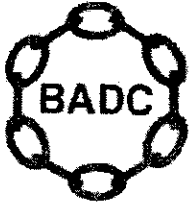
- 1) Stop and search data analysis and the creation of recommendations should be shaped by an anti-racist framework. To achieve this goal, the ACLC recommends that a social scientist or expert criminologist analyze the data. This should be completed no later than December 2012.
- 2) The TPSB should implement policies and guidelines that restrain an officer’s discretion to randomly stop individuals and create 208 cards. Such guidelines should include:
 - The Board should immediately state that it will not tolerate discriminatory stops by police officers.
 - The Chief should be required to report to the Board on a monthly basis regarding carding activities. This report should specifically comment on the rate at which African Canadians are stopped and carded.

⁸ *Ibid.*, at paras. 18-20.

⁹ *Supra* note 5 at page 5.

¹⁰ *Ibid.*

- Officers should be required to record the reason for stopping each individual.
 - The police must provide to everyone stopped a plain language information sheet indicating to those stopped their rights, particularly their right to refuse to provide personal information. The information sheet should be drafted in consultation with the African Canadian Legal Clinic and other equity seeking organizations.
 - The police must provide to everyone that is stopped a carbon copy of the card completed by the officer. This will ensure that individuals can document how many times they have been stopped and the reason for the stop.
- 3) The TPS and TPSB should consult and meet with members of the African Canadian community to ensure that the specific concerns of the community are addressed and reflected in whatever solution is adopted to address the problem of racial profiling.



BLACK ACTION DEFENSE COMMITTEE INC.

Comite' d'action pour la de'fense des Noirs Inc.

944A St. Clair Avenue West, Toronto, Ontario M6C 1C8 Tel: (416) 656-2232 Fax: (416) 656-2252

Chairman of the Toronto Police Services Board, Board members, Chief Bill Blair, other Presenters, Ladies & Gentlemen, My name is _____, I am a member of the Black Action Defense Committee and its Black Community Coalition, I am here to speak against the further collection of Demographic Statistics and all related scrutiny and information collection of our Communities.

First of all let us come to an understanding; the African-Caribbean Community feels harassment and degradation by the 24 hour a day, 7 day a week surveillance which your Officers are tasked to perform on our Communities as a result of your Demographic Statistics collection. We view Demographic Collection as a prime example of Anti-Community Policing and racial Profiling!

As long time Community activist Lennox Farrell suggested, "...Our community should take all young Black men and women on their 16th birthday to the police station and have them carded as a rite of passage."

The *Toronto Star's* recent series of articles on Racial Profiling & Carding as your Demographic Statistics collection is known in our communities have publicized the reality of policing Black and Brown people in Toronto.

We take the *Star's* analysis further to remind Canadians that the *United Nations Charter on Human Rights* and Section 11 of the *Canadian Charter of Rights and Freedoms* and the Ontario Human Rights Code affirm that **everyone** has the right to be free from unlawful search and seizure. The Toronto Police Services behave as though these rights do not apply to African-Caribbean people.

Racial profiling by police officers is not only a violation of human rights. It is another appalling demonstration that anti-Black racism is still pervasive in Toronto and indeed Canadian society in general. There is more and more research evidence that racism makes its targets ill; mentally and physically. Even more, it kills.

Your so-called Demographic Statistic collection is compromising the future of our Children; it causes them to fear Police, to have lower self-esteem and confidence and intimidates them when entering other Afrocentric Neighborhoods. This program seriously erodes our community's confidence and instead instills a lasting mistrust of Law Enforcement and ultimately the Judiciary system. The pressure felt by our Communities is tangible and has brought us to the limits of our patience!

In this regard the Toronto Police Service does not serve and protect the Toronto African-Caribbean people. It disses and profiles us. We condemn the reign of terror against our Communities and youth by police acting as an out-of-control occupying army now intent on playing sociologist and anthropologists.

In light of this reality, BADC and its Black Community Coalition DEMAND:

1. **An IMMEDIATE cessation of all Demographic Statistics collection by the Toronto Police Services** because it creates a conduit for Racial Profiling which harasses, stigmatizes and intimidates and has caused a significant Ratchet effect in most of our Communities, as is evident in our own realities reflected in the *Toronto Star's* report of March 22nd Black & White – A Difference in Documentation.

**BADC - Black Action Defense Committee & The Black Community Coalition
Deputation to the TPSB – April 5 2012 – Demographic Statistics – Racial Profiling & Carding**

2. **An IMMEDIATE cessation of vicarious Carding of people** as it is de-humanizing and degrading and is in contravention of our Charter and human Rights.
3. **An IMMEDIATE transformation in the attitude Toronto Police Services project toward people of African-Caribbean decent** from the current practice of Racial & Cultural indignation, to one of respect, dignity and ethno-cultural sensitivity.

Consequences to non-compliance of our above stated DEMANDS:

Honorable Chairman, Members of the Board, Chief Blair if there is not an immediate compliance to these demands you will force our Community's to begin our own campaign within-the-law of Non-Compliance and Non-Communication toward the Toronto Police Services.

The African-Caribbean Community is now and has always been a friend to the Toronto Police Services, we appreciate the ideals of the task you have to perform in our great city however, and we all should concede that there are very real systemic racism issues which prevent us from embracing each other further.

Until the harassment and stigmatization of the African-Canadian Community by the Toronto Police Services is transformed into Respect and Dignified Treatment, there can no longer be any spirit of cooperation between us.

Your collection of Demographic Statistics is concomitant with Racial Profiling, and your practice of vicarious Carding is an excuse to surveil and intimidate our youth and lifeblood, **AND WE WILL NO LONGER STAND IDLE WHILE YOU ENDANGER THE FUTURE OF OUR COMMUNITY.**

Honorable Chairman, Members of the Board, Chief Blair BADC & the Black Community Coalition implore you to accept this deputation in the spirit in which it has been given, that of respect, determination and ultimately concern for our Communities, our Families and our own person.

Thank you, good day.



frontline partners w/ youth network

To Whom It May Concern:

We are writing to express our support for the Toronto Police Accountability Coalition (TPAC) brief, which will be considered at your meeting on April 5th, 2012. This brief presents TPAC's conclusions based on the race data collected by *Toronto Star* on police dealings on racialized youth.

As a network of frontline workers (people who work directly with young people), we have been inundated with narratives on police dealings with people of colour. As many of the frontline workers we work with are also young people themselves, they too are subject to harassment. We have even had reports of police officers pressuring frontline workers to become "confidential informants" as a means of gathering information on the community. The struggle to develop positive relationships between law enforcement and racialized young people has been a point of contention for decades, marred by inequalities in power and complicated by poverty.

The *Toronto Star* article confirmed what we have been hearing for the past five years of our network's existence; it validated frontline workers' concerns that police-community interactions are highly racialized. The tensions created by these interactions have caused community suffering, and have increased the workload for frontline workers, who often find themselves "interrupting" violence on the ground. We are deeply concerned by the portrayal of young black men as "potential criminals" and the emotional and physical risk this dynamic has imposed on marginalized communities.

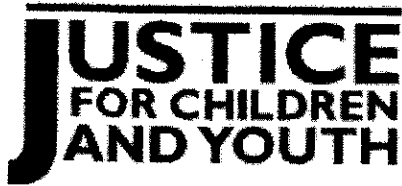
The TPAC brief has excellent recommendations that we strongly urge your Board to consider. These recommendations would help forge more equitable relationships between communities and the police. Every young person has the right to be honoured, cared for, and feels as if they belong to their communities. We know that the police are integral parts of the community, and often have great influence on young people's lives. We hope that the police can participate in developing healthy communities, where safety is not correlated to the colour of one's skin.

Please do not hesitate to contact us should you need our assistance. We look forward to your Board's deliberations on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Neema Alam, Chrissy Carroll'. The signature is written in a cursive style and spans across two lines.

On behalf of Frontline Partners with Youth Network



JOHANNA MACDONALD, STAFF LAWYER

PHONE: 416-920-1633

FAX: 416-920-5855

E-MAIL: macdonaj@lao.on.ca

March 21st, 2012

Deirdre Williams
Toronto Police Service Board

Attn: Toronto Police Services Board

Re: Endorsing Toronto Police Accountability Coalition's Deputation on 'Collection of Demographic Statistics', March 22nd, 2012, TPSB Meeting

I am the street youth legal services lawyer at Justice for Children and Youth. This letter endorses TPAC's deputation on the 'collection of demographic statistics' at your March 22nd, 2012 TPSB meeting.

For over ten years, the Street Youth Legal Services Program (SYLS) at Justice for Children and Youth has voiced concern over the harm that youth in Toronto have experienced at the hands of our police.

The Toronto Police Service contact cards statistics inform us of a deeply rooted problem of discriminatory police stops and data collection. Youth identifying as minorities experience a higher level of distrust of police, and when considering the real and statistical analysis of their interactions with law enforcement officers, it is not surprising.

Take the example of Tyrell, a 17 year old black youth living in the Jane-Finch neighbourhood. He knew a few officers, and was interested to go into law enforcement. One day, at the food court of his local mall, he was violently arrested, searched and questioned about the people he knew. He was then released without charge. This was done in public, and he was left extremely embarrassed and shameful. Now, instead of wanting to enter law enforcement, he tells me, looking down and in a sad voice, 'I hate them all'.

The weight of surveillance of our youth is crushing. It's hard to hear the pain, anger, and sounds of hopelessness in the voices of youth that are being stopped daily, sometimes questioned, sometimes searched, sometimes physically hurt. It's hard to hear because they are too fearful and too devastated, to speak out. Youth are also intuitively knowing that remedies are not available for their sufferings, as the OIPRD annual report highlights dismal accounts of successful resolution to complaints posed by civilians.

CANADIAN FOUNDATION FOR CHILDREN YOUTH AND THE LAW
415 YONGE ST., SUITE 1203

TORONTO, ONTARIO



JUSTICE FOR CHILDREN AND YOUTH

While Chief Blair asserts that Toronto Police Service methods balance rights and provide youth with a safer community, research studies and our clients tell a different story.

The 2010 publication, 'Surviving Crime and Violence: Street Youth and Victimization in Toronto', by authors Bill O'Grady, Stephen Gaetz and Kristy Buccieri, informs us that of 250 interviewed street involved youth: 76% of the youth have experienced criminal victimization in the last year, yet only 20% reported the crime to the police. Of all the youth the SYLS program interacts with, the resounding reason for not reporting is that they do not trust the police; feeling that the police would a) not believe them, or b) not protect them.

A review of the statistics by the General Auditor will do little to address these deeply rooted concerns around trusting relations between our youth and our officers tasked with protecting them. The recommendations in TPAC's brief will take steps in the right direction. Providing persons stopped with an information sheet on their rights and a carbon copy of the card note made by the officer will assist persons stopped to understand the reasons for their stop and the procedural rights they are entitled to.

The Board making statements about intolerance to discrimination will set the stage for the deeper work of rooting out discrimination and serving Toronto's youth in a humane manner, respecting human rights from the school room to the basketball court in the neighbourhood of Weston Mount Dennis. You must take action on this crucial matter of public safety. Please feel free to contact me for further discussions.

Regards,



Johanna Macdonald
Counsel, Justice for Children and Youth



**Office of the Provincial Advocate
for Children and Youth**

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March 21, 2012

Toronto Police Services Board
c/o Deidre Williams
Board Secretary
40 College Street
Toronto Ontario M5G 2J3

Dear Friends:

I am writing to express my support for the brief submitted to you by the Toronto Police Accountability Coalition which is to be considered at your meeting of March 22, 2012. The brief centres on Chair Mukherjee's report "*Collection of Demographic Statistics*" and recent Toronto Star articles on "police stops" from 2008 to mid 2011.

Racialized young people in the mandate of my Office have time and again spoken about their desire to forge better relations with Police in their communities. They have often spoken about being unfairly labeled by Police which exacerbates tension between them and Officers and widens the gulf of mistrust. The Toronto Star articles, as delineated in the TPAC brief, make it clear that this concern is justified. For Black men aged 15 to 24 years the data is astounding. The number of Black youth stopped by Police is 3.4 times larger than the total number of Black youth living in Toronto.

The TPAC brief proposes a number of recommendations for the Board to consider. I would ask the Board to give great consideration to them. I believe that a robust and significant strategy is necessary to build strong relationships between Police forces and racialized youth. I believe we all want a day to come where youth are known to Police for positive, pro-social reasons rather than reasons of suspicion. The good news is that I believe young people wish for this day as well. We will not get there unless we set it as a goal and work towards it. I would submit to you that the practice of the Police as outlined in the Star articles runs contrary to building a bridge to that day.

I look forward to learning of the deliberations of your Board. If you feel my Office could be of assistance to you please do not hesitate to ask.

Sincerely,

Irwin Elman
Provincial Advocate



Deputation to Toronto Police Services Board By Miguel Avila

Agenda Item: COLLECTION, USE AND REPORTING OF DEMOGRAPHIC STATISTICS

April 05 2012

My Name is Miguel Avila, A Toronto Taxpayer and a proud Latino Canadian. I am a peaceful activist and a regular deputant at the Toronto Police Services Board.

Mr Alok Mukherjee is asking the board to decide today to request that the Toronto's Auditor-General Jeff Griffiths "collect and analyze" race-based data from the contact cards police fill out every time they come in contact with people, regardless of whether a crime has been committed.

Your request to have an independent review is a positive measure and your assertions that Youth are more affected by this interaction with your officers is something we have been telling you for years and not only the youth of this city, but the public in general, Torontonians, yes those Taxpayer's who contribute with their portion of our taxes to pay the salaries and benefits of your men and women of blue.

Mr Mukherjee, Racial profiling begins with changing the culture. The Culture of both the T.P.S and its Board. Quoting Mr Blair statements in an article. has acknowledged since becoming chief in 2005 that racial bias is a reality in policing.

As a Torontonian and a Taxpayer I will no longer stand for racial discrimination, particularly based on what people are wearing or speak, more often people who speak on behalf of the defenseless in Toronto are being victimized as in the case of last Friday April 30, 2012. ... Police are here to serve and protect, not to harass and neglect."

What is Racial Profiling?

The Ontario Human Rights Commission has this definition:

For the purposes of its inquiry, the Commission's definition for "racial profiling" is any action undertaken for reasons of safety, security or public protection, that relies on stereotypes about race, colour, ethnicity, ancestry, religion, or place of origin, or a combination of these, rather than on a reasonable suspicion, to single out an individual for greater scrutiny or different treatment.

Racial profiling is different from criminal profiling. Racial profiling is based on stereotypical assumptions because of one's race, colour, ethnicity, etc. Criminal profiling, on the other hand, relies on actual behaviour or on information about suspected activity by someone who meets the description of a specific individual.

Solutions:

Mr Blair has defended the documenting of citizens as good police work really?. T.A.V.I.S target areas plagued by violent crime, and that it has worked to reduce these crimes in those areas or is it the other way around? Most generated contact cards are produced by member of T.A.V.I.S. they are deployed in the city's 13 "priority" or at-risk neighbourhoods.

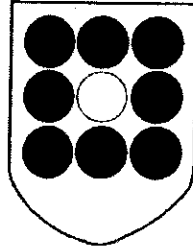
This are the areas where more single-family households, fewer meaningful jobs and less education and employment in these areas, which are home to more newcomers and non-whites. The interaction with Members the Police has created distrust and lack of confidence.

The 208 cards are also known as Filed Information Reports so hardly defended by the Chief and with the blessings of this board must be modified in order that in each and every interaction with the public a Toronto Taxpayer Citizen receives a COPY of such contact for comparison purposes should any unfortunate situation arises in the future. In other words each is protected from what I say and he said and vice versa.

To request that the T.P.S stop collecting demographic data that would be much harder, hopefully in time you will listen.

Miguel Avila
Ward 28

CANADIAN
CIVIL LIBERTIES
ASSOCIATION



ASSOCIATION
CANADIENNE DES
LIBERTES CIVILES

July 19, 2012

Submissions to the Toronto Police Services Board

Noa Mendelsohn Aviv, Equality Program Director
Canadian Civil Liberties Association

RE: Request for Extension of Time to Submit Report: Costs and Operational Implications of Board Motions Relating to Contact Cards and Quarterly Reports to the Board

The Canadian Civil Liberties Association (CCLA) is a national organization with thousands of supporters drawn from all walks of life. The CCLA was constituted to promote respect for and observance of fundamental human rights and civil liberties and to defend and foster the recognition of those rights and liberties. The CCLA's major objectives include the promotion and legal protection of individual freedom and dignity against unreasonable invasion by public authority, and the protection of procedural fairness. For almost 50 years, the CCLA has worked to advance these goals, regularly appearing before legislative bodies and all levels of court. It is in this capacity, as a defender of constitutional rights and an advocate for the rights and liberties of all individuals, that we make submissions to the Toronto Police Services Board (TPSB) with respect to the difficult problem of race-based harassment (commonly known as "racial profiling).

CCLA continues to be concerned about race-based harassment. Race-based harassment is generally defined as including any or a combination of any of the following actions by police against black male youth and/or others from racialized and/or marginalized communities: unwarranted – questioning, stops, identity collection, intimidation, searching, and aggression.

Race-based harassment is unacceptable in a society committed to equality before the law. While it could be that some community liaison officers have built successful relationships with many communities and individuals, the issue has not been resolved. It is incumbent on the TPSB to take the measures necessary to ensure that race-based harassment is stopped.

CCLA is encouraged by the decision of the TPSB to establish an investigation by the City Auditor General to look into racial profiling or race-based harassment. CCLA calls on the TPSB to adopt certain minimal terms of reference, as set out below. Any investigation into race-based harassment would benefit from being carried out in consultation with bodies with demonstrated expertise in policing, police complaints, and human rights matters, and with demonstrated sensitivity with respect to matters of race.

Recommendation #1:

CCLA calls on the TPSB to immediately denounce the practice of race-based harassment. Race-based harassment is defined as including any or a combination of any of the following actions by police against black male youth and/or others from racialized and/or marginalized communities: unwarranted – questioning, stops, identity collection, intimidation, searching, and aggression.

Recommendation #2:

CCLA also calls on the TPSB to promptly develop policies and programs to prevent, prohibit and address race-based harassment.

Recommendation #3:

The TPSB must ensure that the Investigator is given adequate resources to perform a thorough investigation in a timely manner.

Minimal standards for Terms of Reference

Recommendation #4:

CCLA calls on the TPSB to establish certain minimal guidelines and standards for the Investigation's Terms of Reference, as follows:

- 1. In the conduct of the investigation, there must be consultation with the Toronto Police Service (TPS), the police union, community groups, human rights, civil liberties and anti-racism groups, and academics with demonstrated knowledge about policing, police complaints, racism and other human rights issues.**
- 2. The Investigator must:**
 - Investigate TPS policies and practices regarding police questioning, stopping, identity collection, intimidation, searches and aggression.**
 - Investigate TPS policies and practices regarding any or a combination of any of the following actions by police against black male youth and/or others from racialized or marginalized communities: unwarranted – questioning, stops, identity collection, intimidation, searching, and aggression.**
 - Such an investigation should use data from past years as a baseline.**

Effective community policing requires the development of trust between the police and civilians. It is important that the officer's interactions with the community does not undermine that trust.

- 3. The Investigator must investigate how communities view the "community policing" practices of the TPS.**

4. These proposed policies should:

- a. Determine the best way to have ongoing and regular collection, independent analysis, and public disclosure of data concerning police questioning, stops, identity collection, searches, and more.**
- b. Determine the best procedures for engaging with the public in positive, constructive ways, for the purpose of positive community policing, interactions and engagement, while recognizing the dangers of police initiating questions into a person's whereabouts, destination, identity or actions in context of power differentials ;**
- c. Determine appropriate standards for police conduct for stopping and questioning individuals.**

Policies without accountability mechanisms will likely be ineffectual. Given the importance of dignity, and the fundamental right of all people to be free from discrimination, the TPSB should ensure that such policies and standards are observed, and that there is a regular, independent review of this matter.

5. The proposed policies should also consider issues of accountability, including:

- **The responsibility of superiors and managers whose officers are not adhering to the policies, and the responsibility of individual officers;**
- **The appropriate consequences, such as:**
 - **discipline**
 - **negative reviews**
 - **budget/resource allocations**

6. The Investigator must look into the extent, substance and effectiveness of training for officers and superiors with respect to issues of race and racism, youth, and human rights. Who is conducting the training should also be considered.

7. The Investigator must investigate the complaints mechanism for civilians who have experienced trouble with the police, and consider to what extent this mechanism is well-publicized, effective, and ensures that complainants are protected from reprisal.

8. The TPSB should ensure that there is a regular, independent review of this matter.

Toronto Police Accountability Coalition
c/o Suite 206, 401 Richmond Street West, Toronto ON M5V 3A8.
416 977 5097. info@tpac.ca , www.tpac.ca

July 18, 2012.

To: Toronto Police Services Board

Please list Toronto Police Accountability Coalition on the agenda of July 19 to speak to Item 24, the chief's request to delay reporting on the implementation of the carding motions passed by the Board on April 5, 2102, for another four months.

The data in the Toronto Star article on March 10, 2012, <http://www.thestar.com/news/insight/article/1143536--known-to-police-toronto-police-stop-and-document-black-and-brown-people-far-more> indicates there were 1.25 million cards recording police stops from 2008 to mid-2011, or about 400,000 stops for carding a year.

This means that since the Board motions in April, about 100,000 individuals, mostly youth of colour, have been stopped and carded by police. As we argued in our March 18 letter to the Board, racialized youth and men are stopped more frequently, and thus treated differently by police, than others and that treatment is discriminatory. We stated that ways must be found to stop such discriminatory behaviour by police immediately, and we noted that the Supreme Court of Canada has questioned the legal basis for these random stops where individuals feel they must submit to police commands.

We proposed at that time that pending a review of whether the police should in fact continue to make such stops, the police provide to everyone stopped a copy of the card note made by the officer, including the reason for the stop.

Other police forces provide a receipt when an individual is carded – two examples from the United Kingdom are the Metropolitan Police Service in London, (http://www.met.police.uk/stopandsearch/what_is.htm) and the Manchester Police Service (<http://www.gmpa.gov.uk/stop-search.htm>).

The receipt that police provide in Toronto every time an individual is stopped and carded should include similar information to that now provided by the Metropolitan Police, namely:

- the officer details
- the date, time and place of the stop and search
- the reason for the stop and search
- the outcome of the stop and search
- the individual's self-defined ethnicity
- the vehicle registration number (if relevant)
- what the officers were looking for and anything they found
- the individual's name or a description if he/she refuses to give name

This can easily be provided by the officer writing in hand on a prepared form, as occurs in London and Manchester. No complicated technology is required.

Providing a receipt should begin immediately – we suggest August 1, 2012 or September 1, 2012 at the latest. This receipt will provide transparency of police actions and will provide clear documentation to those affected of what the police are doing. The receipt will also ensure that police are much more civil and respectful to those who they stop.

There is no reason to delay providing such receipts while the Chief reports on other matters.

Yours very truly,



on behalf of
Toronto Police Accountability Coalition.

Mark - on report for
August 11/12



August 15, 2012

Chair and Members
Toronto Police Services Board
40 College Street
Toronto ON, M5G 2J3

RE: SUBMISSION OF THE ACLC TO THE TPSB ON CHIEF'S REQUEST FOR EXTENSION

One week ago, the *Toronto Star* published an article detailing an incident between four black boys and two TAVIS officers.

These four teens (aged 15 and 16) reported that they had been stopped and questioned by police on more than 50 occasions.

Having learned their right not to answer police questions, these young men tried to exercise their legal rights. The result? They were punched, arrested, strip searched, and charged with assaulting police, threatening death and assault with intent to resist arrest. The charges were withdrawn because footage from a security camera revealed that the police had seriously abused their power.

If these incidents had not been caught on a security camera, these four black boys who were on their way home from a mentoring session and who did nothing more than try to exercise their legal rights would today have criminal records.

Last month, when Chief Blair, instead of reporting back on the operational implications on the Board's motion relating to the provision of carbon copies and quarterly reports asked for a four month extension, the Toronto Police Accountability Coalition requested the provision of hand written receipts instead.

The provision of receipts and carbon copies to those that come into contact with the police creates accountability where, since at least 1965, there has been none; accountability, because young black boys are afraid to exercise their legal rights and because not every police interaction will be caught on camera.

The extent to which the police are accountable to the public they serve has been described as being no less than "the measure of a society's freedom".¹ Research evidence suggests that abuse of power is most discriminatory where police autonomy and discretion are greatest. Without formal safeguards, such as being held accountable, individuals with discriminatory tendencies are more likely to discriminate in practice since they know that their actions will go unchecked and will not subject them to unwanted repercussions.

¹ Institute of Race Relations 1987:vii

Police accountability (through the provision of receipts and carbon copies to every individual that is stopped and/or questioned) requires those who hold coercive and intrusive powers to think about and explain what actions they take and for what reasons. Additionally, where errors and abuses occur, systems of accountability provide responsible authorities with the opportunity to provide redress to injured parties and to analyze the errors made in order to avoid their recurrence.²

On October 29, 2002, the Council of the City of Toronto resolved that there was an URGENT need for all involved³ to come together to review racial profiling by the Toronto Police Service and pursue positive, measurable, and corrective action in an open, sensitive and non-judgmental manner; that the TPSB immediately review its operational practices and guidelines, recruitment policies, promotional practices, and diversity training programs to ensure police officers have the appropriate skills and training for policing diverse communities; and that the Chair of the TPSB submit a report to Council on the Board's compliance with the recommendations made in the following reports:

- the 1975 report of the late Authur Maloney to the Metropolitan Toronto Police;
- the 1976 Justice Donald Morand Commission report on Metropolitan Toronto Police Practices;
- the 1977 Walter Pitman report on incidents of conflict between Blacks and the Police;
- the 1979 Report to the Civic Authorities of Metropolitan Toronto on race and policing by Cardinal G. Emmett Carter;
- the 1980 Report of the Task Force on the Racial and Ethnic Implications of Police Hiring, Training, Promotion and Career Development by Dr. Reva Gerstein;
- the 1989 Report of the Race Relations and Policing Task Force, chaired by Clare Lewis;
- the 1992 Stephen Lewis Report to the Premier on Race Relations;
- the 1992 report of the Metro Auditor which documented systemic racism within the Toronto Police Force;
- the 1995 Studies for the Commission on Systemic Racism in the Ontario Criminal Justice System which found that Black men were particularly vulnerable to being stopped by the police;
- the 1999 research undertaken by Professor Scott Wortley; and
- the 1999 Goldfarb Survey which indicated that only 38% of respondents in the Black community felt that their community had been treated fairly by the Police

The Council also directed the CITY AUDITOR to undertake an updated audit of Police policies, procedures, programs and practices that impact on racial minorities.

² Benjamin Bowling et al., *Policing and Human Rights: Eliminating Discrimination, Xenophobia, Intolerance and the Abuse of Power from Police Work*, (Geneva: United Nations Research Institute for Social Development, 2004) at 17.

³ The Minister of Public Safety and Security, City of Toronto Council, Toronto Police Services Board, Canadian Race Relations Foundation, and other interested stakeholders.

The commissioning of this report came on the heels of yet another report – the Report of the Board/Service Race Relations Joint Working Group – ordered by former Police Chief Julian Fantino.

Councillors, the stalling tactics that we are witnessing today are not new.

At this point, I wish only to remind you of the following: as the Toronto Police Services Board, it is your job to oversee the Toronto Police Service. Please do your job. Do not permit yet another extension.



[Back to Article](#)

Toronto police TAVIS stop of four teens ends in arrests, captured on video

Published on Tuesday August 07, 2012

Jim Rankin
Staff Reporter

Four teenaged men — three with braces in place to straighten smiles — drape their sprouting frames over chairs in a stuffy second-floor room overlooking a common area in the Neptune Dr. public housing complex, where a police encounter they had went dangerously wrong.

No, they agree, they will never again try to exercise their rights when confronted by police.

On Nov. 21, 2011, the teens — twin brothers, then 15, and two friends, aged 15 and 16 — were walking in the common area, on their way to an after dinner Pathways to Education mentoring session. The much-lauded program helps keep kids in at-risk neighborhoods in school.

The Neptune Dr. housing complex sits within the Lawrence Heights area, one of the city's 13 designated priority neighborhoods.

In an event that would quickly escalate to punches, a drawn gun, five backup cruisers and first-time arrests, an unmarked police van rolled into the parking area and two uniformed Toronto police officers with the Toronto Anti-Violence Intervention Strategy (TAVIS) unit emerged.

The officers, according to police records, were at the Neptune Dr. buildings to enforce the Trespass to Property Act on behalf of the Toronto Community Housing Corporation.

The four teens, all of whom live in the complex, had been stopped and questioned many times before by police. They had also all attended a moot court program, where they learned about their rights.

This encounter came off the rails when one of the teens attempted to exercise those rights and walk away.

Roderick Brereton, a youth worker and conflict management consultant who works in the Lawrence Heights area and knows the four teens well, said there had been noticeable improvement in the relationship between youth, the community and 32 Division police that patrol the area.

The arrests, he said, "pretty much crushes everything that had been built."

The incident highlights the tension between youth who are constantly being stopped and questioned and Toronto police officers who are using a policing strategy that Ontario premier Dalton McGuinty, in light of recent shootings, guaranteed would receive permanent funding.

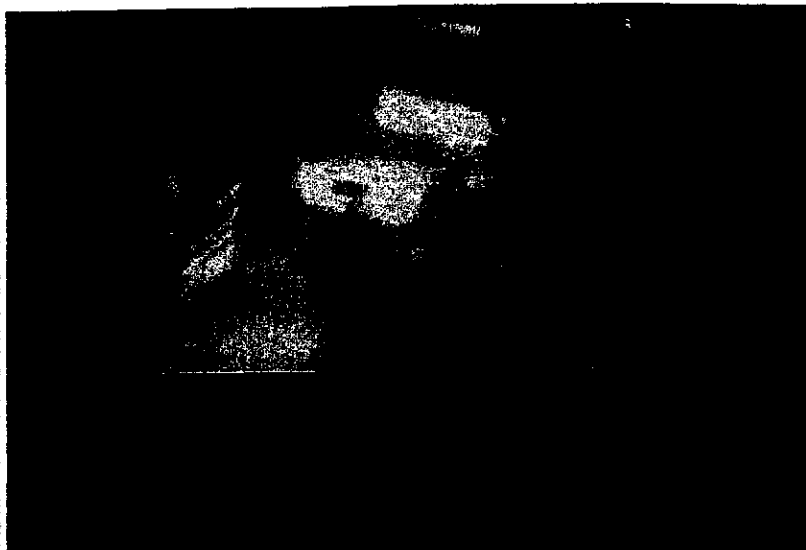
It also underscores how police, in each of the city's 72 patrol zones, disproportionately stop and document black and brown young men, as was explored in *Known to police*, a *Star* series earlier this year. Youth interviewed said they are stopped for no reason and feel criminalized.

In this case, all four of the teens are black.

They were each charged with assaulting police, and the young man who did not want to answer police questions was additionally charged with threatening death and assault with intent to resist arrest.

Although the charges against them were eventually withdrawn (in the cases for three of the four teens, a common law peace bond was sworn) they can't be identified under the Youth Criminal Justice Act.

What ensued can be seen but not heard on Toronto Community Housing Corporation security cameras. A shortened version of two of four camera views can be seen on [thestar.com](#).



Edited security video shows Toronto police TAVIS officers arresting four teens at a Toronto Community Housing Corporation complex on Neptune Dr. on Nov. 21, 2011

Moments after the police van pulls into the parking area, the teens exit one of the buildings and the officers, on foot, stop them. After a brief discussion, one of the officers pushes one of the twin brothers away from the three other teens and his partner. The officer punches the twin, pushes him further and the teen then drops to the ground.

Two of the teens make moves to help the twin brother, one of them getting close enough to touch the officer.

The officer then pulls his handgun and points it at the approaching teens, just as the other officer manages to grab hold of both of them and pull them back. He then appears to briefly point the gun at the twin on the ground, radios for backup and then holsters the firearm.

According to police records, that officer, Constable Adam Lourenco, considered the area to be a "high crime area" with drug activity and gun violence.

Lourenco, in his notes made after the incident, said he drew the gun because "I believe the males are going to attack me."

The twin brother he arrested, Lourenco wrote in his notes, would not answer his question about whether they lived in the complex. "I don't have to tell you s---," the teen replied, according to Lourenco's notes.

Lourenco wrote that he asked for identification and the teen refused and was "extremely excited and not listening to anything I'm saying." He told the teen he was under arrest and took hold of him, and alleges in his notes, that the teen then spat in his face.

None of this can be made out on the security video, which has a distant view of the interaction, and the teens' accounts of what happened differs from the police version.

There was no spitting and no swearing, said the teen who was punched.

"They stopped us and one officer came to the front and one officer came to the back," he told the *Star*.

"One officer came towards me and wanted to search me. He said there was some sort of robbery or something. I said I'm not doing anything wrong. I don't want to be searched, and that I'm going to be going, have a good day, or something like that.

"I was leaving. I just wanted to avoid the situation and just go. So, then he just got mad and said stop trying to act smart. He pretty much grabbed me and then started giving me shots to my stomach and punches, and he started pushing me.

"There was a balcony gate near me and he pretty much gave me one big haymaker and that brought me down."

The teen said the officer then cut his own thumb on something sharp on his utility belt.

"When I was on the ground he grabbed me and said I'm going to go to jail for assaulting him. I have (his blood) on my jacket, a fingerprint. He grabbed me like this and just started wiping his blood on me."

Police made no mention of a robbery in their notes. Lourenco did file an injury report and had a photo taken of his thumb, his notes indicate.

Lourenco did not respond to an email from the *Star*.

After Lourenco called for backup, a total of five cruisers responded. A small crowd of upset residents began to form. Parents and supporters later filled the lobby of 32 Division station, where the teens were being questioned.

"I've never seen anything like it in my entire life," said Brereton, who was at the station to offer his help. "We were treated as criminals. There were family members there and they were concerned and blatantly told to shut up and come back tomorrow."

The twin who was punched was strip-searched and held overnight.

He was offered a number of plea deals, none of which were acceptable, he said. The final offer, which came after the video was disclosed, involved community work, no criminal record and a promise to keep the peace.

Lawyer Craig Bottomley, who represented the twin, said the security videos helped in the withdrawal of the charges but were not a "smoking gun" due to poor quality.

"The fact that all four young people told an exact account of what happened that did not jive with the police account was pretty persuasive in my eyes," Bottomley said in an interview.

"This encounter never should have happened. My client was stopped leaving his home and investigated for trespassing. This was perverse.

"He rightly told the police that he did not have to co-operate with their investigation and the situation was quickly reduced to a violent encounter

where a 15-year-old boy was taken to the ground and his friends had a firearm put in their faces.

"This was a gross overstep by the police that has left my client shaken and disillusioned."

The teens are considering suing police.

"Given the possibility of a lawsuit, it wouldn't be appropriate to comment at this time," said Toronto police spokesperson Mark Pugash.

The teen who was punched said the arrest and charges caused people at his school to view him in a different light. He lost his job at a grocery store and his marks suffered because of interruptions for court appearances and meetings with his lawyer, he said.

He managed to get all of his credits by going to summer school.

In early July, he accepted the peace bond deal, mainly because it meant he could immediately hang out again with his two friends who were arrested. Part of the bail conditions were that he could not talk to them.

In late July, the four teens gathered at the complex for an interview, arranged by youth worker Brereton.

Before their arrests they had all taken a voluntary justice program, offered by the Ontario Justice Education Network. It ended with a mock trial before a real judge, and certificates were issued.

One thing the well-spoken young men said they learned is that they have rights during encounters with police.

"And then we learned that we didn't have them," said one of the teens, referring to the arrests.

"Everyone gets stopped in our area, because there's lots of black people," said the twin who was punched. "Lots of black people get stopped. Guys get stopped a lot more than girls."

Asked if he would ever try to walk away from police again, the twin who was punched replied: "I'm not walking away and getting beaten up and charged again. If that video camera wasn't there, I'd have no chance. It would be my word against police."

The others agree that would be a bad idea.

TAVIS officers, deployed in pockets of the city where violent crime is taking place, do stop, question and document citizens at a higher rate than normal patrol officers.

A *Star* analysis of contact card data obtained in a freedom of information request shows that of the 1.27 million citizen contacts between 2008 and mid-2011, TAVIS stops accounted for 120,000 — or almost one in 10 — of those. That's 32,000 more than the next highest police unit, which is a police division.

Chief Bill Blair has acknowledged in interviews with the *Star* that these encounters do not all go well. But he encourages all officers to proactively stop and document people and the people they are with.

Most of the contact stems from "general investigations," traffic stops and radio calls.

Blair and others credit the TAVIS initiative, in part, for reductions in violent crime in certain neighborhoods.

The initial political response to the recent shootings on Danzig St. was an announcement of permanent funding for TAVIS. To be sure, there has also been talk of funding for youth programming and other social investments, including recommendations that have repeatedly been made over the years but tend to get less action and attention.

Critics question whether the violent crime reductions are lasting and worry that the disproportionate policing and documenting of youth in violent neighbourhoods is impacting public trust.

That is one thing the Toronto Police Services Board, in the wake of the *Star* series, has asked the city auditor to examine.

The four teens from Neptune told the *Star* that, collectively, they have been stopped and documented by police in their neighborhood on more than 50 occasions.

"They stop you, you know everything you have to tell them," explained one of the teens. "Your height, your age, your weight, your address, your phone number, where you live, where are you going, where are you coming from."

"Sometimes, I don't have ID and that's when it's kind of scary. Now I have my health card and my driver's licence."

The data collected in the police stops becomes part of a massive internal database that is used to find links to possible witnesses and suspects following a crime. It is also used, on occasion, in obtaining search warrants.

TAVIS, which began in 2006 following a spate of gun homicides, is Blair's brainchild and is funded by the province.

In interviews with the *Star*, Blair has said that how these encounters turn out has much to do with the way officers approach those they choose to stop and document.

In February, a TAVIS officer was sentenced to a jail for assaulting and squeezing the testicles of a 21-year-old motorist he had pulled over in 2009 in what was deemed an unlawful search.

When the *Star* asked the four teens from Neptune Dr. — some have begun calling them the Neptune Four — if they notice a difference between TAVIS officers and regular patrol, they answered with an emphatic yes.

One said TAVIS officers are more "wild."

If you see TAVIS on the side of a cruiser, said one of the teens, "you go run and hide. If you see TAVIS, it's nightmares."

For Brereton, it's time to start over and help build back a more trusting relationship between the Neptune Dr. community and police.

"It paints the whole police force bad," he said. "It's just like certain people might paint our community as bad. You can't judge obviously the whole force by one person, and you can't judge our community by the acts of one or two people, either.

"But there's something police can do in their approach, because, as you can see in this case, nobody walked up and gave a handshake."

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Black leaders want a say

Published on Saturday October 26, 2002

Peter Small

Toronto Star

This story originally appeared in the Toronto Star Oct. 26, 2002.

Black community leaders say they should have been consulted before Toronto police Chief Julian Fantino announced a review of the force's race relations practices that was prompted The Star's stories on racial profiling.

"Nobody has come to the community and asked us what we want and that is an insult," Dudley Laws, of the Black Action Defence Committee, told a news conference at the Jamaican Canadian Centre yesterday.

"We are the ones - our children are being stopped by police, harassed by police officers - and we should have a say in how the process should take place."

In an earlier news conference at police headquarters, Fantino announced that he had asked Charles Dubin, retired chief justice of Ontario, to conduct the review and he pledged to move quickly on its recommendations.

The move follows Star stories that analyzed a police database recording more than 480,000 incidents. It concluded that blacks charged with simple drug possession received harsher treatment than whites facing the same charge and that a disproportionate number of blacks were ticketed for offences that would come to light only after a traffic stop was made - a pattern consistent with racial profiling.

Margaret Parsons, executive-director of the African Canadian Legal Clinic, said for Fantino to announce his review without consulting with members of the African-Canadian community flies in the face of any meaningful dialogue. "This speaks to a knee-jerk reaction," she said in a telephone interview.

"To be seen to be doing something isn't good enough. Something actually has to happen," and it has to involve the community, she said. Parsons also questioned whether Dubin has an adequate background in race relations to audit police policies.

Fantino said he will ask Dubin to invite input from community groups and individuals, but both Laws and Parsons said they have serious doubts about whether they will take part.

Parsons charged that Fantino is using the Dubin inquiry as a "buffer zone" instead of engaging in meaningful dialogue with the African-Canadian community. "It is a demonstration of his lack of commitment and will to really, really take matters in hand to show some leadership, to show some ownership of the issue."

Zanana Akande, president of the Urban Alliance on Race Relations, a multi-racial group, echoed concerns that her organization and others had not been consulted about the review and she expressed reservations about whether it will participate.

"I think this is a stall," Akande said in a telephone interview. "There are recommendations upon recommendations" from previous reports that have not been implemented, she said.

Valarie Steele, president of the Jamaican Canadian Association, said her group was reserving its decision about whether to take part in the Dubin audit.

"We have been studied to death," she told the news conference at the Jamaican Canadian Centre.

It's imperative that the chief work with the black community to fix a problem that its members know exists because they live with it every day, Steele said. "Denials and another study are not going to help," she said. "What we need are implementations of good policies that will enable us as a community to feel that we are safe."

The Jamaican Canadian Association, the African Canadian Legal Clinic, Black Action Defence Committee and the Black Business and Professional Association issued a joint statement yesterday saying that Fantino's "categorical denial of the existence of racial profiling" in the police force is "very troubling to Toronto's black community."

"The articles in The Star are not news to us," the statement says. "We have told Chief Fantino on many occasions that his front line officers are wreaking havoc on our community. It is important for Chief Fantino to take meaningful actions to ensure that this does not continue."

They thanked "The Toronto Star for having the courage to look at these numbers and bring it to the attention of the wider community."

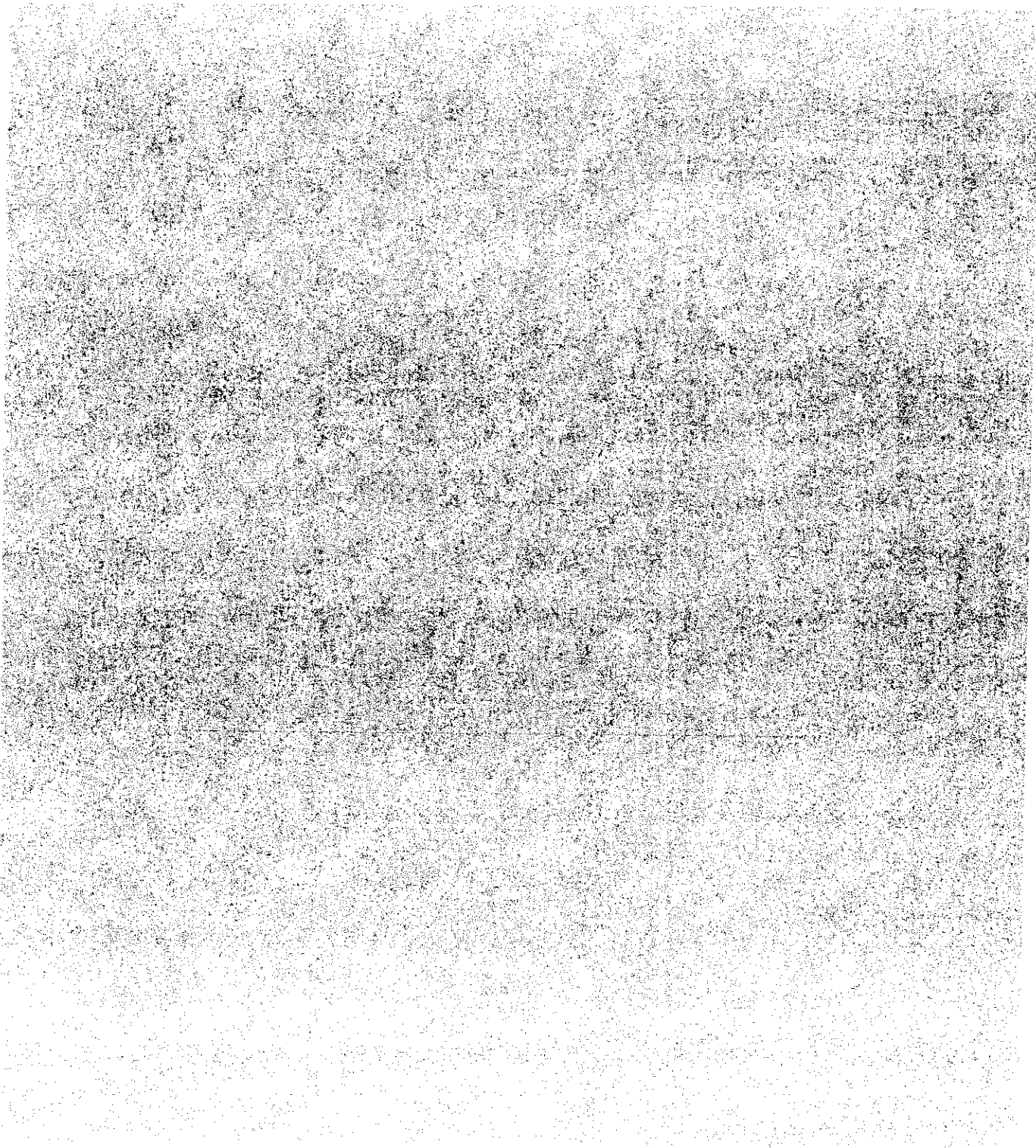
They commended former lieutenant-governor Lincoln Alexander's call for a race relations summit, but said Fantino's "denial of racial profiling in police ranks is not a good starting point."

But Alexander, who is also honorary Toronto police chief, welcomed the Dubin inquiry and said Fantino consulted him on the appointment.

"He's taking this very seriously and moving promptly," he told The Star.

Meanwhile Toronto's diversity advocate Sherene Shaw (Ward 39, Scarborough Agincourt) is urging city council to debate the issue of racial bias in the force at its meeting next week. Among her aims, she wants council to support Alexander's call for a summit; recommend that the police services board set up a race relations policy advisory committee made up of members of the board, city council and the community to report directly to the board; and direct the city auditor to update an audit of police policies, programs and practices that impact racial minorities that was done in 1992 by former Metro auditor Allan Andrews.

With files from John Deverell and Laurie Monsebraaten



Toronto Police Accountability Coalition
c/o Suite 206, 401 Richmond Street West, Toronto ON M5V 3A8.
416 977 5097. info@tpac.ca , www.tpac.ca

November 12, 2012.

To Toronto Police Services Board

Subject: Item 3, Receipts for carding, November 14 meeting

We wish to be a deputation on the above item.

While we are pleased the police will be documenting stops with a receipt, we have the following concerns:

1. More information is needed on what the receipt will contain. It should include the officer's number and division where the officer is based. The reason for the interaction should be specific and detailed, indicating what suspected criminal behaviour caused the stop to occur. It should not include generic reasons such as 'general investigation', which is not a legal reason for police to subject an individual to unwanted questioning and stopping. We think the receipt should be issued for all stops, on foot or in a vehicle.

We would like to see a mock-up of the receipt that is intended to be used.

2. Before the receipt program is implemented, the police should undertake a comprehensive communication strategy which will inform Torontonians, particularly racialized youth who bear the brunt of carding, that they can expect to be given a receipt if stopped, and what that receipt is about. The communication strategy should include radio, television, social media tools, police web site, TTC, etc., as well as presentations in schools. It should be developed after consultation with community agencies. We believe the roll-out of receipts should be delayed for a month or two to permit this communication strategy to be developed and to occur.

3. Some monitoring program is required to ensure the receipt program is effective in informing members of the public about what the police are doing. The chief indicates in his report that the Diversity Management Unit has neither the expertise nor capacity to do this task. It is unfortunate that there is no arm of the police service which can monitor such a basic activity as the police stopping and questioning individuals – it occurs almost half a million times a year – but some mechanism must be found without delay.

While TPAC believes it would be better if the police stopped carding, we understand this is not something the police force will do: accordingly, the receipt mechanism with the changes we suggest is the next best alternative.

Thank you.

A handwritten signature in black ink, appearing to read "J. Sewell". The signature is fluid and cursive, with a large initial "J" and "S".

John Sewell for
Toronto Police Accountability Coalition.

