

## TorontoNAJC Update

### Police Carding in Toronto

*In 2015, as the public controversy heightened over **carding practices of the Toronto police force**, the TorontoNAJC Board decided to maintain a "watching brief" on the issue in keeping with its interest in issues involving racial discrimination and violation of human and civil rights.*

**WHAT IS CARDING?** Carding is the random stopping and questioning of any individual by a police officer and recording the name, address, and other information including age, perceived skin colour, estimated height, and weight, and the names of friends into a permanent database used by the police. In Toronto, in 2014 the practice was called "Community Contacts " and changed to "Community Engagements" in 2015. The police reference the database for possible leads in their investigations.

In last 50 years as cities grew in size and diversity, policing in big cities evolved with more organized information gathering facilitated by the greater use of computer technology. Police used random stopping and questioning of individuals as they patrolled the streets to gather information, and maintained a permanent record of the personal information of the individuals interviewed as a basic investigative tool. Thus "carding" became a standard practice in big city police forces in North America.

Up to March of this year, in Ontario, carding was not specifically regulated, but was carried out under the provisions of the Police Services Act which outlined the general duties of a police officer as crime prevention, investigation of crimes and keeping the peace. At same time however, as with almost all statutory requirements, actions of the police are to respect the Canadian Charter of Rights and Ontario Human Rights Code.

### WHY IS CARDING A PUBLIC CONTROVERSARY?

In Toronto, over the last 40 years racial discrimination has been a simmering issue which has boiled over into full blown public controversy over specific incidents from time to time. In particular, the relationship between the black community and the police as been primary focus. Black community leaders have complained that police have tended to focus unduly on the members of their community since the mid 1970s. The evidence provided was mostly anecdotal and of specific incidents encountered by individuals. The issue took on a greater profile as a result of the Toronto Star newspaper series on police and racial profiling beginning in 2002. The Star analyzed data on policing actions which had be requested from the Toronto Police under the freedom of information act. The Star analysis provided statistical evidence of racial profiling by the police :

*" Blacks arrested by Toronto police are treated more harshly than whites, a Toronto Star analysis of crime data shows. Black people, charged with simple drug possession, are taken to police stations more often than whites facing the same charge. Once at the station, accused blacks are held overnight, for a bail hearing, at twice the rate of whites. The Toronto crime data also shows a disproportionate number of black motorists are ticketed for violations that only surface following a traffic stop. This difference, say civil libertarians, community leaders and criminologists, suggests police use racial profiling in deciding whom to pull over. The evidence is contained in a massive police database recording more than 480,000 incidents in which an individual was arrested, or ticketed, for an offence dating back to 1996. It included*

*almost 800,000 criminal and other charges. The Star obtained that data through a freedom of information request, marking the first time access to these numbers was granted to anyone outside the police community." (the TorontoStar, Oct 19, 2002)*

The response of the Toronto Police Services (TPS)<sup>1</sup> and the Toronto Police Services Board (TPSB)<sup>2</sup> was a denial that racial profiling of the black community was purposely being carried out. Their reasoning was:

- police stop and question people who look suspicious or come to police attention in the course of an investigations;
- police stop people in cars who are in violation of the traffic laws;
- police are not allowed to compile and report police statistics (stops, arrests, charges etc) by race, gender or religion and;
- Anti-racism is an official policy of the Toronto Police and Toronto Police Services Board.

The response of the Toronto Police Association (the official policemen's union) was to launch a \$2.7 billion class action libel suit against the Star for publishing the article that suggested a pattern of racial profiling by the Police. The suit was later dropped.

Over the years, Toronto Police Services have enacted the many of the recommendations from the numerous task forces and commissions which have examined the tensions between the police and the visible minority communities. Such actions have included community policing, on-going community consultations, hiring more visible minorities and women, and training staff to recognize and avoid racial and gender bias. These actions have been well documented and are available in public reports through the website of the Toronto Police Service. ([www.tps.ca](http://www.tps.ca))

Nevertheless, as the frequency of carding increased which appeared to involve an inordinate number of young black men, black community leaders and civil rights groups became more concerned with the practice. The primary concerns associated with carding were racial discrimination in its application and invasion of privacy and violation of civil rights.