Please address reply to:

Howard F. Morton Q.C.
Barrister & Solicitor
31 Prince Arthur Avenue
Toronto, Ontario M5R 2B2
Tel. 416-964-7406 Ext. 155
Fax 416-960-5456

November 12, 2012

Toronto Police Services Board
40 College Street
Toronto, Ontario
M5G 2J3

ISSUING RECEIPTS TO PERSONS WHO ARE STOPPED BY THE POLICE
SUBMISSIONS ON BEHALF OF THE LAW UNION OF ONTARIO

1. The Law Union of Ontario offers its qualified support for the implementation of the three proposals advanced by Chief Blair in his Report.
2. However, neither the Chief's proposals nor the position taken by the Police Services Board of its April 5, May 18, and July 19, 2012 meetings do not even begin to address the paramount issues involving the current practice of "Carding" otherwise known as "Street Checks".
3. The design and use of Form 208 and in particular the manner in which the practice of "Carding" is deployed are both clear violations of the *Canadian Charter of Rights and Freedoms*. Specifically the individual rights guaranteed by *Sections 8 and 9* of the *Charter* are clearly infringed and denied and on a case by case analysis are violations of *Sections 2, 7, 10 and 15* of the *Charter*.
4. The manner in which this so-called form of "community engagement" is deployed warrants scrutiny by the Board. We have authenticated reports from individuals who state that when they decline to either provide identification or provide the information set out in Form 208 as in the absence of special circumstances is their absolute right to do, officers then resort to illegitimate ruses and stratagems such as the following:
 - a) Officers falsely state that they are involved in a criminal investigation and that the individual matches the description of the suspects.

It should be noted that some officers may wrongly believe that by so stating they bring themselves within the broader scope of "investigative detention" as set out in R. v. Mann.

- b) Officers attempt to circumvent and nullify the individuals assertion that they do not wish to identify themselves or provide the Form 208 information by implicitly threatening remarks such as:
 - i. What are you trying to hide!
 - ii. What do you have in your pocket!
 - iii. Do I have to take you to the Police Station?!
 - c) Officers engage in "pat down searches" of the individual which are clearly unlawful.
5. The approaching and stopping of persons without lawful cause followed by a request or demand for identification and answers to the information sought by Form 208 clearly constitute "detention" within the meaning of the *Charter of Rights*. Such demands or requests for identification and information clearly constitute a "search" within the meaning of the *Charter*.
 6. In the overwhelming majority of cases the persons which the police seek to "Card" are doing nothing that would lawfully warrant such police intervention.
 7. Not only is the practice of "Carding" in such a manner an unlawful violation of the *Charter*, it has resulted in community apprehension, sentiment and fear particularly in marginalized communities which undergo a disproportionate "Carding" presence.
 8. Further, individuals who are apparently targeted for "carding" are disproportionately racialized youth. The practice is viewed in these communities as racist policing. Often these are the very communities in which the police seek and need cooperation in the pursuit of legitimate law enforcement and criminal investigation purposes.
 9. The practice of "Carding" is a major obstacle to achieving community trust and cooperation.
 10. It is clear from the statistics obtained by the Toronto Star that the use and impact of "Carding" is primarily directed at youths, racial minorities and members of marginalized communities. However, this practice is one which all Torontonians are subject to.

11. In a free and democratic society a Police Service should not be stopping and demanding from innocent persons the personal and private information set out in Form 208.
12. "Carding" is not merely an unwarranted invasion of privacy, it is an intentional and clear violation of *Charter Rights and Freedoms* and contravenes Human Rights and Privacy legislation.
13. This form of "community engagement" as it is referred to in Chief Blair's Report is far removed from that envisioned by Elmer the Safety Elephant.
14. Chief Blair's Report fails to append either Form 208 or the proposed receipt. We urge you to examine the nature of the information being sought without cause from persons in our city.
15. We draw particular attention to the following: (Form 208 attached)
 - Age
 - Birth place
 - Address
 - Previous country
 - Information relating to associates
 - School attendance
 - Whether ones parents are divorced or separated
 - Mother and father's surnames
16. Although police officers are entitled to ask anyone questions in legitimate circumstances, this ability is trumped by the corresponding common law and *Charter Right* of individuals to decline to answer such questions. Absent special circumstances individuals can also refuse to provide identification.
17. However, that is not what is happening during an approach for the purpose of "Carding".
18. When Police officers refuse to respect *Charter Rights and Freedoms* and instead subvert the *Charter* by subterfuges, ruses, and outright lies they violate the Supreme law of Canada.
19. As early as 2004 the Board was put on notice by the highly respected Jurist that the practice of "Carding" was a threat to a free and democratic society.

20. In R. v. Ferdinand Superior Court Justice H. LaForme heard evidence that the investigating police officers regularly stopped individuals and filled out between 15-45 cards per shift. His Honour stated:

“Although I do not dispute that 208 cards might well be a useful and proper investigative tool for the police; in my view the manner in which the police currently use them make them somewhat menacing. These cards are currently being used by the police to track the movements – in some cases on a daily basis – of persons who must include innocent law-abiding residents.”

“One reasonable – although very unfortunate – impression that one could draw from the information sought on those 208 cards – along with the current manner in which they are being used – is that they could be a tool utilized for racial profiling.”

“... I make my observations only to express a profound note of caution. If the manner in which these 208 cards are currently being used continues; there will be serious consequences ahead. They are but another means whereby subjective assessments based upon race – or some other irrelevant factor – can be used to mask discriminatory conduct. ...”

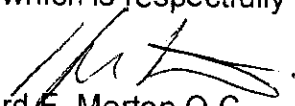
“This kind of daily tracking of the whereabouts of persons – including many innocent law – abiding persons – has an aspect to it that reminds me of former government regimes that I am certain all of us would prefer not to replicate.” (Emphasis added)

21. It should be noted that Justice LeForme did not have the benefit of being made aware of the use of the manner in which police operate when an individual declines to respond to police questioning.
22. Similarly, in R. v. Linton, now Superior Court Justice I. MacDonnell, in dismissing 4 charges of assault police observed that detaining individuals “for the purpose of requiring them to provide identification is unjustified and unlawful. He observed that such practice would give the police “a general warrant to detain for investigation anyone found in a troubled neighborhood.

THE LAW UNION OF ONTARIO

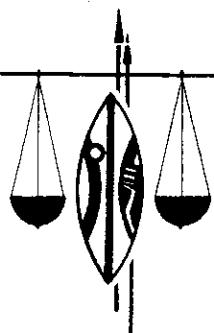
23. It is incumbent that the Board examines the entire practice of "Carding" and not simply concern itself with race based statistics and demographics as a reaction to the Toronto Star articles.
24. The Law Union of Ontario respectfully requests and urges the Board to undertake a comprehensive analysis of the practice of "Carding".
25. We request that as a first step in such analysis, the Board undertake the following:
 - 1) Immediately direct Board counsel or preferably independent counsel to review the existing practice of "Carding" as it is occurring daily on our streets. Counsel should complete and report on such review at the earliest possible date and no later than February 2013.
 - 2) Require Chief Blair to provide counsel all standing, routine or other orders with respect to "Carding".
 - 3) Require Chief Blair to provide counsel with all service policies or directives with respect to "Carding".
 - 4) Require Chief Blair to provide counsel with all training materials with respect to "Carding".
26. The current Board motions and recommendations completely ignore the real issue with respect to "Carding" and the concerns which communities in our city have.
27. On his Report to the Board on the *Charter* violations occurring during the infamous G-20 weekend, Justice Morden emphasized that the Board has as its primary obligation a duty to ensure that its Police Service operate in a lawful manner and in accord with our *Charter of Rights*.
28. To date the Board has failed in its responsibility as it relates to "Carding". The communities which have attended today both inside and outside the Chamber have lost both patience with and confidence in the Board. They see the practice of "Carding" as racist policing.

All of which is respectfully submitted.


Howard F. Morton Q.C.
HFM/dm
Encl.

FIELD INFORMATION / GARRY CONTACT DETAILS		ZONE	TPS	IPS208
DATE (YYY/MM/DD)		200805		
TIME (24 HOUR CLOCK)				
AT <input type="checkbox"/>	NEAR <input type="checkbox"/>	LOCATION/INTERSECTION		
LOCATION DETAILS		OFFICER NO. (S)		
PROJECT #	REFERENCE TYPE/REF NO.	NATURE OF CONTACT		
CIRCUMSTANCE OF INVESTIGATION				
PERSON INVESTIGATED				
BY <input type="checkbox"/> ON <input type="checkbox"/>				
SURNAME		G1		
G2		ALIAS/NICKNAME		
DOB (YYYY/MM/DD)	AGE	SEX	BIRTHPLACE	COLOR
APPEARANCE	EYES	HAIR (STYLE/LENGTH/COLOR)		FACIAL HAIR
HEIGHT	WEIGHT	IDENTIFIED BY (ID TYPE)	ID CONFIRMED YES <input type="checkbox"/> NO <input type="checkbox"/>	
ADDRESS <input type="checkbox"/> NFA <input type="checkbox"/>	SAME AS LOCATION		PREVIOUS/COUNTRY	
TELEPHONE NO <input type="checkbox"/>	CELL NO <input type="checkbox"/>	EMAIL <input type="checkbox"/>		
DRIVERS LICENCE NO		PROV/STATE	DRIVER <input type="checkbox"/> PASS. <input type="checkbox"/>	
RWN POLICE ACCOUNTABILITY REPRODUCTION JUNE 25/2011 fax: 416-365-9371				

ASSOCIATES' YES <input type="checkbox"/> NO <input type="checkbox"/> THIS SUBJECT IS PART OF A GROUP					
ENTER A SEPARATE TPS 208 FOR EACH ASSOCIATE AND ATTACH					
PRIMARY SURNAME TO LINK ASSOC'S					
				ASSOC. #	OF
GANG/CLUB AND DESCRIPTION				GANG MEMBER <input type="checkbox"/> ASSOCIATE <input type="checkbox"/>	
CLOTHING AND BODY MARKINGS					
PERSON COMMENTS					
YOUNG PERSON INFORMATION					
ATTENDING (SCHOOL, ETC)		GRADE	PARENTS ARE	DIVORCED <input type="checkbox"/> SEPARATED <input type="checkbox"/>	
FATHER SURNAME(GI)			CAREGIVER ADVISED	YES <input type="checkbox"/> NO <input type="checkbox"/>	
MOTHER SURNAME(GI)			YOUTH BUREAU NOTIFIED	YES <input type="checkbox"/> NO <input type="checkbox"/>	
VEHICLE INFORMATION					
LICENCE PLATE		PROV/STATE	PLATE (000) YES <input type="checkbox"/> NO <input type="checkbox"/>		LOGO DESIGN
YEAR (YYY)	MAKE	MODEL	COLOUR	STYLE	
VIN#					
VEHICLE DAMAGE					
DAMAGE LOCATION			DAMAGE DESCRIPTION		
DAMAGE COMMENT		EMAIL TO	F/R ENTERED B		
RWN POLICE ACCOUNTABILITY REPRODUCTION REVISED JULY 18/2012					
fax: 416-365-9371					



November 14, 2012

RE: ISSUING RECEIPTS TO PERSONS WHO ARE STOPPED BY THE POLICE

The African Canadian Legal Clinic ("ACLC") would like to begin by again commending the *Toronto Star* for its role in placing racial profiling on the agenda of the Toronto Police Services Board ("TPSB").

While the Clinic unequivocally opposes the police practice of documenting citizens in non-criminal encounters, we would also like to commend the TPSB for heeding our recommendations, and moving from study, analysis and paralysis to much needed action.

Racial profiling is more than a mere inconvenience, a hassle or an annoyance. It has real and direct emotional, psychological, physical and financial consequences; this includes loss of human dignity, the inability to obtain employment, mistrust of and hostility towards police, loss of respect for the law, and alienation and a diminished sense of citizenship. Equally important, it is contrary to the *Police Services Act*,¹ the *Ontario Human Rights Code*,² and the *Canadian Charter of Rights and Freedoms*.³

If properly implemented, the measures proposed by Chief Blair and the TPSB can lead to a level of transparency and accountability that to date has been lacking. In order to ensure that these measures are actually effective in reducing and eventually eliminating the practice of racial profiling, the ACLC makes the following recommendations:

- 1. The "reasons for the interaction" contained on contact cards and provided on receipts must be sufficiently precise, indicating, for example, the specific suspected criminal activity that preceded the stop.**

Chief Blair's report states that the receipts provided to those that are stopped and carded by police will include "the name of the person to whom the receipt is issued, the name of the officer issuing the receipt, the location, date and time, and the reason for the interaction."

The provision of receipts is a measure that is intended to address the questioning and harassment of members of the African Canadian community on the basis of nothing more than racist stereotypes about perceived criminality.

¹ *Police Services Act*, R.S.O. 1990, Chapter p.15, s. 1: Police services shall be provided throughout Ontario in accordance with the following principles: ... (2) The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*; (3) The need for co-operation between the providers of police services and the communities they serve; ... (5) The need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society; (6) The need to ensure that police forces are representative of the communities they serve.

² *Human Rights Code*, R.S.O. 1990, Chapter H.19, s. 1: Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

³ *Constitution Act*, 1982, 1982, c. 11 (U.K.), Schedule B., s. 15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

To date, the rights and freedoms of too many African Canadians have been violated because police officers have been permitted to stop and question individuals for such things as “general investigations” or “general information for the intelligence unit.”

Abuse of power is most discriminatory where police autonomy and discretion are greatest. Unless the “reasons for the interaction” are sufficiently precise, the requirement that reasons be provided will not achieve the objective of compelling officers to first think about whether the exercise of their police powers is racially motivated or is reasonably justified.

When providing reasons for stops, members of the TPS should be required to select from a list of precise justifications, indicating, for example, the specific suspected criminal activity that preceded the stop, as opposed to overbroad and essentially useless reasons such as “general investigations” or “community engagement.”

- 2. The issuing of receipts must be mandatory in every police interaction that results in the completion of a contact card. Failure by a member of the police service to issue a receipt must result in either discipline or the immediate destruction of the contact card.**
- 3. The receipts must include the race of the individual that has been stopped as it is recorded by the police officer on the contact card and as much information about the issuing officer as possible, including the officer's name, badge number, and division.**

In the ACLC's last presentation to the Board, we referred to an article in the *Toronto Star* that detailed an incident in which four African Canadian youths attempted to exercise their legal right not to answer police questions, and were assaulted, arrested, searched, and charged. If properly implemented, receipts have the potential to act as a public accountability measure and perhaps avoid such egregious abuses of police power.

Specifically, where a member of the public has a negative or discriminatory interaction with a member of the TPS, the identifying information provided on the receipt (including the officer's badge number and division), can facilitate the filing of a complaint with the OIPRD or the Human Rights Tribunal against the officer in question. Also, this identifying information could be used internally to flag disproportionate stops and eventually correct, through discipline and/or training, the existence of racist policing practices among individual officers.

In order to create true accountability, however, the provision of receipts must be mandatory in every single police interaction that results in the creation of a contact card. Due to a lack of information about the right to receipts and the inherent power imbalance between members of the public and members of the police service, civilians cannot be expected to request these receipts.

Rather, if there is evidence that a contact card has been completed without the issuance of a corresponding receipt, either the issuing police officer must be disciplined or the contact card must be immediately destroyed. Anything less than this level of commitment and these receipts will become nothing more than an empty gesture.

4. The police service's public education campaign must include information on the public's right to refuse to provide personal information; the right to receive a receipt if carded; what the information provided in contact cards is used for, with whom the information can be shared; for how long it is maintained; the process by which the creation, maintenance and dissemination of this information can be challenged; and possible avenues of redress where there is a perceived abuse of police power.

While the ACLC does not believe that the provision of receipts needs to be pushed back in order to facilitate a public education strategy, we echo the recommendations of the Toronto Police Accountability Coalition that the TPS should undertake a comprehensive communication strategy to inform all Torontonians of their right to receive a receipt if stopped.

This public education campaign should also include information on the following:

- the public's right to refuse to provide personal information;
- for what the information provided in contact cards is used;
- with whom the information can be shared;
- for how long it is maintained;
- the process by which the creation, maintenance, dissemination of this information can be challenged; and
- possible avenues of redress where there is a perceived abuse of police power.

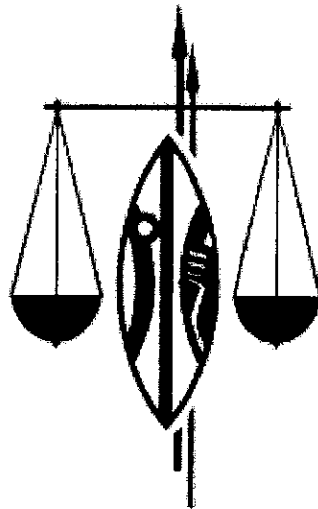
The ACLC recommends that the receipts themselves could serve as a useful public education tool and suggests that this information or references to resources containing this information be provided on the back of receipts. A copy of the ACLC's "Anti-Racial Profiling Toolkit" has been provided to you as an example of what this might look like. I refer you also to materials produced by Justice for Children and Youth that can be consulted in drafting this information.

Conclusion

We are by no means finished in addressing this longstanding and pernicious evil. But today, if our recommendations are heeded, we will have taken a step in the right direction – a step in the direction of continued increases in recruitment of racialized police officers; a step in the direction of increased cooperation and trust between racialized communities and police; a step in the direction of accountability and transparency; and a step in the direction of compliance with the *PSA*, the *Code*, and the *Charter*.

Anti-Racial Profiling Toolkit

An ACLC Public Legal Education
Resource



African Canadian Legal
Clinic

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What is Racial Profiling?

Racial profiling is any action undertaken for reasons of safety, security, or public protection that relies on stereotypes about race, colour, ethnicity, ancestry, religion, or place or origin rather than on reasonable suspicion, to single out an individual for greater scrutiny or different treatment (Ontario Human Rights Commission).

Steps to Take If You Believe You Have Been Subject to Racial Profiling

The police may approach you and ask you questions (as any person can), but they must let you go on your way unless they arrest you or have grounds to detain you.

Although you are not obligated to answer when stopped by the police, stay calm and be polite. Use discretion when answering questions. Seemingly innocent answers could be a reason to further question or detain you or they could prevent you from being further investigated by the police.

If you feel you have been the subject of racial profiling:

- Ask "Am I being detained?"
- If so, ask on *what grounds* (what basis) you are being detained.
- Ask for and write down the name, badge number, and squad car number of the officer. The police must provide that information upon request.
- Look to see if there were any witnesses to the situation and write down their names and phone numbers.
- Write down exactly what happened and what was said immediately after the incident.
- Write down the date, time of day, location, lighting, and any objective evidence such as the posted speed limit if you were driving, how fast you were driving, or if any signs are posted.

Proving Racial Profiling

There is an inherent problem with evidence in cases of racial profiling – they can rarely be proven by direct evidence. The profiling may be subtle and based on the circumstances. So make sure to write down and keep all relevant facts and circumstances, as well as how you felt during the situation (see previous page).

Race only needs to be one factor in the police officer's conduct. It need not be the main or major cause of the mistreatment, and racial profiling can be found to have occurred even if race was mixed in with other legitimate factors (e.g. speeding). There is no need to prove intent or motivation in a case of discrimination – the discriminatory effects of the act are sufficient. The officer's conduct can be the result of subconscious beliefs about members of a visible minority group.

To prove racial profiling:

- the person profiled must belong to a disadvantaged group;
- it must be shown that the person alleged to have profiled (e.g. the police officer), acting in a situation of authority, had some opportunity to observe or presume the race of the person profiled; and
- it must be determined whether this knowledge led the person alleged to have profiled to act in a discriminatory way, either consciously or subconsciously.

Relevant considerations:

- statements were made to indicate the existence of stereotyping or prejudice (e.g. racial slurs, asking "Do you speak English?", suggesting the person profiled is foreign: "In this country we don't...", comments indicative of stereotyping: "What are you doing in this neighbourhood?", etc.)

- a non-existent, contradictory, or changing story is given for why someone was subjected to greater scrutiny or differential treatment (e.g. says after-the-fact that the person profiled was speeding when they were not informed at the time that they were stopped for speeding)
- an explanation is offered that does not accord with common sense (e.g. in cases of unnecessary strip searches)
- the situation would have unfolded differently had the person been from a non-profiled group
- there were deviations from the normal practice (e.g. not telling you your Miranda rights/"reading your rights")
- an unprofessional manner was used or the person profiled was subjected to discourteous treatment (e.g. You ask for the officer's badge number and they reply "1234" or "666")
- a situation where law enforcement officers overstep statutory powers (e.g. using the *Highway Safety Act* to pursue a criminal investigation with regard to the passengers of the vehicle for no valid reason)

Systemic Racism:

- it may help your case to prove that the officer's behaviour and actions were part of a larger problem
- try to establish systemic or institutional racism by seeing if there is a *pattern* within the specific police service that was involved
- look at the training, policy, reports and overall internal culture of the police service where the officer works—was their conduct (partly) a result of training or internal policies?

Important Evidence and Information to Request (Disclosure)

Examples of Some Types of Evidence to Present:

- Copies of the employment record of the officers that relates to the incidents of racial discrimination;
- witness statements;
- copies of any complaints of unprofessional or unlawful conduct made by members of the public against the officers that relate to racial discrimination;
- copies of all policies and training materials dealing with racial discrimination, including confirmation of whether the officers successfully completed any such training;
- memorandum book notes, incident reports, surveillance videos, etc.;
- transcripts of dispatch (was there a call to the officer to look out for someone matching a particular description?); and
- statistical data illustrating the social context (ex. the overrepresentation of African Canadians in police stop, search, and arrest activities) can also help prove the discriminatory situations and prove systemic discrimination.

How to Get Disclosure of the Evidence Needed:

- In order to get this evidence, Requisition forms must be filled out at the appropriate court. In a human rights proceeding before the Human Rights Tribunal of Ontario, write to the respondents and request the information. If it is not provided, follow-up with a request for order during proceedings.
- Provided the information is arguably relevant, the police will then be obligated to make copies of the evidence you have requested and send them to you (including training and internal policies).

How to Prove Damages

After an incident involving racial profiling has occurred and the circumstances surrounding the situation has been documented, it is important to keep track of any **losses** that you incur as a result.

If you are suing the police in Small Claims Court, the Superior Court of Justice, or filing a complaint at the Human Rights Tribunal of Ontario, the Court or administrative tribunal may award damages—monetary value to compensate you for loss or suffering that has incurred. It is important to keep track of bills and receipts.

Damages can include:

- Medical bills or prescriptions;
- Therapist or psychiatrist appointments;
- Time taken off work to attend these appointments.

The Human Rights Tribunal has the jurisdiction to award damages for injury to dignity, feelings and self respect. Thus, it is also important to record damages to one's self-esteem, dignity, self-respect or routine, as well as any feelings of alienation or distrust that arise. For example:

- Someone stops driving at night because the situation that involved racial profiling occurred while driving at night;
- A person stops going to an area where she used to shop because she was the victim of racial profiling in that area;
- Someone doesn't allow their son to walk home from school or to a friend's house, but instead insists on driving him everywhere because he was the victim of racial profiling;
- You no longer feel like a contributing member of society (e.g. you don't return to school);
- Trust in police, or in society, is damaged or shattered;
- New feelings of fear upon seeing police.

Keep track of everything that has changed as a result of the incident, including how the incident made you feel and affected your sense of self-worth and dignity.

Office of the Independent Police Review Director (OIPRD)

What is the Office of the Independent Police Review Director?

The OIPRD is for complaints that concern matters that occurred on or after October 19, 2009.

The OIPRD is an arms-length agency of the Ontario Ministry of the Attorney General, staffed by civilians. The OIPRD is accountable to the Attorney General, but the Independent Police Review Director is responsible for the day-to-day decisions. Therefore decisions are separate from the government, the police and the community.

The OIPRD's goal is to provide an objective, impartial office to accept, process and oversee the investigation of public complaints against Ontario's police. In some cases the OIPRD will also investigate a public complaint.

Under the Police Services Act, police officers cannot discriminate, which includes racial profiling. Discrimination can lead to a finding of misconduct and subsequent discipline.

How to use the OIPRD

You may file a complaint on the OIPRD website, by fax, by mail or in person at the office (information below). You may also file your complaint at any police service in Ontario. Complaint forms can be found online or the OIPRD will send you a hard copy.

Complaints must be filed within six months after the incident took place. OIPRD complaint forms are available on the website, at all municipal, regional and provincial police services, at ServiceOntario locations throughout Ontario and in many community centres and legal clinics.

Outcomes include: the police may decide to improve or change their procedures; they may hold a disciplinary hearing; or they may take disciplinary action without a hearing.

Advantages

- You do not need a lawyer for this process, although you may appoint an agent to help you.
- It encourages local and informal resolution, which would be a great deal faster than going through the courts.
- If there is a finding against the officer, it will go on record.
- It is quick, flexible, and inexpensive.

Disadvantages

- There are no monetary awards. Outcomes of a successful complaint at the OIPRD are not compensatory to the person who has been a victim of racial profiling.
- Local or informal resolution may not appear in the officer's disciplinary record.
- You may not be able to proceed with a case at the Human Rights Tribunal. The Human Rights Tribunal will not hear a case if the substance of the application was already dealt with "appropriately" in another proceeding.

For more information about the OIPRD visit:

<https://www.oiprd.on.ca/CMS/Home.aspx>

Or call: 416.246.7071

Toll Free in Ontario: 1.877.411.4773

TTY: 1.877.414.4773

Fax: 416.327.8332 Toll-free fax: 1.877.415.4773

Or visit their office:

655 Bay Street, 10th Floor

Toronto, Ontario

M7A 2T4

*If the incident happened before October 19, 2009, contact the Professional Standards Division of the applicable Police Services Board.

Human Rights Tribunal of Ontario (HRTO)

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What is the Human Rights Tribunal of Ontario?

All claims of discrimination under the *Human Rights Code* are dealt with through applications filed directly with the Human Rights Tribunal of Ontario. The Tribunal's primary role is to provide an expeditious and accessible process to assist parties to resolve applications through mediation, and to decide those applications where the parties are unable to reach a resolution through settlement.

The amended *Code* established a new Human Rights Legal Support Centre (HRLSC) to provide advice, support and representation for applicants. The Human Rights Legal Support Centre gives free legal assistance to applicants to the Tribunal. The Centre can help you fill out your Application and also help you during the Tribunal process.

How to use the HRTO:

For complaints against the police, fill out the Goods, services, and facilities form (Form 1-C). Name the officer(s) in the complaint. The Ontario Human Rights Code includes a list of specific grounds of discrimination. These are listed on your Application.

After you've received documents you've requested the police department you've filed against, and they are not adequate, contact the HRLSC.

You can complete your application online.

You can also send you Application by mail to:

Richard Hennessy – Registrar
Human Rights Tribunal of Ontario
655 Bay St. 14th Floor
Toronto, ON M7A 2A3

Or you can send your Application by email at
HRTO.Registrar@ontario.ca

The limitation period for bringing a claim to the HRTO is one year from the time the last incident of discrimination occurred.

Damages awarded to successful claims range from \$2000 to \$20,000.



Advantages

- The HRTO is flexible in terms of remedy. You can request a number of remedies: financial, specific (e.g. getting one's job back), or public interest remedies to prevent similar discrimination from happening in the future (e.g. Ordering police services to develop new directives or training programs around racial profiling)
- You are also not limited to one remedy (you can get any or all).
- You can voluntarily choose mediation.
- The HRTO is experienced hearing cases dealing with incidents of racial profiling.
- Remedies at the HRTO take into account injury to dignity, self-respect, and feelings when assessing the amount.

Disadvantages

- It is difficult to represent yourself
- Damages may not be very high
- They may not hear your case again if you have already been through another proceeding

For more information about the HRTO visit: www.hrto.ca

Human Rights Tribunal of Ontario

655 Bay Street, 14th floor

Toronto, ON M7A 2A3

Or email: hrto.tdpo@ontario.ca

Call: 416.326.1312

Toll-free: 1.866.598.0322

TTY: 416.326.2027

TTY Toll-free: 1.866.607.1240

Fax 416.326.2199

Toll-free: 1.866.355.6099

For more information about the Human Rights Legal Support Centre:

www.hrlsc.on.ca

180 Dundas Street West,

8th Floor Toronto, ON M7A 0A1

Call: 416.597.4900

Toll Free: 1.866.625.5179

TTY: 416.597.4903

TTY Toll Free: 1.866.612.8627

Other Avenues

Although there are other avenues to seek redress from racial profiling incidents, such as suing in Small Claims Court or Superior Court, it is a lengthy process that is prohibitively expensive. There are only a handful of judgments in civil cases seeking a remedy for racial profiling—and recently the Ontario Court of Appeal has reviewed and rejected two cases (Falconer and Esmonde, 2008).

Courts are difficult to navigate without legal representation. There are many deadlines that must be met and forms that must be completed. There are also no public interest remedies, as opposed to going through the OIPRD or the Human Rights Tribunal.

If you still want to use Small Claims Court or Superior Court to sue the police service or officer(s) involved in the incident, you should enlist the services of a lawyer.

African Canadian Legal Clinic

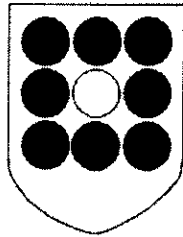
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LIBERTES CIVILES

November 14, 2012

Submissions to the Toronto Police Services Board

Nathalie Des Rosiers, General Counsel
Noa Mendelsohn Aviv, Equality Program Director
Canadian Civil Liberties Association

RE: Issuing Receipts to Persons who are Stopped by the Police

The Canadian Civil Liberties Association (CCLA) is a national non-profit, non-governmental organization with thousands of supporters drawn from all walks of life. The CCLA was constituted to promote respect for and observance of fundamental human rights and civil liberties and to defend and foster the recognition of those rights and liberties. The CCLA's major objectives include the promotion and legal protection of individual freedom and dignity against unreasonable invasion by public authority, and the protection of procedural fairness. For almost 50 years, the CCLA has worked to advance these goals, regularly appearing before legislative bodies and all levels of court. It is in this capacity, as a defender of constitutional rights and an advocate for the rights and liberties of all individuals, that we make the following submissions to the Toronto Police Services Board (TPSB) with respect to Chief Blair's report "Issuing Receipts to Persons who are Stopped by the Police:"

1. Issuing receipts to people about whom a contact card has been made is a positive and important step.

CCLA endorses this recommendation, but will have further recommendations concerning how and when police may (and may not) stop and record information about members of the public.

2. CCLA also supports the recommendation of the Chief to issue quarterly reports on this topic, but again will have further recommendations concerning these reports.
3. While the two recommendations above are important steps towards addressing racial profiling and other policing practices, further steps will be required including: adequate monitoring,

accountability and oversight mechanisms, recourse, community consultations, and the recommendations listed below.

4. Police stops and questioning:

- Protecting individuals' rights and freedoms is in itself a form of protecting the community.
- Police interactions with members of the community vary widely. Friendly exchanges, greetings, offers of help, responses to requests for assistance, and the like may be acceptable and of use in community engagement.

The stops and questioning which we will address, however, are those experienced as compelling compliance, such as when police initiate questioning, or people feel that they cannot go about their business. The Board is urged to recognize the perspective of the individuals stopped and questioned, the significant power imbalance between police and members of the public, the fact that many citizens are not aware of the precise limits of legal authority, the fact that many individuals will therefore err on the side of caution, and that such interactions are experienced as an involuntary "restraint of liberty"¹.

- The recording of a person's information into a police database is a further intrusion into a person's privacy, and may have further consequences and implications for the individual.
- When police stop individuals or question them as described above, and certainly when personal information is recorded, this may be experienced as intrusive, frightening, and intimidating, and can, when unwarranted, be an affront to the privacy and dignity of the person being stopped or questioned.
- Such stops and questioning of individuals – whether or not a contact card is created – should be limited to what is reasonably necessary – for example to question suspects or witnesses. The purpose and practice of police stops and questioning need to be reviewed and changed accordingly.
- It is unreasonable to expect communities to "accept" improper stops.

5. Receipts:

- Receipts issued should include the name, badge number and unit/division of the officer.
- Receipts issued should include printed information about individual rights: when stops and/or questioning are warranted, the right to remain silent and not provide identifying

¹ [1985] 1 S.C.R. 613 per Le Dain J. (dissenting).

information, the right to be free from unreasonable search and seizure, etc. There should also be a link for complaints against police.

6. Other Measures:

- Measures recommended in the Chief's report such as training, monitoring and reporting (including the recommended quarterly reports) should relate not just to police stops where contact cards were created, but also stops where individuals are questioned, and stops where tickets were issued (e.g. for jaywalking). This would provide a more complete and accurate description of police interactions with individuals on the streets.
- Police training should be conducted from an anti-oppression, anti-discrimination perspective.
- The quarterly reports should be made public.
- Benchmarks can and should be established based on earlier contact card information.

7. Community Consultation:

- Ongoing community consultation is a welcome and useful recommendation.
- Community consultations should, where possible, be conducted so as to protect the confidentiality of community members and to protect them from retribution.
- Community perspectives and consultation should be incorporated into training, monitoring and reporting.



JOHANNA MACDONALD, STAFF LAWYER

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November 14th, 2012

Deirdre Williams
Toronto Police Service Board

Attn: Toronto Police Services Board

**Re: Nov. 14th TPSB Meeting Agenda Item #3
Chief William Blair's report to the TPBS on issuing receipts to persons who are stopped
by the police**

On behalf of Justice for Children and Youth (JFCY), the Youth and Police Advocacy Working Group (YPAWG), and the youth we work with, this letter voices concern about three main areas of Chief Blair's report to you. We have five recommendations based on those concerns. To implement these recommendations, we ask that you continue to review, revise, and create Toronto Police Service Board (Board) policies that clarify police roles and responsibilities to provide non-discriminatory policing services to civilians in Toronto.

JFCY provides select legal representation to low-income children and youth in Toronto and vicinity. We are a non-profit legal aid clinic that specializes in protecting the rights of those facing conflicts with the legal system, education, social service or mental health systems. We give summary legal advice, information and assistance to young people, professionals, and community groups across Ontario.

The YPAWG is a collective of at-risk and street-involved youth serving organizations advocating for better interactions between youth and police in our city. YPAWG engages in community activities and education on issues relating to police and youth relations. Taking into account the power difference within the relationship between police and youth, YPAWG encourages and assists youth serving agencies, youth, and the Toronto Police Service to be respectful of their roles and responsibilities, and accountable for their actions.

Background

The Chief's report relates to motions passed during the April 5th, 2012 Board meeting. The original agenda item leading to the motions resulting in the Chief's report was about the collection of demographic statistics on persons being stopped by Toronto Police Service members. The collection and analysis of demographic statistics was requested by the Board so they may

CANADIAN FOUNDATION FOR CHILDREN YOUTH AND THE LAW

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TORONTO, ONTARIO

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www.jfcy.org

potentially quantify the alarming reports and realities highlighted by Toronto Star journalists and community groups about the effects of racial profiling and the existence of discriminatory policing practices in Toronto, particularly between police service members and racialized young men in our city.

In addition to the Board requesting an auditor general's statistical report on potentially discriminatory conduct, community members asked the Board to also pass a policy requiring Police Service members to provide a contact receipt to those stopped and questioned by Service members. In a letter dated March 21st, 2012, JFCY importantly requested that the Board require Service members to provide civilians with BOTH a physical copy of the information recorded during the stop, **AND an information sheet on civilian rights during their stop.**

In consultation with youth, JFCY and YPAWG are concerned that civilians in Toronto continue to be stopped, questioned, and searched in a discriminatory manner based on their age and race and often other protected grounds of discrimination such as disability, sexual orientation or gender. In addition to such discrimination, the youth we work with report extremely negative interactions with the Toronto Police Service including illegal stops, searches, harassment, derogatory language, and physical assaults, for which available remedies for the experienced wrongs are far and few between.

In addition to our continued efforts to resolve these extremely serious grievances affecting our most vulnerable civilians, we depose that:

It is unacceptable that anyone in Toronto continues to be asked to answer questions posed by Toronto Police Service officers about their personal lives without any notification by officers about whether they are obliged to remain in the presence of the officer, whether they are required to answer any of the questions posed, or even whether they are being suspected of any criminal activity.

A. Creating policy that promotes protecting the community by safeguarding fundamental rights

Chief Blair reports that the Toronto Police Service is striving to find a balance between the role of officer's protecting the community, and the individual rights of those in the community being stopped (para 4-5 discussion portion).

The *Police Services Act* governing municipal police services like the Toronto Police requires that services shall be provided in accordance with safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*. Services shall also be provided in accordance with the need to ensure safety and security in neighbourhoods.

These two interests do not require a balance. Respect for individual rights and the safety and

security of the community are no in conflict. In fact, one supports the other. Our Toronto Police Service must do both.

Recommendation #1: The Board must create a strong policy tying these two obligations together – safeguarding individual rights and protecting the community.

We applaud the Toronto Police Service and Board for working to implement policy and procedures under by the *Police Services Act* to safeguard fundamental individual rights and protect communities, but regret that Chief Blair has drawn a divide and suggested that some kind of balancing of interests is required, instead of promoting a culture and practice where rights and safety are respected in concert. Indeed, these two interests must go hand in hand when working within a community with high police presence.

With the existence of clear and open communications and positive police interactions, community members will feel more trusting towards Toronto Police Service members and seek to report crime or more readily assist with investigations of crime. Police Service members must be called upon to treat people respectfully, with dignity and act within the limits of the law – this is the only way that police will successfully engage with community members and be able to provide meaningful safety and protection within the community.

B. Notification of stop purpose and information about public complaints

We are also concerned about the evolution of the use of "street checks", as described in Chief Blair's report. Paragraph 4 and 5 of the "Discussion" portion of the report summary states that the purpose of "street checks" is for investigative AND community engagement purposes.

This dual-purpose goal of investigative and community engagement raises several serious concerns:

- Is community engagement a policing duty that attracts the authority of the police to collect and retain mass databases of personal information about civilians on the street in Toronto?
- Under our *Municipal Freedom of Information and Protection of Privacy Act*, does the Toronto Police Service have lawful authority to collect non-law enforcement personal information about civilians?
- At a minimum, if for community engagement purposes and not investigative purposes, must the Toronto Police Service members notify the individual the purpose for collecting their personal information?

The dual-purpose goal of "street checks" to encompass both an investigative and community engagement role requires that Toronto Police Service member be even clearer about what their

communication with civilians on the street means, so that fundamental rights are safeguarded, as required by the *Police Services Act*.

Without procedural requirements outlining an officer's responsibility to notify civilians about the service they are providing when asking questions, providing a contact receipt of a stop does facilitate accountability, safeguard rights, or build safety in our community.

Recommendation #2: Board policy should require officers to inform people of their rights when being stopped (can they leave, if not, why?, and can they speak with a lawyer?)

Many of our clients who are questioned by Toronto Police Service members are unaware they have a right to refuse to answer questions. They feel threatened, intimidated, and obliged to respond. Regardless of whether a stop is conducted in a coercive, threatening, or even pleasant manner, the inherent power difference between law enforcement agents and youthful civilians begs the question of the true voluntariness of answered questions.

Unfortunately, even civilians who know their rights and responsibilities when questioned by a Toronto Police Service member often feel nervous and threatened in police presence. Many of our clients also feel that if they ask questions about the interaction or try to assert their rights, that they may be treated more harshly by the Toronto Police Service officer who is interacting with them.

It is in the Toronto Police Service's interest to communicate how the Service manages interactions between Service members and civilians, especially the conduct of communications when civilians choose not to share personal information with Service members.

Clear policy and procedural guidelines on how the Service members are required to inform civilians about their rights and obligations is crucial to the proper functioning of the Toronto Police Service in upholding their core service and duties under the *Police Services Act*.

Recommendation #3: Board policy should require officers to provide information about the complaints process directly to people they interact with during any stop

The Toronto Police Service should not and must not tolerate discriminatory conduct by Service members. A policy and operational procedure should be created for informing a civilian about their right to make a complaint about the Service they receive. Feedback from people who are stopped by Service members will allow the Toronto Police Service to identify the origin of complaints and take appropriate action.

C. Policy is required to ensure that the Service monitors compliance with the Ontario Human Rights Code and Canadian Charter of Rights and Freedoms

Recommendation #4: Board policy must be in place relating to the monitoring of compliance with the Human Rights Code and the Canadian Charter of Rights and Freedoms

Chief Blair reported that the Diversity Management Unit does not have the expertise nor capability to monitor the activities of the Service members for misconduct or report to the Chief accordingly. The monitoring of compliance with the *Ontario Human Rights Code* is a crucial goal of the Board and Service, as compliance with the *Code* is required under the *Police Services Act*.

As a crucial element to rectifying the widespread accounts of discriminatory policing in Toronto, if not the Diversity Management Unit, then who shall conduct this monitoring?

Recommendation #5: The Board should review, revise, and implement policy related to the access, retention, and destruction of information collected by the Police Service during a 'street check'

It is also important that the Board review existing policies and procedures relating to information collected by Service members. Some this review may be subsumed in a strong non-conviction police records access, disclosure, and purging policy, to be addressed at item 21 on the agenda, but these issues are also important to consider at the front-end of Police Service stops and record collection in order to evaluate compliance with privacy laws, the *Human Rights Code*, and *Canadian Charter of Rights and Freedoms* guarantees.

On behalf of JFCY and the YPAWG, thank you for your attention to this matter. I invite any comments or questions for further consideration.

Regards,



Johanna Macdonald
Counsel, Justice for Children and Youth

TPSB PROFILING DEPUTATION
DOUG JOHNSON HATLEM
November 14, 2012

The critical question for us today is whether the Toronto Police Services Board has the authority and resolve to tell Chief Bill Blair that he is required to obey rulings of the Canadian Supreme Court even when he disagrees with ~~it~~. Put differently, so long as the Toronto Police Services Board allows Chief Blair to break Canadian law or at least to push the line significantly, it risks losing multi-millions of tax payer dollars in class action lawsuits for its violations of basic Canadian Charter Rights on a regular and ongoing basis. Handing someone a receipt every time you violate a right as delimited by the Canadian Supreme Court does not make the violation of that right any less of a violation.

My name is Doug Johnson Hatlem and I am the Lazarus Rising Street Pastor with the Mennonite Central Committee Ontario, or MCC Ontario. MCC Ontario has seconded me to work with Sanctuary, a church, drop-in centre, health clinic, and arts collective at the heart of downtown Toronto. Our church building is located near Yonge and Bloor. As part of my work over the last seven years with MCC and Sanctuary, I have observed or encountered around 100 stops, searches, and/or CPIC checks by Toronto Police, what Chief Bill Blair's report would like to call "Street Checks." Many of these so-called Street Checks have lead to either carding or ticketing. I will not speak directly to the ticketing this month, but I would like to note that in nearly every one of the 100 or so stops that I have witnessed, Toronto Police have searched the Canadian Police Information Centre, or CPICed the community members I have worked with. I would also like to note that in at least five of the instances, I witnessed what was either clearly racial profiling of 1st Nations people, overheard racial slurs of 1st Nations people, or both.

I want to make one simple suggestion with respect to the Chief's report today. What Chief Blair has called STREET CHECKS are really STREET DETENTIONS, and the Board should order them to be deemed such in all policy relating to the detentions. From my observation, as well as from my readings of similar media accounts and conversations with friends of mine on the streets of Toronto, there is absolutely no way of distinguishing these so-called STREET CHECKS from Detentions. The difference is not just a word.

In an article available online from ten years ago, USING THE CHARTER TO STOP RACIAL PROFILING: THE DEVELOPMENT OF AN EQUALITY- BASED CONCEPTION OF ARBITRARY DETENTION, David Tanovich argued that all police stops should be considered detentions as a way of combatting the problem of racial profiling. As Tanovich put it, "Can it really be said, for example, that it is reasonable to expect that a young black man in Toronto would feel free to refuse an officer's request to "come over" or to "stop"?" I can say very clearly that the same is true for the people I work with who are homeless, panhandling or otherwise poor. There is no way they feel the freedom to leave these situations, and rightly fear from experience that they may be arrested or beaten if they try to leave the scene.

These stops are detentions plain and simple and should be labelled as such. Certainly, by the point a Toronto Police officer has taken someone's name or ID and plugged it into CPIC, there is no reasonable way of distinguishing what is happening from a detention.

What's the difference between a CHECK and a DETENTION? According to the Supreme Court of Canada's rulings, a person who has been Detained must be told that they are being detained, informed of the reason why they are being detained, and of their right to speak to a lawyer.

While I applaud the Board's decision to require the Chief to implement a system of receipting people who are being racially profiled at an unprecedented rate here in Toronto, until there are clear lines about what counts as a detention, and is therefore judicially reviewable and requires that police state the reason for the detention, we cannot end this problem.

AT THE VERY VERY LEAST, Toronto Police must be required to state not only the identifying marks of someone they have detained in the carding and receipting systems as described, THE BOARD MUST ALSO REQUIRE THAT THE REASON FOR THE DETENTION BE NOTED.

As pointed out in an Toronto Star editorial by a lawyer immediately after the "Known to Police" series ran, the Toronto Police have messed around with language three times to avoid the Supreme Court of Canada's attempts to rein in these Charter violating type of detentions.

This is beyond troubling to me, especially as I deal regularly with situations where the Toronto Police feel no need to honour the Supreme Court of Canada's rulings with respect to strip searches. If the Toronto Police Services Board is to fulfill its mandate to oversee Chief Blair and the Toronto Police Services, it must order the Chief to uphold the law with respect to illegal detentions and searches. I understand that Chief Blair feels that these regular carding stops are critical to reducing crime in Toronto. Regardless, Mr. Blair's feelings on this matter cannot be allowed any longer to trump Canada's Charter of Rights and Freedoms and explicit rulings of the Supreme Court of Canada regarding illegal detentions and searches. I urge the Board today to require that all stops on the street, and especially those with a CPIC component, not only require a receipt, but also that they be labelled for what they really are, STREET DETENTIONS.

Thank You.

THE
LAW UNION
OF ONTARIO

Please address reply to:

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Barrister & Solicitor
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November 12, 2012

Toronto Police Services Board
40 College Street
Toronto, Ontario
M5G 2J3

ISSUING RECEIPTS TO PERSONS WHO ARE STOPPED BY THE POLICE

SUBMISSIONS ON BEHALF OF THE LAW UNION OF ONTARIO

1. The Law Union of Ontario offers its qualified support for the implementation of the three proposals advanced by Chief Blair in his Report.
2. However, neither the Chief's proposals nor the position taken by the Police Services Board of its April 5, May 18, and July 19, 2012 meetings do not even begin to address the paramount issues involving the current practice of "Carding" otherwise known as "Street Checks".
3. The design and use of Form 208 and in particular the manner in which the practice of "Carding" is deployed are both clear violations of the *Canadian Charter of Rights and Freedoms*. Specifically the individual rights guaranteed by *Sections 8 and 9* of the *Charter* are clearly infringed and denied and on a case by case analysis are violations of *Sections 2, 7, 10 and 15* of the *Charter*.
4. The manner in which this so-called form of "community engagement" is deployed warrants scrutiny by the Board. We have authenticated reports from individuals who state that when they decline to either provide identification or provide the information set out in Form 208 as in the absence of special circumstances is their absolute right to do, officers then resort to illegitimate ruses and stratagems such as the following:
 - a) Officers falsely state that they are involved in a criminal investigation and that the individual matches the description of the suspects.

It should be noted that some officers may wrongly believe that by so stating they bring themselves within the broader scope of "investigative detention" as set out in R. v. Mann.

- b) Officers attempt to circumvent and nullify the individuals assertion that they do not wish to identify themselves or provide the Form 208 information by implicitly threatening remarks such as:
 - i. What are you trying to hide!
 - ii. What do you have in your pocket!
 - iii. Do I have to take you to the Police Station?!
 - c) Officers engage in "pat down searches" of the individual which are clearly unlawful.
5. The approaching and stopping of persons without lawful cause followed by a request or demand for identification and answers to the information sought by Form 208 clearly constitute "detention" within the meaning of the *Charter of Rights*. Such demands or requests for identification and information clearly constitute a "search" within the meaning of the *Charter*.
 6. In the overwhelming majority of cases the persons which the police seek to "Card" are doing nothing that would lawfully warrant such police intervention.
 7. Not only is the practice of "Carding" in such a manner an unlawful violation of the *Charter*, it has resulted in community apprehension, sentiment and fear particularly in marginalized communities which undergo a disproportionate "Carding" presence.
 8. Further, individuals who are apparently targeted for "carding" are disproportionately racialized youth. The practice is viewed in these communities as racist policing. Often these are the very communities in which the police seek and need cooperation in the pursuit of legitimate law enforcement and criminal investigation purposes.
 9. The practice of "Carding" is a major obstacle to achieving community trust and cooperation.
 10. It is clear from the statistics obtained by the Toronto Star that the use and impact of "Carding" is primarily directed at youths, racial minorities and members of marginalized communities. However, this practice is one which all Torontonians are subject to.

11. In a free and democratic society a Police Service should not be stopping and demanding from innocent persons the personal and private information set out in Form 208.
12. "Carding" is not merely an unwarranted invasion of privacy, it is an intentional and clear violation of *Charter Rights and Freedoms* and contravenes Human Rights and Privacy legislation.
13. This form of "community engagement" as it is referred to in Chief Blair's Report is far removed from that envisioned by Elmer the Safety Elephant.
14. Chief Blair's Report fails to append either Form 208 or the proposed receipt. We urge you to examine the nature of the information being sought without cause from persons in our city.
15. We draw particular attention to the following: (Form 208 attached)
 - Age
 - Birth place
 - Address
 - Previous country
 - Information relating to associates
 - School attendance
 - Whether ones parents are divorced or separated
 - Mother and father's surnames
16. Although police officers are entitled to ask anyone questions in legitimate circumstances, this ability is trumped by the corresponding common law and *Charter Right* of individuals to decline to answer such questions. Absent special circumstances individuals can also refuse to provide identification.
17. However, that is not what is happening during an approach for the purpose of "Carding".
18. When Police officers refuse to respect *Charter Rights and Freedoms* and instead subvert the *Charter* by subterfuges, ruses, and outright lies they violate the Supreme law of Canada.
19. As early as 2004 the Board was put on notice by the highly respected Jurist that the practice of "Carding" was a threat to a free and democratic society.

20. In R. v. Ferdinand Superior Court Justice H. LaForme heard evidence that the investigating police officers regularly stopped individuals and filled out between 15-45 cards per shift. His Honour stated:

“Although I do not dispute that 208 cards might well be a useful and proper investigative tool for the police; in my view the manner in which the police currently use them make them somewhat menacing. These cards are currently being used by the police to track the movements – in some cases on a daily basis – of persons who must include innocent law-abiding residents.”

“One reasonable – although very unfortunate – impression that one could draw from the information sought on those 208 cards – along with the current manner in which they are being used – is that they could be a tool utilized for racial profiling.”

“... I make my observations only to express a profound note of caution. If the manner in which these 208 cards are currently being used continues; there will be serious consequences ahead. They are but another means whereby subjective assessments based upon race – or some other irrelevant factor – can be used to mask discriminatory conduct. ...”

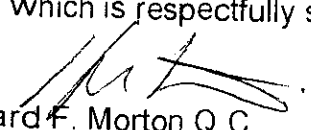
“This kind of daily tracking of the whereabouts of persons – including many innocent law – abiding persons – has an aspect to it that reminds me of former government regimes that I am certain all of us would prefer not to replicate.” (Emphasis added)

21. It should be noted that Justice LeForme did not have the benefit of being made aware of the use of the manner in which police operate when an individual declines to respond to police questioning.
22. Similarly, in R. v. Linton, now Superior Court Justice I. MacDonnell, in dismissing 4 charges of assault police observed that detaining individuals “for the purpose of requiring them to provide identification is unjustified and unlawful. He observed that such practice would give the police “a general warrant to detain for investigation anyone found in a troubled neighborhood.

THE LAW UNION OF ONTARIO

23. It is incumbent that the Board examines the entire practice of "Carding" and not simply concern itself with race based statistics and demographics as a reaction to the Toronto Star articles.
24. The Law Union of Ontario respectfully requests and urges the Board to undertake a comprehensive analysis of the practice of "Carding".
25. We request that as a first step in such analysis, the Board undertake the following:
 - 1) Immediately direct Board counsel or preferably independent counsel to review the existing practice of "Carding" as it is occurring daily on our streets. Counsel should complete and report on such review at the earliest possible date and no later than February 2013.
 - 2) Require Chief Blair to provide counsel all standing, routine or other orders with respect to "Carding".
 - 3) Require Chief Blair to provide counsel with all service policies or directives with respect to "Carding".
 - 4) Require Chief Blair to provide counsel with all training materials with respect to "Carding".
26. The current Board motions and recommendations completely ignore the real issue with respect to "Carding" and the concerns which communities in our city have.
27. On his Report to the Board on the *Charter* violations occurring during the infamous G-20 weekend, Justice Morden emphasized that the Board has as its primary obligation a duty to ensure that its Police Service operate in a lawful manner and in accord with our *Charter of Rights*.
28. To date the Board has failed in its responsibility as it relates to "Carding". The communities which have attended today both inside and outside the Chamber have lost both patience with and confidence in the Board. They see the practice of "Carding" as racist policing.

All of which is respectfully submitted.


Howard F. Morton Q.C.
HFM/dm
Encl.

FIELD INFORMATION CARD / CONTACT DETAILS		ZONE	TP3	TPS208
DATE (YYY/MM/DD)		TIME (24 HOUR CLOCK)		
AT <input type="checkbox"/>	NEAR <input type="checkbox"/>	LOCATION/INTERSECTION		
LOCATION DETAILS		OFFICER NO. (S)		
PROJECT #	REFERENCE TYPE/REF NO.	NATURE OF CONTACT		
CIRCUMSTANCE OF INVESTIGATION				
PERSON INVESTIGATED BY / OFFICER		IN VEHICLE <input type="checkbox"/>		PEDESTRIAN <input type="checkbox"/>
SURNAME		G1		
G2		ALIAS/NICKNAME		
DOB (YYYY/MM/DD)	AGE	SEX	BIRTHPLACE	COLOR
APPEARANCE	EYES	HAIR (STYLE/LENGTH/COLOR)		FACIAL HAIR
HEIGHT	WEIGHT	IDENTIFIED BY (ID TYPE)	ID CONFIRMED YES <input type="checkbox"/> NO <input type="checkbox"/>	
ADDRESS <input type="checkbox"/> NFA <input type="checkbox"/>	SAME AS LOCATION		PREVIOUS/COUNTRY	
TELEPHONE NO <input type="checkbox"/>	CELL NO <input type="checkbox"/>	EMAIL <input type="checkbox"/>		
DRIVERS LICENCE NO		PROV/STATE	DRIVER <input type="checkbox"/> PASS. <input type="checkbox"/>	
RWN POLICE ACCOUNTABILITY REPRODUCTION JUNE 25/2011 fax: 416-365-9371				

ASSOCIATES: YES NO THIS SUBJECT IS PART OF A GROUP

ENTER A SEPARATE TPS 208 FOR EACH ASSOCIATE AND ATTACH

PRIMARY SURNAME

TO LINK ASSOC'S

ASSOC.#

OF

GANG/CLUB AND DESCRIPTION

GANG MEMBER

ASSOCIATE

CLOTHING AND BODY MARKINGS

PERSON COMMENTS

YOUNG PERSON INFORMATION

ATTENDING (SCHOOL, ETC)

GRADE

PARENTS
ARE

DIVORCED

SEPARATED

FATHER SURNAME(G)

CAREGIVER
ADVISED

YES

NO

MOTHER SURNAME(G)

YOUTH BUREAU
NOTIFIED

YES

NO

VEHICLE INFORMATION

LICENCE PLATE

PROV/STATE

PLATE (000)

YES NO

LOGO DESIGN

YEAR (YYY)

MAKE

MODEL

COLOUR

STYLE

VIN#

VEHICLE DAMAGE

DAMAGE LOCATION

DAMAGE DESCRIPTION

DAMAGE COMMENT

EMAIL TO

F/R ENTERED B

RWN POLICE ACCOUNTABILITY REPRODUCTION

REVISED JULY 18/2012

fax: 416-365-9371

Toronto Police Services Board
40 College Street
Toronto, Ontario
M5G 2J3

Issuing Receipts to Person who are Stopped by Police

Submissions on Behalf of the Law Union of Ontario

1. The Law Union of Ontario restates its position set out in our November 12, 2012 submission that this Board has an absolute obligation to undertake a comprehensive analysis of the practice of “carding”.
2. The Police Services Act of Ontario provides as follows:
 - s.1 Police services shall be provided throughout Ontario in accordance with the following principles:
 2. The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms and the Human Rights Code*.
 - s. 31(1) A board is responsible for the provision of adequate and effective police services in the municipality and shall:
3. Justice Morden in his June 29, 2012 *Report into INDEPENDENT CIVILIAN REVIEW INTO MATTERS RELATING TO THE G-20 SUMMIT* cites sections 1.2 and 31(1) finds as follows:

... The purpose of the provision is rather to remind those acting under the Police Services Act of the constant hearing of the *Charter* and the *Human Rights Code* on the performance of their duties. This is critically important because the exercise of so many police powers, for example, those of arrest, detention and search and seizure engage rights that are protected by the *Charter* and the *Human Rights Code*.

4. The Law Union of Ontario submits that both the design of Form 208 and the manner in which “carding” is deployed are clear violations of both the *Charter of Rights and Freedoms* and the *Human Rights and Freedoms* and the *Human Rights Code*.
5. In labeling street checks as form of “community engagement Police claim they are a form of community policing. In reality, street checks are carried out as intelligence gathering of personal information from individuals who are not engaged in criminal or antisocial behavior and who are conducting themselves in a law abiding manner.
6. Many individuals, particularly youths, are unaware that they have the right to walk away. They feel intimidated and obliged to respond often arising out of the inherent power difference between the police and youths. Even if individuals are aware of this right they often fear reprisal of one form or another if they attempt to exercise their right. There are authenticated reports from individuals who claim that when they declined to produce identification and/or answer questions, officers resorted to illegitimate ruses and strategies such as the following:
 1. Officers falsely state that they are involved in a criminal investigation and that the individual matches the description of the suspect. It would seem that some officers wrongly believe that by so stating they bring themselves within the broader scope of investigative detention as prescribed in *R. v. Mann*.
 2. Officers attempt to circumvent the individuals assertion that they do not wish to identify themselves or answer questions by making implicitly threatening remarks such as:
 - What’s in your pockets?
 - What are you trying to hide?
 - Do I have to take you to the Police Station to straighten this out?
 - Have you been using drugs?
 - What is your criminal record?
 - What are you doing in this neighborhood?

7. Furthermore, street checks are most often carried out in neighborhoods and communities in which the police seek and require cooperation in their pursuit of legitimate law enforcement and criminal investigation purposes. However, community groups, legal clinics, and social justice groups allege that the basis for a street check policy is racist policing of persons who are often young, racialized, or marginalized.
8. In a series of articles in February 2010 and in March 2012 ² the Toronto Star published its analysis of all Form 208s filled out by the Toronto Police between 2003 -2008. The Star reported that a review of the data from over 1.3 million Form 208s obtained demonstrated that blacks were more than three times more likely than whites to be stopped and carded by police. In predominantly white areas African-Canadians were seventeen times more likely to be stopped. The Star reported that 41 percent of all Form 208s filled out by officers, involved black persons.
9. This latter statistic demonstrates that such disparity is not the result of blacks being a disproportionate segment of the population in either Toronto's poorest or most crime ridden neighborhoods. Rather they point to the likelihood of racial profiling and race-based policing.
10. The Toronto Police Service website carried a four page article titled **What to Expect When Stopped by Police**. It lists the "**Common Reasons to be Stopped**" yet makes no mention of carding as though such practice did not exist.
11. The scenario attached as Appendix A is a reflection of what has been reported by several community groups and individuals.
12. In its November 14, 2012 required the Chief to review the Form 208 in light of the Race and Ethno-Cultural Equity Police. There is no mention whatsoever of the *Charter* or the *Human Rights Code*.

13. It is incumbent on the Board to ensure that both the format of Form 208 and the means of deployment comply with the *Charter and Human Rights Code*.

All of which is respectfully submitted.

Howard F. Morton, Q. C.

SCENARIO

Two 17 year old black males X and Y are walking on the sidewalk in a residential area at 3pm in the afternoon. Neither youth is doing anything suggestive of wrongdoing. The youths are stopped by two officers who are on foot patrol. One officer states "we want to see ID" in a demanding tone and asks them why they are at that location. The youths, who at this point seem quite nervous, advise the officers that a lawyer had told them at a school function that they were not required to produce ID or answer any questions. One of the officers then falsely states that the youths match the description of gang members who had committed a series of break and enters one street over the day before. The officer then states "we can settle this here or: We will take you to the station and settle it there". The officers then conduct a pat down search of the youths while asking: "What do you have to hide? Are those drugs in your pocket?"

The youths become increasingly alarmed and provide their ID. One of the officers returns to his cruiser with the ID while the other stands beside the youths. On his return, the officer holds onto the ID and asks several questions such as where they live, where they attend school, where were they born, whether their parents are married and live together, and the names of their associates. The youths now very nervous, answer all of the questions. The second officer writes their responses on his notebook. After some twenty minutes they are given back their ID and told to be on their way and keep their noses clean. Subsequently the officer fills out a "Form 208".

The officers are clearly in violation of the *Charter* and the *Human Rights Code* for the following reasons:

1. The officers are on general patrol and are not in the course of a criminal investigation.

2. While the officers would be entitled to lawfully approach and stop the youths requesting identification and asking some questions that is not what occurred. The officers' expression was a demand rather than a request.
3. There is absolutely nothing in the conduct of X and Y which could cause an officer to have a reasonable suspicion that the youths were in any manner connected to a recent or ongoing crime. There is no suggestion of trespass.
4. Although there are some elements of a physical detention there is clearly psychological detention as per *Grant* in that a reasonable person in these circumstances would conclude that they had no choice but to provide identification and answer questions.
5. The physical contact involved in the pat down search.
6. The power imbalance between the police and the youths.
7. The youths are members of a racial minority.
8. The falsehoods and implicit threats made by the officers.
9. The duration of the interaction.

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January 16, 2013.

To: Toronto Police Services Board

Subject: Carding

We wish to be listed as a deputation on the above item at the Board meeting on January 23, 2013. This is an important issue and we would request more than the usual five minutes to present our deputation.

There are three matters that need to be addressed in respect to the Toronto police practice of stopping and carding individuals:

- a) the intrusive nature of such stops and whether they are authorized by law;
- b) the appropriateness of the information gathered by police on Form 208 given the nature of most stops; and
- c) the receipt to be issued by police.

A: The intrusive nature of carding stops.

Concern has been expressed in the courts about carding. In a 2004 Ontario court case, *R. v. Ferdinand*, Justice Harry LaForme referred to carding, stating:

Although I do not dispute that 208 cards might well be a useful and proper investigative tool for the police; in my view the manner in which the police currently use them make them somewhat menacing. These cards are currently being used by the police to track the movements – in some cases on a daily basis – of persons who must include innocent law-abiding residents.

One reasonable – although very unfortunate – impression that one could draw from the information sought on these 208 cards – along with the current manner in which they are being used – is that they could be a tool utilized for racial profiling.

... I make my observations only to express a profound note of caution. If the manner in which these 208 cards are currently being used continues; there will be serious consequences ahead. They are but another means whereby subjective assessments based upon race – or some other irrelevant factor – can be used to mask discriminatory conduct. ...

More recently, a New York Court has found a similar practise by New York City police to be contrary to the United States constitution. While no one would argue that American and Canadian law are exactly the same, there are many similarities, and the judge's comments are very applicable to carding by Toronto police. The case was reported in the *New York Times*, January 9, 2013, page A17 with the headline 'Police stop-and-frisk program in Bronx is ruled unconstitutional.' The following are excerpts from the article, with some of the judge's statements in bold:

Judge Shira Scheindlin of Federal District Court in Manhattan, said police officers were routinely stopping people outside buildings without reasonable suspicion that they were trespassing in front of buildings which had enrolled in the Trespass Affidavit Program where property managers asked police to patrol buildings and arrest trespassers.

"The fact that a person was merely seen entering or leaving a building was not enough to permit police to stop someone, 'even if the building is located in a high crime area, and regardless of the time of day,' the judge ruled. Nor was it enough for an officer to conduct a stop simply because the officer had observed the person move furtively, Judge Scheindlin said. (The forms that the police fill out after each street stop offer 'furtive' movements as a basis for the stop.)"

"For those of us who do not fear being stopped as we approach or leave our homes or those of our friends and families, it is difficult to believe that residents of one of our boroughs live under such a threat. In light of the evidence presented at this hearing, however, I am compelled to conclude this is the case."

"As a person exits a building, the ruling said, 'the police suddenly materialize, stop the person, demand identification, and question the person about where he or she is coming from and what he or she is doing.' "

“The decision continued: ‘Attempts at explanation are met with hostility; especially if the person is a young black man, he is frisked, which often involved an invasive search of his pockets; in some cases the officers then detain the person in a police van.’ ”

“Judge Scheindlin also expressed concern over a department training video that she said incorrectly characterized what constituted an actual police stop. In the video, a uniformed narrator sates ‘Usually just verbal commands such as Stop! Police! will not constitute a seizure.’ The narrator explains that the encounter usually qualifies as an actual stop only if the officer takes further steps such as physically subduing a suspect, pointing a gun at him, or blocking his path. ‘This misstates the law,’ Judge Scheindlin said of the video, which has been shown to most of the patrol force.”

“ Judge Scheindlin called for a hearing to discuss possible remedies to the issues she raised. At that hearing, she said, she will consider requiring the Police Department to create a formal written policy ‘specifying the limited circumstances in which it is possible to stop a person outside a TAP building on suspicion of trespass,’ revise the training of officers and alter some training literature and videos use to teach officers how to conduct lawful stops.”

Police commissioner Raymond Kelly said “Today’s decision unnecessarily interferes with the department’s efforts to use all of the crime-fighting tools necessary to keep building safe and secure.”

One might argue that carding as described by Mr. Justice LaForme is contrary to the Charter of Rights and Freedoms or some other law; but in any case it is bad practise and if applied to most residents of the city (currently it is used most often in low income and disadvantaged neighbourhoods) would be found to be widely offensive.

We believe the best course of action for the Toronto police is to cease carding activities that involve random stops where there is no evidence of illegal activity.

B. The 208 form

The 208 form makes it clear that police believe these stops constitute an investigation, although there is no requirement for the officer to indicate the crime being investigated. It is clear from the data of the 250,000 cards that are filled out every year that the vast majority of stops are related to something other than criminal behaviour.

The information that the individual must provide police is of a very personal nature. It is hard to believe that most individuals would countenance a police officer, on a random stop, demanding to know whether one's parents were separated or divorced, their surnames, and whether the person was attending school. As well, gathering information on 'associates', with an implication that they are part of a gang, including their clothing and body markings, indicates an extraordinary prejudice on the part of police, particularly when no crime is being investigated.

That police wish to gather information about hair style, eye colour, birthplace, nickname, and more is also prejudicial where no crime is being investigated. Most Torontonians would find these questions inappropriate, and for good reasons.

We believe the 208 form needs to be changed to be clear that the stop has occurred because the police are investigating a crime. 'Circumstances of Investigation' should be replaced with two headings:

'Crime being investigated' and

'Why this person was stopped for this crime'

The section on the reverse side, 'Associates' and 'Young Person Information' should only be completed in cases of an investigation of a Criminal Code or Drug offence. These sections should not be completed in cases where the investigation is for an offence involving a municipal bylaw or a provincial statute.

C. The receipt

The receipt proposed by Chief Blair as Form 306 is not appropriate. It assumes that the stop and the carding exercise is for activities for which stops are not warranted. If carding is really a form of 'community engagement', then Toronto police have a false impression about how to successfully engage the community.

Worse, the proposed receipt does not indicate why the police had the authority to engage in the stop. As we know, when the authority of Toronto police to make these stops and get information is challenged by youth, they are often subject to punitive treatment by police, including detention and even criminal charges. What's needed is a receipt which provides clear justification for the stop. Where no clear justification exists, there should be no stop by police.

We think the best receipt is a carbon copy of the amended 208 form.

We also urge that the service undertake a broad publicity campaign before issuing receipts.

Recommendations:

1. **The best course of action for the Toronto police is to cease carding activities which involve random stops where there is no evidence of illegal activity.**

If the Board does not agree to cease carding activities, then:

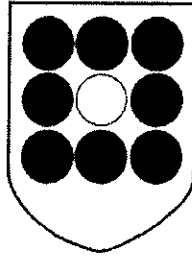
2. (a) **The 208 form should be modified by replacing 'Circumstances of Investigation' with two headings, 'Crime being investigated' and 'Why this person was stopped for this crime'; and**
(b) **The section on the reverse side, 'Associates' and 'Young Person Information' should only be completed in cases of an investigation of a Criminal Code or Drug offence.**
3. **A carbon copy of the amended 208 form should be given to everyone who is stopped and carded; and a broad publicity campaign should be undertaken before the receipt policy is implemented.**

Yours very truly,



John Sewell for
Toronto Police Accountability Coalition.

CANADIAN
CIVIL LIBERTIES
ASSOCIATION



ASSOCIATION
CANADIENNE DES
LIBERTES CIVILES

Submissions to the Toronto Police Services Board

Noa Mendelsohn Aviv, Equality Program Director
Canadian Civil Liberties Association

January 23, 2012

RE: Report of Chief Blair re Forms 208 and Proposed Form 306

CCLA

The Canadian Civil Liberties Association (CCLA) is a national organization with thousands of supporters drawn from all walks of life. The CCLA was constituted to promote respect for and observance of fundamental human rights and civil liberties and to defend and foster the recognition of those rights and liberties. The CCLA's major objectives include the promotion and legal protection of individual freedom and dignity against unreasonable invasion by public authority, and the protection of procedural fairness. For almost 50 years, the CCLA has worked to advance these goals, regularly appearing before legislative bodies and all levels of court. It is in this capacity, as a defender of constitutional rights and an advocate for the rights and liberties of all individuals, that we make submissions to the Toronto Police Services Board (TPSB) on the above-referenced matter.

The Chief's Report, the Forms, and Race-Based Harassment

As this Board is aware, the Chief's report, Form 208 and proposed Form 306 are all part of a larger discussion around race-based harassment (more commonly known as racial profiling), and certain police practices involving detention of individuals, certain lines of questioning, and the recording of individuals' personal information (known as "carding").

Form 306 is intended to be a receipt to inform people of the information recorded in the police database, and as a safeguard against racially motivated or unnecessary police interrogations outside of specific investigations. The concept of a "receipt" was intended to provide the individual a *copy* of the police contact card (subject to reasonable exclusions) which was to inform the individual what was recorded about them in the police database. If the police contact card was recorded on paper, this could have been done through a carbon copy; if electronic, through a print-out.

While certain information may be subject to reasonable exclusions for police investigatory purposes, much of the information the police take down in a “contact card” should be available to the person stopped and carded.

At a minimum:

1. **An individual’s personal information provided by them would presumptively be *not* confidential, and individuals have a right to receive a mirror copy of this.**
2. **Given the underlying issue of race-based harassment, it is critical that an individual who is stopped and carded should receive a receipt reflecting *how the police recorded in their own database* the person’s race or racial appearance.**
3. **The individual who was carded has a right to know the specific reason for the stop: the specific investigation, and (subject to reasonable exclusions) the person’s potential connection to it. (This too should be a mirror copy of the reasons recorded in the contact card.) For example, young people who are detained, questioned and carded by police are frequently told that the reason for the stop is that the individual matches the description of a suspect who committed an offence nearby. It is not asking too much to require that police record this same reason in the police database, and provide a copy to the individual.**

The recording and sharing of the above information with the affected individual will go a long way towards the transparency and accountability needed to begin to investigate and ultimately address race-based harassment. The information will be of use to anyone – including this Board – concerned about race-based harassment and seeking to monitor and end it.

Without providing this information as a copy of the contact card, Form 306 will be ineffective. More insidiously, the form may cause more damage to the community than good, as it appears to justify the violation of people’s rights for no good reason.

Proposed Form 306 in its current version appears to justify detaining, questioning, and recording the identity and personal information about a person for such “reasons” as “community engagement” and “general investigation.” These are insufficient reasons to justify measures that are intrusive and invade a person’s privacy.

The very notion of a “street check” is improper, and implies that it is legitimate for police to intrude into people’s time and space, invade their privacy, and violate their dignity for no reason. Proposed Form 306 makes it appear – both to police and to the community – that general “fishing expeditions” are acceptable. They are neither acceptable nor lawful in Canada.

In light of the above, proposed Form 306 should not be approved or put into use by the Toronto Police Service.

A final receipt should include as well information about a person's rights, and how to protect them. CCLA would be happy to consult with the TPSB on this matter.

At this time, CCLA urges the Board to desist from approving Form 306, and instead to require the Toronto Police Service to provide a "mirror copy" receipt that includes the minimum information listed above. This could be done on *an urgent interim basis*, before the details of a "final" receipt are worked out.

Speaking Notes for the Toronto Police Services Board meeting January 23, 2013

I plan to speak today concerning carding, or what is more formally known as the Field Information Reports. But before I do that I wanted to make reference to another occasion when we sought to influence the TPSB in its actions.

In the year 2000, the Toronto Police Association started endorsing political candidates, contrary to section 46 of the Police Services Act. Over the following years submissions were made to this Board to try and end that practice. The Board, then chaired by Norm Gardner, showed no interest in having the Police Association endorsing of candidates end. Then Police Chief Julian Fantino had no interest in ending the Police Association endorsing of candidates. The lack of action by Chief Fantino and Norm Gardner had not come as much of a surprise. The TPA, under Craig Bromell, was endorsing Progressive Conservatives, the party that both Fantino and Gardner supported.

The TPSB attitude on the Police Association endorsing candidates started to change in 2004 when Alan Heisey was chair of the Board. On December 16, 2004, when Counselor Pam McConnell was chair of the board, and you, Mr. Mukherjee, were Vice Chair, it all changed. The Board policy became:

- (1) The endorsement or opposition of political candidates by municipal police officers is prohibited by the Police Services Act and its Regulations
- (2) Members of the Toronto Police Association or its Executive are subject to the Police Services Act and its Regulations
- (3) The Chief of Police shall communicate with the Service each time an election campaign commences to reiterate that police officers are prohibited from using their status as police officers to endorse or oppose candidates during an election
- (4) The Chief of Police shall discipline any police officer who contravenes this policy

In 2006 this Board provided detailed information to the Ottawa Police Services Board and helped them stop the Ottawa Police Association from endorsing candidates.

Unfortunately I have not seen anything like the same quality of work done by this Board on the carding issue. Others have spoken and will speak about the propriety and constitutionality of the police gathering and storing information obtained by the police officers in Toronto using the Field Information Reports.

I have followed the debate and have been aware of the efforts by TPAC and the Law Union of Ontario to get the TPSB to deal with this carding issue. What I decided to do, while waiting to see if there will be any Board action on carding, was to prepare a two-page information sheet and make it as available as possible to the young people in our city. If this information is spread widely enough, those subject to carding, who are mainly the young ethnic minority people in our city, hopefully will have enough information to be able to exercise their free will when deciding whether to provide information to the police that will end up in the police computer system.

APPROACHED BY THE POLICE... KNOW YOUR RIGHTS

What do you do if you are stopped and questioned by the police?

You have a choice. When you are approached by the police, except in some very specific circumstances, some of which are listed below, you can decide whether you will speak with them and/or give them any information, tell them your name, or produce identification. For the most part, you do not have to answer questions asked of you by the police and cannot be arrested for refusing to answer. If you lie about your name or address, however, you can be charged with obstructing justice or the police.

In Toronto, if you give the police your name and/or produce your identification, it is likely that what you provide to them will be put on what the police call a **Form 208**, more formally called Field Information Reports. That form will indicate what your name is, where you were when the police spoke to you, the time and date when they spoke to you, what you said you were doing and who you were with and other personal information. All of that information, along with other kinds of police contact (like 911 calls) can go into the Toronto Police computer system and remain available to police for many years.

It is also likely that if you tell the police your name, they will run a police computer check on you through the RCMP Central Repository system known as CPIC. CPIC will tell the police officer you are dealing with whether there is a warrant for your arrest and whether you are on bail, or any other information police already have. If you are on bail, CPIC will tell the officer the terms of your bail. If you are violating the terms of your bail, the officer will likely arrest you and charge you for breaching your bail. You will be held for a show cause hearing, at which time a decision will be made whether you will be kept in jail pending your trial(s).

In general, the police can ask you any questions they want, but you do not have to talk to them, show them your identification or answer their questions. The main exceptions to this general rule are when you are stopped and questioned by the police as part of an investigative detention, when you are stopped on a bicycle for a traffic offence, when you are stopped while driving a motor vehicle or when you are being investigated for a non-criminal offence such as drinking in a public place.

According to a decision of the Supreme Court of Canada in a case called *R. v. Mann*, the police have no right or power to stop you unless they have reasonable grounds to believe you may have been involved in a criminal offence. If they have such reasonable grounds, they are entitled to briefly stop you for what is called an investigative detention. If the police approach you and tell you about a specific criminal offence they are looking into and that they believe you are involved in it, in that situation you may decide to cooperate with the police by giving them your name and producing identification. But before you give them any information, ask them why they have stopped you and get specific details of the offence they are investigating.

If you are the driver of a car stopped by the police, under the Highway Traffic Act, you must produce your driver's licence, car registration and insurance for the vehicle you are driving. But NOTE: passengers do not have to identify themselves or answer any questions asked by the police (unless the police are doing an investigative detention for a criminal offence).

Similarly, police issuing tickets for by-law offences (e.g. drinking in public, trespassing, Highway Traffic Act offences committed by bicyclists, etc.), can demand identification in order to ensure that they have a correct name and address. Failing to convince the police of your identity in this situation may give them the right to arrest you, even if the offence itself is not a serious one.

Once stopped or detained, the police do not have a general power to search you or to get you to show them what you have in your pockets, or to search your bag or knapsack. We recommend that you politely but firmly decline to be searched. If they have grounds to arrest you, police do have a general power to search you for any items that you might have that could be used to harm the police or provide evidence.

The police in our city have a difficult job to do. We recommend that you deal with them as politely as possible.

CAUTION

While we believe that it is not an offence to assert one's constitutional rights, please note that asserting one's rights around police may result in an aggressive response by the police, and possibly continued detention, arrest, or charges.

We encourage people to carefully consider the possible outcome of any encounter with police.

Paul D. Copeland
Law Union of Ontario
www.lawunion.ca

Good afternoon Mr. Chair and Board members:

I am here representing Black youth and the wider African Canadian community in the Greater Toronto Area on the issue of carding and contact receipts.

Before I speak to the discussion matters, I would like to make reference to the case of *R. v. Richards* at the Ontario Court of Appeal, where the African Canadian Legal Clinic defined racial profiling as the following:

“Racial profiling is criminal profiling based on race. Racial or colour profiling refers to that phenomenon whereby certain criminal activity is attributed to an identified group in society on the basis of race or colour resulting in the targeting of individual members of that group. In this context, race is illegitimately used as a proxy for the criminality or general criminal propensity of an entire racial group.”

My presence here today is to represent Black youth and the wider African Canadian community that are subject to racial stereotyping and stigmatization by police personnel and authorities, which results in the criminalization of an entire racial group. I am also here speaking on behalf of the Justice is NOT Colour-Blind campaign, that comprises a collection of individuals that are deeply concerned about racial profiling and police brutality.

My response to the discussion matters articulated in the chief's report is the following:

1. Laws or policies must be consonant with generally accepted moral, valuational and constitutional precepts and written with the mutual agreement of the people – including African Canadian people;
2. Police personnel and authorities must serve and learn to differentiate the criminal and noncriminal elements in the African Canadian community, and be perceived as even-handedly opposed to its criminal elements and as zealously protective of its citizens' lives and properties, as respective of their rights and humanity as they are the criminal elements, lives, properties, rights and humanity of other ethnic communities.
3. The police and criminal justice system establishments must respect the intelligence of the African Canadian community and exhibit full confidence in its capacity to know how best to solve its social problems. They therefore should be prepared to actively listen to the community and diligently support its efforts, not paternalistically and autocratically dictate solutions to its problems.

It must be stated in no uncertain terms that, Form 208 Field Information Cards and consequently, Form 306, Community/Officer Contact Receipts, is immoral and violates our right to be free from arbitrary detention or imprisonment. Additionally, it must be stated that if the Board and the service actively listens to the African Canadian community they would quickly come to the realization that this practice is not consented to by Black and *racialized* peoples.

Given the time constraints, I would like to point your attention to a November 30, 2012 article

written by Rachel Mendleson of the Toronto Star, entitled, "York University students allege racial profiling."

In the article, Mendleson highlights stories of students alleging racial profiling at the hands of Toronto police. Mendleson states that Alexandria Williams, president of the York United Black Student Alliance, said uniformed officers have stopped students who don't meet the descriptions (in reference to assaults at York University), which list the suspects as being between 5-foot-7 and 5-foot-10. She quotes Williams, as saying, "they're going up to young, black men who are no taller than 5-foot-3 or 5-foot-4, and asking them to empty their pockets, and show them their identification...under the pretext that they look too young to be on campus...[t]hat's when I start to have a problem, because that doesn't make me feel safe as a black woman, as a member of the black community."

In closing, it is imperative for this Board and the service to come to the realization that Black people feel less-than-human when the police and criminal justice system establishment treats the whole community as criminal. "Racial or colour profiling refers to that phenomenon whereby certain criminal activity is attributed to an identified group in society on the basis of race or colour resulting in the targeting of individual members of that group." Surely, if this Board and the service are interested in having positive relations with the African Canadian community, you will seriously consider that the chief discontinues carding and abandons the implementation of contact receipts – effectively immediately.

Toronto Police Accountability Coalition
c/o Suite 206, 401 Richmond Street West, Toronto ON M5V 3A8.
416 977 5097. info@tpac.ca , www.tpac.ca

March 14, 2013.

To: Toronto Police Services Board

Subject: Carding

We wish to be listed as a deputation on the above item at the Board meeting on March 27, 2013.

The matter of carding was again discussed at the Board at its January meeting, and the decision was made then that a subcommittee was struck to recommend a course of action, and the lawyer would report on the legal implications of carding, both reports to be made at the March meeting.

It was at the Board meeting in April 2012 that the Board unanimously agreed that those carded should receive a carbon copy of the carding information. In spite of the fact the Board has made similar kinds of decisions on three other occasions since then, nothing has changed in respect to police practice. Young racialized residents continued to be stopped and carded by police.

Carding causes great damage to those who are stopped by police. A recent article in *Atlantic Magazine*, 'How Racism is Bad for Our Bodies', makes this clear <http://www.theatlantic.com/health/archive/2013/03/how-racism-is-bad-for-our-bodies/273911/>.

We want the Board to put in place interim measures to change carding while the final actions are debated and decided on. We think eleven months is too long for nothing to happen. As we proposed in our letter of January 23, 2013, we suggest the following:

As an interim measure, the Board should take the following action:

1. The 208 form should be modified by replacing 'Circumstances of Investigation' with two headings, 'Crime being investigated' and 'Why this person was stopped for this crime'; and

2. The section on the reverse side, 'Associates' and 'Young Person Information' should only be completed in cases of an investigation of a Criminal Code or Drug offence.

3. A carbon copy of the amended 208 form should be given to everyone who is stopped and carded.

Yours very truly,

A handwritten signature in black ink, appearing to read "J. Sewell". The signature is written in a cursive style with a large initial "J" and "S".

John Sewell for
Toronto Police Accountability Coalition.

DEPUTATION TO THE TORONTO POLICE SERVICES BOARD

By Miguel Avila

March 27, 2013

Item 6: Toronto Police Service Street Checks and Receipts

I must confess, I thought today 's meeting will put an end to the ongoing saga of the Carding process, Racial Profiling and Street Checks.

However, the letter dated March 11, 2013 by the Chief Commissioner of the Ontario Human Rights Mrs. Barbara Hall, has been added to the ongoing discussion in regards Carding and Street Checks that members of the community have spoken on in previous meetings which is fine. The Commissioner supports the Board for seeking for an opinion to the City Solicitor, and that is exactly we were told last January meeting. .

Well, the board has put the question to the City Solicitor, Mrs. Anna Kinastowski, if this practice is a constitutional violation of the Charter of Rights and Freedoms. The public does not know when the Solicitor will be coming to the Board to report back on its findings , **Question:** Would it be possible for the Board to request Mrs. Kinastowski to report back at a special board meeting next week?

Dear Board Members, You have hear loud and clear from members of the community such practice it is a clear violation of the charter. Moreover, the delaying tactics is causing mistrust on the board ability to put an end to this practice that involves Racial Profiling. Carding, or "Street Check" . In my opinion is a controversial system of information collection that the police say is an integral part of their work done in secret and with no assurances it will be protected from abuse by hot headed officers. (Ottawa Case)

As you are aware I am T.C.H.C resident and I know how this "street checks" are applied by member of T.A.V.I.S in a regular basis to residents of my community including myself. It appears that the "**Trespass Act**" has been modified to accommodate T.P.S officers to be the agents of the Corporation, to enforce and conduct street checks in T.C.H.C properties. I had witnessed T.P.S officers freely walk through the property hallways, corridors, parks, parking lots. You may say they are doing their "job" sure enough.

The stopping of residents at T.C.H.C building is in my view a disturbing practice, Residents feel they don't have to cooperate with the T.P.S since they are not being arrested or cited for an offense.

The stop and carding, it is an intrusive process of asking people's personal information, God Forbids.. if you get puffed up or agitated because of the simple act of telling officers that they have no right to be asking questions....oh boy... it can escalate from insults to the individual by the officers, to threaten with arrest, racist remarks, and at the end it result in physical interactions with residents by members of T.A.V.I.S .

Another detrimental part of this exercise is the ongoing practice of requesting a people's country of origin, Residents feel is a federal (Immigration Canada) matter, because they are aware of their rights not to reveal Immigration information to the T.P.S. most of the time, the individual is detained for not cooperating with the T.P.S. and in order to get released from Jail you need to reveal your country of resident and other personal information.

Dear board member T.C.H.C residents have a life, families , a school to attend to, a church they need to be at, a job interview the next day, a job to be at to feed their families , the right to freely walk in their communities but they are fearful at the sight of the T.P.S. and it is because of this fear and past experiences with marginalized youth that residents don't cooperate with the T.P.S to solve a crime or pinpoint a member of the community for fear of being jailed as well.

In the last few months the C.E.O of the T.C.H.C Mr. Eugene Jones, has hosted several small town hall meetings thorough the City , I have attended several of those meetings attended by City Councilors , MPP's and Residents, they have told Mr. Jones over and over complaining on issues of safety and security. Mr. Jones encourage residents to come forward with information to the Special Constables operating with the corporation or the T.P.S... the answer is always the same... the complains are always the same.. the remarks are the same.. and the message , please cooperate with the T.P.S to reduce criminal behavior and activities in buildings plagued by crime. Excuse me?? .. How are we supposed to cooperate with the T.P.S if we are treated without respect and dignity?? You need to shape up and make amendments with the community but that will be part of my deputation on Item 29 : Process to Report Judicial Comments Regarding Officer Dishonesty or Misconduct . Stay Tuned.

Thanks again for your time.

Miguel Avila

Board General Mailbox

From: Brittany Harris (CLASP) <bharris_clasp@osgoode.yorku.ca>
Sent: Wednesday March 20, 2013 15:28
To: Board General Mailbox
Subject: Toronto Police Services Board: Deputation Re: Toronto Police Service Street Checks and Receipts

This is an enquiry e-mail via <http://www.tpsb.ca> from:
Brittany Harris (CLASP) <bharris_clasp@osgoode.yorku.ca>

Hello Deidre

I am initiating a request to make a deputation at the March 27 Toronto Police Services Board in regards to the Toronto Police Service Street Checks and Receipts.

I will be making this deputation on behalf of the Community and Legal Aid Services Programme (CLASP).

Outline

Introduction

CLASP is a poverty law legal clinic at Osgoode Hall CLASP supports Toronto's low-income residents living in the Jane-Finch community.

Like those you've heard from we have concerns with the practice of carding.

Body

Stop the Practice Immediately

Until the issues with the carding program have been addressed and fully considered the program should be put on hold. Significant issues with the program have been raised including concerns from the community, charter concerns brought forward by lawyers, and concerns about the intrusive nature of this questioning. Continuing with a practice that is recognized as flawed and not fully understood makes little sense. Give us time to develop a series of best practices to this contentious issue.

Expectations & Standards

To hear that police are being evaluated based on the number of 208 cards is disappointing. This flies in the face of the numerous deputations and voices that have been put before the board. There are better ways to develop evaluation standards.

Best Practices: Stop the program

We believe that the best way of addressing the multiple problems associated with street checks is to stop the program entirely. It may be impossible to keep the intention of the program in tact while still holistically respecting charter rights. The intention of the street check and field information form is not to collect information in relation to investigations. Its purpose is to collect personal information for the police database. Some of that information may be used in future investigations for crimes that have not and may not occur.

Best Practices Alternatives

If stopping the program entirely is not possible at this junction, there are a number of other practices that could be taken up to improve the police street check. However, such suggestions do not necessarily address community concerns with racial profiling.

Change the Field Information Form so that the reasons for the stop are listed. Only stop people or complete a field information form in relation to investigations. Even when people are stopped for investigations and personal

information is gathered, police have to make sure that no negative designation will be entered in the system for that person (for example "P" - person of interest). Only collect detailed and personal information in 'the Associates' and 'Young Person Information' sections where the person questioned is reasonably believed to be a suspect. Issue a carbon copy to those who are stopped

Conclusion

Stop Carding Immediately while concerns are worked through and best practices developed.

Stop Carding Permanently

Alternatively :

- o Change the 208 form so that the reason for the stop is clearly stated
- o Stop people and complete 208 forms only during investigations
- o Collect detailed information only on suspects during investigations
- o Issue carbon copy receipts to those who are stopped and carded

Consider new holistic evaluation measures and standards.

Please let me know if you have any further questions about our deputation.

Sincerely, Brittany Harris



BLACK IS NOT A CRIME

A Public Service Accountability Project

March 21, 2013

VIA EMAIL

Deirdre Williams
40 College Street
Toronto ON, M5G 2J3
Email: deirdre.williams@tpsb.ca

RE: TORONTO POLICE SERVICES BOARD MEETING

Please be advised that the community organization, Black Is NOT A Crime, would like to present a deputation at the meeting of the Toronto Police Services Board (TPSB) scheduled for March 27, 2013.

Briefly, we will submit that, given the disproportionate rate at which members of the African Canadian community are carded, the practice of carding is illegal; it is violative of the *Ontario Human Rights Code*, the *Canadian Charter of Rights and Freedoms* and various international treaties. Black Is NOT A Crime will also submit that, contrary to Ms. Barbara Hall's letter, the TPSB does not need to assess whether race is a factor in adverse treatment from carding. We know that it is. Finally, Black Is NOT A Crime will seek clarification from the TPSB as to whether the City Solicitor's legal analysis will incorporate and/or be based on the data published by the *Toronto Star*.

The deputations will be presented by Mr. Roger Love. Please let me know if you have any questions, comments, or concerns.

Thank you,

Moya Teklu, B.A., J.D.
Black Is NOT A Crime

THE
LAW UNION
OF ONTARIO

Please address reply to:
James Roundell
647.706.1127
james.roundell@gmail.com

March 27, 2013

Toronto Police Services Board
40 College Street West
Toronto, Ontario
M5G 2J3

CONSTITUTIONALITY OF STREET CHECKS
SUBMISSIONS ON BEHALF OF THE LAW UNION OF ONTARIO

1. At the January 23, 2013 meeting, the Toronto Police Services Board resolved to request a report back from the City Solicitor on the legality of Street Checks for the March 27, 2013 meeting.
2. At the same meeting, a subcommittee was struck to reach out to the community and community organizations and propose a new policy governing Street Checks.
3. The Law Union of Ontario expresses its disappointment that neither report is complete.
4. The Law Union further expresses its disappointment that there is no mention of either item in the agenda for the March 27, 2013 meeting.
5. The Law Union of Ontario takes this opportunity to remind the Toronto Police Services Board of its responsibility to scrutinize the intelligence gathering Street Check policy both immediately and completely.


Law Union of Ontario

6. In his Report to the Board on the *Charter* violations occurring during the G-20, Justice Morden emphasized that the Board has as its primary obligation a duty to ensure that its Police Services operate in a lawful manner and in accordance with both our *Charter of Rights and Freedoms* and the Ontario *Human Rights Code*.
7. To this end, the Law Union of Ontario reiterates its submissions from the November 14, 2012 meeting and calls on the Toronto Police Services Board to newly resolve the following with respect to the report on the legality of the Street Checks:
 - i. That the Board retain independent counsel;
 - ii. That the Board require the Chief to provide counsel with the following with respect to Street Checks:
 1. All standing, routine, or other orders,
 2. All service policies and directives,
 3. All training materials,
 4. Any other document produced by Police Services concerning Street Checks;
 - iii. That the Board ensure that the report is made public; and
 - iv. That the Board ensure that the report is completed by the April 25, 2013 Board meeting.
8. It is incumbent upon the Board to examine the entire practice of Street Checks, and not simply examine race and other demographic statistics.
9. The Police Services' unlawful stopping and demanding of personal and private information from persons with respect to whom they have no suspicion of criminality has no place in a free and democratic society.
10. Street Checks are a clear and intentional violation of *Charter* rights. Their discriminatory application serves only to render them more deplorable.

Law Union of Ontario

11. While the Board allows months to pass into years of inaction, thousands of law-abiding community members are being stopped, intimidated, and documented without their permission, in violation of their rights and in a discriminatory manner, every day.

All of this respectfully submitted,

A handwritten signature in black ink, appearing to read 'James Roundell', written over the text 'All of this respectfully submitted,'.

James Roundell
Law Union of Ontario

March 14/2013

Ms. Deirdre Williams
Board Administrator
Toronto Police Services Board
40 College Street
Toronto, ON, M5G 2J3
deirdre.williams@tpsb.ca

Dear Ms. Williams:

Re. TPSB 'Contact Us' deputation: Method to speed up implementation of street check receipt system

Below is a close copy of the deputation sent to the Toronto Police Services Board 'Contact Us' message web site on Jan 16/13 10:08EST. It was intended to contribute to the Jan 23/13 regular Board meeting.

Hello to the Toronto Police Services Board,

Thank you for posting the Contact Receipt TPS 306 2012/10 well before the Jan 23/13 Board meeting. By using the Roger's video of Board meetings I have been able to follow your ongoing attempts to implement a 'street check' receipt policy.

Street checks (colloquially known as 'Carding') apparently occur up to 400,000 times annually, and have therefore led to significant public interest in regards to the efficiency, legality, and impact on citizen/police relationships. What Toronto is attempting with the street check receipt policy may also end up setting a trend for Canada. The Board is correct in its desire to create a document trail that should help adherence to legal principles and make street checks as mutually respectful as possible. While the police that are doing street checks have immediate goals like criminal investigations and also medium term crime suppression in mind, the Police Board must look to the longer term relationships between a community and their police.

However, while the Board's strong desire to 'get it right the first time' is admirable, that is not necessarily achievable or wise. I will attempt to explain why it is better to push ahead immediately with the present less than perfect 306 Contact Receipt, rather than lose still more time attempting to work out all the details before the first field deployment.

In scientific research, at which I make my living, it will inevitably take three tries to get an experiment or field procedure completely right. This is also true in almost all human endeavors, even if everyone involved is trying to make a success. Basically, the first time something complex is tried the results will show a few things that go right, and some unexpected or underestimated circumstances that don't. The people involved will then make the now obviously needed corrections to the material, practices or situation and carry out the second try. The second try will then go mostly right, but reveal several small improvements to make as the main problems are now out of the way. Those final smaller modifications are carried out and the third try approaches perfection.

New human endeavors that depend on interactions between disparate groups of people frequently are more complicated than described above and therefore getting things 'mostly right' is often as good as it gets. Note also that although receipting police interactions have been done in a few other countries, the legal and social systems vary enough that we cannot rely on those limited examples as a 'first try'.

At the Police Board there has been a focus on the written details of the receipt itself, but there are two other equally important components to the proposed street check receipting process. The second component, which has not been as publically discussed, is the actual process Toronto police will go through as they do a receipted street check. For example, how readily is the receipt given out, and is that after the street check is complete or part way through as consent is asked or implied? Will officers have to keep both hands busy while the receipt is written, or will the officers already have their names stamped, with the recipient filling out the details and the officer then signing at the bottom, etc.?

The third and less controllable component is how the recipient of the receipt responds or is affected. Do they respond positively or not, and what impact does this have on the police relationship in the neighbourhood. Initial and subsequent feedback from the recipients will need to be studied in order to adjust the receipting process in as positive a direction as possible.

So there are three components interacting during the projected street check, namely the receipt, the receipting process, and the response the receipting generates. These components will moderate back and forth with each other in ways not yet fully determined. Also, how officers feel about the process, and thereby compose themselves when receipting, is also going to be a major influence. It will take considerable time and several policy amendments to work this all out. Meanwhile, every month over 30,000 more street checks are carried out in Toronto.