**Racial Discrimination:** In the GTA, the black community leaders voiced concerns about the large amount of young black men who were being carded by the police. Most of those stopped and questioned felt they were stopped merely because they were black. Very few were charged with any crime. The Toronto Star newspaper pressed the Toronto Police for basic information on carding from 2002 onwards. Requests were rebuffed until 2012 when Toronto Police released information arrayed on maps showing high crime areas throughout the city. The Toronto Star reporters analyzed this information and ran a series of articles on carding which disclosed that:

*"Overall in Toronto, the number of individual young black men, aged 15 to 24, who were "carded" — stopped and documented by police **between 2008 and mid-2011 was 3.4 times greater than the city's population of young black men.....black people are more likely to be stopped and documented***

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<sup>1</sup> Toronto Police Services is the city's operational municipal police force headed by the Chief of Police.

<sup>2</sup> Toronto Police Services Board is in charge of setting policing policies for the city and is composed of municipal and provincial appointees.

than white people in each of the city's 72 patrol zones. Moreover, the likelihood increases in zones that are predominantly white and wealthier. Officers stop and question people and document who they are with on Field Information Report cards. Personal details, including physical descriptions, are then entered into a huge database, which officers can search later in the aftermath of crimes. More **than a million individuals** have been documented in the past three years; the number of cards filled out jumped 18 per cent between 2008 and 2011." (Toronto Star, Mar 16, 2012)

Further, the Ontario Human Rights Commission has stated:

"Many racialized people in Ontario, especially African Canadians and Indigenous peoples, have experienced "carding" as yet another form of racial profiling." (<http://www.ohrc.on.ca/en/ohrc-submission-ministry-community-safety-and-correctional-services-street-checks>)

### **Violation of Privacy and Civil Rights:**

In May 2014, the Law Union of Ontario stated:

"The Toronto Police Service engaged in the general intelligence-gathering practice known as "carding" for many years without any policy direction from the Board. This practice was **a systematic violation of the rights of people in our communities**, and especially of racialized youth, and it undermined the public's trust and confidence in the police service and thereby impaired public safety." (<http://www.lawunion.ca/2014/05/>)

The Ontario Human Rights Commission specified those Charter rights of the individual when subjected to carding in its 2015 submission to the Ontario Government during the consultations for new regulation on carding:

"The police duty to inform an individual of his or her section 10(b) Charter right to retain and instruct counsel is triggered at the outset of an investigative detention. It includes the right to do so in private and be advised of the existence and availability of Legal Aid and duty counsel. The Charter right to counsel that arises on detention under section 10(b) also reflects the principle against self-incrimination—a principle of fundamental justice under section 7. Furthermore, section 10(a) of the Charter requires that individuals who are detained for investigative purposes be advised, in clear and simple language, of the reasons for the detention." (<http://www.ohrc.on.ca/en/ohrc-submission-ministry-community-safety-and-correctional-services-street-checks>)

In 2015, The Toronto Lawyers Association in a letter to the Ontario Government raised the following concerns regarding violations of rights:

"In TLA's view, this street checking practice is extremely problematic for the following reasons: the breadth and vagueness of the street check power, the inherent lack of voluntariness of the carding process, and the impact on the carded person's privacy, including the unregulated collection and compilation of personal information for unspecified purposes. Together and separately, these concerns demonstrate that this practice involves a government incursion into the privacy rights of individuals who are not under investigation or accused of any offense, and that the proposed carding practice would result in a breach of citizens' fundamental Charter rights including the fundamental freedoms of association and peaceful assembly, as well as ss. 7 – 9 legal rights and s. 15 equality rights." ([http://c.ymcdn.com/sites/www.tlaonline.ca/resource/resmgr/Community\\_Action/Street\\_Check\\_Consultation\\_le.pdf](http://c.ymcdn.com/sites/www.tlaonline.ca/resource/resmgr/Community_Action/Street_Check_Consultation_le.pdf))