The first version of the Contact Receipt TPS 306 2012/10 lacks sufficient detail on what happened during the street check, and on the articulable reason for the interaction. Fortunately, working out the receipting process and studying the recipient response can still be carried out in the field while using the present first version already printed 306 receipts. Simultaneously, the Board and interested parties can carry on considering what modifications are desired for a second version Contact Receipt. Therefore, please consider deploying the presently printed street check receipts immediately.

Sincerely,

Randy Schmidt

Good afternoon Mr. Chair and Board members:

I am here as a representative of Black youth and the wider African Canadian community in the Greater Toronto Area to speak to the Street Check Subcommittee report.

I would like to remind the Board that it was just over a month ago, on March 21 that the world observed the UN's International Day for the Elimination of Racial Discrimination. On that day, MPP Jagmeet Singh stated the following in the Legislative Assembly, "racial discrimination at its roots is a question of power. When there is a power imbalance, there will be discrimination. If we want to eliminate discrimination and racism, we need to eliminate the power imbalance which perpetuates this racism."

Indeed, it is the sense of powerlessness among those that are most affected by racial profiling that is just as dangerous as the sense of powerfulness among those that are responsible for this immoral and unconstitutional practice.

Speaking on behalf of the Justice IS NOT Colour-Blind Campaign, which comprises a collection of individuals and networks that are deeply concerned about racial profiling and police brutality, we respond to the report, raising the following issues and recommendations:

1. Toronto Police personnel should be taught to perceive and acquit themselves not as occupiers of the African Canadian community, not as its rulers or as enforcers of quasi-colonial laws such as street checks but as its servants, employees, as its representatives, and who along with the members of that community are mutually and co-equally concerned and involved in protecting its best interests.
2. Toronto Police personnel should reflect the ethnic compositions of the African Canadian communities they serve, and should employ at all levels a representative number of African Canadian personnel who possess a high level of Afrocentric consciousness and demeanour. It is not enough to have black faces in high and low places. Police units such as TAVIS which operate within the African Canadian community, the neighbourhoods and highways in general, should possess a sound working knowledge of the culture, history, and behavioural character of the African Canadian community and demonstrate an earnest respect for it.
3. Police personnel responsible for violating the rules of common decency and courtesy, for the use of racial slurs and epithets, for abuse of power and authority, the use of unnecessary force, other forms of harassment and injurious behaviour when dealing with African Canadian citizens, should be visited with certain, swift, and effective chastisement. The Chief has started doing this but needs to specifically address anti-Black racism within the Service.

Since this Board believes it is unrealistic to halt street checks, despite the racist manner in which it is being carried out, and appears poised to endorse contact receipts as a tool to evaluate this practice – it is our contention that the Board must begin the very serious work of implementing an African-centred

educational rehabilitation program for African Canadian police personnel, which will inoculate them with a deep knowledge of truth and of African history and culture.

The Christopher Dorner story in Los Angeles is an example of what can happen when White racism remains unchecked and is pervasive throughout a police organization. Even the story of a 16-year old Black boy named Kimani Gray is instructive. He was shot dead by two plainclothes police officers not far from his home in Brooklyn's East Flatbush neighbourhood. The community had had enough with racial profiling and police killings of youth by the NYPD, and rioted, according to the media, for several days.

We submit that you immediately pursue our recommendation to re-educate the Service's African Canadian police personnel while at the same time ensuring that White and non-Black police officers are taught to perceive and acquit themselves not as occupiers of the African Canadian community. This, in our estimation, in addition to implementing certain, swift, and effective chastisement whenever police personnel harass or injure African Canadians – can have a significant positive impact on the relations between police and the African Canadian community in which they are supposed to serve. Ultimately though, "if we want to eliminate discrimination and racism, we need to eliminate the power imbalance which perpetuates this racism."



BLACK IS NOT A CRIME

A Public Service Accountability Project

April 25, 2013

Deirdre Williams
40 College Street
Toronto ON, M5G 2J3
Email: deirdre.williams@tpsb.ca

RE: STREET CHECK SUB-COMMITTEE UPDATE

BLACK IS NOT A CRIME. is a community organization dedicated to addressing anti-Black racism in the provision of public services, including police services.

BLACK IS NOT A CRIME. commends the Street Check Sub-Committee of the Toronto Police Services Board for its update and interim recommendations.

As set out in the Sub-Committee's report, the African Canadian community – including members of BLACK IS NOT A CRIME. – has appeared before the Board on a number of occasions. We have asked for carbon copies or receipts of 208 cards, periodic reports of disaggregated race-based data, and a general recognition that the practice of carding by the Toronto Police Service amounts to racial profiling. We have argued that carding is illegal, ineffective and highly detrimental to community relations in general and the African Canadian community in particular. We have been unequivocal and unwavering in our demand that racial profiling by the Toronto Police Service must stop.

BLACK IS NOT A CRIME. is hopeful that the recommendations of the Sub-Committee will move us closer to this goal. We support these recommendations as measures of much needed accountability and transparency and are cautiously optimistic about the direction in which the Sub-Committee appears to be heading as evidenced by the recommendations made and the questions asked of Chief Blair.

However, we continue to have reservations about the Board's commitment to taking concrete action to eliminate the discriminatory practice of carding. The Sub-Committee's recommendations that the Chief provide quarterly reports on street check practices and carbon copies of 208 cards were originally passed by this Board in April 2012 – one full year ago. Similarly, the recommendation that the Chief provide receipts as an interim measure was originally passed by this Board in July 2012.

The community will not accept being back here a year from now asking yet again for the implementation of these same recommendations. As noted by the Sub-Committee, the reputation of the Toronto Police Service and the legitimacy of the Toronto Police Services Board will be measured by how quickly concrete action is taken.



BLACK IS NOT A CRIME.

A Public Service Accountability Project

With respect to the recommendations made, BLACK IS NOT A CRIME. would like to note its concern about the immediate implementation of Form 306 in its current form. As noted by previous deputants, if Form 306 does not provide information about the perceived race of the individual being stopped and the specific reason for the stop, it will be useless as a tool of public accountability and transparency.

Justifications like “Community Engagement” and “General Investigation” are catchall terms that are easily manipulated to legitimize racial profiling and other *Charter* violations. There is no need to record an individual’s name, birth date and other personal information to establish that an officer is building community relations (i.e. shaking hands and kissing babies).

Let us not forget why this interim measure was requested in the first place – because absolute discretion and lack of oversight led to abuse of police power and the harassment of young Black men for no reason other than the colour of their skin.

The Sub-Committee has asked the Chief about the current policies on “when an officer may (a) conduct a Street Check, (b) record the Street Check on a Form 208/Field Information Report (FIR), and (c) must issue a receipt?.” The Sub-Committee has also asked “What accountability measures exist in relation to the conduct of Street Checks?”

BLACK IS NOT A CRIME. requests that the Chief be asked to report specifically on the steps to be followed by the public if and when a receipt is not issued; where complaints can be made; and, most importantly, what consequences might befall an officer who is determined to have failed to issue a receipt (and ultimately a carbon copy).

It is ironic that the Sub-Committee has asked how best to involve community stakeholders. These are the community stakeholders that have already appeared before you: Urban Alliance on Race Relations, Toronto Police Accountability Coalition, Canadian Civil Liberties Association, African Canadian Legal Clinic, Black Action Defence Coalition, Front Line Partners with Youth Network, Justice for Children and Youth, Office of the Provincial Advocate for Children and Youth, Miguel Avila, the Law Union of Ontario, Justice is Not Colour Blind, Lazarus Rising Street Pastor, Community Legal Aid Service Program, Rand Schmidt, and BLACK IS NOT A CRIME. The community has been involved. We have made these and other recommendations time and time again. We will no longer continue to offer legitimacy to this Board by engaging in what has so far been a futile process.

We also note that the only stakeholder singled out for consultation in the Sub-Committee’s report is one that has not once appeared before this Board on this issue – the Ontario Human Rights Commission. The Commission’s position with respect to racial profiling is clear. We refer you to the Commission’s 2003 publication, “Paying the Price: The Human Cost of Racial Profiling,” which is readily available on the Commission’s website.



BLACK IS NOT A CRIME

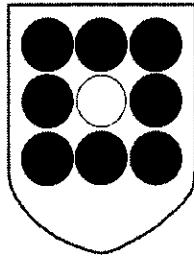
A Public Service Accountability Project

If you implement the recommendations that have been made and get answers to the questions that have been asked in a timely manner, the community will continue to provide our feedback and be engaged.

Sincerely,

BLACK IS NOT A CRIME.

CANADIAN
CIVIL LIBERTIES
ASSOCIATION



ASSOCIATION
CANADIENNE DES
LIBERTES CIVILES

Submissions to the Toronto Police Services Board

Noa Mendelsohn Aviv, Equality Program Director
Canadian Civil Liberties Association

April 25, 2012

RE: Report of the Toronto Police Services Board on "Street Check Committee – Update"

CCLA

The Canadian Civil Liberties Association (CCLA) is a national organization with thousands of supporters drawn from all walks of life. The CCLA was constituted to promote respect for and observance of fundamental human rights and civil liberties and to defend and foster the recognition of those rights and liberties. The CCLA's major objectives include the promotion and legal protection of individual freedom and dignity against unreasonable invasion by public authority, and the protection of procedural fairness.

Introduction

The Report and Recommendations raise significant concerns. They maintain the continuation of "street checks" for the purpose of "community engagement" without proper safeguards that would ensure their constitutionality, and they fail to create a tool that could help create transparency and accountability on the part of the Toronto Police Service.

I. "Street Checks"

The very notion of a "street check" is improper, and implies that it is legitimate for police to approach anyone anywhere, intrude into people's time and space, and invade their privacy without proper justification. "Community engagement" is not sufficient justification. Indeed, these stops often undermine the goals of law enforcement and of the criminal justice system.

When police stop individuals without justifiable reasons, ask questions, and particularly when they record people's names and identities, this constitutes an unconstitutional violation of those individuals' privacy, liberty and dignity. To the extent that the stops disproportionately

Without providing a carbon copy of this basic information, any receipt or form, including Form 306, will be ineffective.

More insidiously, Form 306 may cause more damage to the community than good, as it appears to justify the violation of people's rights for no good reason. It appears to justify "street checks" and detaining, questioning, and recording the identity and personal information about a person for such reasons as "community engagement" and "general investigation." These are insufficient reasons to justify measures that violate people's fundamental rights.

Recommendations regarding the "receipt" and Form 306:

3. Proposed Form 306 makes it appear – both to police and to the community – that general "fishing expeditions" are acceptable. They are neither acceptable nor lawful in Canada. Form 306 should not be approved or put into use by the Toronto Police Service.

4. Instead, the Board is urged to require the Toronto Police Service to provide a "mirror copy" as set out above, as a necessary tool for transparency and accountability. This copy should include as well information about a person's rights, and how to protect them. CCLA would be happy to consult with the TPSB on this matter.

III. Recommendation - General:

5. CCLA urges the Board adopt these recommendations promptly, and address these serious issues without further delay.

THE
LAW UNION
OF ONTARIO

Please address reply to:

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April 24, 2013

Toronto Police Service Board
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M5G 2J3

**SUBMISSIONS OF THE LAW UNION OF ONTARIO RE: STREET CHECK
SUBCOMMITTEE – UPDATE**

To recognize always that the power of the police to fulfill their functions and duties is dependent on public approval of their existence, actions and behavior, and on their ability to secure and maintain public respect.

To recognize always that to secure and maintain the respect and approval of the public means also the securing of willing cooperation of the public in the task of securing observance of laws.

To recognize always that the extent to which the cooperation of the public can be secured diminishes, proportionately, the necessity of the use of physical force and compulsion for achieving police objectives.

To seek and to preserve public favour, not by pandering to public opinion, but by constantly demonstrating absolutely impartial service to law, in complete independence of policy, and without regard to the justice or injustices of the substance of individual laws; by ready offering of individual service and friendship to

all members of the public without regard to their wealth or social standing; by ready exercise of courtesy and friendly good humour; and by ready offering of individual sacrifice in protecting and preserving life.

Sir Robert Peel, principles 2-5 of the nine Principles of Policing on the creation of the London Police Constabulary, 1829

It is respectfully submitted that the April 19, 2013 update by the subcommittee evolves from a conclusive underpinning which flies in the face of supreme law of Canada.

This conclusive and underpinning, rationale for the sub-committee's conclusions and recommendations is stated in paragraph 1 at page 3 of the Update as follows:

The Subcommittee has carefully reviewed the request made by several deputants that the practice of Street Checks be stopped in its entirety. Given TPS operational requirements, the Subcommittee does not believe that stopping the practice of Street Checks is realistic. The Subcommittee believes that it is more practical to focus on the impact and purpose of Street Checks. (Emphasis added)

The issue is not whether the use of Form 208 and the manner in which it is deployed are necessary in order that the TPS can meet its operational requirements.

The issue is whether such use and deployment are lawful.

The Law Union of Ontario continues to maintain that both Form 208 and the manner in which it is filled out, ie, street checks, are violations of the *Canadian Charter of Rights and Freedoms*, the *Ontario Human Rights Code*, and municipal and provincial privacy legislation.

Throughout the history of the common law many unlawful investigative stratagems have been used by police officers in free and democratic societies. These stratagems were often carried out under the guise of being necessary due to "operational requirements" to facilitate criminal investigations, prosecutions or intelligence gathering operations.

Some examples of such conduct are:

- Using physical or psychological force to obtain confessions or statements;
- Unlawful entry on property or buildings without a search warrant or exigent circumstances;
- Unlawful wiretap or other interception of communications without judicial authorization;
- The unlawful removal and replacement of private property for investigative purposes;

Even prior to the *Charter of Rights and Freedoms* such conduct was held by Courts to be unlawful requiring a cessation on their use. Under the *Charter of Rights and Freedoms* such practices have been held to be violations of the supreme law of Canada.

We appreciate that the legal opinion requested by the Board is not yet completed. We anxiously await to review it.

In the interim we are concerned that the “questions” set out in Appendix B of the Subcommittees Update fail to even mention the overriding issue before the Board, i.e.: **Are form 208 street checks lawful? Are they violations of Charter rights and freedoms? Do they violate the *Ontario Human Rights Code* and privacy legislation?**

The Law Union of Ontario restates its position set out in our November 12th, 2012 submission that this Board has an absolute obligation to undertake a comprehensive analysis of the practice of “carding” or street checks.

The *Police Services Act* of Ontario provides as follows:

- s.1 Police services shall be provided throughout Ontario in accordance with the following principles:
 - 2. The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.
- s. 31(1) A board is responsible for the provision of adequate and effective police services in the municipality and shall:
 - s.31 i(e) The board shall... direct the Chief of Police

Justice Morden in his June 29, 2012 *Report into Independent Civilian Review Into Matters Relating to the G-20 Summit* cites sections 1.2 and 31(1) and finds as follows:

... The purpose of the provision is rather to remind those acting under the *Police Services Act* of the constant bearing of the *Charter* and the *Human Rights Code* on the performance of their duties. This is critically important because the exercise of so many police powers, for example, those of arrest, detention and search and seizure engage rights that are protected by the *Charter* and the *Human Rights Code*.

Recommendation

In addition to the interim measure set out in the update, the Board should forthwith direct Chief Blair to issue a standing order or directive mandating that all officers caution persons approached for the purpose of 208 carding or street checks, advising such persons that they have the right to refuse to answer questions and are free to go.

Such a caution could read as follows:

I am a police officer.

I would like to ask you some questions.

You have the right to refuse to answer my questions and you are free to go.

The Law Union of Ontario is not attempting to discourage persons from co-operating with the police. We adopt Sir Robert Peels principles citing that public cooperation is essential to effective law enforcement.

However, just as the police have a right to ask pertinent questions in a professional manner, members of the public with extremely few exceptions have an absolute right to refuse to answer. It is difficult to imagine why law enforcement officers would oppose advising members of the public what the law is.

In our January 23rd, 2013 submission we stated the following:

“In labeling street checks as form of “community engagement” Police claim they are a form of community policing. In reality, street checks are carried out as intelligence gathering of personal information from of the tracking of individuals who are not engaged in criminal or antisocial behavior and who are conducting themselves in a law abiding manner.

Many individuals, particularly youths, are unaware that they have the right to walk away and not answer any questions. They feel intimidated and obliged to respond often arising out of the inherent power difference between the police and youths. Even if individuals are aware of this right they often fear reprisal of one form or another if they attempt to exercise their right. There are authenticated reports from individuals who claim that when they declined to produce identification and/or answer questions, officers resorted to illegitimate ruses and strategies such as the following:

1. Officers falsely state that they are involved in a criminal investigation and that the individual matches the description of the suspect. It would seem that some officers wrongly believe that by so stating they bring themselves

within the broader scope of investigative detention as prescribed in *R. v. Mann*.

2. Officers attempt to circumvent the individuals assertion that they do not wish to identify themselves or answer questions by making implicitly threatening remarks such as:

- What's in your pockets?
- What are you trying to hide?
- Do I have to take you to the Police Station to straighten this out?
- Have you been using drugs?
- What is your criminal record?
- What are you doing in this neighborhood?

Furthermore, street checks are most often carried out in neighborhoods and communities in which the police seek and require cooperation in their pursuit of legitimate law enforcement and criminal investigation purposes. Community groups, legal clinics, and social justice groups strongly believe that the reality of street check policy is racist policing of persons who are often young, racialized, or marginalized. This belief is supported by reports from persons who have been the subject of street checks and by statistics reported by the Toronto Star.

See also Appendix A (attached)

All of which is respectfully submitted on behalf of the Law Union of Ontario.

Howard F. Morton, Q.C.

SCENARIO

Two 17 year old black males X and Y are walking on the sidewalk in a residential area at 3pm in the afternoon. Neither youth is doing anything suggestive of wrongdoing. The youths are stopped by two officers who are on foot patrol. One officer states "we want to see ID" in a demanding tone and asks them why they are at that location. The youths, who at this point seem quite nervous, advise the officers that a lawyer had told them at a school function that they were not required to produce ID or answer any questions. One of the officers then falsely states that the youths match the description of gang members who had committed a series of break and enters one street over the day before. The officer then states "we can settle this here or: We will take you to the station and settle it there". The officers then conduct a pat down search of the youths while asking: "What do you have to hide? Are those drugs in your pocket?"

The youths become increasingly alarmed and provide their ID. One of the officers returns to his cruiser with the ID while the other stands beside the youths. On his return, the officer holds onto the ID and asks several questions such as where they live, where they attend school, where were they born, whether their parents are married and live together, and the names of their associates. The youths now very nervous, answer all of the questions. The second officer writes their responses in his notebook. After some twenty minutes they are given back their ID and told to be on their way and to keep their noses clean. Subsequently the officer fills out a "Form 208".

The officers are clearly in violation of the *Charter* and the *Human Rights Code* for the following reasons:

1. The officers are on general patrol and are not in the course of a criminal investigation.
2. While the officers may have been entitled to lawfully approach the youths and ask some questions, that is not what occurred. The officers' expression was a demand rather than a request.
3. There is absolutely nothing in the conduct of X and Y which could cause an officer to have a reasonable suspicion that the youths were in any manner connected to a recent or ongoing crime. There is no suggestion of trespass.
4. Although there are some elements of a physical detention there is clearly psychological detention as per *Grant* in that a reasonable person in these circumstances would conclude that they had no choice but to provide identification and answer questions.
5. The physical contact involved in the pat down search.
6. The power imbalance between the police and the youths.
7. The youths are members of a racial minority.
8. The falsehoods and implicit threats made by the officers.
9. The duration of the interaction.

June 20/13
P160

Please address reply to:

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June 20, 2013

Toronto Police Services Board
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STREET CHECKS - CARDING

Submissions on Behalf of the Law Union of Ontario

1. The Law Union of Ontario remains of the strong view that both the Toronto Police Service policy with respect to "carding" and the manner in which it is carried out violate the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.

See Law Union written Submissions to the Board dated November 12, 2012, January 23, March 27 and April 24, 2013.
2. The Police Services Act of Ontario provides as follows:
 - s.1 Police services shall be provided throughout Ontario in accordance with the following principles:
 2. The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.
 - s. 31(1) A board is responsible for the provision of adequate and effective police services in the municipality and shall...
 - s. 31i(e) The board shall... direct the Chief of Police.

Justice Morden in his June 29, 2012 *Report into INDEPENDENT CIVILIAN REVIEW INTO MATTERS RELATING TO THE G-20 SUMMIT* cites sections 1.2 and 31(1) states as follows:

... The purpose of the provision is rather to remind those acting under the Police Services Act of the constant bearing of the *Charter* and the *Human Rights Code* on the performance of their duties. This is critically important because the exercise of so many police powers, for example, those of arrest, detention and search and seizure engage rights that are protected by the *Charter* and the *Human Rights Code*.

3. We appreciate that the Toronto Police Service is in the process of reviewing the practices, procedures, training and professionalism with respect to all interactions between officers and members of the public, of which “carding” is but one.
4. While we applaud this effort we are greatly concerned with the ever increasing, justified, fear, anger, and resentment which is growing daily in communities who view both carding and the manner in which it is carried out as racial profiling and racist.
5. The Law Union of Ontario has had several meetings with stakeholder community groups. There is a clear consensus among them that:
 - 1) The practice of carding is a major obstacle both to the community trust of the Toronto Police Service and to cooperation by community members in criminal investigations, and other legitimate police activities.
 - 2) The Toronto Police Services Board has demonstrated through its delay and fumbling on the issue that it is not prepared to address, not only the “carding: issue, but racial profiling in policing generally.

6. At its January 23, 2013 meeting, the Board appeared to recognize its obligation, pursuant to the Justice Morden Report, to ensure that the policy and practice of "carding" did not violate the *Charter* or Human Rights legislation. The Board requested the City Solicitor to provide a legal opinion on this issue for the March 27, 2013 meeting. This legal opinion has still not been provided and the delay seems indicative of the Board's lack of commitment to the public's concern and apprehension of this issue.

Recommendation 1

7. **Given that the Board has had this issue before it for over one year and seems unable to respond to public concern and anger in a timely fashion, we urge the Board to direct Chief Blair to suspend the practice of "carding" until the Board reaches its conclusion with respect to whether the practice violates the *Charter* and Human Rights legislation.**

Recommendation 2

8. **In the event that the Board is unwilling to suspend "carding" until these issues have been resolved we urge the Board to forthwith direct Chief Blair to issue a standing order or directive mandating that all officers caution persons approached for the purpose of 208 carding or street checks, advising such persons that they have the right to refuse to answer questions and are free to go.**

9. Such a caution could read as follows:

I am a police officer.

I would like to ask you some questions.


You have the right to refuse to answer my questions and you are free to go.

10. The Law Union of Ontario is not attempting to discourage persons from cooperating with the police. We adopt Sir Robert Peels principles citing that public cooperation is essential to effective law enforcement.
11. However, just as the police are entitled to ask pertinent questions in a professional manner, members of the public with extremely few exceptions have an absolute right to refuse to answer. It is difficult to imagine why law enforcement officers would oppose advising members of the public what the law is.
12. A decision to delay the Auditor General's report, the delivery of all TPS material and data related to the race-based nature of the stops, and the quarterly report on the nature and quality of Street Checks is illogical and will further exacerbate community and public frustration and anger.
13. The Auditor General refers to the significant changes being implemented on July 1 which would render the audit of little or no value. With respect, the Auditor General and the Street Check Subcommittee have misunderstood what the purpose of the request is. The purpose is to establish a baseline using the data from 2009 when the collection of demographic data on all police interactions was implemented, to the present.
14. The baseline is the only way to interpret the effectiveness of any future changes to police policy and operational changes. Implementing significant changes does

not reduce but increases the need for the report this board requested. A quarterly report on Street checks would serve a similar purpose, and need not wait for new changes or implementation of receipts.

15. Furthermore, although the request was in the context of the Toronto Star report on Street Checks showing the disproportionate targeting of racialized young men, the request is for an analysis of ALL police interactions with community members.
16. The provision of all existing Toronto Police Service material and data related to the race-based nature of stops will provide a baseline by which to determine the effectiveness of subsequent changes and improvements to "carding" should it be held to be lawful.

Recommendation 3

17. **That the Board direct the Auditor General to proceed with its audit as originally mandated and that no deferral be permitted.**
- 

All of which is respectfully submitted on behalf of the Law Union of Ontario.

Howard F. Morton, Q.C.
James Roundell

Adion Fayalo

P160/13
June 20th

Good afternoon Mr. Chair and Board members:

I am here as a representative of Black youth and the wider African Canadian community in the Greater Toronto Area to speak to the updated Street Check Subcommittee report.

Admittedly, it is difficult for me to speak to this report without at first acknowledging and validating the public claims made by members of the Somali community that have been further stigmatized by the actions of some officers during Project Traveller. Their stories concerning the use of unnecessary force by police are the same as the stories of Black youth and the wider African Canadian community.

The commonality of stories is definitely an indication that street checks are not the only problem. Certain conditions must inhere if the African Canadian community, in cooperation with the law enforcement and criminal justice establishments, is to commit itself effectively to the support of the nation's laws, their enforcement, and is to prevent or significantly reduce criminal activity in its midst.

Speaking as a Youth Outreach Worker that works to build the capacity of Black youth, that have disproportionate contact with police personnel in the York South-Weston community, and a member of the Justice IS NOT Colour-Blind Campaign, we think the Board must work towards bringing about the following outcomes in cooperation with the African Canadian community – in order to improve the enforcement of laws:

1. Authorities and police personnel must impartially enforce the laws and not permit themselves to be perceived as representatives and enforcers of discriminatory racial, class, institutional attitudes and practices. In this case, perception is actually reality, and street checks; delays by this Board, and raids, only hurt the image of the police since many members of the Black community already see the police as serving and protecting White, rich and powerful men, including this city's political leadership;
2. Police authorities and personnel must be equally and as speedily responsive to the needs of the African Canadian community as they are to non-African Canadian communities. Why are we subject to street checks and raids as forms of crime-reduction? Conversely, why are White ethnic communities mostly or totally free from such tactics?
3. The African Canadian community does by all means saliently demand the swift, sure and effective punishment of those of its constituents who dare victimize, in whatever manner and for whatever reasons, any other of its members. Culprits who commit Black-on-Black crime should be aware of the fact that the community will not tolerate, rationalize, countenance or in any way condone the victimization of one Black by another. People in the African Canadian community are ridding themselves of the internalized racist belief that African life is less precious than non-African life, especially White life. While doing this, we are actively committed to systemic change of the police and criminal justice establishments along the lines suggested above, and at previous deputations. The African Canadian community will unequivocally and loudly condemn, and vigorously pursue the fair-minded prosecution of those Blacks who harm

other Blacks, no matter their station in life, when police personnel and authorities serve and learn to differentiate the criminal and noncriminal elements in the African Canadian community.

At this point in time, the issue is more than street checks. The police and this Board are not respecting the intelligence of the African Canadian community and are exhibiting non-confidence in its capacity to know how best to solve its social problems. You are not actively listening to the community but are in fact paternalistically and autocratically dictating solutions to our problems. This must come to end. This is why we must reiterate again the importance of re-educating the Service's officers along an Afrocentric educational framework.

If police and criminal justice personnel continue to abuse their power and authority, and use unnecessary force against the community, then, there will be a point in time when the African Canadian community will realize that it has the *right* and duty to defend itself from its criminal elements if the government, to which it pays taxes, and whose officials it helps to elect, fails to do so. Ultimately, we cannot permit ourselves to be victimized by police who enforce discriminatory racial, class, institutional attitudes and practices. This is a complex problem that can only be solved when both the police and the African Canadian community cooperate in implementing racially representative and equitable policing in this city.



June 20, 2013

RE: SUBMISSION OF THE AFRICAN CANADIAN LEGAL CLINIC ("ACLC") TO THE TORONTO POLICE SERVICES BOARD ("TPSB") RE 2012 Annual Hate / Bias Crime Statistical Report

Since 1994, the African Canadian Legal Clinic ("ACLC") has been an advocate for African Canadian rights in groundbreaking cases before every level of the Canadian Justice system. We have been involved in cases involving racial profiling by law enforcement; the collection and reporting of disaggregated race-based data; and the impact of police record keeping practices. As early as March 2012, we have appeared before the Toronto Police Service Board ("TPSB"), and made countless recommendations which respect to the collection of 208 cards or field information reports. We have asked for carbon copies or receipts of 208 cards, periodic reports of disaggregated race-based data, a review of the existing carding statistics by independent academic with expertise in the area of race and policing, and a general recognition that the practice of carding by the Toronto Police Service amounts to racial profiling.

In March 2012, we advised the TPSB of the numerous legal and social science studies and reports on this issue that have been produced over the last thirty years. Over the past four decades, numerous reports documented the strained relations between the police and the African Canadian community. The ACLC has identified at least 15 reports issued since the 1970s dealing with police/minority relations in Canada. This is not a new issue. In order to move forward, TPS must use this information as the cornerstone of their analysis of carding practices. Similarly, the Auditor General must use this history as the starting point for any analysis of carding statistics.

We commend the Street Check Sub-Committee for advancing the long overdue recommendation that the Chief provide quarterly reports on street check practices and carbon copies or receipts of 208 cards. We applaud the recommendation that the Chief provide receipts as an interim measure in July 2012. Sadly over a year later, members of our community have been forced to wait for the implementation of any of these key recommendations. According to a Toronto Star report, the Auditor General will delay any analysis of carding statistics until TPS has completed a review of its policies and procedures with respect to carding.¹ This position shows no respect for the experiences of African Canadians and other marginalized groups who have lived through decades of discriminatory police practices. Furthermore it ignores the studies that have been conducted since the 1970's which have accurately documented this phenomenon.

The decision to delay the review, and Chief's status report will inevitably skew the investigative findings as officers may temporarily change their behaviour during the review period. While we are hopeful that the changes to the carding process suggested by Deputy Chief Slowly will spark some improvement, the internal efforts of TPS should not delay or stand in the place of an independent review. We can see no reason why a full review of the existing 208 data cannot be conducted. In light of the disproportionate rate at which black and brown Torontonians are stooped, and its impact on the legitimacy of our police services, prompt attention to the issue is necessary.

¹ Winsa, Patty and Rankin, Jim. "Carding Review Delayed a Year" *Toronto Star* 20 June 2013 Print.

In addition to the foregoing, we call for an end to the practice of tying an officers performance to the number of street checks conducted. As noted by a Toronto Star Report, "Officers with high [208] numbers climb higher at a steady pace" while low counts "can delay scheduled promotions".² The Star article also pointed to the well known fact that some officers are directed to meet a street check quota. This practice must be ended. As part of our analysis of this issue we have been advised that young girls in the Jane and Sheppard neigoubourhod have been stopped by officers and have observed officers handing out coupons to young children in exchange for personal information about themselves or other community members. There should be no reward for engaging in this type of conduct. This is not community engagement.

Further delay with respect to the implementation of Form 306, or the Auditor General's review will be highly detrimental to the community-police relations. These recommendations should be implemented immediately as part of a highly publicised pilot project. TPS should use the pilot project as an opportunity to correct any issues that may arise and hold further public consultations.

Recommendations:

1. The Auditor General should act in accordance with the Board's recommendation to perform a review of street check data at hand. The independent review, must be independent. It should be carried out irrespective of any ongoing analysis or review being conducted by the TPS. Any recommendations stemming from an immediate review should be submitted to TPS and used as part of an ongoing analysis of the issue.
2. Field Information Reports should no longer be used to measure police performance. Simply put, officers should not be rewarded for carding individuals.
3. The Toronto Police Service should conduct a highly publicized pilot project to advise the community that officers will issue receipts after each stop where personal information is documented in a Field Information Report.

Roger Love
Advice Counsel
African Canadian Legal Clinic

² Winsa, Patty and Rankin, Jim. "Carding Review Delayed a Year" *Toronto Star* 20 June 2013 Print.

Ministry of Children and
Youth Services

Office of the Strategic Advisor on
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Ministère des Services
à l'enfance et à la jeunesse

Bureau du conseiller stratégique responsable
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P110013
June 20th
Ontario

June 10, 2013

Ms. Marie Moliner
Chair, StreetCheck Subcommittee and
Member, Toronto Police Services Board
40 College Street
Toronto M5G 2J3

Dear Ms. Moliner

I appreciate very much having been invited to the meeting that you and Deputy Chief Peter Sloy held on May 28th to advise a small group of community members of the plans that the Deputy Chief has been developing to improve the quality of the interactions between Toronto police officers and Toronto residents, particularly Black youth.

While the time available for responses to the Deputy Chief's thorough presentation did not permit much of a discussion of his plans, it was nonetheless very valuable to be brought up to speed on them. I know that those present from the community, and many others, would welcome further opportunities for meaningful engagement and consultation on the overall contents of the important new strategy that the Deputy Chief spoke about. In the meantime, I fully support the decision to proceed on July 1 with the proposed interim receipt.

In listening to the Deputy Chief, I was struck by how closely some of his comments reflected what my co-Chair, the Hon. Roy McMurtry, and I heard during the 18 months we spent consulting on and preparing our 2008 Review of the Roots of Youth Violence. In particular, I appreciated hearing his clear and well-articulated understanding of the often very negative impacts on racialized youth, their friends, families and community – and indeed their future prospects – that can flow from aggressive policing strategies, and his recognition of the need to change policing practices to reduce these kinds of impacts.

It was also gratifying to hear the recognition that at a policy level there is a need to balance the perceived benefits of strategies such as TAVIS against their potential to cause serious harms to individuals and communities.

I am taking the liberty of attaching to this letter some extracts from the Report on the Roots of Youth Violence that discuss this serious situation and propose some responses. The extracts include the following comments that I am setting out here (reordered for ease of reference) to highlight the need for effective and immediate action:

We fully appreciate that the neighbourhood conditions we described in chapters 4 and 5 create enormous challenges for those who police these communities as well as those who live in them. The same conditions that facilitate crime — rundown areas and buildings, limited through streets, poor sightlines, dead ends, dark stairwells and corridors,

overcrowding — all create risks for police officers as well as potentially hardening their attitudes to those who are forced to live in these conditions. In light of these conditions, we applaud the countless ways individual officers go beyond the call of duty to try to support youth and prevent crime, as well as to carry out their often-onerous enforcement obligations (page 280)...

Yes, youth may often be unresponsive, confrontational or rude. But it is the officer who is paid to be the adult and who can reasonably be expected to take the high road. Policing through intimidation has no place in a society. It alienates individuals, promotes disrespect of the police in large segments of communities and makes impossible the kind of relationships and community mobilization the police themselves say they need to make a difference. When it does so, it powerfully creates and reinforces the immediate risk factors for violence in entire communities (page 281-82)...

The seriousness of this situation needs to be noted. Senior police officers in this province and elsewhere have told us of how negative incidents on the front lines can undo months of positive work by other police officers to put or keep youth on the path to a positive future or to build trust with a community. This negative potential is magnified when a stop or intervention is seen as being the result of racial profiling. How can youth of colour see a positive and productive future in a society in which they and their friends, and sometimes their parents as well, are routinely, and often aggressively, stopped and questioned just because of the colour of their skin? This is not a minor inconvenience — it is a life lesson that race matters, and that it can and will count against some members of our community (page 78)...

Overly aggressive, belittling, discriminatory and other inappropriate conduct towards youth is an issue that permeated our discussions. It has been the subject of numerous previous reports. It is one of the most pressing issues put forward by youth, and it is a cause of concern to all who are trying to contain and prevent violence, including most senior police officers in this province and elsewhere, as well as government officials with whom we met. And yet it persists (page 77)...

Police conduct in particular matters a great deal because of the large number of youth it affects, including many who will have no other involvement with the justice system. When we have youth who already feel their chances in life are limited by their colour or by where they live, or both, and when these same youth have little to do and few mentors and role models, police targeting and overly aggressive behaviour can drive their spirit into the ground. Some react on the spot and get into deeper trouble; others seethe until they boil over for reasons even they cannot always articulate; and yet others retreat into shells, which permanently mar their prospects (page 77)...

This not only leads to heightened risks for criminal behaviour, but also builds sympathy in the community for those targeted by the police. It makes the community reluctant to trust the police and engage with them to address gang and crime issues (page 77).

More generally, it seems to me that the Board's consideration of the Deputy's strategy, and perhaps as well its overall approach to setting policies for the Toronto Police Service, could usefully be more informed than it has been by the conclusions that Mr. McMurtry and I drew in our Report. While our mandate was province-wide, and while policing was only one of many issues (including racism, concentrations of poverty, mental health, youth opportunity, education and several others) that we addressed, we did see the relationships between youth and the police as a key concern.

Although the advice that is found in the attached extracts was given to the province, I would suggest that it is readily translatable into independent action by the Board. Please feel free to make this letter part of the record of the Board's proceedings and to contact me should you wish to discuss this matter further.

Very best regards,



Dr. Alvin Curling
Strategic Advisor on Youth Opportunities to
the Minister of Children and Youth Services

Extracts from the Report on the Roots of Youth Violence

Pages 77-78 (emphasis added)

Overly aggressive, belittling, discriminatory and other inappropriate conduct towards youth is an issue that permeated our discussions. It has been the subject of numerous previous reports. It is one of the most pressing issues put forward by youth, and it is a cause of concern to all who are trying to contain and prevent violence, including most senior police officers in this province and elsewhere, as well as government officials with whom we met. And yet it persists.

Although most frequently raised in relation to front-line police officers, the issue is by no means restricted to them. It extends into the courtrooms and correctional facilities. It is apparent to us, as it has been to so many before us, that individuals at many levels within our justice system believe that aggressive suppression and control by physical dominance, and sometimes by demeaning treatment, will limit crime or "teach youth a lesson." **The sad reality is that if police stops or interventions are done discriminatorily or aggressively or in a degrading manner, or if youth are belittled in court or harassed while in custody, a deep sense of grievance and frustration can result. Where it does, a youth's self-esteem and sense of belonging or hope are undercut. Alienation and a sense of unfairness and oppression can easily follow.**

Police conduct in particular matters a great deal because of the large number of youth it affects, including many who will have no other involvement with the justice system. **When we have youth who already feel their chances in life are limited by their colour or by where they live, or both, and when these same youth have little to do and few mentors and role models, police targeting and overly aggressive behaviour can drive their spirit into the ground. Some react on the spot and get into deeper trouble; others seethe until they boil over for reasons even they cannot always articulate; and yet others retreat into shells, which permanently mar their prospects.**

There is a serious disconnect here with the action needed to address the roots of violence involving youth. **Not only do overly aggressive police practices nurture the roots of the immediate risk factors, but also they can quickly undercut major investments in other areas that may well have kept a youth on the path to a productive future.** Whatever progress we make in education, in building self-esteem and respect through mentoring or civic engagement, or in creating hope, opportunity and confidence through sports or the arts can be undone by aggressive and humiliating interactions that indicate to youth that they are inferior.

This not only leads to heightened risks for criminal behaviour, but also builds sympathy in the community for those targeted by the police. It makes the community reluctant to trust the police and engage with them to address gang and crime issues.

One officer's small win in a mano-a-mano encounter with a youth can all too easily produce one large step backwards for policing in a whole community...

The seriousness of this situation needs to be noted. Senior police officers in this province and elsewhere have told us of how negative incidents on the front lines can undo months

of positive work by other police officers to put or keep youth on the path to a positive future or to build trust with a community. **This negative potential is magnified when a stop or intervention is seen as being the result of racial profiling. How can youth of colour see a positive and productive future in a society in which they and their friends, and sometimes their parents as well, are routinely, and often aggressively, stopped and questioned just because of the colour of their skin? This is not a minor inconvenience — it is a life lesson that race matters, and that it can and will count against some members of our community.**

Pages 240-41 (emphasis added)

The need for race-based data is overwhelming, and the reassurance from how normalized this has become in Britain is telling. The need should be obvious: without data we can neither prove nor disprove the extent of racism in any particular part of our society. Nor can we focus limited resources on the areas most in need of action, nor design measures to achieve the most-needed results in the most efficient way, nor assess whether progress is being made as a result of those measures.

Indeed, it is hard to think of another domain where it would be controversial to seek evidence of a problem and, where a problem is found, go on to seek evidence of how best to address it and whether the efforts made to do so are bearing fruit...

We note in this specific connection that the collection of race-based data on policing in Britain goes back to at least 1992. In calling for Ontario to adopt this approach, including in what seems to be the most fraught area here: front-line policing, the British precedent is as reassuring as it is inspiring. After more than a decade of experience, we were advised by a senior police commander in London that, while some front-line officers consider it bureaucratic, it has widespread endorsement, especially among police leadership. It provides a vital tool to find areas needing improvement, develop approaches to secure that improvement and demonstrate the improvement to the public.

Pages 242-44

The most immediately pressing issues are those involving front-line policing. These have serious community-wide implications, as well as the potential to be flashpoints on a daily basis. In our view, action on them will have the greatest short-term impact on matters giving rise to violence involving youth.

We recognize that a long-term cultural shift, a more representative police force and a rethinking of some front-line police strategies will be necessary to fully come to grips with this issue. As the ongoing workplace issues in relation to racism among employees at Ontario's correctional facilities demonstrate, this will take sustained time and energy. In the meantime, we feel that tangible signals of a commitment to address these long-standing concerns need to be sent now to both police and residents in the priority neighbourhoods across the province.

We first suggest that the Province establish a fund, which communities and police could access to support highly localized police-youth issues committees in each priority neighbourhood across the province. Funds would support youth participation and provide for a neutral facilitator. The police would be represented by the local police commander and front-line officers engaged in policing in the area (not just liaison officers). These committees would open the kind of dialogue which wouldn't otherwise happen, and would be mandated to develop a neighbourhood-specific plan to improve interactions between

youth and front-line officers. They would also be involved in the design and delivery of the local training programs we propose below.

We agree with what the Ministry of Community Safety and Correctional Services said to us, when it called for "more opportunities for positive interaction between police and youth." We think that these committees can and will be positive. The opportunity to hear each other out, coupled with the obligation to work together to build a local plan on matters of direct and immediate relevance to their work and lives, should make these committees places of constructive engagement.

The second immediate initiative we propose would also be very local and would be centred in the priority neighbourhoods. It would see the Province provide funding for immediate, in-service, neighbourhood-based training on anti-racism for front-line officers in each of these neighbourhoods. We recommend this tight focus for reasons of expedition and cost, and also because we believe that service-related training is likely to be the most effective. We agree with what Stephen Lewis said in his 1992 report, specifically in the context of race-relations training:

If we really believe in investing in our justice system, then the people who are on the front-line deserve the best training possible (Lewis, 1992: 13).

We have been told repeatedly that the few hours of sensitivity training at the Police College before recruits begin their work as police officers does very little good. The training is of necessity generic and is divorced from experience in the field. We were often told that the training is very frequently overridden by police leaders and colleagues once recruits take up their duties.

What most of us know about adult education is that it is most effective when taught in a hands-on way and when it responds to issues we are actually facing in our work or our lives. We heard in England how they are now focusing race-relations training for the police on very specific job functions and using the orientation of improving the officer's functioning in their current assignment. The training, therefore, is not about sensitivity in some general way, but rather focuses on ways in which a better appreciation of anti-racism will improve the officer's performance in the particular job they are carrying out.

Our rationale for suggesting that the initial focus for this kind of job-specific training be on front-line officers is simple: it is interactions with front-line officers that can do the most damage to race relations and where addressing concerns about racism could do the most good. We understand that those are often difficult and sometimes dangerous situations for the officers themselves, and that many of the youth they deal with seem or can be aggressive and intimidating. Even though most youth stopped by the police do not meet this description, the reality that some do increases, rather than obviates, the need for this training.

As these short-term training measures are put in place, we believe that the Ministry of Community Safety and Correctional Services should carefully examine the recent British approach of requiring officers to be "assessed as competent" on issues of race. As described in the *Improving Opportunity, Strengthening Society* report to which we referred earlier, "[a] key goal of this program is to ensure that, by 2009, everyone in the Police Service is assessed as being competent about race and diversity...." (Department for Communities and Local Government, 2007). In the same vein, consideration could be given to including good community relations and support in measuring the performance of local police commanders.

This initiative applies nationwide and is overseen by a national board. Police forces are required to have a suitable number of trained assessors, and assessment has started in most police forces. What is attractive about this is that it goes beyond training to find out whether training has worked and, if not, to identify specifically where and what more is needed.

The last specific initiative we propose for the police is the establishment of a telephone hotline for the reporting of negative interactions between police and minority youth. Those interactions can take place anywhere in this province, and without recourse to a system such as this there will be neither the information nor the impetus to develop a sound way to deal with them, wherever they arise. This service could be established as part of the new independent police complaints oversight body, which is expected to be operational shortly after our report is published, or in some other independent body. In either event, it would provide a sound anchor, directly or indirectly, for the power in the new oversight system to undertake reviews of systemic issues arising in policing anywhere in Ontario.

Pages 280-82 (emphasis added)

We fully appreciate that the neighbourhood conditions we described in chapters 4 and 5 create enormous challenges for those who police these communities as well as those who live in them. **The same conditions that facilitate crime — rundown areas and buildings, limited through streets, poor sightlines, dead ends, dark stairwells and corridors, overcrowding — all create risks for police officers as well as potentially hardening their attitudes to those who are forced to live in these conditions.** In light of these conditions, we applaud the countless ways individual officers go beyond the call of duty to try to support youth and prevent crime, as well as to carry out their often-onerous enforcement obligations. We also applaud the balanced statements of senior police officers and of senior officials in the ministry responsible for policing in Ontario.

We nonetheless have three serious concerns about the way policing is carried out on the streets. Two of these have already been addressed above. The first, over-criminalization, is sometimes a structural resourcing question as opposed to an issue of how police discretion is used, although we believe that the value of strategic thinking about the consequences of their decisions should be more widely communicated to, and such thinking more generally expected from, front-line officers. **The second, systemic racism,** while by no means limited to policing, is a fundamental concern, which we have already addressed in some detail above. **The remaining issue is the aggressive approach sometimes taken to policing, both as it affects youth and their peers and as it affects whole communities. How far up the chain of command support for this aggressive “take control” approach extends is difficult to ascertain from one day to the next, but it is high enough that long-standing concerns about it remain unaddressed.**

While our focus in this section of our report as a whole is on youth justice, we do not in this particular connection confine our remarks about police conduct to interactions with youth as they are defined by the *Youth Criminal Justice Act*. Overly aggressive and uncivil police behaviour to any member of a community can send clear messages throughout that community about fairness, trust in the police and belonging to the wider community.

We emphasize that we are not debating the wisdom of policing strategies. We have published in Volume 4 an insightful paper by Prof. Doob and his colleagues on what the evidence tells us about some of those strategies and commend it to those who wish to

pursue this topic. For present purposes, we wish only to reflect on the concerns we often heard about how these strategies are implemented. The idea of policing by suppression — by a large show of force — may be the right short-term approach in some circumstances. But as the police themselves told us, suppression cannot be sustained. Inevitably, problems arise elsewhere, sometimes because the suppression itself has simply moved them. When it does, resources go elsewhere.

When they do, safety then turns in large measure on what the community is left to deal with when the extra police resources are withdrawn. **If the suppression efforts have been done with firmness, but also civility and respect, they may have achieved some lasting benefits without alienating youth and their community. But where they are carried out aggressively, with tactics that intimidate and often belittle, and where as a result the community is alienated and bridges between the police and the community are destroyed, then for the reasons we outlined in Chapter 4 these tactics have every potential to contribute to the growth of alienation, a sense of injustice and other roots of violence involving youth.**

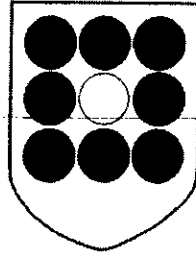
The issue of police attitude extends beyond how major suppression efforts are carried out, although that raises particular concerns. In our view, every officer must be trained, supported and expected to think about the impact of their attitude, as well as their actions, on the immediate risk factors for violence. Again, to avoid being taken out of context, we stress that this does not mean that an officer must refrain from intervening when crime is suspected or expose themselves or others to risk. We want simply to say that, apart from such situations, there is both time and a need for mature, strategic thinking about the roots of violence involving youth.

Yes, youth may often be unresponsive, confrontational or rude. But it is the officer who is paid to be the adult and who can reasonably be expected to take the high road. **Policing through intimidation has no place in a society. It alienates individuals, promotes disrespect of the police in large segments of communities and makes impossible the kind of relationships and community mobilization the police themselves say they need to make a difference. When it does so, it powerfully creates and reinforces the immediate risk factors for violence in entire communities.**

A long-run solution is a more representative police force, one with officers who come from and ideally live in and near the communities they serve. It also involves a culture shift to valuing and rewarding longer-term approaches to preventing crime by contributing to stronger, more involved communities and to youth seeing a positive future in them. And it **includes immediate actions by police leaders to curb unnecessarily aggressive and uncivil behaviour by their officers.**

P160/13
June 20th

CANADIAN
CIVIL LIBERTIES
ASSOCIATION



ASSOCIATION
CANADIENNE DES
LIBERTES CIVILES

Submissions to the Toronto Police Services Board

Noa Mendelsohn Aviv, Equality Program Director
Canadian Civil Liberties Association

June 20, 2013

RE: Report of the Street Check Sub-Committee and Deferral of Auditor General's Review

CCLA

The Canadian Civil Liberties Association (CCLA) is a national non-profit organization with thousands of supporters drawn from all walks of life. The CCLA was constituted to promote respect for and observance of fundamental human rights and civil liberties and to defend and foster the recognition of those rights and liberties. The CCLA's major objectives include the promotion and legal protection of individual freedom and dignity against unreasonable invasion by public authority, and the protection of procedural fairness.

Justice Delayed is Justice Denied

CCLA supports efforts of the Street Check Sub-Committee to review and reconsider the need for "street checks," and to monitor police encounters with the public and demand accountability of such (through such measures as a providing information on the TPS website, reporting to the Board, and considering a transparent carbon copy receipt following such encounters).

CCLA also supports the need for a review of police practices with respect to "street checks" and racial profiling, and the need for baseline data with respect to these, as was requested of the City Auditor General.

However CCLA is concerned that the most recent *Updates* by the Street Check Sub-Committee and the Report of the Auditor General represent in fact *a retreat* from the forward movement begun over a year ago.

Specifically:

- CCLA objects to the emphasis placed by the TPS as work done to “review and substantially revise the current Field Information Report (FIR) process and to consider the most workable format for an interim receipt.” CCLA’s position continues to be that what should be under consideration is not *how* to conduct a street check, but the legality and constitutionality of this practice that unjustifiably invades a person’s privacy and violates their dignity. The practice of random street checks is unlawful and should be stopped immediately.
- CCLA objects to the delay on items “e” and “f” of the Recommendations until the end of 2013. The Board and the public require this information for transparency and accountability with respect to police practices concerning “street checks” and racial profiling.
- CCLA objects to the deferral of the Auditor General’s Review of Police collection of demographic data. The review was requested in April 2012, and was intended to establish “*baseline data* showing the pattern of contact between the police and members of the community in general, and young people from certain ethno-racial backgrounds in particular.” (emphasis added) An initial review, as requested, is essential, and may provide baseline data and important information. No delay is justified. That said, this initial review can and should be followed up by reviews following the implementation of changes to police policies and practices.

Conclusion

The Board is urged to require that the Toronto Police Service immediately put a stop to the unlawful practice of random street checks.

The Board is also urged to reject the above-mentioned items, and to persevere in its requests:

- For data and reports from the Chief without delays, and
- For a Review to be concluded within this calendar year from the Auditor General.

**THIS IS AN EXTRACT FROM THE MINUTES OF THE PUBLIC MEETING OF THE
TORONTO POLICE SERVICES BOARD HELD ON AUGUST 13, 2013**

#P209. COMMUNITY INQUIRY PROCESS AND INTERIM RECEIPT

The Board was in receipt of the following report July 18, 2013 from Marie Moliner, Member and Chair, Street Check Sub-Committee:

Subject: COMMUNITY INQUIRY PROCESS AND INTERIM RECEIPT

Recommendations:

It is recommended:

1. THAT the Chief of Police provide to the Board at its public meetings brief, written monthly progress reports on the ongoing development of the Community Inquiry process and the implementation of the receipting process beginning at the Board's meeting on September 12, 2013; and,
2. THAT the Chief of Police provide the Board with a comprehensive written report detailing all aspects of the development and implementation of the new community inquiry process and providing an evaluation of the interim receipt for the Board's December 12, 2013 public meeting.

Financial Implications:

There are no financial implications arising from receipt of this report.

Background/Purpose:

At its meeting on June 20, 2013, the Board received an update report from the Street Check Sub-Committee, considered a report from the Auditor General indicating that his review of community contacts would be deferred pending implementation of the new community inquiry process, and received a presentation with respect to the July 1 implementation of the interim receipt (Form 307) which is to be provided as an outcome of certain community contacts (Min. P160/13 refers).

Discussion:

During the June 20th meeting, the Board considered the presentation from the Chief on the interim Community Inquiry receipt process and made a number of motions. However, it did not address the on-going need for the Board to be informed and updated on the Community Inquiry receipting process as it evolves over the next few months.

During a subsequent meeting of the Street Check Sub-Committee, held on July 3, 2013, a need for on-going reporting was identified in order to assess the success of the implementation of the interim receipt. A need for clarification also arose between the TPS work to implement the interim receipt and the TPS work on the broader Community Inquiry work (revised Form 208).

As a result, the Street-check subcommittee recommends a framework for on-going reporting to the Board during the implementation of both the Community Inquiry Process and the interim receipt. The request is for reports on receipting as well as the rest of the changes that the Service is working on respecting the Community Inquiry process. In particular, the Committee seeks a monthly brief written progress report, beginning in September 2013, and a comprehensive written report, to be provided for the Board's December 2013 public meeting.

This comprehensive report should include:

1. an assessment of the FIR/208 process and the rationale for both retaining the practice of street checks and for contemplating changes to this process;
2. synopses of any research conducted into the practices of other jurisdictions, including the practices of other large Canadian police services;
3. details of stakeholder consultations conducted by the Service and a synopsis of the issues arising from those consultations;
4. an assessment of the utility and application of the interim receipt;
5. details of the proposed new community inquiry process and the procedures that will implement the process as well as plans for officer training, communication to the community, retention of data and access to data;
6. an evaluation of the interim receipt process.

Conclusion:

Monthly updates will help provide the public with timely information in response to a subject that is very much in the public interest. The time-frame proposed for the detailed progress report should allow the Service sufficient time to present a substantive and meaningful report while giving sufficient advance notice of the report to the community.

The Board was also in receipt of the following correspondence dated July 10, 2013 from John Sewell, Toronto Police Accountability Coalition:

Subject: Carding, Form 306

We request that this letter be placed on the agenda for the July 18 Board meeting.

At the June Board meeting, Deputy Chief Sloly made a presentation about the ways in which a new Form 307 would be given as a 'receipt' in some cases where police and community members interact. He talked at some length about how the police

were trying to be more transparent in what they were doing. He then indicated that Form 208, which is the documentation of information gathered by police, is being replaced by a new Form 306.

We have requested to see copy of Form 306 but were told “A copy of this report is not publicly available.”

The new form is obviously different from the old one. Form 208 was called ‘Field Information Report’, whereas Form 306 is called ‘Community Inquiry Report’. What information does Form 306 record?

If any headway is to be made regarding carding or street checks, it will start with the Police Service being clear and open about the kind of information officers are gathering on people they stop to question. We request the Board to ensure Form 306 is made public without delay.

Mr. Miguel Avila was in attendance and delivered a deputation to the Board. Mr. Avila also provided a written submission in support of his deputation; copy on file in the Board office.

The Board approved the following Motions:

- 1. THAT the Board receive Mr. Avila’s deputation and forward a copy of his written submission to the Street Check Sub-Committee for consideration; and**
- 2. THAT the Board defer consideration of the foregoing report and Mr. Sewell’s correspondence to its September 2013 meeting.**

Moved by: A. Pringle

DEPUTATION TO THE TORONTO POLICE SERVICES BOARD

By : Miguel Avila-Velarde

August 13, 2013

RE: Agenda Item 28 Community Inquiry Process and Interim Receipt

Dear Board Members:

Thanks for allowing me to speak on this important public interest item. I am here to deliver the good news and the bad news:

Let's start with the Bad News:

While this conversation is taking place today, Residents of T.C.H.C are being stop and check by members of T.A.V.I.S , Yes Summer is back so does T.A.V.I.S

I have learned that T.P.S officers are asking youth and young racialize minorities mostly Black and Brown (Latino) people, like me, demanding youth to turn over their socks and remove all items on their pockets at the start of the "**friendly approach**" remember the presentation by Deputy Soley last june.. he spoke of the levels in which the officer engages with members of the pubic. However it is being skipped by officers and taking directly to the third level right at the encounter with residents of T.C.H.C worst, Also, Officers are not providing Community Members with a required form **307** as recommended by this board.

The "Letter of the Landlord" the newly updated agreement between the T.P.S and the T.C.H.C of March 19 2013 does give **again** authorization to the T.P.S to enforce the Trespass Act on behalf of the landlord. That is period.. no other condition or requirement.

The new Form **306** " Community Inquiry Report" replaces the former **208** Card Field Information Report, however it has not been made public yet, the Public Interest its not taking under consideration by the board and I don't understand the reason for the delay. Consultations have take place or are taking place but the chief says , no we are not ready yet.. I feel that as a resident of T.C.H.C and a "Regular" target of T.A.V.I.S . I must demand this board to release the details of the 306 card to the public, stop stalling the release,

Now into the GOOD news:

The good news comes south of the border, A brave judge concluded in New York, that the practice of "Stop and Frisk" by N.Y Police Departments was violating the constitutional rights of racialize minorities mostly Black and Latino men and women.

Some of the recommendation out this historical decision right here at home that can be adopted by this board if they have "**Sincere Wishes**" to improve the relations with the Public.

ONE: Start a pilot program in which officers will wear cameras on their bodies to record street encounters.

TWO: To solve our domestic problems right here at home.. Disarm our police, Yes, take away their TOYS.. and permit only Sergeants with proper training to carry guns and teasers.

I am hopeful we don't have to create another new " investigation" , "Inquire", "reviews" to ensure our citizens, who live in this great City where No one should live in fear of being stopped whenever he/she leaves his/her home to go about the activities of daily life.

Respectfully Yours,

Miguel Avila

**THIS IS AN EXTRACT FROM THE MINUTES OF THE PUBLIC MEETING OF THE
TORONTO POLICE SERVICES BOARD HELD ON SEPTEMBER 12, 2013**

**#P220. STREET CHECK SUB-COMMITTEE – COMMUNITY INQUIRY
PROCESS AND INTERIM RECEIPT**

The Board was in receipt of a copy of Minute No. P209/13 from the August 13, 2013 meeting which contained the following:

- copy of report dated July 18, 2013 from Marie Moliner, Chair of the Street Check Sub-Committee, regarding the community inquiry process and interim receipt; and
- copy of correspondence dated July 10, 2013 from John Sewell, Toronto Police Accountability Coalition, containing a request for a copy of Form 306.

The foregoing documents were deferred by the Board to its September 12, 2013 meeting for consideration. A copy of Minute No. P209/13 is appended to this Minute for information.

The following persons were in attendance and delivered deputations to the Board:

- **John Sewell, Toronto Police Accountability Coalition**
- **Roger Love, African Canadian Legal Clinic ***

***written submission also provided; copy on file in the Board office.**

The Board was also in receipt of a written submission from Irwin Elman, Provincial Advocate, Office of the Provincial Advocate for Children and Youth. A copy of Mr. Elman's written submission is on file in the Board office.

The Board approved the following Motions:

- 1. THAT the Board receive Mr. Sewell's deputation and his correspondence dated July 10, 2013;**
- 2. THAT the Board receive Mr. Love's deputation and his written submission; and**
- 3. THAT the Board defer consideration of Ms. Moliner's report dated July 18, 2013 to its October 07, 2013 meeting.**

Moved by: M. Moliner

COPY

**THIS IS AN EXTRACT FROM THE MINUTES OF THE PUBLIC MEETING OF THE
TORONTO POLICE SERVICES BOARD HELD ON AUGUST 13, 2013**

#P209 COMMUNITY INQUIRY PROCESS AND INTERIM RECEIPT

The Board was in receipt of the following report July 18, 2013 from Marie Moliner, Member and Chair, Street Check Sub-Committee:

Subject: COMMUNITY INQUIRY PROCESS AND INTERIM RECEIPT

Recommendations:

It is recommended:

1. THAT the Chief of Police provide to the Board at its public meetings brief, written monthly progress reports on the ongoing development of the Community Inquiry process and the implementation of the receipting process beginning at the Board's meeting on September 12, 2013; and,
2. THAT the Chief of Police provide the Board with a comprehensive written report detailing all aspects of the development and implementation of the new community inquiry process and providing an evaluation of the interim receipt for the Board's December 12, 2013 public meeting.

Financial Implications:

There are no financial implications arising from receipt of this report.

Background/Purpose:

At its meeting on June 20, 2013, the Board received an update report from the Street Check Sub-Committee, considered a report from the Auditor General indicating that his review of community contacts would be deferred pending implementation of the new community inquiry process, and received a presentation with respect to the July 1 implementation of the interim receipt (Form 307) which is to be provided as an outcome of certain community contacts (Min. P160/13 refers).

Discussion:

During the June 20th meeting, the Board considered the presentation from the Chief on the interim Community Inquiry receipt process and made a number of motions. However, it did not address the on-going need for the Board to be informed and updated on the Community Inquiry receipting process as it evolves over the next few months.

During a subsequent meeting of the Street Check Sub-Committee, held on July 3, 2013, a need for on-going reporting was identified in order to assess the success of the implementation of the interim receipt. A need for clarification also arose between the TPS work to implement the interim receipt and the TPS work on the broader Community Inquiry work (revised Form 208).

As a result, the Street-check subcommittee recommends a framework for on-going reporting to the Board during the implementation of both the Community Inquiry Process and the interim receipt. The request is for reports on receipting as well as the rest of the changes that the Service is working on respecting the Community Inquiry process. In particular, the Committee seeks a monthly brief written progress report, beginning in September 2013, and a comprehensive written report, to be provided for the Board's December 2013 public meeting.

This comprehensive report should include:

1. an assessment of the FIR/208 process and the rationale for both retaining the practice of street checks and for contemplating changes to this process;
2. synopses of any research conducted into the practices of other jurisdictions, including the practices of other large Canadian police services;
3. details of stakeholder consultations conducted by the Service and a synopsis of the issues arising from those consultations;
4. an assessment of the utility and application of the interim receipt;
5. details of the proposed new community inquiry process and the procedures that will implement the process as well as plans for officer training, communication to the community, retention of data and access to data;
6. an evaluation of the interim receipt process.

Conclusion:

Monthly updates will help provide the public with timely information in response to a subject that is very much in the public interest. The time-frame proposed for the detailed progress report should allow the Service sufficient time to present a substantive and meaningful report while giving sufficient advance notice of the report to the community.

The Board was also in receipt of the following correspondence dated July 10, 2013 from John Sewell, Toronto Police Accountability Coalition:

Subject: Carding, Form 306

We request that this letter be placed on the agenda for the July 18 Board meeting.

At the June Board meeting, Deputy Chief Sloly made a presentation about the ways in which a new Form 307 would be given as a 'receipt' in some cases where police and community members interact. He talked at some length about how the police were trying to be more transparent in what they were doing. He then indicated that

Form 208, which is the documentation of information gathered by police, is being replaced by a new Form 306.

We have requested to see copy of Form 306 but were told “A copy of this report is not publicly available.”

The new form is obviously different from the old one. Form 208 was called ‘Field Information Report’, whereas Form 306 is called ‘Community Inquiry Report’. What information does Form 306 record?

If any headway is to be made regarding carding or street checks, it will start with the Police Service being clear and open about the kind of information officers are gathering on people they stop to question. We request the Board to ensure Form 306 is made public without delay.

Mr. Miguel Avila was in attendance and delivered a deputation to the Board. Mr. Avila also provided a written submission in support of his deputation; copy on file in the Board office.

The Board approved the following Motions:

- 1. THAT the Board receive Mr. Avila’s deputation and forward a copy of his written submission to the Street Check Sub-Committee for consideration; and**
- 2. THAT the Board defer consideration of the foregoing report and Mr. Sewell’s correspondence to its September 2013 meeting.**

Moved by: A. Pringle

**THIS IS AN EXTRACT FROM THE MINUTES OF THE PUBLIC MEETING OF THE
TORONTO POLICE SERVICES BOARD HELD ON OCTOBER 07, 2013**

**#P239. STREET CHECK SUB-COMMITTEE – COMMUNITY INQUIRY
PROCESS AND INTERIM RECEIPT**

The Board was in receipt of a copy of Minute No. P220/13 from the Meeting held on September 12, 2013 which contained the following:

- copy of report dated July 18, 2013 from Marie Moliner, Chair of the Street Check Sub-Committee, regarding the community inquiry process and interim receipt.

A copy of Minute No. P220/13 is appended to this Minute for information.

The following persons were in attendance and delivered deputations to the Board:

- **John Sewell, Toronto Police Accountability Coalition***; and
- **Roger Love, African Canadian Legal Clinic.**

***written submission also provided; copy on file in the Board office.**

The Board approved the following Motions:

- 1. THAT the Board receive the report dated July 18, 2013 from Ms. Moliner;**
- 2. THAT the Board receive the deputations and Mr. Sewell's written submission;**
- 3. THAT the Board schedule a special Board meeting at City Hall on a date and time to be determined in the month of November 2013 to receive public response to the Board's and the TPS's proposals related to the issue of street checks in order to assist the Board in establishing an effective policy; and**
- 4. THAT the work of the Street Check Subcommittee be concluded and that the Board assume responsibility for further work on this matter.**

Moved by: M. Thompson

*****COPY*****

**THIS IS AN EXTRACT FROM THE MINUTES OF THE PUBLIC MEETING OF THE
TORONTO POLICE SERVICES BOARD HELD ON SEPTEMBER 12, 2013**

**#P220. STREET CHECK SUB-COMMITTEE – COMMUNITY INQUIRY
PROCESS AND INTERIM RECEIPT**

The Board was in receipt of a copy of Minute No. P209/13 from the August 13, 2013 meeting which contained the following:

- copy of report dated July 18, 2013 from Marie Moliner, Chair of the Street Check Sub-Committee, regarding the community inquiry process and interim receipt; and
- copy of correspondence dated July 10, 2013 from John Sewell, Toronto Police Accountability Coalition, containing a request for a copy of Form 306.

The foregoing documents were deferred by the Board to its September 12, 2013 meeting for consideration. A copy of Minute No. P209/13 is appended to this Minute for information.

The following persons were in attendance and delivered deputations to the Board:

- **John Sewell, Toronto Police Accountability Coalition**
- **Roger Love, African Canadian Legal Clinic ***

***written submission also provided; copy on file in the Board office.**

The Board was also in receipt of a written submission from Irwin Elman, Provincial Advocate, Office of the Provincial Advocate for Children and Youth. A copy of Mr. Elman's written submission is on file in the Board office.

The Board approved the following Motions:

- 1. THAT the Board receive Mr. Sewell's deputation and his correspondence dated July 10, 2013;**
- 2. THAT the Board receive Mr. Love's deputation and his written submission; and**
- 3. THAT the Board defer consideration of Ms. Moliner's report dated July 18, 2013 to its October 07, 2013 meeting.**

Moved by: M. Moliner

COPY

**THIS IS AN EXTRACT FROM THE MINUTES OF THE PUBLIC MEETING OF THE
TORONTO POLICE SERVICES BOARD HELD ON AUGUST 13, 2013**

#P209. COMMUNITY INQUIRY PROCESS AND INTERIM RECEIPT

The Board was in receipt of the following report July 18, 2013 from Marie Moliner, Member and Chair, Street Check Sub-Committee:

Subject: COMMUNITY INQUIRY PROCESS AND INTERIM RECEIPT

Recommendations:

It is recommended:

1. THAT the Chief of Police provide to the Board at its public meetings brief, written monthly progress reports on the ongoing development of the Community Inquiry process and the implementation of the receipting process beginning at the Board's meeting on September 12, 2013; and,
2. THAT the Chief of Police provide the Board with a comprehensive written report detailing all aspects of the development and implementation of the new community inquiry process and providing an evaluation of the interim receipt for the Board's December 12, 2013 public meeting.

Financial Implications:

There are no financial implications arising from receipt of this report.

Background/Purpose:

At its meeting on June 20, 2013, the Board received an update report from the Street Check Sub-Committee, considered a report from the Auditor General indicating that his review of community contacts would be deferred pending implementation of the new community inquiry process, and received a presentation with respect to the July 1 implementation of the interim receipt (Form 307) which is to be provided as an outcome of certain community contacts (Min. P160/13 refers).

Discussion:

During the June 20th meeting, the Board considered the presentation from the Chief on the interim Community Inquiry receipt process and made a number of motions. However, it did not address the on-going need for the Board to be informed and updated on the Community Inquiry receipting process as it evolves over the next few months.

During a subsequent meeting of the Street Check Sub-Committee, held on July 3, 2013, a need for on-going reporting was identified in order to assess the success of the implementation of the interim receipt. A need for clarification also arose between the TPS work to implement the interim receipt and the TPS work on the broader Community Inquiry work (revised Form 208).

As a result, the Street-check subcommittee recommends a framework for on-going reporting to the Board during the implementation of both the Community Inquiry Process and the interim receipt. The request is for reports on receipting as well as the rest of the changes that the Service is working on respecting the Community Inquiry process. In particular, the Committee seeks a monthly brief written progress report, beginning in September 2013, and a comprehensive written report, to be provided for the Board's December 2013 public meeting.

This comprehensive report should include:

1. an assessment of the FIR/208 process and the rationale for both retaining the practice of street checks and for contemplating changes to this process;
2. synopses of any research conducted into the practices of other jurisdictions, including the practices of other large Canadian police services;
3. details of stakeholder consultations conducted by the Service and a synopsis of the issues arising from those consultations;
4. an assessment of the utility and application of the interim receipt;
5. details of the proposed new community inquiry process and the procedures that will implement the process as well as plans for officer training, communication to the community, retention of data and access to data;
6. an evaluation of the interim receipt process.

Conclusion:

Monthly updates will help provide the public with timely information in response to a subject that is very much in the public interest. The time-frame proposed for the detailed progress report should allow the Service sufficient time to present a substantive and meaningful report while giving sufficient advance notice of the report to the community.

The Board was also in receipt of the following correspondence dated July 10, 2013 from John Sewell, Toronto Police Accountability Coalition:

Subject: Carding, Form 306

We request that this letter be placed on the agenda for the July 18 Board meeting.

At the June Board meeting, Deputy Chief Sloly made a presentation about the ways in which a new Form 307 would be given as a 'receipt' in some cases where police and community members interact. He talked at some length about how the police were trying to be more transparent in what they were doing. He then indicated that

Form 208, which is the documentation of information gathered by police, is being replaced by a new Form 306.

We have requested to see copy of Form 306 but were told “A copy of this report is not publicly available.”

The new form is obviously different from the old one. Form 208 was called ‘Field Information Report’, whereas Form 306 is called ‘Community Inquiry Report’. What information does Form 306 record?

If any headway is to be made regarding carding or street checks, it will start with the Police Service being clear and open about the kind of information officers are gathering on people they stop to question. We request the Board to ensure Form 306 is made public without delay.

Mr. Miguel Avila was in attendance and delivered a deputation to the Board. Mr. Avila also provided a written submission in support of his deputation; copy on file in the Board office.

The Board approved the following Motions:

- 1. THAT the Board receive Mr. Avila’s deputation and forward a copy of his written submission to the Street Check Sub-Committee for consideration; and**
- 2. THAT the Board defer consideration of the foregoing report and Mr. Sewell’s correspondence to its September 2013 meeting.**

Moved by: A. Pringle

**THIS IS AN EXTRACT FROM THE MINUTES OF THE SPECIAL PUBLIC MEETING
OF THE TORONTO POLICE SERVICES BOARD HELD ON
NOVEMBER 18, 2013**

#P277. POLICE CARDING AND THE ISSUE OF PROFILING

The Board was in receipt of the following report November 11, 2013 from Alok Mukherjee, Chair:

Subject: POLICE CARDING AND THE ISSUE OF PROFILING

Recommendations:

It is recommended that the Toronto Police Services Board approve the following principles to be included in a Board policy on the documentation of contacts with members of the public otherwise known as “carding,” and profiling:

1. The Board rejects and does not condone any individual or institutional policing practice that results in profiling generally and racial profiling specifically, whether intentionally or by impact, against individuals because of their membership of particular groups identified by characteristics including, but not limited to, race, ethnicity, sex, sexual orientation, age, disability and socio-economic status. Therefore, the purpose of this policy is to eliminate conscious or unconscious profiling of individuals as a result of the practice of carding while supporting the legitimate collection and retention of information needed for *bona fide* investigative purposes.
2. Gathering and retention of contact information under clearly defined circumstances, based on *bona fide* reasons and proper supervision can be a legitimate tool for effective police work related to criminal investigation and crime prevention.
3. Consistent with the principles of policing contained in the *Police Service Act* (“the Act,” the Ontario *Human Rights Code* and the Board’s policies on Race and Ethnocultural Equity, Human Rights as well as Collection, Use and Reporting of Demographic Statistics, such information will be based on *bona fide* investigative reasons and include only those elements of an individual’s background that are demonstrably relevant to specific police investigations.

It is further recommended that the Board policy on the documentation of contacts with members of the public and profiling include a direction to the Chief of Police (“the Chief”) to develop procedures to ensure that:

4. *Bona fide* criteria are established for the collection and retention of contact information, and clear direction is provided for the monitoring and supervision of individual members’ practice including specific provisions for dealing with deviation from the criteria.
5. Consistent with the principles of policing contained in the *Police Service Act* (“the Act”), the Ontario *Human Rights Code* and the Board’s policies on Race and Ethnocultural Equity, Human Rights as well as Collection, Use and Reporting of Demographic Statistics, such information will be based on *bona fide* investigative reasons and include

only those elements of an individual's background that are demonstrably relevant to specific police investigations.

6. This information will be retained in the police database for a period of five years, except in circumstances where there is a legitimate investigative reason to retain the information for a longer period. Retention beyond the prescribed five-year period will be authorized on a case-by-case basis by the Chief.
7. In those exceptional circumstances where information is retained beyond the prescribed retention period, access to such information will be given only to those Service members who are so authorized by the Chief.
8. Collection of contact information through the issuance of any card or note which documents contacts with members of the community ("contact cards") will not be used to measure performance and productivity of individual members of the Toronto Police Service ("the Service").
9. Statistics related to the issuance of contact cards by individual members of the Service will be reviewed by the Service and the members' Unit Commanders on a monthly basis and in the instance where an individual member's practice is found to deviate significantly from the general pattern established by the statistics, the member will be subject to review and appropriate remedial action taken.

It is further recommended that the Board policy on the documentation of contacts with members of the public and profiling include a reporting requirement as follows:

10. The Chief will submit a public report to the Board in January, May and September of each year on the number of contact cards issued by members of each Division and specialized Unit, broken down by race, ethnicity, sex, age, sexual orientation, disability of the subject and any other relevant grounds protected under the Ontario *Human Rights Code*. The report will provide general reasons for which contact cards were issued.

It is further recommended that subsequent to the development and approval of the formal Board policy on the documentation of contacts with members of the public and profiling, the Board direct that the Chief will:

11. Implement a comprehensive communication plan to ensure that this Board policy, and related procedures, are known to all members of the Service and widely publicized in the community.
12. Implement an appropriate training, communication and monitoring plan to ensure full Service-wide compliance with this policy and related procedures.
13. Provide full details of his procedure with respect to collection and retention of contact information to the Board within three (3) months from the approval of this policy by the Board.
14. Provide to the Board for its review within three (3) months from the approval of this policy any new tool that is developed for the consistent collection and recording of contact information.

15. Immediately conduct a review of the existing Service database to identify contact card information pertaining to individuals where there is no *bona fide* investigative justification for retaining such information, and purge such information within six (6) months from the approval of this policy by the Board.
16. Undertake an immediate review of the practices associated with the Toronto Anti-Violence Intervention Strategy (“TAVIS”) with a view to ensuring that these practices are consistent with the principles of policing contained in the *Police Service Act*, the Ontario *Human Rights Code* and the Board’s Race and Ethnocultural Equity as well as Human Rights policies.
17. Verify to the Board by a public report due no later than six (6) months from the approval of the Board policy that these actions have been completed.

It is further recommended that subsequent to the development and approval of the formal Board policy on the documentation of contacts with members of the public and profiling, the Board:

18. Request that, one (1) year later, the Auditor General of the City of Toronto undertake a comprehensive audit of the implementation of the Board’s directions and of the changes in practice implemented by the Chief as a result of his Police and Community Engagement Review (P.A.C.E.R) report with a view to assessing their impact on the practice of carding by members of the Toronto Police Service, with follow-up reports as deemed appropriate by the Auditor General.

Financial Implications:

The financial impact associated with the implementation of these recommendations is not known at this time.

Background/Purpose:

The purpose of this report is to recommend principles for a policy and measures to address issues related to the practice of carding individuals with whom members of the Toronto Police Service interact. Carding is the police practice of completing a documentation containing information about the individual with whom a contact occurred, and of entering that documentation in a police database. It is claimed that this practice is very useful in dealing with violent crimes because it provides police with a valuable intelligence database. As a result of this belief, information is gathered and retained even about individuals who are not suspects in or subjects of a criminal investigation, but who are identified by their identity or background.

Interaction with the public is, no doubt, integral to policing; through such interaction police officers serving Toronto’s neighbourhoods and the Service as a whole gain valuable intelligence which assists them in investigating and preventing crime and keeping the community safe. In certain circumstances, retention of information regarding that contact can serve a legitimate policing purpose. It is essential, however, that this practice is implemented in a way that does not have a disproportionate, negative impact on members of any group within the society because of factors including, but not limited to, race, ethnicity, sex, sexual orientation, age and socio-economic status.

Of particular concern in this regard is the long-standing view that young Black Torontonians and, to a lesser extent, youth from other racialized backgrounds as well as poor youth are disproportionately carded without legitimate reasons, leading to concerns about “profiling.” It has been claimed that profiling unjustifiably criminalizes and/or stigmatizes innocent members of certain social groups, especially Blacks, is contrary to the *Ontario Human Rights Code* as well as the principles of the *Police Services Act*, and, finally, does not serve any useful public safety purpose. On the contrary, it may undermine that purpose by sowing the seeds of distrust towards the police in large segments of the community.

There has been substantial discussion of this issue by academics, inquiry commissions and journalists over many years. Of particular note are the periodic investigative articles published by the *Toronto Star* newspaper since 2002. The most recent such examination is contained in the *Toronto Star* series of Saturday, September 28 and Sunday, September 29, 2013.

An extensive analysis by the *Toronto Star* of the practice of carding since 2008 to 2012 suggests a very disturbing trend. It shows that carding reached a historic height in 2007, the year marked by the so-called “summer of the gun,” and has remained at unprecedented levels in the following five years.

This is disturbing because these are also the years when the Board and the Service have acknowledged that police interaction with community should not result in a disproportionate, negative impact on any group and have taken several actions to prevent this impact.

Therefore, the Board has an obligation to use its statutory authority and powers as interpreted by the Supreme Court to give the Service a clear policy direction in regard to carding as it relates to racial and other forms of profiling.

The Board derives its authority to enact these directions from the following provisions of the Ontario *Police Services Act* (“the Act”):

Declaration of principles

1. Police services shall be provided throughout Ontario in accordance with the following principles:

2. The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.
3. The need for co-operation between the providers of police services and the communities they serve.
5. The need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society.

Responsibilities of boards

31. (1) A board is responsible for the provision of adequate and effective police services in the municipality and shall,

- (c) establish policies for the effective management of the police force;
- (e) direct the chief of police and monitor his or her performance;

There can be no question that the principles in section 1 of the *Act* are intended to be overarching. As such, the responsibilities of the Board enumerated in section 31 (1) of the *Act* must be interpreted within the framework of those principles. This is such a fundamental

consideration that the Supreme Court of Canada has acknowledged that the Board “arguably” had a positive duty to act where matters of great public significance are involved.

In its 2003 decision in *Odhavji Estate v. Woodhouse*, the Supreme Court recognized “the Board’s broad discretion to determine what objectives and priorities to pursue, or what policies to enact in pursuit of those objectives.” According to the highest court, “courts should be loath to interfere with the Board’s broad discretion.” Nevertheless, the Supreme Court also recognized that there were circumstances when the Board could be considered to have “a positive obligation” to take action. In such circumstances, the Board would be “required” to act and, by implication, be subject to judicial scrutiny if it failed to do so. The court said:

66 It is possible . . . that circumstances might arise in which the Board is required to address a particular problem in order to discharge its statutory obligation to provide adequate and effective police service. If there was evidence, for example, of a widespread problem in respect of the excessive use of force in the detention of visible minorities, the Board arguably is under a positive obligation to combat racism and the resultant use of excessive force.

I would suggest that the issue of profiling due to excessive and disproportionate issuance and retention of contact card information involving racialized and poor youth by the Service meets the threshold for “a positive obligation” to act as established by the Supreme Court.

Discussion:

Through its policies – including, in particular, the Race and Ethnocultural Equity Policy, the Human Rights Policy and the Policy on Collection, Reporting and Use of Demographic Statistics – the Board has made very clear its position that discriminatory policing, whether by intent or impact, is unacceptable, against the law and will not be tolerated.

Profiling, especially racial profiling, is a form of discriminatory policing. It has been the subject of considerable research, analysis and discussion. Disproportionate carding of members of a group, identifiable by race, ethnicity, sex, age and/or socio-economic status, even when it is not deliberately targeted, may constitute a form of discriminatory policing in terms of its impact and, as such, a breach of Board policies as well as the law.

Beyond the legal aspect, the Board must take a serious view of the issue of discriminatory policing from a public interest perspective as well. To the extent that public safety and community well-being are the overarching goals to which the community expects the police to contribute along with other institutions, such as education, housing and public health, those goals apply to all members of society regardless of their race, age or socio-economic status. It would be ironic if those goals were sought for some at the expense of others.

In an in-depth examination of contact cards issued by members of the Toronto Police Service during the years 2008-2012 in the course of interactions with members of the public, published on Saturday, September 28 and Sunday, September 29, 2013, the *Toronto Star* has found that there has been a significant increase in the magnitude of contact card activity since 2007. It found, further, that young Black Torontonians and, to a lesser extent, young Brown and poor white residents were given more contact cards than the rest of the population. These reports are based on data obtained from the police database and compared against Statistics Canada population statistics.

The *Star* provides a breakdown of the data by patrol zones and individual police officers.

While it is generally accepted that such data, properly collected using valid criteria, can serve an important investigative purpose, the Service's practice causes concern due to its sheer size and apparent disproportional impact. Academics, researchers and concerned members of the community have expressed serious reservation that the practice may even be counter-productive in so far as it has a negative impact on community trust and confidence in the police.

For the Board, this is a matter of serious concern because the practice appears to run counter to its stated position with respect to the issuance of contact cards and retention of information, a practice popularly referred to as "profiling."

At its meeting on April 5, 2012, the Board considered a report from me, dated March 12, 2012 and titled "Collection of Demographic Statistics," which contained a series of recommendations to address the issue (Minute No. P56/012 refers). These recommendations were approved, among others and, based on representations from members of the community a Board committee called the Street Checks Sub-Committee was established in 2013.

At the same time, the Service announced that it had undertaken a comprehensive internal review of the practice.

It is in the context of these efforts, based on the law and Board policies, that the findings published in the September 28-29, 2013 editions of the *Toronto Star* suggesting a continuing and ever-growing practice are disconcerting. They create a distinct impression that efforts of the past decade to ensure that carding does not have a discriminatory impact may have been ineffective.

At the Board meeting of October 7, 2013, the Service made a public presentation of the 31 recommendations it planned to introduce by way of a new approach to gathering and retaining carding information (Min. No. 244/13 refers). The Service contends that these recommendations will address the issue of racial and other profiling.

In conjunction with the operational changes the Service proposes to make, the Board, in its role as the oversight and governing body for policing in Toronto, must now take action to deal with the continuing discriminatory impact, give policy direction with respect to disposition of data retained from previous years and implement measures to ensure accountability to prevent any continuation of a discriminatory practice.

It has been suggested in some quarters that restrictions on carding will have a chilling effect on front-line policing as officers may be unwilling to gather and fill out information. It has been further suggested that should this happen, violent crime will rise.

I must strenuously reject these suggestions; surely, the Service, with all the intelligence, expertise and experience at its disposal, has the means and the ability to develop effective policing strategies without negatively affecting large numbers of innocent people from particular racialized and other backgrounds.

These are, of course, not the only actions taken to address the issue of the disproportionate carding, or profiling, of members of certain backgrounds. A review of previous efforts shows that the Board and the Service have been attempting to address the issue of profiling for many years. Racial profiling by police has been a serious concern in the community since at least the 1970s.

History/Context

Profiling as a result of the police practice of carding is a challenge that faces policing in many jurisdictions around the world. In Toronto, it has been a subject of considerable attention. Of note, besides the *Toronto Star* reports of 2002, 2010, 2012 and 2013, are such recent examinations as Ontario Human Rights Commission report, “Paying the Price: The Human Cost of Racial Profiling” (2002); Carol Tator and Frances Henry, ed., *Racial Profiling in Canada* (2006); and Roy McMurtry and Alving Curling’s review, “Review of Roots of Youth Violence” (2008).

In fact, the matter has been on the public agenda for a much longer period of time, as documented in a 2003 Toronto Police Service report, “Policing a World Within a City.” An excerpt from this report providing an overview of the history of these earlier efforts is to be found in Appendix A.

Discriminatory policing – and in particular, involving Black Canadians – has been the focus of concern, criticism and study since at least 1975 when the late Wilson Head conducted his study entitled, *The Black Presence in the Canadian Mosaic: A Study of Perception and the Practice of Discrimination Against Blacks in Metropolitan Toronto*. Since then, there have been several others, including Walter Pitman’s 1977 task force report commissioned by the Toronto City Council, *Now Is Not Too Late*, Dr Reva Gerstein’s 1980 study of the credibility of the police to provide fair and just services to members of Toronto’s Black community, numerous studies commissioned by the Police Services Board and the Police Service in the 1990s, and the 1992 audit of race relations practices of the Metropolitan Toronto Police Force by the Metropolitan Toronto Auditor Allan Andrews. At the same time, the province, too, began paying attention to the issue through the 1989 Race Relations and Policing Task Force chaired by Clare Lewis, the 1992 study of anti-Black racism conducted by Stephen Lewis, and the 1992 Royal Commission on Systemic Racism in the Criminal Justice System co-chaired by David Cole and Margaret Gittens.

As a result of and in response to all of this work, the Board and the Service carried out many initiatives. These included the establishment in 1989 of a Race Relations Policy by the Board, attention to police training, changes in procedures related to police conduct and focus on improving police-community relations, among others. The focus was on “moving forward together,” to borrow the title of a report prepared in 1995 containing responses to all of the recommendations made by different authors. The intent was to demonstrate that the Race Relations Policy adopted in 1989 had a meaningful impact on every aspect of organizational life.

Yet, in a presentation to the Board’s Race Relations Sub-Committee on December 6, 1999, based on a survey of police stops carried out in 1994, University of Toronto Criminology Professor Scot Wortley pointed out that Black respondents were more likely to have been stopped by police than others. This information was relayed to the Board, during its January 26, 2000 meeting, and the Board requested a response from Chief Boothby about strategies on police stops. This was received at the February 24, 2000 Board meeting.

To the extent that carding is related to police stops, then, it has been considered by the Board and the Service for the last two decades as the source of a serious problem that had not been resolved by the strategies implemented in prior years. This was supported by the first *Toronto Star* “Race and Crime” series of October 19, 20 and 26, 2002. It reinforced and supported the findings of Professor Wortley’s 1999 presentation. Further support came from the Ontario Human Rights

Commission’s report, “Paying the Price: The Human Cost of Racial Profiling,” which was presented to the Board by Chief Commissioner Keith Norton on May 27, 2004.

Beginning in 2005, new efforts began to deal with this issue, as the following chronology of Board response to carding and the issue of profiling demonstrates.

Recent Response to Carding and the Issue of Profiling, 2003-2013 – A Chronology

Date	Action
January 2003	TPS Report: “Policing a World Within a City”
September 2003	Draft Report of the Board/Service Race Relations Joint Working Group (not published or approved by the Board) questioning the existence of racial profiling in police contacts
May 27, 2004	Presentation to Board by Keith Norton, Chief Commissioner of the Ontario Human Rights Commission, “Paying the Price: The Human Cost of Racial Profiling” and adoption by the Board of several recommendations to address the issue
March 8, 2005	Board direction on mandatory Name Badges
June 21, 2004	Board direction on in-car cameras in patrol cars
March 26, 2006	Approval of Board Policy on Race and Ethnocultural Equity Replaced the former Race Relations Policy, with focus on outcomes; contains specific reference to police stops; requires review of all procedures to ensure they are consistent with this policy and regular evaluation and reporting on the implementation of the policy
March 22, 2007	Human Rights Charter Project A comprehensive organization change project initiated jointly by the Board, the Service and the Ontario Human Rights Commission to ensure, through policy, procedures, training and monitoring of results, that all practices of the organization are consistent with the requirements of the Ontario <i>Human Rights Code</i>
October 18, 2007	Board Policy on Collection, Use and Reporting of Demographic Statistics (Amended in September 23 and November 15, 2010 and again on May 11, 2011)
February 12, 2009	“Aboriginal Policing – Statement of Commitment and Guiding Principles”
March 25, 2010	Approval, in principle, of a comprehensive Board Policy on Human Rights (final policy in effect since June 15, 2012)
April 5, 2012	Chair’s Report of March 12, 2012 with a series of recommendations to address the issue, titled “Collection of Demographic Statistics”

January 23, 2013	Establishment of Street Checks Sub-Committee
April 25, 2013	Direction to the Chief of Police to provide a receipt to every individual for whom a card is created, as an interim measure, pending further changes

However, the 2008 review, “Roots of Youth Violence,” by former Ontario Chief Justice Roy McMurtry and former Speaker of the Ontario Legislature Alvin Curling, as well as subsequent reports in the *Toronto Star* of 2010 and 2012 showed that disproportionate carding of Black youth or profiling persisted.

Analysis of Police Carding Data by Toronto Star – 2001-2012

Date	Finding
Oct. 19, 20, & 26, 2002 Part 1: http://www.thestar.com/news/gta/kenowntopolice/singled-out.html Board reaction story: http://www.thestar.com/news/gta/raceandcrime/analysis-raises-board-hackles.html Black arrest rates: http://www.thestar.com/news/gta/raceandcrime/black-arrest-rates-highest.html	Toronto Star “Race & crime” series This series used Toronto police CIPS arrest and charge data as its foundation and found that blacks in certain circumstances were treated more harshly than whites in terms of being held for bail more often, and were charged to a higher degree with certain driving offences that would have come to light following a traffic stop. It also examined who was being charged for serious violent crimes and found young black males, many of whom were born in Jamaica, were disproportionately represented.
Feb. 6, 7, & 15, 2010 http://www.thestar.com/news/gta/raceandcrime.html	Toronto Star “Race matters” This series revisited the CIPS analysis and found little had changed. It also for the first time examined contact cards from MANIX and FIR databases and showed black and brown-skinned people are carded at higher rates.
March 10, 11, 2012 http://www.thestar.com/news/gta/kenowntopolice.html	Toronto Star “Known to police” Another re-visit of CIPS analysis and again there was little change. An analysis of FIR shows carding is on the rise and no change in who is being carded. The Star, looking at who is carded and where, asks the question of whether it is possible that police in certain pockets of the city have stopped, questioned and documented every young man of colour who lives there.

It was in this context that the Board approved a series of further measures in late 2012 and early 2013, including the establishment of the Street Checks Sub-Committee and the direction to provide receipts to those with whom contact had been made by police. At the same time, the Service announced its comprehensive internal review of the practice of carding.

In addition to recommending the provision of receipts, the Street Checks Sub-Committee held a community consultation, summarized and posted on the Board's website, submissions from members of the public and held numerous discussions with senior members of the Service engaged in the review ordered by the Chief.

Need for Further Board Action

This most recent analysis by the *Star* of September 28-29, 2013 is more extensive than the previous ones. It is also the most disconcerting in that it shows that at the very time when the Board and the Service were establishing stronger policies and procedures, implementing enhanced training and education, and going through a comprehensive process to change organizational culture and practices through the Human Rights Charter Project, carding – especially carding of Black and Brown youth and poor white youth – was at an all-time high continually year after year.

To be sure, in two of those years, there had been a significant spike in violent crime that required the gathering of intelligence through community engagement. However, the fact remains that, on one hand, overall, crime was declining during this period and, on the other, information about a disproportionate number of racialized and poor youth was being collected and stored in the police database.

A consideration of this paradox raises a number of questions, such as:

1. What was the place of high volume carding in the Service's strategies for controlling violent crime?
2. How widespread and routine was the use of carding as a measure of productivity and performance?
3. What explicit attention was paid to Board policies in the development and implementation of policing strategies?
4. With respect to the TAVIS program, what mandate and directions were given to those responsible for managing it? Was it so results-driven that there were no parameters set consistent with the Board policies referenced above? What was the nature of monitoring and supervision of TAVIS initiated actions?
5. Beyond TAVIS, what was the nature and quality of supervision and monitoring in the Service from the top ranks to the lowest ranks of management? Did people truly exercise supervision at each level? Did they monitor results regularly? Did they hold each other accountable for complying with Board policies?

Questions like these raise the issue of accountability and responsibility throughout the organization. That is to say, profiling as a form of discriminatory policing – even if by impact rather than intent – should not be seen as a problem of bad behaviour on the part of some individuals. It needs to be seen as the result of systemic practices involving policing strategies.

The Board needs to gain a clear understanding of this systemic issue. And as the Board seeks to do so, it is imperative that it take a clear policy position and establish a stricter framework with respect to the practice itself.

Efforts until now have been focused largely on controlling and changing individual behaviour through training, education, communication, community engagement and discipline. These are important and necessary; however, they have clearly not been successful in bringing an end to profiling. Stronger, systemic measures are needed to overcome an unacceptable pattern of profiling that persists stubbornly. And those measures must include a clear direction with respect to acceptable practices related to outcomes and to accountability, supervision and monitoring. That is what the recommendations contained in this report provide.

It is fair to say that in focusing attention on individual behavior, there has been insufficient consideration of policing strategies and their impact. The intent behind these recommendations is to recognize that profiling is, or can be, the result of strategies used to deal with crime. The recommendations, therefore, emphasize accountability, supervision and monitoring.

Conclusion:

It is, therefore, recommended that the Toronto Police Services Board approve the following principles to be included in a Board policy on the documentation of contacts with members of the public otherwise known as “carding,” and profiling:

1. The Board rejects and does not condone any individual or institutional policing practice that results in profiling generally and racial profiling specifically, whether intentionally or by impact, against individuals because of their membership of particular groups identified by characteristics including, but not limited to, race, ethnicity, sex, sexual orientation, age, disability and socio-economic status. Therefore, the purpose of this policy is to eliminate conscious or unconscious profiling of individuals as a result of the practice of carding while supporting the legitimate collection and retention of information needed for *bona fide* investigative purposes.
2. Gathering and retention of contact information under clearly defined circumstances, based on *bona fide* reasons and proper supervision can be a legitimate tool for effective police work related to criminal investigation and crime prevention.
3. Consistent with the principles of policing contained in the *Police Service Act* (“the Act,” the Ontario *Human Rights Code* and the Board’s policies on Race and Ethnocultural Equity, Human Rights as well as Collection, Use and Reporting of Demographic Statistics, such information will be based on *bona fide* investigative reasons and include only those elements of an individual’s background that are demonstrably relevant to specific police investigations.

It is further recommended that the Board policy on the documentation of contacts with members of the public and profiling include a direction to the Chief of Police (“the Chief”) to develop procedures to ensure that:

4. *Bona fide* criteria are established for the collection and retention of contact information, and clear direction is provided for the monitoring and supervision of individual members’ practice including specific provisions for dealing with deviation from the criteria.

5. Consistent with the principles of policing contained in the *Police Service Act* (“the Act”), the Ontario *Human Rights Code* and the Board’s policies on Race and Ethnocultural Equity, Human Rights as well as Collection, Use and Reporting of Demographic Statistics, such information will be based on *bona fide* investigative reasons and include only those elements of an individual’s background that are demonstrably relevant to specific police investigations.
6. This information will be retained in the police database for a period of five years, except in circumstances where there is a legitimate investigative reason to retain the information for a longer period. Retention beyond the prescribed five-year period will be authorized on a case-by-case basis by the Chief.
7. In those exceptional circumstances where information is retained beyond the prescribed retention period, access to such information will be given only to those Service members who are so authorized by the Chief.
8. Collection of contact information through the issuance of any card or note which documents contacts with members of the community (“contact cards”) will not be used to measure performance and productivity of individual members of the Toronto Police Service (“the Service”).
9. Statistics related to the issuance of contact cards by individual members of the Service will be reviewed by the Service and the members’ Unit Commanders on a monthly basis and in the instance where an individual member’s practice is found to deviate significantly from the general pattern established by the statistics, the member will be subject to review and appropriate remedial action taken.