### **Contributing to Public Distrust:**

Carding is seen as contributing to growth of public distrust of the police, particularly with the black community, as statistical analyses of the application of carding indicated that:

"black people are more likely to be stopped and documented than white people in each of the city's 72 patrol zones. Moreover, the likelihood increases in zones that are predominantly white and wealthier" (see Toronto Star, Mar 16, 2012)

The way carding was being carried out by the police as disclosed by a former police officer to the Toronto Star can be seen to contribute to public distrust:

*"If we see a white guy in (a rich area), for example, and it's 10 o'clock,[at night] we just assume that he lives there. If we see a black guy, we're going to stop him because we assume he's checking out the neighbourhood to commit a crime. So, from a policing standpoint, it's sad, but you're trying to look at the community and say, 'This person doesn't belong.' Internally, we know it's wrong but then as police, we're saying, 'What if he was about to commit a crime, and we just passed him?' So it's hard on the black guy, but at the same time, if something should happen, we're going to look at the police and say, 'But the officer and his partner passed him and did nothing'." (Toronto Star, Sept 27, 2013)*

A police officer's working assumptions of black persons in making carding decisions (told by a former police officer) is another contributing factor to public distrust:

*"I'll just speak specifically on black people – that the way they dress and we call it characteristics of a gangbanger, for example, if somebody has baggy pants we'll think that he has a gun. In summertime, he's wearing a sweater, we feel that he's concealing something. But then there's other times when we'll just see somebody that has a braid up here or they just look serious, and I'm driving a scout car, they look back and we think they see the car and it's like they're just minding their own business, we take that for they don't like police, and I think we feel it gives us that authority to stop them because they don't like us. On the other hand, if the black guy stops and acknowledges us, maybe waves or something, we think he's OK. It's a situation where we judge without knowing and to basically find out, we have to go and stop them. But we don't have a reason. So, hopefully, once we run them (through police databases), we'll say that there have been contacts with police before. And that becomes our justification. But the truth of the matter is that we're prejudging them, because we really don't know." (Toronto Star, Sep 27 2013)*

Another contributing factor to public distrust was the use of cards issued by an officer in rewarding the officer's performance:

"You have to, because at the end of the day it's numbers. (Card counts) would be based on platoon (shift). So, if you have a platoon that will go out and, say, the top guy did 15, your supervisor's going to look at you and say, "Hey, John Doe did 15, so I expect you to do 16." So then it becomes an internal competition. Then every six weeks after a five-week (work) cycle ends, your inspector would look at the numbers of the platoon, they total everything up. They tally everything up and then they'll come to you and say, "D platoon had a thousand 208s. [form # of carding interview] B platoon only had 600." If I'm on B platoon they're going to say, "Hey, what's going on." So then your staff sergeant would come to you and say, "You had the lowest number. So, you have to bump it up, or else you won't get to do that training spot (that will help you move up in rank)." So they'll use that to say you're not really going to go anywhere. (Toronto Star, Sept 27, 2013)

Also, the arbitrary nature of carding and inconsistency of information recorded was revealed by a person who had been carded numerous times and on his own initiative requested the carding information on his file:

"[Kina] Singh, who is black, says he himself has been stopped by police more than 20 times but never arrested or charged. When he filed a freedom of information request for his police contact cards, he received 57 pages and 11 cards with "various information on them," and discovered a number of inaccuracies. Police recorded on two occasions that he told them he was born in Jamaica when in he was born and raised in Toronto. One record even mentioned an immigration warrant. 'Another one says I'm not police friendly. I am police friendly.' Other records show a range for how tall he is. Singh says if police are judging those they stop based on race or colour, there can be an increase risk to that person's safety, especially if the information is not accurate." (CBC-News April 15, 2015)

The Toronto Star analysis and reports were instrumental in disclosing how a routine police procedure evolved into a discriminatory practice. Further the Star's analyses revealed how the operational practice of carding varied from the policy commitment to anti-racism of the Toronto police force. In particular, the following specific aspects of carding were revealed to be the source of controversy:

-black males and in particular black younger men were being targeted for carding which is

- discriminatory;
- individuals who were being carded were not being informed of their right not to participate;
  - individuals who were being detained by the police were not being informed of their right to legal counsel and ;
  - the information on individuals collected by police in carding was being retained in a database without due consideration to accuracy or privacy rights and;
  - the cumulative effect of these problematic aspects of the carding practice was exacerbating public distrust of the police .