It is further recommended that the Board policy on the documentation of contacts with members of the public and profiling include a reporting requirement as follows:

10. The Chief will submit a public report to the Board in January, May and September of each year on the number of contact cards issued by members of each Division and specialized Unit, broken down by race, ethnicity, sex, age, sexual orientation, disability of the subject and any other relevant grounds protected under the Ontario *Human Rights Code*. The report will provide general reasons for which contact cards were issued.

It is further recommended that subsequent to the development and approval of the formal Board policy on the documentation of contacts with members of the public and profiling, the Board direct that the Chief will:

11. Implement a comprehensive communication plan to ensure that this Board policy, and related procedures, are known to all members of the Service and widely publicized in the community.
12. Implement an appropriate training, communication and monitoring plan to ensure full Service-wide compliance with this policy and related procedures.
13. Provide full details of his procedure with respect to collection and retention of contact information to the Board within three (3) months from the approval of this policy by the Board.

14. Provide to the Board for its review within three (3) months from the approval of this policy any new tool that is developed for the consistent collection and recording of contact information.
15. Immediately conduct a review of the existing Service database to identify contact card information pertaining to individuals where there is no *bona fide* investigative justification for retaining such information, and purge such information within six (6) months from the approval of this policy by the Board.
16. Undertake an immediate review of the practices associated with the Toronto Anti-Violence Intervention Strategy (“TAVIS”) with a view to ensuring that these practices are consistent with the principles of policing contained in the *Police Service Act*, the Ontario *Human Rights Code* and the Board’s Race and Ethnocultural Equity as well as Human Rights policies.
17. Verify to the Board by a public report due no later than six (6) months from the approval of the Board policy that these actions have been completed.

It is further recommended that subsequent to the development and approval of the formal Board policy on the documentation of contacts with members of the public and profiling, the Board:

18. Request that, one (1) year later, the Auditor General of the City of Toronto undertake a comprehensive audit of the implementation of the Board’s directions and of the changes in practice implemented by the Chief as a result of his Police and Community Engagement Review (P.A.C.E.R) report with a view to assessing their impact on the practice of carding by members of the Toronto Police Service, with follow-up reports as deemed appropriate by the Auditor General.

The Board was also in receipt of a copy of Minute No. P244/13 from the meeting held on October 07, 2013, with respect to the Toronto Police Service - Police and Community Engagement Review (PACER). A copy of the Minute is appended to this Minute for information.

The following persons were in attendance and delivered deputations to the Board:

- **Veronica Salvatierra, Youth Criminal Justice Worker, St. Stephen’s Community House ***
- **Peter Rosenthal ***
- **Howard Morton, The Law Union of Ontario ***
- **Wyndham Bettencourt-McCarthy ***
- **Derek Moran ***
- **Dianne Carter and Shaheen Azmi, Ontario Human Rights Commission ***
- **Joy Bullen ***
- **Maurice Stone ***
- **Knia Singh ***
- **Knia Singh, Osgoode Society Against Institutional Injustice**

- **Emma Julian**
- **Bev Salmon ***
- **Noa Mendelsohn Aviv, Director, Equality Program, Canadian Civil Liberties Association**
- **Paul Copeland ***
- **William Rosemberg**
- **Kingsley Gilliam, Black Action Defence Committee ***
- **Anna Willats, Toronto Police Accountability Coalition ***
- **Ben Lau, Co-Chair, Chinese Community Consultative Committee ***
- **Kris Langenfeld ***
- **Audrey Nakintu, Justice is Not Colour Blind ***
- **Roger Love, Advice Counsel, African Canadian Legal Clinic**
- **Miguel Avila**
- **Desmond Cole**

***written submission also provided; copy on file in the Board office.**

Ms. Bettencourt-McCarthy also provided the Board with a copy of her report *Reforming Carding Procedures, An Alternative Policing Model for the Toronto Police Service*. A copy of the report is on file in the Board office.

The Board was also in receipt of written submissions from:

- **Dahn Batchelor, Criminology and Criminal Law Consultant**
- **Rand Schmidt**
- **Bill Closs**
- **Jim Roche**

Copies of the foregoing written submissions are on file in the Board office.

Following the deputations, the Board had a discussion with Deputy Chief Sloly with respect to some of the issues raised by the deputants.

The Board noted that several deputants had referred to the three legal opinions that were provided to the TPS. Chair Mukherjee asked whether the TPS would release the names of the lawyers who provided the opinions.

Deputy Chief Sloly advised the Board that he was permitted to identify the three lawyers who had provided Chief Blair with opinions. They are:

- **Don McLeod, former defence counsel and recently appointed to the Ontario Court of Justice**
- **Murray Segal, Murray D. Segal Professional Corporation**
- **Alan Gold, Alan D. Gold Professional Corporation**

The Board discussed the timeline for further discussions regarding the development of a policy on contacts with members of the public. The Board subsequently approved the following Motions:

- 1. THAT the Board receive the deputations and written submissions;**
- 2. THAT the Board receive the foregoing report from the Chair and the copy of Minute No. P244/13; and**
- 3. THAT the Board hold a special meeting prior to the end of December 2013 in order to consider a position on this matter.**

Moved by: M. Thompson

Legislative
Assembly
of Ontario



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législative
de l'Ontario

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September 12, 2013

Dr. Alok Mukherjee
Chair,
Toronto Police Services Board
40 College Street
Toronto, ON
M5G 2J3

Dear Mr. Mukherjee,

Thank you for the opportunity to present a written submission on two very important issues before the Board today: (1) the Report of the Street Check Sub-Committee- Community Inquiry Process and Interim Receipt; and (2) the correspondence from John Sewell of the Toronto Police Accountability Coalition dated July 10, 2013.

The Office of the Provincial Advocate for Children and Youth (Advocate's Office) is an independent office of the Legislative Assembly of Ontario. Created by statute in 2007, the Advocate's Office was established to, among other things; provide an independent voice for children and youth and to educate children and youth about their rights.

The Advocate's Office has been following the debates on "Street checks" (also known as carding) through a variety of sources including the media; Toronto Police Services Board (TPSB) minutes during the period of April 2012 to August 2013; submissions and deputations of the Ontario Human Rights Commission, Law Union of Ontario, Canadian Civil Liberties Association, and the Toronto Police Accountability Coalition; the Toronto Police Services ("TPS") Report on the Review of Forms 208 and 306; the presentation of Deputy Chief of police, on the Toronto Police Services Board Interim Receipt Process; and the regular updates of the Police Check Sub-Committee.

In addition, young people have directly expressed a number of concerns about “street checks” (also known in the community as carding) to the Advocate’s Office. These concerns include: the tenor of interaction between the police and young person; not knowing whether they are legally required to answer the questions posed by the police officers; the perception that the young person is not free to walk away and is actually being detained by police during these encounters.

Street Check Sub Committee Recommendations

In April 2012, the TPSB passed a series of motions related to the collection of demographic statistics, including one designed to ensure that copies of the “contact cards” filled out by police would be provided to individuals stopped by police under these circumstances. The implementation of this particular motion was delayed pending receipt of a report from the Chief of Police about the cost and operational implications of this recommendation. This report has been delivered. Another report is now underway and a sub committee has been struck. But there is still no final decision on whether copies of “contact cards” will be issued. It has been insinuated in some of the social media sites reviewed by the Advocate’s Office that the TPS and the TPSB are ‘dragging their heels’ or ‘letting the issue slip off the radar’.

As a means of enhancing public confidence, the Advocate’s Office fully supports the recommendations of the Street Check Sub-Committee that (i) the Chief of Police file monthly progress reports on the “on-going development of the Community Inquiry Process and the implementation of the receipting process” at the public meetings of the TPSB and (ii) the Chief of Police provide the Board with a comprehensive written report detailing all aspects of the development and implementation of the new community inquiry process and providing an evaluation of the interim receipt for the Board’s December 12, 2013 public meeting.

Of equal importance though, is the previous recommendation of the Police Services Board to ask the City Solicitor to provide an opinion on the legality of “street checks” (January 2013 minutes of the TPSB). The City Solicitor has not yet made public his opinion on this matter. In the meantime, the Chief Commissioner of the Ontario Human Rights Commission has urged that the “current practice [of street checks] be stopped until policies and procedures are fully developed and completely and transparently assessed” against the Ontario Human Rights Code and the Charter of Rights and Freedoms (letter to the TPSB dated July 2, 2013). Despite the clear questions/concerns about the legality of this practice, “street checks” continue. Therefore, the Advocate’s Office recommends that the Board also seek monthly reports from the City Solicitor’s Office updating the progress on providing an opinion on the legality of street checks.

Additionally, we recommend that any measure to assess, review or monitor “street checks” practices, endorsed by the Board include community consultation with young people particularly those who are in or were in Child Welfare, Children’s Mental Health, Youth Justice settings are those who come from communities who have experienced “carding”.

Toronto Police Accountability Coalition

With respect to the request of the Toronto Police Accountability Coalition, there have been many debates and discussions about the nature of the information collected by the police during the course of street checks. A significant area of concern is the type of personal information police are requesting, especially from young people. In April 2012 the Board passed a motion that police be requested to provide everyone stopped a copy of the contact card "Field Inquiry Report"/Form 208 made by the officer, including the reason for the stop". Similarly, the Canadian Civil Liberties Association has recommended in their deputations that people who have been stopped should be entitled to a "mirror copy" of the information collected by police and this position has been adopted by other groups- including the Advocate's Office.

The TPS has countered that a receipt be proffered instead. As an interim measure, pending the outcome of the Chief of Police Internal Review and final decision of the Board, the Board has requested that the Toronto Police provide "receipts for all encounters where a TPS 208 or FIR is completed".

The most recent version of the receipt is referred to as a "Community Inquiry Report Receipt"/ Form 307. A copy of this receipt is publicly available through the TPSB office, contained in a presentation slide deck prepared by the Toronto Police Service titled, "Toronto Police Services Board Interim Receipt Process". Based on the contents of this slide deck presentation, it would appear that Form 208/Field Inquiry Report has been replaced by Form 306/"Community Inquiry Report".

To the best of our knowledge, neither Form 208 nor Form 306 have been made available to the public although deputants to the TPSB have attached blank Form 208's to their submission (as a means of illustrating the type of information collected by police) and a scanned copy of the form has been posted on at least one third party website. Both Form 208 and Form 306 are what both the community and police are talking about when they refer to "contact cards". And it is this most recent version of the contact card, Form 306, Mr. Sewell and the Toronto Police Accountability Coalition are seeking to have made available to the public. We agree. And it is hard to imagine the basis upon which the TPS can be seen to publicly disagree with this proposal given the official messaging on the TPS website (www.torontopolice.on.ca/CIR) about this issue. Here is an excerpt:

For the past year, the Toronto Police Service has undertaken a comprehensive review of how our officers interact with the public. This includes a close look at training, procedures, practices and a review of our Field Information Report, commonly known as FIRs or 208s.

We believe our community interactions can increase public trust and create confidence in our Service. We know our community interactions play a role in protecting you and your community. Crime rates in general, and violent crime specifically, have gone down over the last seven years because, in part, of our community interactions and Field Information Reports.

Unfortunately, these gains also come at a cost.

Some of our interactions with the public have not been as respectful or as bias-free as they should have. Some of our interactions have been more frequent and involved than they could and should have been.

We have heard your concerns. We know you want to know why this person and not that person. We know you want to know why we ask the questions we do and what we do with the answers.

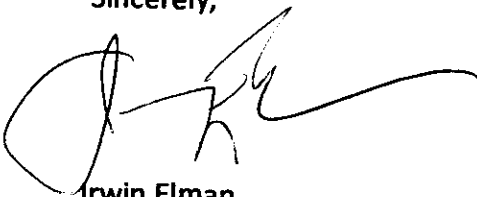
We believe we can do a better job of explaining why this information is collected and why it is so important.

If the TPS is as serious about transparency and accountability as this messaging would seem to suggest, blank templates of Form 306 should immediately be made available on the TPS Website so that the public can see exactly what type of information the police would like to collect (or are currently collecting).

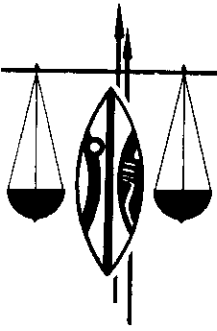
As noted above, the Advocate's Office sees the public disclosure of the Form 306 template as a good interim step, but believes that the most appropriate action would be the issuance of "mirror copies" of completed Form 306's to members of the public stopped by police under these circumstances.

In closing, I would like to commend the work of the Street Check Sub Committee. The updates provided by the committee indicate that very good and important questions are being considered. If the Advocate's Office can be of assistance in helping in any way, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Irwin Elman', with a long, sweeping horizontal stroke extending to the right.

Irwin Elman
Provincial Advocate



September 12, 2013

RE: SUBMISSION OF THE AFRICAN CANADIAN LEGAL CLINIC (“ACLC”) TO THE TORONTO POLICE SERVICES BOARD ON THE COMMUNITY INQUIRY PROCESS AND INTERIM RECEIPT

As you may be aware, the African Canadian Legal Clinic (“ACLC”) has been an advocate for African Canadian rights in groundbreaking cases, legislative reforms and policy initiatives at the federal and provincial level. Our work has included litigation and policy items which directly engage police services across the province, including the Toronto Police Services (“TPS”). As early as March 2012, we have appeared before the Toronto Police Service Board (“TPSB”), and made countless recommendations which respect to the collection of 208 cards or Field Information Reports, now referred to as Community Inquiry Reports (Form 306). We have asked for carbon copies or receipts of 208 cards, periodic reports of disaggregated race-based data, and a general recognition that the practice of carding by the Toronto Police Service amounts to racial profiling. Our position remains unchanged. Nonetheless, we anxiously await the Chief’s initial monthly progress report on the ongoing development of the Community Inquiry Process and the implementation of the receipting process. In order for the Chief to submit a comprehensive report that responds to the concerns of the African Canadian community in December, the framework for on-going reporting to the TPSB must be expanded.

The ACLC is disappointed by the glaring omissions from the list of items that the Street-check subcommittee has marked for inclusion in the Chief’s comprehensive report. The list has failed to create a comprehensive framework that can be used as the basis for a meaningful report. Regrettably, the list does not include any reference to the collection and monitoring of disaggregated race-based statistics that can be used to eliminate the disproportionate carding of the African Canadian and other racialized communities. Without ongoing reporting and monitoring of this issue, it is unlikely that the reforms proposed in December will fairly address the issue of racial profiling.

Furthermore, there is no mention of the steps TPS will undertake to alert the public to the forthcoming changes to the carding or receipt process. As mentioned during our consultations with the Street-check subcommittee, a full scale public education campaign should have been deployed to alert the community to changes to the carding process and inform them the new receipt. Without fulsome public education and transparency, TPS risks alienating the community and stakeholders that have a vested interest in ensuring that the Chief’s report will be responsive to their concerns. On this note, we echo the Toronto Police Accountability Coalition’s request to make a copy of form 306 publicly available without delay.

The proposed framework is also silent on reforms to the duties of supervisory officers who are entrusted with reviewing carding statistics. Questions still loom amongst stakeholders regarding TPS's practice of requiring some officers to complete a predetermined number of stops, or a quota. Similarly, questions remain adrift about the proposed disciplinary action that will be handed down to officers that card African Canadians at disproportionate levels after controlling for other variables.

There is also no mention of any ongoing reporting about revisions to the complaint system in the proposed framework. Public confidence in the reformed system can only be achieved if we are provided with a functional and meaningful opportunity to challenge an officer's decision to card, failure to issue a receipt, or delete erroneous information captured on a 306 card. While we recognize that most complaints are directed to the OIPRD, we implore TPS to use this review period to address the public's lack of confidence in the system by considering innovative processes that will allow for the expedient purge or revision of erroneous information.

In addition to the foregoing, the ACLC would like to draw the Board's attention to the decision in *Floyd, et al. v. City of New York, et al*, a decision which contains several useful holdings which should inform the work of the Street-check Subcommittee and TPS. On August 12, 2013, a federal judge found that the New York City Police Department's (NYPD) stop-and-frisk searches violate the constitutional rights of minorities, more specifically their Fourth Amendment rights which outlaw unreasonable searches and their Fourteenth Amendment rights which guarantee equal protection of the law, amongst other federal and state legislation. The decision included several key passages which should guide the ongoing review of the carding process.

For example the court held that many of the checkboxes on the UF250 (which is similar to form 208) that officers use to indicate the basis for the stop are "subjective and vague."¹ Regrettably, NYPD officers could check a box which reads "fits the description" in order to justify a stop.² The court ruled that, "Fits the description is a troubling basis for a stop if the description is so general that it fits a large portion of the population in the area such as black males between the ages of 18 and 24."³ This is a descriptor that we submit is not uncommonly used within TPS. The problematic use of checkboxes in form 306, and 307 has been raised by several stakeholders including the ACLC. We have yet to receive any confirmation that this concern will be addressed. The *Floyd* decision also comments on supervisory officers directing the rank and file of the NYPD to meet "numerical enforcement Goals" or quotas, and the absence of a "meaningful procedure for auditing stop paperwork to monitor the constitutionality of the stops."⁴ These findings among others led to the court to find that the NYPD's practice of stopping individuals without clear grounds violates sections four and fourteen of the US Constitution.

¹ *Floyd, et al. v. City of New York, et al*, 813 F.Supp.2d 457, at page 7.

² *Supra* note 1.

³ *Supra* note 1 at page 41.

⁴ *Supra* note 1, at pages 93-95.

We caution the TPSB and the Street-Check Sub Committee to resist the urge to dismiss the *Floyd* decision because it was handed down in the United States. Rather, we ask you to consider the following similarities: The equal protection clause of the Fourteenth amendment guarantees to every person the equal protection of the law. It prohibits the intentional discrimination based on race.⁵ Similarly, section 15 of the Canadian *Charter of Rights and Freedoms* guarantees equal protection and equal benefit of the law without discrimination, based on immutable characteristics such as race. The Fourth Amendment protects persons in the US from unreasonable searches and seizures. Similarly, section 8 of the *Charter* protects against unreasonable searches or seizures. In addition to parallels in our legal systems, there are statistical similarities between the NYPD's 'stop and frisk' practice and carding by TPS which cannot be ignored. For example, the *Floyd* case notes "Blacks and Hispanics are more likely than whites to be stopped within precincts and census tracts, even after controlling for other relevant variables. This is so even in areas with low crime rates, racially heterogeneous populations, or predominately white populations."⁶ Similarly the Toronto Star found that, "In each of the city's 72 patrol zones, blacks are more likely than whites to be stopped and carded."⁷ While a fulsome comparison between the similarities is beyond the scope of this deputation, we sternly advise the TPSB to consider the *Floyd* ruling.

We recommend the following additions to the Street-check subcommittee's suggested framework for the Chief's ongoing reporting to the TPSB:

- 1) Collection and monitoring of disaggregated race-based statistics that can be used to eliminate the disproportionate carding of the African Canadian and other racialized communities.
- 2) Plans to implement a full scale public education campaign to alert civilians to changes to the carding process and inform them of the new receipt.
- 3) Plans to revise the complaint process, including steps to be followed by the public if and when a receipt is not issued; where complaints can be made and, most importantly, what consequences might face an officer who has failed to issue a receipt.
- 4) Renewed oversight of the carding and receipting process by supervisory officers to ensure that officers comply with the *Charter*, and the *Code*. Moreover, we request further clarity from TPS with respect to the use of quotas.

In order to conduct a meaningful review of the carding process, TPS must be willing to stretch its boundaries and earnestly listen to the concerns we have raised, or risk undertaking a costly and in and fruitless exercise.

Roger Love
Advice Counsel
African Canadian Legal Clinic

⁵ Supra note 1 at pages 5,6.

⁶ Supra note 1 at page 9.

⁷ Jim Rankin and Paty Winsa "Known to police: Toronto police stop and document black and brown people far more than whites" Toronto Star, March 9, 2012), online: http://www.thestar.com/news/insight/2012/03/09/known_to_police_toronto_police_stop_and_document_black_and_brown_people_far_more_than_whites.html

1

•What are the parameters that should be placed on the practice of street checks and/or community engagement?

•What are reasonable justifications for this practice?

•What tools can be imposed to ensure that street checks are being conducted only when appropriate and justified?

•What is the appropriate retention period for information obtained through such a practice?

•How can the Board ensure that the community plays a meaningful and ongoing role in evaluating this practice and providing feedback to the Board and the Service?

My name is Veronica Salvatierra and I am a Youth Justice Worker at St. Stephen's Community House. I've been in the field for 15 years and in this time, I have heard hundreds of negative interactions with the Toronto Police Service, I have also been witness to many of these. I am not here to bash the service. I am here to provide feedback in the hopes that communities no longer fear the TPS. I have worked with some amazing officers and have a great relationship with the Neighborhood Officers in 14 Division. I am looking forward to developing a pre-charge diversion program with them, to keep youth out of the justice system.

I would like to begin with stating the obvious. We live in the most Diverse City in the World and the Toronto Police should become leaders in cultural competency, inclusivity and bias-free policing. Unfortunately, history has shown that this has not been the case and I am hopeful that the TPS is moving forward in a manner in which community consultations are done as a means to make real change. Whole communities fear and distrust the police and this has caused an inability to conduct proper investigations as no one is willing to talk to your officers.

I DO NOT agree with the collection of information through the methods of street checks. I would rather see this form of investigation end rather than create parameters for it. Unfortunately, since it appears that the Service is continuing this method of investigation, I would propose the following:

- 1) DO NOT replace the receipts with making notes in officer handbooks and providing business cards. This practice will decrease transparency and accountability and will create more distrust.
- 2) Continue providing receipts as this practice will instill accountability and trust in the service.
- 3) Ensure that receipts provide a clear reason for the stop – “community engagement” should never be a reason for a stop.
- 4) Ensure that all stops are legitimate and legal.
- 5) Ensure accountability by placing measures to check that officers adhere to legal stops and providing receipts.
- 6) Hold your officers accountable if they do not follow these practices
- 7) Inform the public that they have the right to receive a receipt, education on what you are doing is important in building trust.

The TP5 holds a lot of power and as such must also be held to a higher standard of accountability. Marginalized communities fear your officers, you should want all communities to trust you and this consultation is an exercise in that. Going forward with the recommendations of the PACER report would cause more harm to these communities if they do not feel involved in decisions that will affect them.

The only reasonable justifications for this practice would be legitimate and legal stops. If someone is breaking a law then the Police have every reason to stop and question someone. The color of one's skin, the clothes they wear, what area of the City they are in or their age group is not a legitimate reason to stop and question someone. I am hopeful that you are honest in your attempts to build a better relationship with communities that have felt like targets for so long.

Issuing receipts that contain clear indicators as to the reason for the stop should be mandatory. The receipts should provide all relevant information for the stop so that the person who is stopped understands clearly why they were stopped and questioned. It is the individual's right to know this and it is the service's obligation to make sure that this information is provided. Not only should receipts be provided, but your organization must come up with appropriate supervision strategies. Every officer should be provided feedback on their work and if they are not conducting themselves in an appropriate manner, there must be progressive discipline and further training opportunities.

The retention of street check information has been harmful and caused many barriers to the success of many marginalized youth in this City. I would offer a six month retention period as a maximum. We know that young people make mistakes, but we also know that many of them learn from their mistakes and make better choices. Retaining this information for longer periods can and will hinder youth from progressing positively.

It is difficult to believe that the service is taking the concerns of carding seriously when it appears as if the board and the service are not working cohesively on the issue. If the board is looking for trust from those who have been most affected by carding then I would encourage you to continue with community consultations and reaching out to frontline workers in areas which have been most affected. Provide community stakeholders with ample time to make accommodations to attend and take part in these conversations and give recommendations. There are a lot of people who would like to see positive change in the service and who are invested in creating trust with and for the police service. Unfortunately, the action of some officers has created such a divide that it is hard to trust the police at this time. In order to rebuild trust you must change police culture, you must come down hard on those officers who are not in line with the vision of a bias-free approach. You must be transparent and available to communities who have been affected. I do not agree with going forth with any of the recommendations of the PACER report without community involvement first, real and inclusive community involvement. Having opportunities such as this is a start and I would like for this to continue.

Thank you.

2

PETER ROSENTHAL, BARRISTER

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Tel: 416 978 3093
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rosent@math.toronto.edu

November 18, 2013

To: Toronto Police Services Board

Re: "Street Checks" and "Carding"

It is reasonable to assume that increased police presence in high-crime areas would have the effects of lessening criminal activity and of increasing the apprehension of criminals. However, "street checks" and "carding" are not necessary components of increased officer presence.

Even in the highest crime areas of Toronto, most residents are law abiding. There is no excuse for subjecting them to any more police interference with their daily lives than residents of other areas are subjected to.

Many people, especially young Black males, are very frequently stopped and carded by Toronto police officers. The PACER Report asserts (on page 7) that there were 1,104,561 people carded from 2009 to 2011 - this is an astonishing figure. In some neighbourhoods, the large number of "street checks" creates an atmosphere similar to that of a military occupation. Moreover, there appear to be very many incidents in which law-abiding people in cars are stopped and carded merely because they are "driving while Black."

I agree with the submission by the Law Union of Ontario that the present practices of street checks and carding violate both the *Canadian Charter of Rights and Freedoms* and the *Ontario Human Rights Code*. In my view, section 7 of the *Charter* is violated by the police interference with liberty that is not in accordance with the principles of fundamental justice. Both the *Human Rights Code* and the equality section of the *Charter* are violated by the disproportionate checking and carding of Black males.

The PACER report asserts that "Legal Services consulted with three eminent lawyers, all representing different legal scope and interests. All three opinions were unanimous in stating police officers may, for recognized policing reasons, approach members of the community and seek their voluntary cooperation in responding to questions and that such police conduct does not violate an individual's rights under the *Canadian Charter of Rights and Freedoms (Charter)*."

I would submit that you should take no comfort from the assertion above, for several reasons. First of all, the "eminent" lawyers are not identified. Moreover, there is no indication of the exact question(s) put to them, and their exact answers. Most importantly, the question of what constitutes "recognized policing reasons" must be interpreted in the context. Random stops of people who are not suspected of having knowledge of any specific crime under investigation is not a "recognized policing reason", except for military police in occupied territories.

To precisely determine the extent to which the practice contravenes the *Charter* and the *Human Rights Code* would require hearings by the courts and by the Human Rights Tribunal. However, to determine whether the practice should continue requires only common sense. As opposed to police presence, there is no significant demonstrated benefit of street checks and carding. On the other hand, the practice has alienated a very large number of people, and such alienation undoubtedly lessens cooperation with the police. I strongly urge, as the Law Union has, that you immediately suspend street checks and carding. Moreover, I would urge you to experiment with a friendly police presence that does not include special interrogations and documentation of innocent people. Such an approach is likely to encourage people to voluntarily provide information about criminal activities.

Thank you for your consideration of this submission.

Sincerely,

Peter Rosenthal

Please address reply to:

Howard F. Morton, Q. C.
31 Prince Arthur Avenue
Toronto, Ontario M5R 1B2
Tel. 416-964-7406 Ext. 155
Fax: 416-960-5456

November 14, 2013

Toronto Police Service Board
40 College Street
Toronto, Ontario M5G 2J3

**THE PACER REPORT
SUBMISSIONS ON BEHALF OF THE LAW UNION OF ONTARIO**

I – THE PACER REPORT AND THE LEGALITY OF STREET CHECKS

The Police Services legitimacy in continuing with the practice of “street checks” or “carding” is dependent on demonstrating two minimum requirements:

- A. That the practice is necessary for legitimate “policing reasons” and is carried out in accordance with the principles prescribed in Section 1 of the *Ontario Police Services Act* RSO 1990.
- B. That the practice does not violate the *Canadian Charter of Rights* or the *Human Rights Act* and is otherwise lawful.

A. LEGITIMATE POLICING REASONS AND SECTION 1 OF THE POLICE SERVICES ACT.

The term “legitimate policing reasons” as relied on the *Pacer Report* to justify the need for “street checks” or “carding” is amorphous.

The *Pacer Report* claims that there is a fundamental need for the collection of personal data and other personal information from law abiding persons who have done nothing which would otherwise justify engagement by the police.

There is a clear onus on the Police Service not only to convince the Board that there are compelling *bona fide* reasons to engage in “street checks” or “carding” but also that

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such reasons are legitimate and that they do not violate the *Charter of Rights* or the *Ontario Human Rights Act*.

From a purely intelligence gathering perspective the police might find it useful to know absolutely everything about everyone at all times. Clearly this Board would not permit such a scenario. The question for the Board therefore is where to draw the line on intelligence gathering operations.

The Law Union of Ontario submits that “street checks” and “carding” as presently conducted and as envisioned by the *Pacer Report* are neither legitimate nor justifiable.

It is further submitted that the practice of “carding” both at present and as envisioned by the *Pacer Report* violate the following principles mandated by section 1 of the *Police Services Act*:

1. The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*
2. The need for cooperation between provinces of Police Services and the communities they serve.
3. The need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society.

B. VIOLATION OF THE CHARTER OF RIGHTS AND FREEDOMS AND THE ONTARIO HUMAN RIGHTS ACT.

In our earlier submissions to the Board (November 12, 2012, January 23, April 24, June 20, 2013) the Law Union of Ontario set out our position that the practice of “carding” or “street checks” violates the *Charter of Rights*, the *Ontario Human Rights Act*, and provincial and municipal privacy legislation.

The recommendations set out in the *Pacer Report* fail to alter the fundamental violation of these provisions.

The approaching, stopping, and questioning of persons solely for the purpose of a “street check” in and of itself violates the *Charter of Rights* in several respects as outlined in our earlier submissions. The fact that such intrusions disproportionately involve male, black, youth as evidenced by reports from Communities and the Toronto Star findings are a clear violation of these safeguards. Street Checks are discriminatory and often race based and as such violate the *Ontario Human Rights Act*.

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While the Pacer Report and its recommendations are an attempt to modify the practice, such do not and cannot legitimize "street checks" because the practice itself is illegitimate.

II. THE LEGAL FOUNDATIONS CITED IN THE PACER REPORT.

At pp 33-37 the Report attempts to justify "street checks" in terms of its legality by citing legal opinions from three unnamed "eminent jurists" all of whom have apparently concluded that there is nothing "legally wrong" with the practice.

To date the Police Service has refused to make these legal opinions available for scrutiny.

Further we are advised that at a private consultation held by the Police Service on October 23, 2013 Mr. Paul Copeland, a member of the Law Union was quoted as being of the view that "street checks" were lawful.

This was simply untrue and Mr. Copeland has so stated in his letter to Chief Blair of October 29, 2013.

Whether or not this assertion apparently made by both Chief Blair and Deputy Chief Sloly was an attempt to mislead and placate persons at the consultation it should be retracted by a letter from Chief Blair to all who were present at the consultation.

It should also be noted that the Law Union of Ontario, whose members are often in daily contact with various communities concerned about "street checks" and have spent considerable time and effort before this Board on the issue, was not invited to the private gathering.

We request that the Board direct Chief Blair to make the three opinions of the "eminent jurists" public in order that there be a further and fairer discussion of the issue of legality.

III. THE POLICE SERVICE BOARD LEGAL OPINION

At its January 23, 2013 meeting, the Board appeared to recognize its obligation, pursuant to the *Justice Morden Report*, to ensure that the policy and practice of "carding" did not violate the *Charter* or Human Rights legislation. The Board requested the City Solicitor to provide a legal opinion on this issue for the March 27, 2013 meeting. This legal opinion has still not been provided and the delay seems indicative of the Board's lack of commitment to the public's concern and apprehension of this issue.

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It is unclear whether the City solicitor's opinion is still in the making or whether the Board has withdrawn its request and is simply going to rely on the opinion of the three lawyers retained by the Police Service.

We request that the Board make its intentions known and advise when the opinion will be completed.

Recommendation

- (i) **The practice of "carding" or "street checks" is a violation of the *Charter of Rights and Freedoms*, the *Ontario Human Rights Act* and privacy legislation both as it presently exists and as envisioned by the *Pacer Report*. The Board is urged to suspend the practice of "carding" and "street checks" until the Board comes to its own independent conclusion on this issue.**
- (ii) **That the Board expedite the completion of the legal opinion as directed at its January 23, 2013 meeting.**

IV. ADVISING PERSONS STOPPED THAT THEIR COOPERATION IS VOLUNTARY

Throughout the Pacer Report the authors continually stress that cooperation by persons stopped on a "street check" is purely voluntary on the part of such persons.

Such assertion seems to be restated throughout the Report in order to buttress the Police Services conclusion that "street checks" are lawful.

However, when the Law Union recommended in its April 24, 2013 submission to the Board that as an interim measure the Board direct that when a person is stopped for a "street check" the officers must immediately advise such person that the cooperation is voluntary, such recommendation was not accepted.

When a person, particularly a young person is stopped by an officer for a "street check" or "carding" the power imbalance is overwhelming.

It is difficult to imagine how the Chief or the Board could oppose such a recommendation. The officer is the legal representative of the state and presumably is aware that the cooperation of persons stopped is voluntary. Many individuals stopped are either unaware or unsure of their right not to cooperate. Many more are hesitant to assert their right not to cooperate because they fear reprisal by the officer as we have outlined in our previous submissions.

The only possible reason to oppose our recommendation is the fear that some persons may actually assert their right not to cooperate. Clearly this fear is not a valid reason for law enforcement officers refusing to simply advise persons of what the law is. This is particularly so in light of the *Pacer Reports* quest for “community engagement” and its repeated reliance on the fact that such cooperation is voluntary.

Recommendation

As an **interim measure** only the Board should forthwith direct that Chief Blair issue a **standing order or directive** mandating that officers immediately advise persons stopped for a “street check” that their cooperation is voluntary.

We recommend that the following statement be used by officers:

I am a police officer.

I would like to ask you some questions.

You have the right to refuse to answer my questions and you are free to go.

The Law Union of Ontario is not attempting to discourage persons from cooperating with the police. To the contrary, we subscribe to Sir Robert Peel’s principles on policing citing that public cooperation is essential to effective law enforcement.

To recognize always that the power of the police to fulfill their functions and duties is dependent on public approval of their existence, actions and behavior, and on their ability to secure and maintain public respect.

To recognize always that to secure and maintain the respect and approval of the public means also the securing of willing cooperation of the public in the task of securing observance of laws.

To recognize always that the extent to which the cooperation of the public can be secured diminishes, proportionately, the necessity of the use of physical force and compulsion for achieving police objectives. [Emphasis added]

Sir Robert Peel: Principles of Policing on the Creation
of the London Police Constabulary, 1829.

CHAIR MUKHERJEE MEMORANDUM

The principles and procedures recommended by the Chair are a significant step in the right direction insofar as the *Ontario Human Rights Act* is concerned. However, the memo fails to address violations of the *Canadian Charter of Rights and Freedoms*.

In fact apart from a passing reference to the *Police Services Act* on page 4, the *Charter* is not even mentioned in the Chairs memo.

This is a major failing of the memo.

Justice Morden in his June 29, 2012 Report into *INDEPENDENT CIVILIAN REVIEW INTO MATTERS RELATING TO THE G-20 SUMMIT* cites sections 1.2 and 31(1) finds as follows:

... The purpose of the provision is rather to remind those acting under the *Police Services Act* of the constant bearing of the *Charter* and the *Human Rights Code* on the performance of their duties. This is critically important because the exercise of so many police powers, for example those of arrest, detention and search and seizure engage rights that are protected by the *Charter* and the *Human Rights Code*.

That having been said however we make the following preliminary comments:

1. Recommendation #2 refers to *bona fide* reasons as a fundamental underpinning for the gathering and retention of "contact information". We submit that rather than an amorphous categorization, i.e. "*bona fide* reasons", the specific reasons or specifications for the collection and retention of information from persons who are simply out and about and have done nothing wrong should be enumerated and spelled out in clear terms.
2. Recommendations #3 and 5 again refers to the terms "*bona fide* investigative reasons" which seems to suggest that persons information will only be collected and retained where such information is demonstrably relevant to specific police investigations.

We are confused as to the meaning of these two recommendations. If they only refer to the retention of information they are inadequate. At a minimum, an officer should only approach a person for the purpose of a street check if the officer has an honest and reasonable belief that such person's information will be demonstrably relevant to a specific, ongoing police investigation.

ALL OF WHICH IS RESPECTFULLY SUBMITTED ON BEHALF OF THE LAW UNION OF ONTARIO.

Howard F. Morton, Q.C.

**Deputation by Wyndham Bettencourt-McCarthy to the Toronto Police Services Board,
November 18, 2013.**

Thank you for the opportunity to speak today. I am here as a public policy graduate student specializing in policing.

In my research I've learned a great deal about the negative impacts of carding on individuals, communities, and public safety.

While both the Toronto Police Service and the Police Services Board have made genuine attempts to improve carding practices, there remains a need to reform carding and adopt alternative policing methods.

Currently the Toronto Police Service uses "carding" (meaning the stopping, questioning and documenting of individuals) as a way to access information and increase public safety. Because individuals can be stopped for vague reasons like "general investigation," carding has resulted in allegations of racial profiling, and data reveals that black men aged 15 - 24 are more likely than white men to be carded by police in every area of Toronto.

When communities and residents believe that police officers are engaging in racial profiling or harassment, police legitimacy declines. Residents who do not trust the police are less likely to report crimes and cooperate with investigations, and are more likely to commit crimes. Lack of public confidence in the police has been identified as the greatest barrier to effective policing. The very tool that Toronto Police are using to try to increase public safety has been proven to actually decrease public safety.

In October, the Toronto Police Service released the PACER Report, an internal evaluation of carding practices. While a number of the Report's recommendations are positive, it fails to offer concrete reforms to carding practices. In contrast, the report released last week by Board Chair Mukherjee recommends substantially changing carding practices to ensure that officers have legitimate investigative reasons for stopping and questioning individuals.

The report I present to you today highlights the importance of adopting Mr. Mukherjee's recommendations. It also outlines an alternative model for effective policing in Toronto, one that does not involve the carding of large groups of people. Instead, this model saves resources and builds trust with communities, while ensuring that police are able to get the information they need to solve crimes.

The PACER Report argues that carding is a necessary policing tool for officers to ensure public safety. However, alternative policing strategies that don't involve carding are currently used in cities across the U.S., and are successful at fighting crime without jeopardizing police legitimacy.

I am here today to present a policing model based on the ideas of focussed deterrence and community policing. Unlike the Toronto Police's current "hot spot policing," where police emphasize high-crime neighbourhoods, focussed deterrence consists of drilling down on one kind of crime and one kind of criminal--namely repeat violent offenders.

The model involves police communicating directly to offenders to deter them from crime. The police offer the offenders incentives if they refrain from being violent, such as social and community resources, and disincentives if they don't, such as intense police scrutiny. This focussed deterrence strategy has dramatically reduced homicide and drug crimes in Boston, Oakland, Baltimore, Memphis, Chicago, and most recently, Detroit. While Toronto Police say that carding is needed to "reduce crime and protect the public," focussed deterrence stops violent crimes from happening before they start, without affecting a large number of innocent people.

For focussed deterrence policing to work, the police must lead the community in carrying out the strategy. In my Report, I highlight a partnership in Los Angeles, where the Police Department worked with a community group of former gang members to provide neighbourhood updates and youth outreach. The police also assigned officers to long-term neighborhood placements. As a result Los Angeles experienced a 60% decrease in violent crime. Toronto Police argue they need carding to get information to solve crimes -- but community policing has proven to be a more

effective way of accessing information and lowering crime rates without engaging in racial bias or profiling.

The Report I present to you today details a plan for the Toronto Police Service that, through focussed deterrence and community policing strategies, could improve relationships between communities and the police while increasing public safety. For it to work, the Toronto Police Service and the Police Services Board must commit to changing carding practices, working directly with offenders and communities, and restructuring the Toronto Anti-Violence Intervention Strategy. By learning from policing policies that have had great success in other cities, we can help to ensure that Toronto remains “the best and safest place to be” for all residents.

Thank you.

Deirdre Williams

From: Derek Moran <billymadisun@yahoo.com>
Sent: Tuesday November 19, 2013 17:13
To: Deirdre Williams
Cc: councillor_delgrande@toronto.ca; councillor_thompson@toronto.ca; jleiper@toronto.ca; ombuds@toronto.ca; akinasto@toronto.ca; mayor_ford@toronto.ca; karen stintz; CanLII Communications; councillor_dford@toronto.ca
Subject: Re: TPSB - Deputations

Hi Deirdre,

What i had to say last night was not very popular, yet, it was the absolute truth. I didnt really have any bullet-points, i just spent the time waiting for the meeting to begin rehearsing in my head what i was going to say and really just improvised while i was sitting at the mic.

Simply put though- Ontario is a COMMON LAW jurisdiction. Police officers though, are instructed i guess to enforce ADMIRALTY Law, based on Maritime Law/the Law of the Water, on DRY-LAND. Ive even had a police officer confirm this to me. How is this even POSSIBLE? It's not. I really have nothing against the Toronto Police, but i just dont want to see it getting as bad here as it is getting in the u.s.A, where the police dont even CARE anymore if they are being filmed committing unspeakable acts of brutality upon us the people. This is all really one big form of TRUST LAW being administered whether anyone realizes or not, and Trust Law, is the HIGHEST form of Law there is. Im studying Donovan Waters 'Law of Trusts in Canada' even as i type to you because they dont, or wont, offer it at George Brown. Hope this helps.

At the end of the night though, i did hand to Councillor Thompson a photocopy from a book that every police officer gets- Roger E. Salhany's 'The Police Manual of Arrest, Seizure & Interrogation,' that gives them EXACTLY the case-law they are to use which explains the COMMON LAW's stance on 'Carding'/street-checks, etc. from Koechlin v. Waugh 1957. MAXIM-of-law: Ignorance of the law is NO EXCUSE.

FUN-FACT: this case-law is NOT included on CanLII's website, and ive pointed this out to them.....you might want to ask yourself- "WHY?" In fact- here's the 'reason' they gave me when i emailed them about it:

"Dear Mr. Derek,

Unfortunately, the decision in the case Koechlin v. Waugh (1957) has not been received by CanLII yet. The decision you are referring might be unavailable electronically; however, we will request an electronic version from our source. After we receive the decision we will include it in our database as soon as possible.

Thank you for using CanLII.

Yours sincerely,

The CanLII Team / L'équipe CanLII"

..i mean- the case IS from 1957 afterall! LOL

By: Derek, one of the 'people' mentioned in the City's Charter AND the Preamble to the City of Toronto Act 2006

p.s.

I voted for MAYOR Ford...not *de facto* Mayor DEPUTY MAYOR Norm Kelly

Obedience to de facto law

15. No person (this goes for PEOPLE, too) shall be convicted of an offence in respect of an act or omission in obedience to the laws for the time being made and enforced by persons in de facto possession of the sovereign power in and over the place where the act or omission occurs.

<http://laws-lois.justice.gc.ca/eng/acts/C-46/page-5.html#docCont>

On Tuesday, November 19, 2013 4:16 PM, Deirdre Williams <Deirdre.Williams@tpsb.ca> wrote:
Good afternoon,

Thank you for attending the special meeting of Toronto Police Services Board last night and for providing your comments to the Board on a very important matter.

We are very interested in having a written copy of your oral remarks and would greatly appreciate, if possible, an e-version of your remarks sent to me at your earliest convenience. It does not have to be lengthy, a brief summary or bullet point notes will be fine.

If you have any questions, please feel free to contact me.

Thank you very much,

Deirdre Williams
Board Administrator
Toronto Police Services Board
Telephone: 416-808-8094
Email: deirdre.williams@tpsb.ca

This e-mail (including any attachments) may contain PRIVILEGED and CONFIDENTIAL INFORMATION only for use of the Addressee(s). If you are not the intended recipient of this e-mail or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify me by telephone or e-mail to arrange for the return or destruction of this document. Thank you.

**TPS Racial Profiling and Carding:
OHRC Deputation at November 18, 2013 Public Meeting
Inviting Public Comment on PACER Report and Mukherjee Report**

The Ontario Human Rights Commission (OHRC) continues to have significant human rights concerns about racial profiling and its impact on racialized and Aboriginal Peoples. In particular, we raised concerns about the current practice of carding¹ in our deputation to the Toronto Police Services Board (TPSB) on June 20, 2013, including:

- The gross over-representation of African Canadians in the Toronto Police Service (TPS)'s contact card database, which strongly suggests racial profiling is occurring²
- Interactions associated with contact cards are commonly experienced as detentions and restraints of liberty³
- Stops may lead to unreasonable questioning, requests for identification, intimidation, searches and aggression.⁴

We called on the TPS to stop carding until policies and procedures were fully developed and assessed against the *Human Rights Code* and the *Charter*. We still take that position.

We have reviewed the Phase II report of the Toronto Police Service's Police and Community Engagement Review (the PACER Report). Several recommendations in the report are positive steps. The OHRC supports creating a standing community advisory committee to assess and address racial profiling;⁵ conducting community surveys to evaluate and address issues relating to public trust and racial profiling;⁶ monitoring officer performance trends and indicators that may relate to racial bias;⁷ and reporting publicly on "Community Safety Note" related procedures and practices.⁸

However, although the PACER report suggests some changes to the practice of carding, it appears that the TPS still intends to stop individuals and ask for, record and store their personal information and circumstances without clear and lawful criteria.

Without such criteria, the TPS and the TPSB cannot ensure that carding complies with the *Human Rights Code* and the *Charter*. Chair Mukherjee also recommends that the Chief of Police develop *bona fide* investigative criteria for carding.⁹ However, we must repeat: until clear and lawful criteria are developed and assessed against the *Human Rights Code* and the *Charter*, or guidance is provided in the form of an order by the Human Rights Tribunal of Ontario or the courts, the practice must be stopped.

Since our last deputation, the Toronto Star released its new analysis of TPS carding data from 2008 to 2012. Those findings have only increased our concerns that TPS

carding continues to have a significant negative impact on the African Canadian community, particularly young Black men:

- Between 2008 and the end of 2012, the number of street checks increased by 23 percent¹⁰
- African Canadians remained three times more likely than White people to be carded. Although they represented only 8% of the Toronto population, African Canadians were the target of 23% of all contact cards filled out between 2008 and 2012¹¹
- In each of the city's patrol zones, African Canadians remained more likely than White persons to be subjected to police stops that result in no arrest or charges being laid¹²
- The number of young Black males, aged 15 to 24, who were documented at least once in the police patrol zone where they live, exceeded the young Black male population for all of Toronto¹³
- The Toronto Anti-Violence Intervention Strategy (TAVIS) unit had the highest Black carding rate of any policing unit. 83% of TAVIS cards were for general investigation (not the result of a specific traffic violation, criminal investigation or suspect description) and 40% of these cards were of African Canadians.¹⁴

The PACER report does not resolve our concern that the TPS practice of carding violates the *Human Rights Code* and *Charter* because:

- It is essential to have a fully-developed and transparent procedure that has been assessed against the *Human Rights Code* and the *Charter*. This is required to provide effective training¹⁵
- It appears that all that is required to card an individual, or complete a "Community Safety Note," is that someone "draw the attention of police" and engage "community safety."¹⁶ This is no different than stopping someone for the purpose of "general investigation"
- There is no indication officers will be instructed to advise individuals who are the subject of "Community Safety Notes" that their participation is voluntary and that they are free to leave
- It appears that being present in a "high crime area" may be enough to justify a "Community Safety Note"¹⁷
- There is a lack of information on how contact card data is used¹⁸
- There need to be clear disciplinary consequences or other accountability measures for officers who exhibit racial bias.

We have reviewed Chair Mukherjee's report and support his recommendations that direct the Chief of Police to:¹⁹

- Develop *bona fide* investigative criteria for carding
- Provide for the monitoring and supervision of officers against the *bona fide* investigative criteria with accountability mechanisms

TPS Racial Profiling and Carding

- Purge existing information from the TPS database where there is no *bona fide* investigative justification for retaining such information
- Eliminate performance and productivity measures based on the collection of contact cards
- Undertake a review of TAVIS practices against the *Human Rights Code*.