## **RESPONSES TO THE POLICE CARDING ISSUE IN TORONTO**

*The responses of the Toronto Police Force, The Toronto Police Services Board, other key stakeholders and the Ontario Provincial government are discussed.*

### **Key Agencies and Stakeholders Involved.**

The main government agencies involved in responding to claims of racial discrimination and violation of civil rights in carding are the Toronto Police Service (TPS) which carries out carding or street checks: the Toronto Police Services Board (TPSB), which is a civilian board composed of municipal and provincial appointees which develops and approves specific policing policies for the municipality and the Ontario Ministry of Community Safety and Correctional Services which administers the Police Services Act which regulates all policing activities in the Province. Other key stakeholders involved are the Ontario Human Rights Commission, the Privacy Commissioner, Urban Alliance on Race Relations, Toronto Police Accountability Coalition, Canadian Civil Liberties Association, the African Canadian Legal Clinic, and the Black Action Defence Committee.

The Toronto Star analysis of carding by the Toronto Police issued in March 2012 raised the profile of the carding issue which has been a longstanding complaint from the black community. Basically its findings were:

"Between 2008 and mid-2011, police filled out 1.25 million of these reports, involving 788,000 individuals. Skin colour was specified on 92 per cent of the cards. The personal details are entered into a massive police database that police say provides them valuable leads following crimes, such as names of potential witnesses and suspects. **While blacks make up 8.3 per cent of Toronto's population, they accounted for 25 per cent of the cards filled out between 2008 and mid-2011. In each of the city's 72 patrol zones, blacks are more likely than whites to be stopped and carded. The likelihood increases in areas that are predominantly white.** After peaking in 2007 and declining in 2008, the number of ards filled out each year has risen steadily. There were 381,873 cards filled out in 2011, 20,000 fewer than 2007 but up 18 per cent from 2008." (Toronto Star, Mar 16, 2012)

In April 2012, The Toronto Police Services Board which is responsible for local policing policies, responded to the Star report by asking the city auditor to collect and analyze data on contacts between the police and community in order to establish a baseline against which carding could be evaluated and report by December 2013. In addition, the Board requested the Toronto Police Service:

- to issue a copy of the carding information taken by the officer in a street check to individuals questioned ;
- to report quarterly on carding activities, including race and ages of those carded;
- involve the TPS Diversity Management Unit to monitor carding activities and;
- to report the on steps taken to address the recommendations in 6 months. (*TPSB Minutes, April 5 2012*)

Interestingly, to develop a hard statistical factual base to determine whether or not there was a racial bias in carding, the Board had to reauthorize the TPS to collect, use and report statistics by race since reporting by race was 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 could not be used by the public institutions so as to prevent the racialization of any group). The TPSB, however, directed that such information was to be treated as confidential by the TPS and Board.

An important legal distinction that needs to be noted is that the police may detain anyone for questioning in relation to a specific crime in which case the police must inform the individual they are being detained and that they have a right to a lawyer. In contrast, if the police are stopping an individual to seek information not related to a specific crime, the individual has the right to choose not to cooperate and walk away.