We agree that *bona fide* investigative criteria, training, supervision and monitoring, reporting, and accountability mechanisms are essential first steps to stop carding from violating the *Human Rights Code* and the *Charter*.

We continue to offer our assistance to the TPS and TPSB to apply a human rights lens and help ensure that procedures that are developed comply with the *Human Rights Code*.

Endnotes

¹ Toronto Police Services Board Special Public Meeting, Agenda Item 1 (November 11, 2013) ["Mukherjee Report"].

Carding is defined as:

Carding is the police practice of completing a documentation containing information about the individual with whom a contact occurred, and of entering that documentation in a police database.

² Although they represented only 8% of the Toronto population, Black people were the target of almost 25% of all contact cards filled out between 2003 and 2008. Moreover, from 2008 to mid-2011, the number of carded young Black men was 3.4 times higher than the young Black male population. The data indicated that Black people were issued a disproportionate number of contact cards in all Toronto neighbourhoods. See Toronto Star, *Toronto Star Analysis of Toronto Police Service – 2010: Advanced Findings* (2010); Jim Rankin, "Race Matters: When Good People are Swept Up With the Bad" (February 6, 2010) *Toronto Star* A1; Jim Rankin, "CARDED: Probing a Racial Disparity" (February 6, 2010) *Toronto Star* IN1; Jim Rankin & Patty Winsa, "Known to Police: Toronto police stop and document black and brown people far more than whites" (March 9, 2012); ACLC Deputation, April 5, 2012; Toronto Police Services Board Minutes (April 25, 2013) at #P121, Appendix A, Summary of Deputations Toronto Police Accountability Coalition.

³ Toronto Police Services Board Minutes (April 25, 2013) at #P121, Appendix A, Summary of Deputations, Deputation of Law Union of Ontario; CCLA Deputation November 14, 2012.

⁴ CCLA Deputation, March 21, 2012.

⁵ Toronto Police Service, the Police and Community Engagement Review: Phase II – Internal Report and Recommendations (October 4, 2013) at 55 ["PACER Report"].

⁶ *Ibid.*

⁷ *Ibid.*, at 57 and 58.

⁸ *Ibid.*, at 76 and 77.

⁹ Mukherjee Report, *supra* note 1.

¹⁰ *Toronto Star Analysis Package* (August 7, 2013) at 5.

¹¹ *Ibid.*, at 7.

¹² Jim Rankin & Patty Winsa, "Devastating. Unacceptable"; Toronto police board chair appalled by Star findings that show a stubborn rise in the number of citizens stopped and documented by our police officers – with black males heavily overrepresented" (September 28, 2013) *Toronto Star* A1.

¹³ *Ibid.*

¹⁴ *Ibid.*; *Toronto Star Analysis Package* (August 7, 2013) at 15-17; Note: TAVIS involves targeted and pro-active policing in "at-risk" neighbourhoods.

¹⁵ PACER Report, *supra* note 1.

An Informal Interaction is defined as:

A simple "meet and greet" communication between an Officer and a community member, wherein a limited exchange of information may occur. An Informal Interaction concludes with no formal process or documentation submitted.

A Community Inquiry is defined as:

An in-person communication between an Officer and a community member wherein the Officer, for the purposes of preserving the peace and/or preventing crimes or other offences, make inquiry of a community member.

Recommendation 2 includes that the procedure be rewritten to include and define the operational purpose of ensuring public safety, a legal and human rights framework, information management and retention requirements (an interim seven year retention period be set for all Community Safety Notes), new quality control processes and introduces heightened supervision standards.

¹⁶ *Ibid.*, at 53; The PACER Report states:

Of the hundreds of community members encountered by each Officer daily some people, due to conduct and/or context, specifically draw the attention of police. In order to distinguish between casual encounters and such situations wherein Officers are making inquiry as part of their duties under the *Police Services Act*, it is prudent to define the terms, "Informal Interaction" and "Community Inquiry" as components of community safety and deliver training to Officers with respect to the appropriate use of these terms.

¹⁷ *Ibid.*, at 45; The PACER Report states:

For instance, Officers can use objective data such as crime statistics to understand when crimes are being committed in certain geographical locations. With this information, Officers can better explain their enforcement in those locations in a manner supported by objective evidence and based on their duties as police officers to preserve the peace and prevent crimes or other offences.

¹⁸ *Ibid.*, at 42; The PACER Report states the following:

Many people felt that the collection and retention of their personal information on police databases would have a negative effect on future employment prospects as well as their ability to travel... They also felt the expression "known to police" had a damaging effect.

¹⁹ Mukherjee Report, *supra* note 1.

From: Joy Bullen
Concerned Citizen of Toronto

November 18, 2013

To: Toronto Police Services Board.

In respect to the Board's and TPS's proposals related to the issue of street checks in order to assist the Board in establishing an effective policy.

I wish to register my concern that the street checks, performed by the Toronto Police, abrogate our charter rights, specifically:

- S.8 - protection against unreasonable searches or seizures;
- S.9 - protection against arbitrary detention;
- S.15 - guarantees of equal protection and equal benefit of the law...

I have chosen to address the Board, to ask that you take immediate and meaningful action to stop the practice which has variously been described as Carding, Street Checks, and Community Engagement, unfairly visited on young Black males in Toronto, by the Toronto Police. This practice is breeding fear and division; is destroying the lives of our sons and brothers and robbing our country of so much of the life blood that is necessary for building vibrant, healthy communities. This is a practice that for decades has drawn a dividing line between the majority - white and powerful, and the minority - the city's Black population, and in particular our Black youth.

For decades smart business leaders have cautioned that success depends on respecting and valuing the diverse communities that make up Toronto. Some progress has been made, but there remain many areas of concern where minorities are faced with discriminatory practices which challenge and burden our efforts to build successful and meaningful lives. At the same time, the demographic of our city is changing. The power brokers will not always be predominately straight, white and male. Today, determined minorities are making valuable contributions to Canada and Toronto in every area - education, finance, politics, law enforcement, judiciary and more... Any policy that has the effect of driving a wedge between groups of our society along racial and socio-economic lines will eventually fail and will cause serious damage to the fabric of Canadian society. Carding is one such policy.

For decades, community leaders, academics, the media and ordinary citizens have decried the practice of carding and called for change. (These are listed in the Board report). Yet, we continue to suffer increasing numbers of our Black youth being singled out, being questioned by the police for no legal justifiable reason, and then having their personal information held in a police database indefinitely!

Thereafter, we become *'known to the police!'*

The proposals submitted by the Toronto Police Service and by the Chair of the Police Board both acknowledge that the practice of Carding as it is administered today, disadvantages individuals and disproportionately disadvantages Black youth. The remedial measures recommended are useful as a means of directing and monitoring legal and justified police activity and enforcing accountability. They represent an opportunity for the Police to re-define *Community Engagement*; to re-build trust and to put real meaning to '*serve and protect*'.

However, these measures cannot be effectively applied in an atmosphere of mistrust or in an environment where the rights of individuals are not being respected.

First, The Board must exercise its legal right and responsibility to protect the public by ruling that the practice of carding / street checks/ community engagement, shall cease immediately.

Next, the Board, in conjunction with the Police Services and community groups, must clearly define valid police interaction with community members paying particular attention to those areas of systemic racial profiling that must be eradicated.

The citizens of Toronto cannot be expected to tolerate another decade of studies and good intention. In particular, we, the members of Toronto's Black community cannot be expected to continue to sacrifice our young men, our families' future, our rightful place in Canadian society, while we wait for the Police to 'get it right'.

In her July 2, 2013 letter to the Board, Barbara Hall, chair of the Ontario Human Rights Commission, recommended "that the current practice be stopped until policies and procedures are fully developed and completely and transparently assessed against the *Code* and the *Charter*."

I support that recommendation.

Respectfully

Joy Bullen

Maurice Stone
Deputation to Toronto Police Services Board
November 18, 2013

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c/o Corner Drop-in
St. Stephen's Community House
260 Augusta Avenue
Toronto, ON M5T 2L9

Subject: PACER Report

My name is Maurice Stone. I am speaking to you today as an individual, and as a user of the St. Stephen's Community House Corner Drop-in. I am speaking to you today about carding, what we know in the community as "208s". The practice of carding has been very harsh for people of colour in Toronto.

Stopping and detaining people for no apparent reason is a violation of the Canadian Charter of Rights and Freedoms. Section 8 states that "everyone has the right to be secure against unreasonable search or seizure." Section 9 says "everyone has the right not to be arbitrarily detained or imprisoned."

Also, the Ontario Human Rights Commission has said that it agrees this practice could violate people's Charter rights. They note that people who are stopped feel they are being detained and having their liberty violated. Many who are stopped feel they are pressured to give information. Many feel intimidated, searched and treated aggressively.

We agree with Barbara Hall, head of the Commission, that carding be stopped until policies and procedures are put in place that don't violate the Human Rights Code and the Charter.

The PACER report is completed. It is supposed to be the Police answer to the problems with carding people. But this report does not recommend doing away with carding. This practice will continue if the report is adopted. But it will be tweaked, slightly changed. The Toronto Police must end carding. It is a harsh practice which has no practical use. People in my community feel we are unfairly targeted. This is because Blacks are stopped three more times than whites by police.

People had asked for those who get stopped and detained and written up to be given a receipt to explain the reason they are stopped. This is a good idea. But this report wants people to instead be given a police business card. This makes no sense. We wanted the receipt so people had a written record that they had been detained and questioned.

The stopping of mostly people of colour shows discrimination by the police. It shows racial profiling. Young black males are often stopped. We feel our community is under attack. It means these youth won't trust the police. Police should be trying to create better relations with these youth. Instead, these youth don't want to talk to police because of this racist activity.

Police spend a lot of tax dollars entering the data they find from carding in a computer. All this time results in very little crime being discovered.

Thank you.

Deputation to the Toronto Police Service by Knia Singh – November 18, 2013

Good evening to Police Services Board Chair Alok Mukherjee, Deputy Chief Peter Sloly, and the Toronto Police Service.

I want to start my deputation by stating that all the statements I make during my deputation are aimed at identifying the challenges that are not generally spoken about from a personal perspective, and on behalf of African-Canadians that are subject to the practice of racial profiling, overt racism, and the violation of Charter Rights that are guaranteed by the Canadian Charter of Rights and Freedoms.

The subject we have been discussing recently in the media through the admirable bravery of Jim Rankin and the Toronto Star in the series 'Known to Police' is a continuation of articles of recent years regarding the disproportionate amount of bias in the Toronto Police Service towards people of colour, specifically males of African-Canadian descent. Without these studies and articles the practice of racial profiling would have continued to go unchecked, uncriticized, and detrimental to the African-Canadian community.

This problem is not a problem that started in 2005 with what has been labelled 'the summer of the gun', or with the 2002 Star articles exposing the racial bias in policing, or even with what few will remember as the Rodney King Riots that took place in downtown Toronto.

This problem of what is called 'racial profiling' is a deeper problem that can only be compared to the practice of Apartheid South Africa, Nazi Germany, and the rounding up of people of Japanese descent during the second World War.

What the media and those not affected by this practice call 'racial profiling', I call 'Malicious Racial Prosecution' (MRP) for short. If racial profiling was an accurate description as to what takes place when a young African-Canadian man is involved, it would be as simple as the perpetrator seeing someone of African-Canadian descent and assigning a characteristic to them based on previous experience, or lack of previous experience, in what we commonly call prejudice or bias. With those prejudices or bias we will come to a decision in our mind about how that person acts or will act, and the type of things they do or like to do, and even some of their behaviours and tendencies.

By this definition we can deduce that racial profiling is done by an average member of our society probably everyday without malice, threat, or intent to harm.

Now let us put this same practice into context when a member of the Toronto Police Service engages in this thought process while in the line of duty. As Law Enforcement Officers the Toronto Police have a duty to enforce the law and have been granted special powers under the Police Services Act, there is also attributed and implicit powers based on their position and status within society that civilians grant the police in order for them to perform their duty. The powers that have been associated with police are the legitimate use of force, the ability to carry a firearm, and the powers of arrest and detention towards anyone that is suspected of committing a crime.

When a member of a powerful institution has over 7,000 members that are equipped with that duty and responsibility to the public as a whole, there should be no interference of personal bias with the execution of their duties to enforce the law.

Unfortunately when you combine personal bias with a position of authority, and the ability to impose force, you may end up with an abuse of power situation that is eventually played out. This can happen in a classroom where a teacher has something against a student based on how they speak, what clothes they wear, or even how they look. It would not be justified for that teacher in their responsibility to the whole class to mistreat particular students based on their preconceived biases, and the effects of an authority figure constantly reprimanding, or picking on a student would eventually result in some defiance from the student, and internal doubts of ability, worth and competency.

This situation is dramatically amplified when you have someone in a position of authority, who is socially accepted to impose force upon you without justification or repercussion.

Some members of the Toronto Police Service are analogous to the teacher who gives preferential treatment to some, and picks on others.

The members of the Police Service have a responsibility to treat everyone equally and fairly in the commission of their duties, and although this may not be practical for everyday citizens, this is imperative that people who uphold and enforce the law adhere to the strict practice of equality amongst all residents.

The practice of targeting young Black males does not occur in isolated rare incidents as the Police would like to believe. There is an accepted police culture that sanctions and protects the actions of other officers when they are in violation of this extremely important principle.

I have been subject to arbitrary detention and racial profiling by police, and fortunately those experiences have not materialized into any type of physical harm done to me. However the psychological impact of hoping that an officer you are faced with is not one that had a bad day or decides to push his powers past the limit is something that I do not look forward to when an interaction with police under the carding context takes place.

CONTACT CARD INTERACTION

The experience of being racially profiled by police is not one that is as simple as being stopped and asked a few questions. In order to provide an accurate account of events I refer to the Police Officer as the Officer, and the average African-Canadian male as the victim. For many African-Canadian males it happens while driving it usually starts with an officer visually spotting a victim and deciding to follow the car, in some instances u-turns and unsafe driving manoeuvres are committed by police in order to get within close proximity of the victim. At that point, once the Officer is behind the victims vehicle the vehicles licence plate is entered to the police database to check the ownership and registration of the vehicle. The most logical reason this would be done is because there is some sort of suspicion that the person driving may not be in good standing with the law. This practice is usually done based on appearance. The only conclusion I reasonably come up with is that the Officer has implied guilt of an alleged offence based on the race of that person.

That is the issue the African-Canadian community is facing, whether driving or walking young people of African-Canadian descent are common targets of interrogation for Police Officers.

Take for instance when a car containing more than one person is pulled over, the general practice that victims of racial profiling are subject to is one officer will ask the driver for his licence and registration, while the other officer will engage the passengers and request identification from them. There is absolutely no justifiable grounds for requesting information from passengers of a car for a traffic stop. The driver is obligated by the Highway Traffic Act to produce identification upon a vehicle stop, but that is it. Too many victims of Malicious Racial Prosecution are unaware of the right to refuse to answer questions, or are too afraid to refuse based on fear of physical violence and arrest from the police. That is not the practice of a free and democratic society, that is the practice of Apartheid South Africa.

DISCREPANCIES IN CONTACT CARD INFORMATION

It must be pointed out that after I made my freedom of information request it took over the mandated 30 days to receive my documents. I was notified of the police request to extend their time to provide me with the information to 60 days. I did not appeal that decision and allowed for 60 days to pass. After 60 days I did not receive my information and had to write a letter to the police Chief demanding I be provided with my information.

I was provided with some reports but not the memo notes that I requested. It has been 11 months since my request which is approximately 270 days past due of what is required by law.

What is most alarming about the documents I received is that two of the entries list my birthplace as Jamaica, one of the entries listed me as having a possible immigration warrant. I find these entries dangerously inaccurate as I was born in Toronto, I was never asked by any officer what was my place of birth and am perplexed who two separate entries have this as part of my documents. In addition my height has ranged from 8 feet tall and 141lbs, to 5 foot 9 160lbs. I have also been noted in the contact cards as "rude to police", and "claimed racial profiling".

If this is the information that is kept on me, how can I or anyone in the city rely on the accuracy of Police reports if they are highly inaccurate and biased. The fact is I have never been charged or arrested, yes I have a pseudo criminal record that has the potential to endanger my safety upon future contacts with the police.

I request that the Police Services Board, and the Chief of Police ensure that any person stopped and questioned is first informed of their right not to answer any questions. Only then can the Police Service claim that the practice is not illegal or violating the Charter of Rights and Freedoms.

The next step would be to provide strict punitive damages to officers that engage in racial profiling that will effectively act as a deterrent to racial bias and discrimination enacted upon members of the African-Canadian community.

Finally the goal of the Toronto Police Services Board, and the Toronto Police Service should be to eliminate the practice of racial profiling, carding, and Malicious Racial Prosecution. I thank the Board for the opportunity to address these concerns.

Sincerely,
Knia Singh

Deputation by Bev Salmon to Toronto Police Services Board – Nov 18th 2013

Re: Developing Policy Governing Police Street Checks

Police Chief Blair, Chair Mukherjee and Members of the Board:

I am here to voice my strong opposition to the practice of police street checks and carding. It is shocking that over one million people have had their personal information documented over a four year period. I shall not be contributing to comments on how to make an ill conceived policy of carding better and am saddened that the community is expected to buy into this policy proposal. Enshrining this practice of carding into policy will set back Police and Black Community relations years as it smacks of racial profiling and Anti-black racism. I do support other TAVIS ,CRU and RRT initiatives that increase safety in the community

Many of us have worked with police and community over the past half century to improve police/black community relations. It took decades of committee meetings, report recommendations, police sensitivity training and community based policing initiatives to foster more positive police/youth relations. This is not the time to turn back the clock.

As a private citizen as well as a former Metro Toronto Councillor, I have been directly involved in race relations and criminal justice issues affecting our city and specifically our Black Community. These issues included police shootings, stopping and searching innocent blacks, including myself and friends, for what is known as driving while black, beatings of young males, black, and some who appeared to be black, at Cherry Beach. My own home was harassed at two am by two police officers after I had reported several incidents back in the 70's. Albeit, that was not on your watch but we must learn from the past and not repeat such indignities.

I urge you to cease this carding practice that disproportionately impacts too many of our innocent Black youth, particularly socially and economically deprived males who have been caught in the web of criminalization. The effect of being carded can have severe and long lasting consequences for too many innocent people. This is not the South Africa of old. 21st century Toronto commands a more humane approach to crime that does not deprive selected citizens of their freedoms and rights to equality .

If carding is wrong for your own sons and daughters, it is wrong for all. Please examine your own conscience and discard this practice. In my opinion no amount of tweaking will make this practice acceptable. I appeal to you to reject recommendations 19, 21, 29 in the PACER Report and any other policy recommendations before you related to the continuation of carding. Thank you.



Speaking notes for November 18 Toronto Police Services Board meeting.

On October 29, 2013 I sent a letter to Chief Blair and Deputy Chief Sloly concerning the PACER report and legal opinions obtained by the Toronto Police Service. There were three attachments with that letter. That material was sent electronically to the Board on November 13 and I asked that it be made available to all board members. I hope that you have it with you.

In that letter I expressed concern about what had been said by Chief Blair and Deputy Chief Sloly at a by invitation only meeting held on October 23 at the Toronto Police Headquarters.

On January 23, 2013 when I made submissions to the Board on the carding issue, I reviewed how long it had taken the Board to adequately deal with the issue of the Toronto Police Association endorsing political candidates. It seems to me that on the carding issue the Board is starting to be as slow as it was on the endorsing candidates' issue.

As I recall, the Board set up a committee chaired by Marie Molinar to look into the carding issue. The Board or perhaps the Committee requested a legal opinion on the carding issue. My understanding was that that opinion was to come from Albert Cohen of the city of Toronto legal department. So far as I

am aware no such opinion has been provided to the Board. It certainly has not been made available to the public or to other interested parties.

After the January 23 meeting, the Board and the police moved away from using the Form 208 cards to using a form called 306, with receipts to be given to all those people who were stopped for the purposes of carding.

The PACER report was presented by the police. In my view, it represents an attempt by the police to continue their very broad-based intelligence gathering program in the community, basically the same as the carding process. But with the elimination of the use of cards and the elimination of the use of giving receipts, I think there is a possibility that it will be much more difficult for the media and other people using Freedom of Information requests to be able to monitor what the Toronto police are doing in intelligence gathering and in monitoring whether there is racism in the targeting of those chosen to be stopped for intelligence gathering purposes.

The reports from last week, and in today's Toronto Star indicate that after that Form 306 was introduced, the amount of carding was reduced to one quarter of what had been going on.

Mr. Mukherjee, in paragraphs 2 and 3 of his Recommendations dated November 11, 2013, refers to "supporting the legitimate collection and retention of information needed for bona fide

investigative purposes.” He went on to state “ Gathering and retention of contact information under clearly defined circumstances can be a legitimate tool for effective police work related to criminal investigation and crime prevention”.

I interpret those words to mean that the Toronto Police should only be questioning people during investigative detentions as contemplated by the Supreme Court of Canada in the Mann decision. If I am wrong in that interpretation, please let me know right now.

If I am right in my interpretation, Mr. Mukherjee is totally at odds with the wish of the Toronto Police Service as expressed in the PACER report to continue on with its random street stop, intelligence gathering program. As expressed by the Law Union of Ontario and by the Toronto Police Accountability Coalition, as well as by the Black Action DefenCe Committee class-action lawsuit, I believe that the carding process, and what is proposed under the PACER report, violates the Canadian Charter of Rights and Freedoms and the Ontario Human Rights Act.

In the PACER report the Toronto Police stated that they had obtained from “three eminent jurists” opinions which were unanimous in stating that “the police officers may, for legitimate policing reasons, approach members of the community and seek their voluntary cooperation in responding

to questions seeking personal data and other information collected for law enforcement purposes. There is nothing legally wrong with collecting, using or retaining that information.”

Requests have been made to know the names of the “three eminent jurist” who prepared the opinions and to have access to the opinions. Don McLeod, who was recently appointed to the Ontario Court of Justice, was named by Deputy Chief Sloy as one of the lawyers who had provided an opinion. So far those opinions have not been released. It has been claimed that the opinions are privileged. I would point out that the privilege in relation to the opinions is the privilege of the Toronto Police Service. The Police can release the opinions if they want to.

In my communications regarding the carding issue I had communicated with the chair of your committee dealing with the carding issues, Ms Molinar, by email dated October 24, 2013. I said that I would like to see the three legal opinions. I said that if the Board decides there is some basis for declining to produce the opinions, I would like to hear the Board’s reasons for not producing them. I went on to say that if the Board claims there is solicitor-client privilege that precludes producing the opinions, I would ask that the Board consider redacting those parts of the opinions where privilege is

claimed. In my email I said to Ms. Molinar that, if she felt it appropriate, I would ask her to raise the issue of these opinions with her fellow Board members.

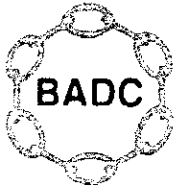
Mr. Mukherjee, in an email exchange I had with you, on October 13 you told me that Ms. Molinar had shared with you our email exchange. You told me there had been an ongoing discussion with Chief Blair with respect to making public the three legal opinions. You said the Board is mindful of the fact that these opinions were provided to the Chief in a privileged manner. You went on to note that the opinions are summarized in some detail in the Chief's PACER report.

So far I have not seen the opinions.

As I understand the Morden Report, it was recommended that the Toronto Police Services Board have a counsel separate from counsel for the Police and separate from counsel for the City of Toronto, to advise the board on legal issues. Justice Morden felt there would be a conflict of interest for the Board to get legal opinions from the city legal department or from lawyers retained by the Toronto Police Service.

In my view it is the duty of the Board to set the policy to be followed by the police on this important issue. It is not up to the Police to tell the Board what it plans to do and have the Board in effect rubberstamp the intelligence gathering program that has been run by the Toronto Police Service under the

carding process and now proposed to be done under the PACER process.



BLACK ACTION DEFENSE COMMITTEE INC.

Comite' d'action pour la de'fense des Noirs Inc.

944A St. Clair Avenue West, Toronto, Ontario M6C 1C8 Tel: (416) 656-2232 Fax: (416) 656-2252

Mr. Chair Man and Members of the Toronto Police Services Board,

Greeting From the Black Action defense Committee

PRESENTATION: by Kingsley Percival Gilliam (M.A)

When I immigrated to Canada over forty-five years ago, Canada was deemed to be a society governed by the Rule of Law. In societies governed by the Rule of Law. Individuals are free to pursue any activity that is not an offense under a statute, regulation or municipal bylaw. They were free to travel and pursue the activities without interference of the police unless the police had reasonable and probable grounds that the individuals or groups had committed an offence or was likely to do so.

The founders of Black Action Defense Committee, including the following: Charles Roach, Dudley Laws, J. Edward Clarke, Milton Blake, Denham Jolly, Lennox Farrell, Brian Hyman, Monifa Young, Sharona Hall, Nomvuyo Hyman and many others marched in Toronto on African Liberation Day annually for the dismantling of the Apartheid System and the "Pass laws" in South Africa. We marched, raise funds, held rallies and conducted a variety of public education activities, to galvanize support for our mission to dismantle apartheid.

Many of these leaders have passed on but were they to return today, they would be shocked that this debate is taking place in Toronto, about Toronto Police Service, and not about the brutal police forces of apartheid regime that ruled South Africa back then.

Without that criteria being demonstrated by a police officer, the officer had no right to stop, detain or question an individual or group of citizens.

When the Canadian Constitution was repatriated from Britain in 1982 it included a Charter of Rights and Freedoms that are guaranteed to every citizen or everyone in Canada.

The issue of individual rights set out in the section 6 of the Charter and cited below, below are only limited by such limits that are demonstrably justified in a free and democratic society.

Former Chief Justice Brian Dixon developed the Oakes Test , to guide the courts in determining what constitutes a demonstrably justified reason to limit a Charter Right.

Canada is a State Party to the UN Charter and to the Universal Declaration of Human Rights. Therefore, the practice of racial profiling is not only offensive to the Ontario Human Rights Code and the City of Toronto Equity Bylaw, but to the Canadian Charter of Right and Freedoms and the Universal Declaration of Human Rights, to which Canada is a State Party.

The Police Services Board as the governing body for Police in Toronto has a duty to ensure that police services under its control, conform to the Police Services Act, The Human Rights Code, The Charter of Rights and Freedoms and the Universal Declaration of Human Rights.

As a governing body, you have failed miserably to protect society from abuses of their rights by Toronto Police under the TAVIS program, which is a violation of the Canadian Charter of Rights and Freedoms, as well as for other abuse of power.

The draft policy you presented for discussion Mr. Chairman, is a Step in the Right Direction.

Black Action Defense Committee supports the draft policy in principle but request certain changes to strengthen the proposed policy.

(1) BADC recommends that the Charter of Rights be added to the list of legislations in paragraph #3 of the draft policy that must be adhered to in all police contacts with civilians.

(2) That bona fide investigative reasons, on which police will be allowed to stop and Question individuals, as referred to in #2 and 4, be clearly defined and itemized.

In essence, BADC welcome this draft policy and regret greatly that it was not put in place earlier. Had that been done thousands of citizens would not have experienced the police racial profiling and the humiliation of the illegal stops and interrogation by Toronto Police.

THE PACER REPORT

In Reviewing The PACER Report I was trucked by the List of contributors to the report, all of whom are either Police officers or employees of Toronto Police Service.

This report is written from the Perspective of the offender, in this case the police, trying to justify and legitimize there action.

This type of activity is a make work project for an oversized police force which continues to increase despite the steady reduction of crime over the past seven years as the PACER Report indicates.

Had the police had legitimate policing activities to occupy the force, they could not find the manpower to undertake these types of activities that are not sanctioned by law.

In Essence they become lawmakers without legislative authority.

The PACER Report is analogs a fox guarding the chicken coup.

What is most insidious about this practise of Carding and the stark evidence of racial profiling in this practice is that the vast majority of cases have resulted in no charges, therefore it is not subject to the scrutiny of the court, where the charter rights can be invoked and the **Oakes test applied.**

During the 1970's and 80's The Black Community in Toronto conducted an annual African Liberation Day March in Toronto to liberate South African Blacks and Non-white Peoples from the oppression of the Pass Laws. As a young man I participated in that annual event along with other stalwarts form our community including the Founders of the Black Action Defense Committee.

It is therefore ironic that today my wife is moving freely in South Africa without any police interference while our children cannot walk the streets of Toronto without being stopped and questioned by the police without a reasonable and probable ground other that the fact that they are Black.

I should further not that over the past 45 years I have Participate in numerous community leaders delegations to Toronto Police. We have met with Chief Adamson and Deputy Chief Acroid, then Chief Acroid, on a plethora of issues some of us have met with Chief Fantino over many issues including Police Racial Profiling, hover the issue of CARDING is the most dangerous issue to police community relations that I have encountered. As a social sciences professional, my concern is that the police might be winning the small battle but looses the war.

It should be noted that society functions on the principle of shared values, customs morays, and laws which are inculcated in every citizen and the vast majority of citizens uphold the law. The police was created to deal with the few members of society that disregard the societal values and laws.

What the practice of carding is doing, is creating generations of citizens that hate the police because of the constant harassments. This precludes these generations from having respect for the police and makes them hostile to the police.

With that rapidly growing segment of the population hating the police for justifiable reasons, the city would go bankrupt in a few years trying to provide enough police, guns, and teasers to keep society safe.

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

LEGAL RIGHTS

Marginal note: Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Marginal note: Search or seizure

8. Everyone has the right to be secure against unreasonable search or seizure.

Marginal note: Detention or imprisonment

9. Everyone has the right not to be arbitrarily detained or imprisoned.

Marginal note: Arrest or detention

10. Everyone has the right on arrest or detention

- (a) to be informed promptly of the reasons therefor;
- (b) to retain and instruct counsel without delay and to be informed of that right; and
- (c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

y Rights In the following sections:

Section 1 of the *Canadian Charter of Rights and Freedoms* is the section that confirms that the rights listed in the Charter are *guaranteed*. The section is also known as the **reasonable limits clause** or **limitations clause**, as it legally allows the government to limit an individual's *Charter* rights. This limitation on rights has been used in the last twenty years to prevent a variety of objectionable conduct such as hate speech (e.g., in *R. v. Keegstra*) and obscenity (e.g., in *R. v. Butler*). It has also been used to protect from the unreasonable interference of government in the lives of people in a free and democratic society by defining these limits.^[common law]

When the government has limited an individual's right, there is an onus upon the Crown to show, on the balance of probabilities, firstly, that the limitation was *prescribed by law* namely, that the law is attuned to the values of *accessibility* and *intelligibility*; and secondly, that it is *justified in a*

free and democratic society, which means that it must have a justifiable purpose and must be proportional.

Prescribed by law

The inquiry into whether the limitation was "prescribed by law" concerns the situation where the limitation was the result of some conduct of a government or its agents and whether the conduct was authorized by accessible and intelligible law. The Court articulated when the authorization would fail for being too vague as "where there is no intelligible standard and where the legislature has given a plenary discretion to do whatever seems best in a wide set of circumstances".¹¹¹

Where there is no lawful basis for the conduct the limitation will certainly fail. In *Little Sisters Book and Art Emporium v. Canada*, the Supreme Court found that the conduct of a border official in singling out homosexual from heterosexual reading materials was not authorized by any law. Likewise, police conduct that was not exercised under lawful authority will fail at this stage.¹¹²

Oakes test

The primary test to determine if the purpose is demonstrably justifiable in a free and democratic society is known as the **Oakes test**, which takes its name from the essential case *R. v. Oakes* [1986] 1 S.C.R. 103 which was written by Chief Justice Dickson. The test is applied once the claimant has proven that one of the provisions of the Charter has been violated. The onus is on the Crown to pass the Oakes test.

In *R. v. Big M Drug Mart Ltd.* (1985), Dickson asserted that limitations on rights must be motivated by an objective of sufficient importance. Moreover, the limit must be as small as possible. In *Oakes* (1986), Dickson elaborated on the standard when one David Oakes was accused of selling narcotics. Dickson for a unanimous Court found that David Oakes' rights had been violated because he had been presumed guilty. This violation was not justified under the second step of the two step process:

1. There must be a *pressing and substantial objective*
2. The means must be *proportional*
 1. The means must be *rationaly connected to the objective*
 2. There must be *minimal impairment* of rights
 3. There must be proportionality between the infringement and objective

The test is heavily founded in factual analysis so strict adherence is not always practiced. A degree of overlap is to be expected as there are some factors, such as vagueness, which are to be considered in multiple sections. If the legislation fails any of the above branches, it is unconstitutional. Otherwise the impugned law passes the Oakes test and remains valid.

Since *Oakes*, the test has been modified slightly.¹¹¹

IN light of the foregoing decision and test proscribed by the Supreme Court of Canada, is there a Statute Law, the authorizes the police to infringe Peoples charter Rights, by stopping, detaining and questioning them?

Without Such a statute law, we have no basis for limiting a right guaranteed under the Charter. Therefore the Practice of stopping innocent civilians without reasonable and probable grounds is ultra vires the charter and must be stopped.

Toronto Police Accountability Coalition
c/o Suite 206, 401 Richmond Street West, Toronto ON M5V 3A8.
416 977 5097. info@tpac.ca , www.tpac.ca

November 14, 2013.

To: Toronto Police Services Board.

Responding to the PACER Report and Chair Mukherjee's recommendations

The Board must take leadership in this situation when police management wants to go down the same old path which is wrong for the reasons stated below. The Board should declare that carding will no longer be tolerated in the Toronto Police Service and it should put senior managers in place who will ensure this happens. Once that is done one can talk more realistically about how police can regain their reputation in communities in Toronto.

There are three reasons why the system of carding, street checks, and/or community engagement is wrong and should not be employed by the Toronto Police Service. This remains true even with the proposed changes to the practise of carding suggested in the PACER report and in the recommendations of Chair Alok Mukherjee. The practise must be stopped for any single one of these reasons.

1) It discriminates against certain kinds of individuals.

Evidence from the last ten years of carding as analyzed by the Toronto Star show that young black males are targeted proportionately at least three times as often as young white males. That is discrimination, prohibited by Ontario legislation.

In her letter of July 2, 2013 to the Board, Barbara Hall, chair of the Ontario Human Rights Commission stated:

The Commission has a number of significant human rights and *Charter* concerns with the current practice of carding. It has also heard similar concerns from community and advocacy groups. Those concerns include:

* the gross over-representation of African Canadians in the Toronto Police Service's contact card database, which may indicate racial profiling;

* how interactions associated with contact cards are commonly experienced as detentions and restraints of liberty; and

* how such stops may lead to unreasonable questioning, requests for identification, intimidation, searches and aggression.

She recommended "that the current practice be stopped until policies and procedures are fully developed and completely and transparently assessed against the *Code* and the *Charter*."

Tweaking the system as proposed in the PACER report and in Mr. Mukherjee's proposals will not end the racial discrimination which has occurred for more than a decade. The practise of carding must be stopped.

2) It violates the Canadian Charter of Rights and Freedoms.

Section 8 of the Charter states "Everyone has the right to be secure against unreasonable search or seizure."

Section 9 of the Charter states "Everyone has the right not to be arbitrarily detained or imprisoned."

Many of those stopped by police feel intimidated by police, and know that friends who have attempted to enforce their charter rights by refusing to answer questions or refusing to be searched by police, have been subject to reprisals by police. There is a major power imbalance between police and young men, and police use various kinds of strategies to force answers, such as by saying it's a criminal investigation (when it isn't), or alleging that they have drugs (when they have no reasons to believe they do), or threatening to take them to the police station. In these cases, Charter Sections 8 and 9 are breached.

The police service has three legal opinions which all conclude that carding does not infringe the Charter. Since the police refuse to make these opinions public, it is difficult to know whether the police interpretation of the opinions is correct or whether the legal opinions themselves deal with the reality of carding. The PACER report summarizes these opinions in one paragraph on page 8 indicating that all opinions are based on the notion of 'voluntary co-operation' although it is clear that the practice of carding involves coercion and often threats by police.

3) As a strategy for gathering information it is inefficient and offensive.

Police want to create good relations with youth, but carding creates hostility with youth, as it would with others who are stopped and interrogated for no good reason. Police need good relations with communities, but carding creates insecurities and people in communities who are constantly carded shown they do not want to cooperate with police – a reaction which probably allows more crime to occur than if police had fostered good relationships. To those stopped, carding seems like a racist activity since blacks are stopped far more frequently on a proportional basis than whites. Senior police officers can say as often as they want that racial discrimination will not be tolerated, but those who are carded feel it happens every day, and the evidence shows it does.

Carding prejudices the many who are not involved in crime and creates much unneeded cost by requiring police to enter a lot of data in the computer that has no relationship to criminal activity. For all of the stops made, it discovers very little crime.

Using euphemisms such as 'community engagement' and 'community safety notes' cannot hide the fact that this activity is still carding and this practise must stop. Trying to beautify something which is wrong – by community engagement, by "intercultural development", and so forth – does not make it right.

We also note that PACER recommends getting rid of the 208 Form, or the mysterious 306 Form, apparently to save officers time. But the real reason is surely to make this data hard to access by members of the public since there will be no way to file a Freedom of Information request to get this data in bulk. We remember that the force and the Board fought very hard against releasing carding data to the Star from the 208 Forms, forcing it all the way up to the Court of Appeal which in 2009, after a three year court battle, required the release of the information.

As well PACER proposes that instead of someone getting a receipt explaining the reason they were stopped, they receive a business card, and this is supported by Mr. Mukherjee. This is ludicrous. The receipt was requested to ensure there was a written reasonable justification for being detained and frisked. Those carded should be given a receipt of the information gathered from them by police so they know what information police are recording about them.

We understand that since the Board had required the issuance of a receipt identifying the officer(s) involved, carding has been substantially reduced, some say as much as 75 per cent. We understand that officers don't do carding so they will not have to issue receipts. Receipts, or carbon copies, should be mandatory if carding continues.

Yours very truly,

A handwritten signature in black ink, appearing to read "J. Sewell". The signature is fluid and cursive, with a large initial "J" and "S".

John Sewell for
Toronto Police Accountability Coalition.

Dr. Alok Mukherjee, members of the Toronto Police Services Board.

Chief Bill Blair and Command officers.

My name is Ben Lau and I am the co-chair of the Chinese Community Consultative Committee.

About a year ago, Toronto Police initiated the PACER project , spearheaded by Supt. Dave McCleod under the direction of Deputy Peter Sloly and Chief Bill Blair. Consultation meetings were held with external agencies and community groups including the 17 CPLC's (Community Police Liaison Committees) and 9 Community Consultative Committees such as Muslim, French, South West Asia, Asia Pacific and Chinese communities. During the consultation process, issues were raised and discussed with the view to effect bias free carding process while carrying out the legitimate collection and retention of information for bona fide investigative purpose. Subsequent consultation meetings were held as follow-ups and further refinement.

I am pleased to inform the Board that a lot of the comments and recommendations identified by the community members at the consultation meetings were incorporated in the PACER reports such as:

- The importance of bias-free delivery of police services as articulated in the new Core Value Statement;
- The appropriateness of information on the card;
- Use and Retention of data;
- Effective communications to communities on the Carding process;
- Enhanced training to police officers on Charter of Rights and Freedom, Human Rights and Anti-racism disciplines;
- Making embracing diversity and inclusiveness as part of the assessment for new applicants and promotions;

- A community advisory committee to work with the Service in the delivery of the bias-free police services.

The fact that the Pacer Task force has incorporated many of our comments into their recommendations reflects the Service's commitment to work in partnership and in collaboration with the communities in the delivery of a bias-free police service in Toronto.

With reference to the Carding process. I would be very upset if my son comes home to me and tells me that he has been stopped almost once a week by the police on his way back home. However, if I know that my son is being stopped at 2 O'clock in the morning in a dark alley with a couple of his friends on a weekday. Then I would ask myself what he and his friends are doing at 2 in the morning while there is a school day in the next morning.

It is my opinion that there are two components for the success of community safety and the quality of community living..... and they are Policing and Community Components.

On the Policing component and under the PACER recommendations, Toronto Police would provide a bias-free delivery of police service with due consideration to the Charter of Rights, Human Rights, Anti-Racism and non-profiling practices, while engaging with the community. A standing community advisory committee would be working with Toronto Police. This committee should also include youths from different cultural backgrounds. An effective communication be established with the community on the bona fide criteria of the carding process. It is only through effective communications and increase in awareness that will improve the quality community engagement and interaction.

On the Community component, we need to be "Watchful and Helpful"Watchful in the way to ensure our community is a safe community.....Helpful in the way that if there are safety issues then we, as community members, would identify issues and challenges, and seek out resolutions through our local police and local government/agencies.

It is only through Trust and Mutual Respect, and meaningful dialogues that communities and Police can work in partnership and in collaboration for the betterment of living standards in our community. One way to achieve this is through quality communications and engagement.

It is my opinion that the decrease in crime rate in recent years can be attributable to the TAVIS initiatives in priority neighbourhoods. The presence of police uniforms certainly provides security and comfort to the neighbourhood.

The PACER recommendations become a pivotal point in Toronto Police's delivery of police services as it creates a new Core Value Statement emphasizing the importance of quality interactions/engagement with the community in the delivery of biased-free police services for the many years to come.

Ben Lau, P. Eng, MSc, BSc

Co-Chair

Chinese Community Consultative Committee



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19

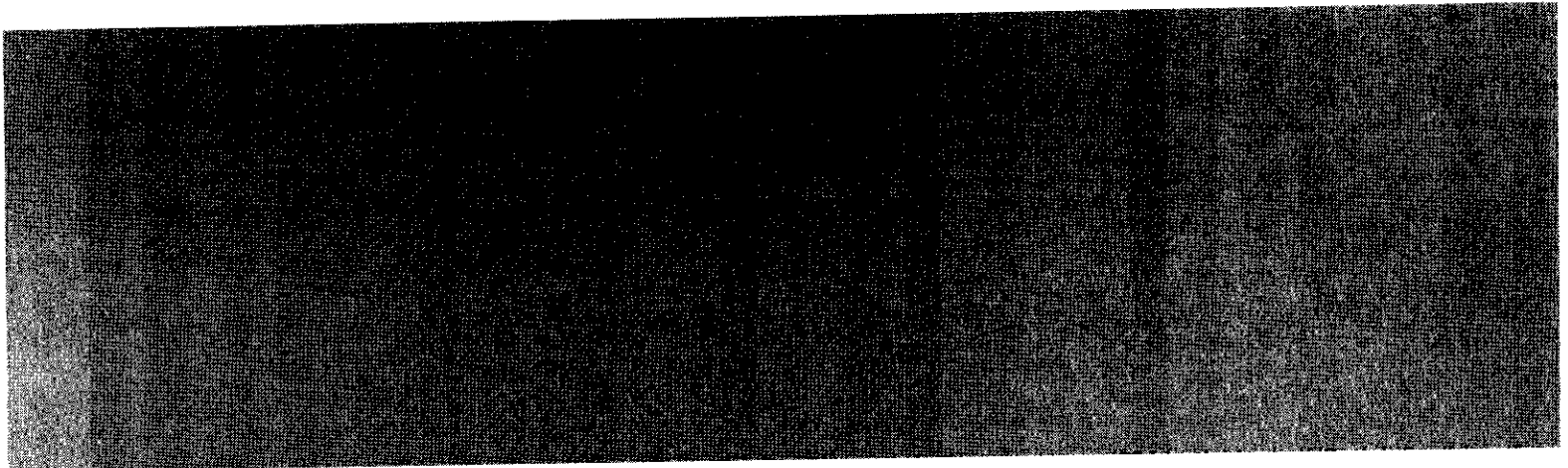
Documents pertaining to the deputation by:
Kris Langenfeld

Solicitor-Client Privilege in Canada

Challenges for the 21st Century

Professor Adam Dodek, B.A., J.D., LL.M.
University of Ottawa

Discussion Paper for the Canadian Bar Association
February 2011





PCC and GMP roll out stop and search changes



Police are rolling out a new stop and search recording procedure across Greater Manchester.

From Wednesday 12 December 2012, officers will no longer fill out a long form and will instead record a stop and search encounter via their radio.

Tony Lloyd, Greater Manchester's new Police and Crime Commissioner, hopes the changes

will help improve the public's confidence in the police.

Tony said: "The use of stop and search by the police has had a damaging impact on communities in the past. I've listened to people's concerns and their experiences of stop and search and it's clear that this can be a reason when confidence in the police is low, particularly among young people and black and minority ethnic communities. I hope these changes and the accompanying police officer training will help to improve the relationship between these groups and the police."

The changes to the recording procedure mean that stop and search data is more immediately available and can be better monitored and scrutinised.

Tony added: "The majority of Greater Manchester's residents are law-abiding and they need to be reassured that stop and search is being used at the right times and in the right way, to target criminals and keep our communities safe. Hopefully, this new recording procedure will go some way in building public trust."

Deputy Chief Constable, Ian Hopkins said: "Stop and search is a powerful tool in the fight against crime and it is important that we make sure we use this power proportionately to make sure we give people the reassurance that it is not being abused."

"The system has been piloted in Bolton, Wigan and Trafford before rolling it out across the Force. It has proved to be much quicker and less intrusive for members of the public."

"The fact that the radio automatically records time, date, location and other information means less bureaucracy and allows our officers more time to be out and about keeping our communities safe."

General is required to independently determine whether every government bill introduced in Parliament and every regulation complies with the *Charter* and the *Canadian Bill of Rights*.¹⁸³

Second, the B.C. Court of Appeal demonstrated a willingness to examine the purpose of the Privilege and its application to Crown Counsel. As stated at the outset of this section, the purpose of the Privilege does not fit well with the provision of legal advice by government lawyers. The B.C. Court of Appeal stated that “[s]olicitor-client privilege is designed primarily as a means to ensure that clients are not reluctant to obtain legal advice, or reticent in discussing their situations with their solicitors. It is a means to foster the proper taking and giving of legal advice. These considerations are not germane to the situation of Crown counsel in charge approval decisions.”¹⁸⁴ As one Australian commentator has noted, public officials are expected to be frank and candid in their communications with each other, whether or not these communications may later be disclosed and these expectations should be the same whether the public official is a lawyer or a non-lawyer.¹⁸⁵ From here we turn to the issue of waiver.

It is not clear who can effectively waive the Privilege for a public sector entity. Absent formal waiver of the Privilege, it is difficult to predict when a court will find that the Privilege has been effectively waived. Ontario court decisions appear to hold that a single city councillor is not in a position to waive the Privilege, by leaking privileged information.¹⁸⁶ Somewhat differently, a Nova Scotia court held that a public official had impliedly waived the Privilege when he released a summary of the legal advice he had received.¹⁸⁷ That case is instructive because of its detailed analysis of the authority to receive and to release legal advice within government as well as its willingness to find implied waiver. It held that the public official’s authority to waive privilege is coextensive with his authority to acquire the opinion in the first place. In many ways, this assertion raises more questions than it does answers. Within government, legal advice is requested and received in both informal and formal ways. Legal advice is provided through formal legal opinions, but also through e-mail, phone conversations or meetings. Functionally, those requesting the legal advice have the authority to do so. Does this mean that they also have the authority to waive it? Complicating the matter further is the role of political staff, a group whose legal authority is often unclear. If they are acting as agents of their Minister, they have the *de facto* authority to request legal advice. Do they also have authority to waive the Privilege if they release the substance of that advice to someone outside of government?

Public officials are concerned that providing privileged information to government bodies such as the Auditor General may constitute waiver of the Privilege. A dispute on this issue arose in 2010 between the Government and the Auditor General in Nova Scotia. The Nova Scotia Government first refused to provide the Auditor General with privileged information. It has since promised to introduce legislation which would state that disclosure of privileged information to the Auditor General does not constitute waiver of the Privilege. In general, where statutory provisions

¹⁸³ See *Department of Justice Act*, R.S.C. 1985, c. J-2, s. 4.1; *Canadian Charter of Rights and Freedoms Examination Regulations*, SOR/85-781; *Canadian Bill of Rights*, S.C. 1960, c. 44, s. 3; and *Canadian Bill of Rights Examination Regulations*, C.R.C., c. 394.

¹⁸⁴ *Supra* note 181 at para. 105.

¹⁸⁵ Chris Wheeler, “Rethinking the Legal Advice Privilege in the Public Sector Context” (2006) 50 AIAL Forum 31 at 36.

¹⁸⁶ See *1784049 Ontario Ltd. (c.o.b. Alpha Care Studio 45) v. Toronto (City)*, 2010 ONSC 1204, [2010] O.J. No. 764 at para. 19 citing *Donofrio v. City of Vaughan* 2008 CanLII 37054 (Ont. S.C.J.); *Elliott v. City of Toronto* (2001), 54 O.R. (3d) 472 (S.C.J.); *City of Guelph v. Super Blue Box Recycling Corp.* [2004], 2 C.P.C. (6th) 276 (Ont. S.C.J.); *Imperial Parking Canada Corp. v. City of Toronto*, [2006] O.J. No. 3792 (S.C.J.).

¹⁸⁷ *Peach v. Nova Scotia (Transportation and Infrastructure Renewal)*, 2010 NSSC 91, [2010] N.S.J. No. 121.

"The technology also allows us to closely monitor and ensure that officers are using the power to stop and search to combat crime effectively by being in the right place, at the right time."

The changes to the stop and search recording procedure follow a pilot on the Bolton division. Trafford and Wigan rolled out in October 2012.





Any person who is searched, and not arrested, is offered a receipt of the encounter. This records the details of the officer and date and time of the encounter.

Details from the receipt can be used to ask for a written record of the search by completing an enquiry form online or by visiting a local police station.

The changes are as a result of an amendment to the Police and Criminal Evidence Act (PACE) 1984, which came about as a result of the Crime and Security Act 2010.

To find out more about police stops in Greater Manchester go to <http://www.gmpcc.org.uk/tools-and-resources/stop-and-search/>

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Stop and Search

[Domestic violence](#)

What is stop and search?

[Hate crime](#)

There are a number of laws which give powers to officers to stop and search a person or vehicle without having to arrest them first. The ones used most commonly are:

[Online safety](#)

- Code A of the **Police and Criminal Evidence Act 1984 (PACE Code A)**, relating to searches for weapons, stolen property, display grade fireworks or items which could be used to commit a crime;

[Mental health](#)

- Section 23 of the **Misuse of Drugs Act 1971**, relating to searches for controlled drugs;

[Stop and Search](#)

- Section 60 of the **Criminal Justice and Public Order Act 1994**, relating to searches for offensive weapons or dangerous instruments which might be used, or might have been used in incidents of serious violence; and

[Young people](#)

- Sections 43 and 47A of the **Terrorism Act 2000**, relating to searches for evidence or articles in connection with terrorism.

Where can searches be carried out?

Searches under PACE Code A can only be carried out if you are somewhere where there is public access.

Searches under the remaining powers may be carried out anywhere, but use of the powers under Section 60 of the Criminal Justice and Public Order Act 1994 and Section 47A of the Terrorism Act 2000 must be authorised by senior police officers and confined to specific geographic areas and periods of time.

Why might I be stopped and searched?

Searches under PACE Code A, Section 23 of the Misuse of Drugs Act 1971 and Section 43 of the Terrorism Act 2000 can only be carried out if the officer has reasonable grounds for suspecting that they will find what they are looking for.

Searches under Section 60 of the Criminal Justice and Public Order Act 1994 and Section 47A of the Terrorism Act 2000 do not require the officers to have reasonable suspicion that they will find anything.

The officer must have sufficient grounds for searching you, for example you must be linked to accurate and current intelligence and information. Unless you match a description of a suspect, officers must not base their grounds on your appearance, what you are wearing or the fact that you may have committed a crime in the past. Appearance would include factors such as your age, disability, gender reassignment, race, religion/belief, sex or sexual orientation.

What isn't a stop and search?

A screening (knife) arch is not a stop and search. You can't be forced to go through the arch, but refusal may result in further police action, or even a full search.

An officer can confiscate cigarettes or alcohol in view (even if it is in a container) if you are underage. This is also not a stop and search.

Who can 'stop and search' me?

Police officers can search people or vehicles under any of the powers listed above.

Police officers must be in uniform to carry out searches under Section 60 of the Criminal Justice and Public Order Act 1994 and Section 47A of the Terrorism Act 2000. Police officers don't have to be in uniform to carry out searches under the other powers listed, but they **must** show you their identity card before searching you.

Searches will normally be done by an officer of the same sex as you, although you can be asked to remove headgear by an officer of the opposite sex for searches under Section 47A of the Terrorism Act 2000.

Chief constables in each force area can choose whether to give powers to police community support officers (PCSOs) to carry out some types of stop and search. In Greater Manchester, PCSOs can search vehicles and their contents, or anything that the vehicle driver, passengers or pedestrians are carrying under Section 47A of the Terrorism Act 2000, provided this has been authorised by a senior officer and they are accompanied by, and are being guided by a police officer.

How should a stop and search be carried out?

Before you or your vehicle are searched, the officer must take all reasonable steps to ensure that you understand:

- that you must stay and be searched;

- what law they are using; their name and/or ID number;
- the police station they work from;
- why they stopped you;
- what they are looking for;
- and your right to a record of the search or a receipt.

If you are being searched under Section 60 of the Criminal Justice and Public Order Act 1994 and Section 47A of the Terrorism Act 2000 you will be told that the use of the power has been authorised for that locality and time period.

The officer will try and get your co-operation for the search, but may use reasonable force if necessary.

Searches will normally be carried out close to where you were stopped.

You should only be detained for as long as necessary to carry out the search. Extensive searches must only be carried out when the circumstances suggest it is necessary.

What will I be asked to remove?

The officer can ask you to remove your coat, jacket or gloves in public.


An officer searching you under Section 60 of the Criminal Justice and Public Order Act 1994 can ask you to remove anything that they believe you are wearing to conceal your identity in public.

An officer searching you under Section 47A of the Terrorism Act 2000 can ask you to remove headgear and footwear in public in addition to your coat, jacket and gloves. They may take you somewhere out of public view to ask you to remove any headgear worn for religious reasons. Officers do not need to be the same sex as you (except under Section 43 of the Terrorism Act 2000) but will be mindful of cultural sensitivities around the removal of headgear worn for religious reasons.

The officer can ask you to take off more than an outer coat, jacket or gloves, and anything you wear for religious reasons, such as a face scarf, veil or turban, but only if they take you somewhere out of public view. Searches involving the removal of anything worn for religious reasons or more than outer coat, jacket, gloves will normally be done by an officer of the same sex as you and out of sight of anyone of the opposite sex.

What is recorded?

From December 2012, the record of a stop and search in Greater Manchester will be made via the officer's radio. Details recorded include the grounds for the search, the object being searched for and the outcome of the search. The officer will give you a paper receipt with this information on.

Stop & Search Receipt	
THIS IS NOT AN IDENTITY CARD	
<p>To obtain a full written record of a stop and search (including completion of an internet enquiry page at www.gmp.police.uk/stopandsearch), or produce this receipt at any Greater Manchester Police station, alternatively please dial 0161 672 9000.</p> <p>You can only ask for a full written record within three months of the encounter. Further information regarding your rights and entitlements in relation to stop and search encounters can be found on the internet (www.stopandsearch.com).</p> <p>Greater Manchester Police attract your opinion. In return we will accept your comments. For a copy of our complaints or general feedback guide contact us on our website: www.gmp.police.uk</p> <p>If you need to contact the police in an emergency dial 999. For non-emergency calls and general enquiries please dial 0161 672 9000.</p>	
	
Officer PIN:	
Officer Surname:	
Station based at:	
Time (24hr):	
Date:	
Officer:	
Power used:	<input type="checkbox"/> POLICE and/or other <input type="checkbox"/> SBA (UK/CA) <input type="checkbox"/> 1987 Terrorism Act
FORM 60623/04 (04/2011)	

If you are searched in Greater Manchester and you are not arrested as a result, you have the right to a receipt, unless there are exceptional circumstances which make it impracticable for the officer to make a record of the search. The officer will record the following details:

- the details of the officer;
- the time and date of the encounter;
- the power used to search you.

You can use the details from the receipt to ask for a full written record of the search by completing the [Greater Manchester Police enquiry form](#) or by visiting your local police station. This information is only available within three months of the stop.

If you are searched but then arrested and taken to a police station, the officer must record details of the search on the custody record. You have a right to receive a copy of the search record.

Separate records must be made for each person and vehicle searched, unless the reason for choosing to search you and your vehicle and what is being looked for are the same.

What can I do if I'm unhappy about the way I was treated?

The officer should treat you fairly and with respect. If you are unhappy with how you were treated, you can complain. If you feel you were treated differently because of your ethnic background, age, sex, sexual orientation, gender identity, religion or a disability, you can complain.

It will help if you keep the receipt that the police officer gave you. To find out how to make a complaint please visit our [complaints](#) page. You can also contact Greater Manchester Police on 101 or visit the [GMP website](#).

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Criminal Justice and Public Order Act 1994

1994 c. 33 ▶ Part IV ▶ Powers of police to stop and search

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Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Criminal Justice and Public Order Act 1994. Any changes that have already been made by the team appear in the content and are referenced with annotations.

[View outstanding changes](#)

Powers of police to stop and search

60 Powers to stop and search in anticipation of violence.

- [F1(1)]** If a police officer of or above the rank of inspector reasonably believes—
 - (a) that incidents involving serious violence may take place in any locality in his police area, and that it is expedient to give an authorisation under this section to prevent their occurrence, or
 - (b) that persons are carrying dangerous instruments or offensive weapons in any locality in his police area without good reason,
 he may give an authorisation that the powers conferred by this section are to be exercisable at any place within that locality for a specified period not exceeding 24 hours.]
- (2)
- (3) If it appears to **[F2an officer of or above the rank of]**superintendent that it is expedient to do so, having regard to offences which have, or are reasonably suspected to have, been committed in connection with any **[F3activity]** falling within the authorisation, he may direct that the authorisation shall continue in being for a further **[F424]** hours.
- [F5(3A)]** If an inspector gives an authorisation under subsection (1) he must, as soon as it is practicable to do so, cause an officer of or above the rank of superintendent to be informed.]
- (4) This section confers on any constable in uniform power—
 - (a) to stop any pedestrian and search him or anything carried by him for offensive weapons or dangerous instruments;
 - (b) to stop any vehicle and search the vehicle, its driver and any passenger for offensive weapons or dangerous instruments.
- F6(4A)**
- (5) A constable may, in the exercise of **[F7the powers conferred by subsection (4) above]**, stop any person or vehicle and make any search he thinks fit whether or not he has any grounds for suspecting that the person or vehicle is carrying weapons or articles of that kind.
- (6) If in the course of a search under this section a constable discovers a dangerous instrument or an article which he has reasonable grounds for suspecting to be an offensive weapon, he may seize it.
- (7) This section applies (with the necessary modifications) to ships, aircraft and hovercraft as it applies to vehicles.
- [F8 F9(8)]** A person who fails]
 - F10(a)** to stop, or to stop a vehicle; **F9** . . .
 - F9(b)**

when required to do so by a constable in the exercise of his powers under this section shall be liable on summary conviction to imprisonment for a term not exceeding one month or to a fine not exceeding level 3 on the standard scale or both.

- (9) Any authorisation under this section shall be in writing signed by the officer giving it and shall specify **[F11]** the grounds on which it is given and the locality in which and the period during which the powers conferred by this section are exercisable and a direction under subsection (3) above shall also be given in writing or, where that is not practicable, recorded in writing as soon as it is practicable to do so.

[F8(9A)] The preceding provisions of this section, so far as they relate to an authorisation by a member of the British Transport Police Force (including one who for the time being has the same powers and privileges as a member of a police force for a police area), shall have effect as if the references to a locality in his police area were references to a place specified in section 31(1)(a) to (f) of the Railways and Transport Safety Act 2003.]

- (10) Where a vehicle is stopped by a constable under this section, the driver shall be entitled to obtain a written statement that the vehicle was stopped under the powers conferred by this section if he applies for such a statement not later than the end of the period of twelve months from the day on which the vehicle was stopped **F12**...

[F13(10A)] A person who is searched by a constable under this section shall be entitled to obtain a written statement that he was searched under the powers conferred by this section if he applies for such a statement not later than the end of the period of twelve months from the day on which he was searched.]

- (11) In this section—

[F14[F15“British Transport Police Force” means the constables appointed under section 53 of the British Transport Commission Act 1949.]]

“dangerous instruments” means instruments which have a blade or are sharply pointed;

“offensive weapon” has the meaning given by section 1(9) of the **M1** Police and Criminal Evidence Act 1984 **[F16** or, in relation to Scotland, section 47(4) of the **M2** Criminal Law (Consolidation) (Scotland) Act 1995]; and

F17

“vehicle” includes a caravan as defined in section 29(1) of the **M3** Caravan Sites and Control of Development Act 1960.

[F18(11A)] For the purposes of this section, a person carries a dangerous instrument or an offensive weapon if he has it in his possession.]

- (12) The powers conferred by this section are in addition to and not in derogation of, any power otherwise conferred.

Annotations:

Amendments (Textual)

- F1** S. 60(1) substituted (1.3.1999) by 1997 c. 21, s. 8(2); S.I. 1999/5, art. 2
- F2** Words in s. 60(3) substituted (1.3.1999) by 1997 c. 21, s. 8(4)(a); S.I. 1999/5, art. 2
- F3** Word in s. 60(3) substituted (1.3.1999) by 1997 c. 21, s. 8(4)(b); S.I. 1999/5, art. 2
- F4** Word in s. 60(3) substituted (1.3.1999) by 1997 c. 21, s. 8(4)(c); S.I. 1999/5, art. 2
- F5** S. 60(3A) inserted (1.3.1999) by 1997 c. 21, s. 8(5); S.I. 1999/5, art. 2
- F6** S. 60(4A) repealed (14.12.2001) by 2001 c. 24, ss. 125, 127(2)(i), Sch. 8 Pt. VI
- F7** Words in s. 60(5) substituted (1.3.1999) by 1998 c. 37, s. 25(2) (with Sch. 9); S.I. 1998/3263, art. 4
- F8** S. 60(9A) substituted (1.7.2004) by The British Transport Police (Transitional and Consequential Provisions) Order 2004 (S.I. 2004/1573), art. 12(3)(a)
- F9** S. 60(8)(b) and word “or” immediately preceding repealed (14.12.2001) by 2001 c. 24, ss. 125, 127(2)(i), Sch. 8 Pt. VI
- F10** S. 60(8)(a)(b) substituted (1.3.1999) for words in s. 60(8) by 1998 c. 37, s. 25(3); S.I. 1998/3263, art. 4
- F11** Words in s. 60(9) inserted (1.3.1999) by 1997 c. 21, s. 8(6); S.I. 1999/5, art. 2
- F12** Words in s. 60(10) repealed (1.3.1999) by 1997 c. 21, s. 8(7); S.I. 1999/5, art. 2
- F13** S. 60(10A) inserted (1.3.1999) by 1997 c. 21, s. 8(8); S.I. 1999/5, art. 2
- F14** S. 60: definition of “British Transport Police Force” ceases to have effect (1.7.2004) by virtue of Railways and Transport Safety Act 2003, (c. 20), ss. 73, 120, {Sch. 5 para. 4(1)(b)(2)(f)} (with s. 72); S.I. 2004/1572, art. 3(ddd)(jjj)
- F15** Definitions of “British Transport Police Force” and “policed premises” in s. 60(11) inserted (14.12.2001) by 2001 c. 24, ss. 101, 127(2)(f), Sch. 7 para. 16(3)
- F16** Words in s. 60(11) inserted (1.3.1999) by 1997 c. 21, s. 8(9); S.I. 1999/5, art. 2
- F17** S. 60(11): definition of “policed premises” repealed (1.7.2004) by The British Transport Police (Transitional and Consequential Provisions) Order 2004 (S.I. 2004/1573), art. 12(3)(b)
- F18** S. 60(11A) inserted (1.3.1999) by 1997 c. 21, s. 8(10); S.I. 1999/5, art. 2

Modifications etc. (not altering text)

- C1** S. 60 extended (S.) (1.3.1999) by 1997 c. 21, s. 8(11); S.I. 1999/5, art. 2

Marginal Citations

- M1 1984 c. 60.
M2 1995 c. 39.
M3 1960 c. 62.

[F19] 60AA Powers to require removal of disguises

(1) Where—

- (a) an authorisation under section 60 is for the time being in force in relation to any locality for any period, or
- (b) an authorisation under subsection (3) that the powers conferred by subsection (2) shall be exercisable at any place in a locality is in force for any period,

those powers shall be exercisable at any place in that locality at any time in that period.

(2) This subsection confers power on any constable in uniform—

- (a) to require any person to remove any item which the constable reasonably believes that person is wearing wholly or mainly for the purpose of concealing his identity;
- (b) to seize any item which the constable reasonably believes any person intends to wear wholly or mainly for that purpose.

(3) If a police officer of or above the rank of inspector reasonably believes—

- (a) that activities may take place in any locality in his police area that are likely (if they take place) to involve the commission of offences, and
- (b) that it is expedient, in order to prevent or control the activities, to give an authorisation under this subsection,

he may give an authorisation that the powers conferred by this section shall be exercisable at any place within that locality for a specified period not exceeding twenty-four hours.

(4) If it appears to an officer of or above the rank of superintendent that it is expedient to do so, having regard to offences which—

- (a) have been committed in connection with the activities in respect of which the authorisation was given, or
- (b) are reasonably suspected to have been so committed,

he may direct that the authorisation shall continue in force for a further twenty-four hours.

(5) If an inspector gives an authorisation under subsection , he must, as soon as it is practicable to do so, cause an officer of or above the rank of superintendent to be informed.

(6) Any authorisation under this section—

- (a) shall be in writing and signed by the officer giving it; and
- (b) shall specify—
 - (i) the grounds on which it is given;
 - (ii) the locality in which the powers conferred by this section are exercisable;
 - (iii) the period during which those powers are exercisable;

and a direction under subsection (4) shall also be given in writing or, where that is not practicable, recorded in writing as soon as it is practicable to do so.

(7) A person who fails to remove an item worn by him when required to do so by a constable in the exercise of his power under this section shall be liable, on summary conviction, to imprisonment for a term not exceeding one month or to a fine not exceeding level 3 on the standard scale or both.

(8) The preceding provisions of this section, so far as they relate to an authorisation by a member of the British Transport Police Force (including one who for the time being has the same powers and privileges as a member of a police force for a police area), shall have effect as if references to a locality or to a locality in his police area were references to any locality in or in the vicinity of any policed premises, or to the whole or any part of any such premises.

(9) In this section **[F20** "British Transport Police Force" **]** and "policed premises" each has the same meaning as in section 60.

(10) The powers conferred by this section are in addition to, and not in derogation of, any power otherwise conferred.

(11) This section does not extend to Scotland. **]**

Amendments (Textual)

F19 S 60AA inserted (14.12.2001) by 2001 c. 24, ss. 94(1), 127(2)(d)

F20 S. 60AA: definition of "British Transport Police Force" ceases to have effect (1.7.2004) by virtue of Railways and Transport Safety Act 2003, (c. 20), ss. 73, 120, {Sch. 5 para. 4(1)(b)(2)(f)} (with s. 72); S.I. 2004/1572, art. 3(ddd)(jjj)

Modifications etc. (not altering text)

F3 Ss 60, 60AA amended (1.7.2004) by Railways and Transport Safety Act 2003, (c. 20), ss. 73, 120, {Sch. 5 para. 4(1)(a)(2)(f)} (with s. 72); S.I. 2004/1572, art. 3(ddd)(jjj)

[F21 60A Retention and disposal of things seized under section 60.

- (1) Any things seized by a constable under section 60 [F22 or 60AA] may be retained in accordance with regulations made by the Secretary of State under this section.
- (2) The Secretary of State may make regulations regulating the retention and safe keeping, and the disposal and destruction in prescribed circumstances, of such things.
- (3) Regulations under this section may make different provisions for different classes of things or for different circumstances.
- (4) The power to make regulations under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Annotations:

Amendments (Textual)

F21 S 60A inserted (1.3.1999) by 1998 c. 37, s. 26 (with Sch. 9); S.I. 1998/3263, art. 4

F22 Words in s 60A(1) inserted (14.12.2001) by 2001 c. 24, ss. 94(2), 127(2)(d)

[F23 60B Arrest without warrant for offences under section 60: Scotland.

In Scotland, where a constable reasonably believes that a person has committed or is committing an offence under section 60(8) he may arrest that person without warrant.]

Annotations:

Amendments (Textual)

F23 S 60B inserted (1.3.1999) by 1998 c. 37, s. 27(2) (with Sch. 9); S.I. 1998/3263, art. 4

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JUSTICE IS NOT COLOUR-BLIND

Justice IS NOT Colour-Blind Campaign (JINCB)
November 18, 2013

Toronto Police Service Board
40 College Street
Toronto Ontario
M5G 2J3

SUBJECT: Re: Item 1 – Police Carding and the Issue of Profiling

My name is Audrey Nakintu. I am a mother, an activist and will be speaking on behalf of the Justice Is Not Colour Blind (JINCB) campaign. JINCB is made up of a body of Greater Toronto Area residents that have been fighting against racial profiling and police brutality. Just about a year ago I gave a deputation in which I mentioned that racial profiling is contrary to the Charter of Rights and Freedoms section 15(1) and that the Toronto police had made a commitment to eradicating racial profiling in the Human Rights Project Charter (May 17, 2007) and they failed to do so. This condemnation has become a recurring theme with other deputations in the last year that have come from a diverse cross section of the citizens of Toronto.

So here we are a year later and I'll call it the moment of truth. Is the Toronto Police Service finally ready to transform a police force that is proven to have a history of racial profiling? Mr. Chair (Alok Mukherjee) has referenced the Supreme Court of Canada when he called the practice "so odious", he also eloquently pointed out in his report that "there has been substantial discussion of this issue by academics, inquiry commissions and journalists" the climax of course being the most recent extensive analysis of racial profiling by the Toronto Star that started in 2002; yet again we have a new set of recommendations for the Toronto police by the Chair of the Toronto Police Service Board. I will have to conclude that the racism in the Toronto Police Service is inherent.

The top cop, the chief of police is indeed himself a privileged white man whom racial profiling vis-a-vis “street checks” climbed to ridiculous levels under his watch as Toronto’s police chief. Racism is quite entrenched in this white supremacist farcical wonderland of multiculturalism also known as the city of Toronto.

African Canadians in this city, especially African men are defenceless and deserve protection like any other law abiding resident or citizen. We are under constant surveillance, harassment and police brutality. The multitude of reports, inquiries and exposes have been unable to protect us and keep us safe from a racist and menacing few from the Toronto Police Service. It makes me wonder, if there are frontline police officers so arrogant in their contempt of African people by being openly brutal in their harassment and indeed murder of African men, what then are the feelings of their superiors and supervisors behind the scenes whom have most likely encouraged and rewarded the behavior and attitudes of their officers. A class action lawsuit has been filed against this Board and the Toronto Police Service. This matter is in the hands of the judiciary now since we see no plans to punish the individual officers that engage in racial profiling.

We have moved to a different forum where a judiciary has to force concrete and permanent transformations in how the Toronto Police Service “serves and protects” ALL. An arrogant racist will never change his or her superiority complex, however, if they are consistently reprimanded and called out on their behavior, then they will be forced to curb it or at least keep it under control. Like I mentioned earlier African men are defenceless from racist cops who know will get away with harassing, brutalizing and even killing them.

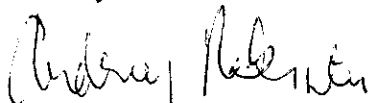
We are seeking remedies against the entire institution of the Toronto Police Service. JINCB is in 100% solidarity with the class action suit. In addition to the remedies requested in the class action, JINCB’s demands are:

- We want an immediate end to all racist programs, policies and practices that target Black people, which include but are not limited to: PAVIS/TAVIS, carding and racial profiling.
- We want an end to the practice of sweeps and raids of Black people, which have been used under false pretexts, in order to criminalize the community.
- We reject the notion of justifiable homicide and want the families of all Black victims of police killings, to be fully compensated by the Province of Ontario, for their pain and suffering, whether or not there are civil actions pending.

- Given the documented physical, psychological, mental, economic and other injuries resulting from being racially profiled, we demand the criminalization of the practice of racial profiling. We believe that racial profiling is a tenet of systemic racism, which is institutional racism. Consequently, we want the immediate arrests and vigorous prosecutions of all police officers in Ontario that have killed Black victims.

If the Board and Toronto Police Service is interested in cooperating with the African Canadian community then it must create the conditions which the community can trust its personnel. This starts with actively listening to the community and this will at least signal to the African Canadian community that indeed the police are on the right course of action.

Thank you



Audrey Nakintu

Justice IS NOT Color Blind (JINCB)

(A)

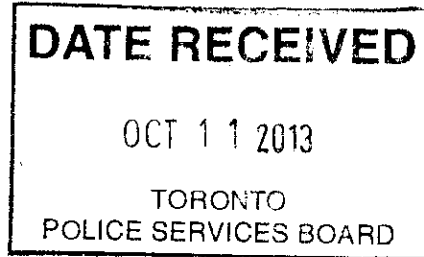
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Toronto Police Services Board
50 College Street
Toronto, Ontario M5G 2J3

October 9, 2013

Ladies and Gentlemen

I recognize that by having a large data base of people living in certain areas of Toronto will help the police fight crime in those areas since such a data base will assist the police in finding criminals who have committed crimes. But at the same time, randomly stopping everyone who is walking on the streets or is part of a group of people in city parks is definitely unconstitutional.

Section 9 of the *Canadian Charter of Rights and Freedoms* states; “Everyone has the right not to be arbitrarily detained or imprisoned.

According to *Black’s Law Dictionary*, the word, “arbitrarily” means amongst other meanings, “wilful and unreasoning action without consideration and regard to facts and circumstances presented.” The word “detain” means amongst other meanings; to hold and to restrain from proceeding.”

In *Hufsky v. The Queen*, the Supreme Court of Canada made an interesting description as to what constitutes the detention of a person. The court said in part;

“The random stopping of the appellant for the purposes of the spot check procedure, although of relatively brief duration, resulted in [the] appellant being detained within the meaning of section 9 of the Charter. The police officer, by the random stop, assumed control over the movement of the appellant by a demand or direction. Appellant was arbitrarily detained, within the meaning of section 9 of the Charter, as a result of the random stop for the purposes of the spot check procedure.” *unquote*

In the *Hufsky* case, the officer was justified in detaining *Hufsky*, to wit: randomly waving to him to pull over so that he could determine if the driver was impaired or if he had a driver's licence or was driving while his licence was suspended or whether his car was insured because the officer's actions had legislative authority to do so and his act in doing so was done for a lawful purpose and for the good of the general public.

There is however, no legislative law in Canada that gives a police officer the right to randomly interfere with a citizen walking or standing on a street and detain him where he is walking or standing for the purpose of questioning him in order to seek private details of the person so that those details can be placed in a police data bank.

Now it is clearly obvious that if a police officer sees someone prowling around a neighbourhood late at night rather than walking in one specific direction, the officer may very well be suspicious of that person's behavior and he has the right to stop that person and ask him what he is doing in the neighbourhood. If the person refuses to answer that question and the officer then drives away, it is possible that the person he left behind might be a burglar and is trying to find an abandoned house to burglarize.

The citizen would be wise to explain to the officer his presence in that neighbourhood. For example, the officer would be quite right to ask a suspicious person what he is doing in the neighbourhood and even ask him where he lives. If the person lives in the area, he would be stupid to tell the officer that he won't answer that question. An honest person who is walking home will tell the officer where he lives. If the suspicious person says he is on his way home, the officer could follow him discretely to make sure that the person is telling the truth. If the person says he is visiting a friend, again the officer should make sure he is telling the truth.

Now if the suspicious person is uncooperative when approached or lies about his destination, then the officer has the right to continue detaining him and ask him for his name. He can then check via the equipment in his car as to whether or not he is a felon or is wanted by the police. If it turns out that the person has a previous record of break and enter or other serious crimes or is on parole or probation and is violating his parole or probation by being out that late, he can arrest him and take him to the station for further investigation.

Citizens are not required to answer any questions that police officers give them even if they are criminals. However if a police officer has a genuine suspicion that the person he is questioning is committing a crime or has committed a crime or is searching for a house to break into or is carrying a weapon, he has a right to stop him, question him

and even search him especially when he won't answer simple questions that may justify the man being in the neighbourhood.

However, if the officer is satisfied that the person he is questioning has a legitimate reason for being in that area and that he hasn't committed a recent crime, he should thank the person for his cooperation and move on. He should not detain him for the purpose of carding him. To do so, conflicts with the edict of section 9 of the Charter and therefore infringes on the rights of the citizen.

Although the vast majority of black males in Toronto are law-abiding, they are still subjected to the improper detention by police officers for the purpose of carding them because of the actions of a much smaller number of blacks who commit crimes.

This kind of conduct by the police raises the question as to whether or not carding innocent people really reduces crime. If anything, it would increase crime. Let me explain why.

In order for police forces to solve crimes, they need the cooperation of the members of society. If police officers piss them off, the citizen's cooperation will be nil.

People can be helpful to the police when the police are investigating crimes but the police will get doors slammed in their faces if the people they are hoping will assist them are pissed off because of the abuse they received from unthinking, uncaring police officers. Does anyone really believe that the 26,627 people who between 2006 and 2012 that were unnecessarily questioned and carded are going to cooperate with the police? If they don't cooperate with the police, then more crimes will go unsolved and crime will increase.

Studies have revealed that frequent exposure to police stops can and often do reduce cooperation and confidence in the police per se and as such, it undermines the successes of the justice system because criminals get away with their crimes when no one will talk to the police about the criminal's wrongdoings. It isn't the police who suffer; it is the victims of the criminals who suffer.

Further (and this is important) our youth must understand the need to cooperate with the police because if they don't learn it when they are young, they will ignore the police when the police later need their cooperation when the young people are older. How can we instill that sense of responsibility to our young people when all that they will remember in the years of their youth were the constant abuses by the police they had been subjected too?

There is nothing wrong in collecting appropriate race-biased statistics as that wil

expose systematic biases and ultimately improve the relationships between the police and the minorities in our communities. That's good policing and it is good for the community also. But carding ordinary people walking on the streets or gathering in the parks serves no legitimate purpose at all and instead it infuriates the people who have been subjected to such abuses.

Recently, a judge in New York City ruled that the stop and frisk tactic of the New York Police Department violated the constitutional rights of the minorities who were being harassed in that manner. He said that the police had been stopping innocent people minding their own business for years without any objective reason to suspect them of any wrongdoing. They had been searching their pockets for contraband or guns or whatever.

The judge in New York correctly stated that the stop and frisk practice was in violation of the *Fourth Amendment* of the United States *Constitution* which prohibits unreasonable searches and seizures.

The judge also said that no one should have reason to fear of being stopped and randomly searched without justifiable cause when going to or from his home. It follows that in Canada, no one should have reason to fear of being stopped, questioned and having their personal information placed in a police data base when they have committed no wrong while they are walking to or from their home or are in another public place.

I recommend that the police stop and question only persons who appear to act suspiciously when they are in a neighbourhood or in a city park. Unless the person is blatantly acting suspicious such as prowling around a neighbourhood after dark or fits the description of a wanted person or someone who has just committed a crime, the police should not stop and question that person. If the officer wishes to discretely keep an eye on that person, I see no reason why he shouldn't do that.

Further, I see no reason why a police officer who is investigating a crime shouldn't approach anyone in the neighbourhood or anywhere else in his quest for information.

Now the question of just how long the information the police officer has recorded about his investigation of the person he has stopped and questioned is harder to answer. But we must be mindful of the fact that when a person is arrested, tried in court and found not guilty, that person has the right to ask the police to destroy his fingerprints and photos that have been taken from and of him. The exception of course is that if the person has a criminal record, the police should be permitted to keep that information until the person has applied for a pardon and received it. Then everything related to that person must be placed in a specific location where it can't be accessed

without the authority of the Solicitor General of Canada. Of course if the questions only relate to the officers query as to information about a previous crime being committed, then that information being received should be kept until the crime is solved.

I hope that the contents of this letter will assist the Board in resolving this contentious issue it is facing.

Yours truly

A handwritten signature in cursive script that reads "Dahn Batchelor".

Dahn Batchelor

(B)

PACER Report Considerations

Albert Einstein once stated that the definition of 'insanity' is "doing the same thing over and over again and expecting different results". The Toronto Police Services Board (TPSB) wants different results but the Toronto Police Service (TPS) PACER report seems to be mainly expansion or tweaking of already existing approaches, processes, and training. This submission will provide links to the British experience, point out PACER's critical flaw, promote a change to TPS culture, and steps to bring about that change.

The TPSB Street Check Sub-Committee established a useful precedent by posting all the submissions it had received. It would serve the public and the Board well, both now and in the future, if all policy submissions were placed in a searchable section of your TPSB website, as long as the authors concur.

An annoyance with PACER is the use of semantics to soften the reality of street checks on individuals. The resulting contact cards have become field information reports, then community inquiry reports resulting from community engagement, and now community safety interactions produce community safety notes. It is difficult not to be in favour of all that community safety, and I do hope that when your deputants travel to your community safety meeting they do not drive through a red community safety light thereby causing a public safety event requiring the response of a community safety vehicle.

Similarities to the British Experience

The British have a longer experience with police frequently stopping people and resulting controversies. They more accurately call them 'stop and account's. About 1/3 of stops lead to searches. To reduce the administrative burden, in 2011 British law changed so that 'stop and account' no longer needed to be receipted and the parameters recorded for 'stop and search' receipts were reduced. It appears about 1/2 of police jurisdictions have continued receipting 'stop and account'. The statement in PACER p.8 that Greater Manchester Police (GMP) no longer issue receipts is correct for 'stops', but not for 'searches'.

The Police and Crime Commission for Greater Manchester is the functional equivalent of the TPSB. Their website explains the legal basis of 'stop and search' and how the required receipt can be used for accessing a full record of the search <http://www.gmpcc.org.uk/tools-and-resources/stop-and-search/> The GMP now use radios to input information to a central data system, as soon will TPS 'E-notebooks'. <http://www.gmpcc.org.uk/news/new-stop-and-search-recording-procedure-across-greater-manchester/> The linked Guardian news article summarizes the ongoing British debate on street checks, with statistics ~1/2 way down the page <http://www.theguardian.com/uk/2011/sep/22/police-record-race-stop/print> The debate will be very familiar to members of the TPSB. Note the leader of the Association of Chief Police Officers adds that 'stop and account' was not really a police power and people could ignore requests for information from an officer. For 'stop and search' they can also refuse the naming but not the search.

The Metropolitan Police Service (MPS) has a good explanation of how they see street stops, similarly to the TPS <http://content.met.police.uk/Article/Frequently-Asked-Questions/1400009364853/1400009364853> However the British legal and social framework is not identical to ours and they have more terrorism challenges, so caution is needed when directly comparing procedures. The MPS also specifically states that while a 'stop and search' cannot be refused, a person does not have to provide a name or address

(*unless ~charged*). In contrast, the TPS seems to want people's names and associates with which to build interlinked data bases (VERSADEX) of personal connections, addresses, pictures and histories.

In regards to cooperating and providing a name the MPS does say "Everyone has a civic duty to help police officers prevent crime and catch offenders". Toronto police routinely request the same from witnesses to violent crimes and those stopped for street checks. I am increasingly familiar with the conduct of TPS members after the G20, and when officers may be misbehaving during regular policing. It seems many Toronto police do not voluntarily or fully cooperate with investigations or help the public with police accountability. Consequently the TPS lacks moral authority when requesting public cooperation. All police agencies have difficulty getting those at the margins of criminality to provide information, but it may be even harder in Toronto. It is not surprising the TPS has decided to implement a high frequency of street check carding. Unfortunately with the high frequency comes much individual humiliation and risk of bias and over reliance on intimidation instead of consent during street checks.

The Critical PACER Problem

The PACER report, meant to facilitate ongoing street checks by the TPS, references anonymous lawyers and has a flawed legal premise, mid p.8. "*...police officers may, for recognized policing reasons, approach members of the community and seek their voluntary cooperation in responding to questions and that such police conduct does not violate an individual's rights under the Canadian Charter...*". Yes, when interacting with the public police can ask any questions or permissions they want. For example that could include the phone numbers and personal interests of all your family members. It is all perfectly legal if the information provided back is truly done so voluntarily. In practice, street check cooperation that is fully voluntary may occur less than 50% of the time. A policy of numerous street checks that is not driven by specific criminal investigations or articulable clear behavioural cause is likely unconstitutional, as well as counterproductive in the long term.

Most street checks and searches are done on young, legally uninformed, or vulnerable adults, by prominently armed sets of officers. Officers know the investigative background of the stop, points of law, control timing and flow of information, and are constrained by accountability measures that are presently weak. During the stop, if there are articulable investigative reasons legally requiring the citizen's information be provided then the officer needs to state so clearly in a documentable way. If those conditions do not exist then the citizen has a right to be informed they do not have to cooperate, and that there is no personal risk in not doing so. PACER says little about those best practices.

To be able to assert that frequent street checking/carding and resulting searching is constitutional requires that the issue of voluntary cooperation be independently confirmed. The PACER report avoids that issue, so the TPSB would be wise to further scrutinize. Since there is an extensive data base of those previously carded, linked to their addresses, it would be relatively easy to run anonymous surveys of those who have been carded. If nothing else that survey will create a baseline for future comparisons.

The TPSB has been very cognisant of the animosity generated by street checks that are either so numerous as to ensnare people going about their business or considered racially targeted. The Board has for years tried to mitigate the potential for such problems, yet for the last full year with stats the

number of street checks was almost at a record level. The Board's recent considered requirement for a street check receipting process was meant to increase the level of respect during those encounters, ensure articulable legal and unbiased reasons for the questioning, and thereby likely reduce the frequency without a significant reduction in policing effectiveness. The TPS prefers another approach. A proper goal is to have decent people of all races, particularly the young, able to live their lives without being periodically forced to stop and produce personal information on demand by those in uniforms.

During 2012 the TPS has likely significantly reduced the number of street checks, partly due to outside events and trends. In New York their high frequency 'stop and frisk' program, after years of complaints and legal threats, has now been cut back and their police were about to be placed under Federal monitoring until appeals were initiated. The greatest check on potential police excess has turned out not to be the oversight agencies, but citizen video and the internet, along with the old standbys of the media and our very slow moving Courts. The influence of insurance agencies is also increasing.

If Toronto street checks are constrained to criminal investigations and immediate threats it should be possible to reduce the number by up to 75%. It is an uncomfortable statement, but for sad historical and socio-economic reasons the remaining valid street checks are still going to have a racial bias. However, it should then be possible for a young Black not living a seriously anti-social lifestyle to grow up in Toronto without being periodically forced to update their circumstances in to a police data bank.

The TPSB's apparent difficulty being the organization that significantly reduces the number of street checks is indicative of an increasingly officer centred TPS culture that tends to underestimate the long term negative impacts of its actions on citizens. The unacceptably high number of strip searches is a similarly related issue. There is no real need to strip more than 2% of the arrestees being held in detention. Proper use of search techniques, metal detectors, medical supervision, and single bunking can provide detention facilities as safe or safer than at present, without the widespread (and thereby unconstitutional) degradation of strip searches. As with other issues like incivility, rough groundings during arrests and explosive dynamic entries on family residences, this is not a training or supervision problem but an attitudinal or cultural one.

The present TPS culture may unnecessarily humiliate (cardings and searches) degrade (strip searches) intimidate (TAVIS) beat (distractive blows) and possibly kill more citizens than necessary. That is not due to a lack of resources or training, or something unique about Toronto personalities. For many of the above practices the TPS tends to set the agenda for other police agencies in southern Ontario and to a degree the RCMP. My concern is that there will be further influence on other Canadian police agencies.

The Long Term Solution is to Change the TPS Culture

There is a solution to a negative culture, not simple or quick, and more fundamental than PACER. Policing is an incredibly complex endeavour, dealing with a wide and sometime unpredictable set of inter-related circumstances and individuals. Gaining experience over the years and gathering more from the older officers matters greatly, more so than with most jobs. Yet it turns out, initially surprising until thought through, that a group of mostly rookie officers with the right attitude polices better than an experienced force with adverse views. Much of what happens in policing, for better or worse, is

determined by the initial structuring of the first communication between an officer and a member of the public. New relatively well trained recruits with a citizen centred attitude will instinctively get that right.

Some of the retired police chiefs who have decisively changed the culture of their services have determined that once a police agency is larger than ~600 the culture cannot really be permanently changed, even by a motivated transformative Chief with resources and good timing. The conclusion is that changing police organizational culture requires either small or newly created units.

Steps needed to recreate the TPS with a more positive culture:

If there is a decision that renewal of the TPS culture is both worthwhile and doable, the Board then needs to cultivate strong allies committed to this project. Overcoming the many expected obstacles will require outside resources and legal and political backing for the long haul. Relative to Provincial governments in Western Canada, Queen's Park has a strong influence on municipal police and has maybe tended to be more attuned to requests from police management rather than police boards. Both the Provincial and Toronto governments need to be strongly onside before starting any transition.

The TPSB will need to find an upcoming transformational police leader who is familiar with and respected in southern Ontario. This person would be hired as a Deputy Chief of Renewal (DCR), but in effect would need to report directly to the Board, basically running a smaller but parallel police service.

The DCR would be given two smaller TPS Divisions, reorganised in such a way that most existing staff will initially be shuffled out to clear the way for a different cadre, including Superintendents. If a call is put out to the present members of the TPS, for those who want to volunteer to try policing differently, and screening by the DCR is carried out to get the best attitudes, there are enough exceptional officers within the TPS to staff the two Divisions. Subsequently all of the newly hired constables that will eventually be coming on line would be posted to those two Divisions. A police division consisting mostly of newly trained and cultured young officers, supervised by a handful of self-selected citizen centred older officers, and led by a dedicated transformational Deputy Chief skillful at defeating bureaucratic obstacles will outperform any of the present TPS Divisions. And in the process their moral will skyrocket.

While the two Divisions would necessary have to share some of the TPS infrastructure, the goal would be a significant break with the established ways of looking at and policing Torontonians. There would be different practices tried and evolved, different uniforms with more of a shift back to the less threatening royal blue, and policies to connect the officers more with the public and less with each other. Hopefully there would develop and be maintained a culture different than the one currently exemplified by the public statements of the Toronto Police Association. The resulting pushback from the established TPS and former employees would be fierce and ugly. That resistance will be more of a risk to success than the endless human idiocy and criminality police normally have to cope with. It will take very special officers to pull off a new positive self-sustaining Toronto police culture.

Success will create the two most elite Toronto police Divisions and there will then be a risk that expansion to other Divisions will occur too quickly and dilute the new culture, as opposing to steadily replacing the previous culture and attitudes over the next decade.

Shorter Term TPSB Recommendations

The present TPSB does not have the desire, resolve, capacity, or enough support at Queen's Park and City Council to fundamentally change TPS culture by the transformative rebuilding described above. Until the wider political environment is more favourable the present TPSB can however take preparatory steps. The concept of long term cultural transformation should be discussed and planned. The TPSB can establish more familiar relations with the Queen's Park bureaucracy and all Provincial political parties. Present and future Board members need to develop a strong understanding of the process of 'institutional capture', and an active executive search committee needs to begin reconnaissance for suitable transformative change police managers in southern Ontario.

More immediately in response to the PACER report the TPSB needs to rapidly clarify the 'voluntary cooperation' aspect with legally defensible facts and require that during 'community safety stops' citizens receive clarity and a code allowing subsequent examination of the information obtained. That will most likely reduce the numbers and types of inappropriate street checks. Independent outside legal and search technique advice is also required to provide alternatives to strip searches, sooner rather than later. The Board and the TPS already agree that TAVIS requires close supervision. For the benefit of both the public and the police, initial deployment of Body Worn Video (BWV) should be facilitated.

Rand Schmidt

Nov 17/13



Deirdre Williams

From: Board General Mailbox
Sent: Monday November 18, 2013 12:40
To: Deirdre Williams
Subject: FW: Toronto Police Services Board: Carding - November 18 meeting

FYI...

-----Original Message-----

From: Bill Closs [<mailto:wccloss@rogers.com>]
Sent: Sunday November 17, 2013 9:01 AM
To: Board General Mailbox
Subject: Toronto Police Services Board: Carding - November 18 meeting

This is an enquiry e-mail via <http://www.tpsb.ca> from:
Bill Closs <wccloss@rogers.com>

As the former police chief of Kingston, Ontario I have worked with Scot Wortley regarding recording "street checks". These cards can be used as "enablers" or "public relations" tactics if they do not capture the correct information. A check of a black teen in public housing waiting for an elevator can be "justified" by checking Provincial Statute. A check under Federal Statute can be used to justify interrogating a black teen wearing hip/hop clothing. Federal Statute can be used to justify a black male driving a vehicle. These examples are real & involve innocent citizens. The critical issues are (1) capturing the real reason for the stop on the form and (2) training.



Deirdre Williams

From: Jim Roche <jfroche@gmail.com>
Sent: Monday November 18, 2013 13:14
To: Deirdre Williams
Subject: Community Input on Street Checks

In my opinion, the success of policing in any community is directly related to how close the police officers are to the community. If they are seen as part of the community, police officers will be more acceptable, less feared and less threatening to the community in general. For this to happen, officers need to associate with people at street level by walking and talking to people on the sidewalk, in stores, in parks etc. This interaction has to be continuous once initiated and must be genuine. The trust that is built up in this relationship takes both time and effort but the positive effects are seen immediately as well.

Every negative interaction will be a major setback compared to the effects of a positive interaction. Actions like "raids" on neighbourhoods (ref. TAVIS activity) will reduce the impact of true community policing.

However, once real community policing is in place, there will be no much reduced need for "street checks" and "carding". As part of the community, officers will recognize strangers or people out of place and can interact with them on that basis. While this attention may not always be welcome, that response in itself may alert the officers to the true intentions of the people involved.

Other essential elements of real community policing is the reduction of equipment that officers carry while interacting with community members - guns, body armour, etc. Well trained officers should not need to resort to the use of equipment of this type in everyday situations and pepper spray and batons should be sufficient.

The number of officers involved in interactions is also an issue. I have been approached by four officers looking for some third party information from me. While one conducted the interaction, I felt quite intimidated and threatened by the presence of the other three - and this was in a situation where the police officers were helping me!

Regards.

Jim Roche
180 Indian Grove
Toronto M6P 2H2

The practice of street checks or "carding" as it is currently carried out is an inherently discriminatory and dehumanizing practice. It is disingenuous to refer to this police tactic as community engagement because in reality it achieves the complete opposite. Street checks, alienates and stigmatizes an entire demographic of people, and engenders unsustainable levels of distrust and anger within communities that the police are sworn to protect and serve. Further, the practice of deliberately stopping and questioning individuals based purely on the subjective profiling carried out by a police officer is a fundamental violation of civil and human rights in Canada. This practice does not merely need reform it needs to be eliminated.

Fundamentally, street checks are poor and lazy police work. They do not involve a fair and just interaction between police and the victims of this profiling. Those who are "carded" by the police are not under arrest, they have done nothing wrong yet in all encounters the police have established suspicion of criminal behavior (past, present or future) based solely on the physical appearance of the target and his (or her) presence in a particular location/ area of the city. This type of profiling disproportionately impacts those who are poor and Black based on the systemic biases built into the Canadian justice and policing system.

I refuse to offer any suggestions that would imply that street checks are acceptable in any capacity in 21st century policing. They are not. Street checks are a form of state intimidation meant to restrict and monitor the movements of predominantly, poor Black men based on a preconceived notion that they are more prone to criminal behavior which is a falsehood and has been disproven. Street checks turn this province into a police state where officers are empowered to act with impunity and intimidate and harass citizens whose only transgression is being a visible minority in a poor neighborhood. Thus as said before it is not about reforming street checks it is about the elimination of this abhorrent practice that debases all citizens democratic and constitutional rights.

I urge the Toronto Police Services Board to immediately put an end to street checks. I truly believe that the Toronto Police are better than this practice and can foster true community engagement that is based on mutual respect and relationship building, rather than continuing the current regime which is characterized by prejudice and abuse. I think the Toronto Police would be well served to remember that all communities value safety as much if not more than they do and we are all human trying to make the province in which we live a better place for everyone. If reducing crime is not approached based on collaboration the gains that we have made thus far will be reversed. I would like to hope that this is not what the government nor the police want. The best way forward is to continue to empower communities to have a voice and a say in the tactics that are meant to ensure their safety. Policing poor and "at-risk" communities involves establishing legitimacy and communicating genuine concern for the plight of the majority of law abiding citizens that reside there. Ongoing and meaningful communication is key. By adopting this type of approach I believe the Toronto Police Services will see the futility of street checks and begin to better

understand how to combat crime in particular neighborhoods in a way that fosters neighborhood renewal and sustainable community safety.

If you have any questions about what I have submitted please feel free to contact me. Thank you very much for your time and for the opportunity to submit a written brief

Jordanna Lewis
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