The Board established a Subcommittee on Carding that met monthly from July 2012 through to November 2013 to develop a new policy on carding and the subcommittee consisted of select members of the Board and Chief of Police (or his designate). During this period, the Board heard 28 deputations from numerous organizations including the Urban Alliance on Race Relations, Toronto Police Accountability Coalition, Canadian Civil Liberties Association, the African Canadian Legal Clinic, Black Action Defence Committee and received written briefs from Frontline Partners with Youth Network and Justice for Children and Youth. While some of the groups wanted the practice of carding completely stopped, the Board took the position that it was not practical to totally eliminate carding and took the position that they wanted to eliminate the negative elements of carding which the black community and civil rights groups found offensive. The key points of the presentations and briefs suggested that:

- police inform individuals stopped of their right not to cooperate (i.e they do not have to be interviewed if they wish;
- police must give a reasonable specific explanation why they are stopping the individual for questioning;
- police provide a copy of the information taken from the individual who was stopped and questioned

In July 2013, the Toronto Police Services modified their carding practice and began issuing receipts to individuals who were stopped and questioned by the police officers as part of their street checks or community contact program. This appears to be the only procedural change taken by the TPS in implementing the recommendations of the April 2012 Board decision.

In April, 2014 the Toronto Police Services Board voted unanimously to approve a new carding policy called **the Community Contacts Policy**. The policy was particularly detailed in articulating the purpose of community contacts, defining it and more importantly in prescribing the way in which contacts were to be carried out by the police. The key points of the policy are listed

below:

- Board acknowledges that a police officer can have "Contacts" with the public which are non-detention, non-arrest interactions between police officers and community members that involve the eliciting and/or recording of personal information. This policy is not intended to prohibit or guide informal greetings or conversations.
- Police officer in recording information in making a contact will make a "Community Safety Note" only for a valid public safety purpose. "Community Safety Notes" ("CSNs") are investigative records of information police officers may only initiate and record Contacts that serve a valid public safety purpose.
- Valid public safety purposes justifying the initiation or recording of Contacts are:
  - i. Investigating a specific offence;
  - ii. Preventing a specific offence;
  - iii. Ensuring the community member who is the subject of the Contact is not at risk; and
  - iv. Collecting intelligence relating directly to an identifiable, systemic criminal problem and pursuant to a Service or Division-approved initiative.
- Purposes that do not justify the initiation, continuation or recording of Contacts are:
  - i. Gathering personal information for use in unspecified future investigation;
  - ii. Investigating an unsupported suspicion;
  - iii. Prolonging an interaction in the hope of acquiring the reasonable suspicion necessary to detain;
  - iv. Meeting a quota or performance target; and
  - v. Raising awareness of police presence in the community.
- Police officers may only initiate Contacts where they can articulate the public safety purpose of the information sought;
- Police officers do not consider race, place of origin, age, colour, ethnic origin, gender identity or gender expression in deciding whether to initiate a Contact unless one or more of these factors form part of a specific suspect, victim or witness description;
- Community members know as much as possible in the circumstances about their right to leave and the reason for the Contact;
- Police officers understand that disengagement from a Contact is an acceptable, valued and sometimes necessary policing step; and
- Contacts do not lead to the collection of irrelevant personal information.
- A Contact is not in compliance with this policy if:
  - the community member does not freely participate in the Contact; or
  - if the police officer elicits or attempts to elicit personal information without an articulable basis to believe the information will serve a public safety purpose.

Further, the Board specified requirements for police officers recording information gathered in a street check. The main points are:

- Community Safety Notes(CFN)only contain information that serves a valid public safety purpose and contain the minimum personal information necessary to fulfill the public safety purpose for which they are prepared;
- Police Service will not use the quantity of CSNs prepared to measure performance and productivity of individual Service members;
- Categories of information in CSNs are developed in consultation with the Ontario Human Rights Commissioner and the Office of the Information and Privacy Commissioner.
- Personal information collected during Contacts that are not in compliance with this policy is not retained, used or disclosed for any investigative purpose and is retained in a manner consistent with MFIPPA; and
- Personal information collected and retained before July 1, 2013 in CSNs, Field Information Reports (FIRs), Form 208s, Form 172s and Form R41s that are inconsistent with this policy is not retained in the investigative database. The Chief and the Board will work collaboratively on a retention and destruction protocol consistent with this policy.

Other requirements specified by the Board in the new policy included:

- restrictions on the use of information collected through contacts to ensure compliance with legal privacy requirements;
- restricting the use of compiled information only to evaluate the effectiveness of the program;
- specifying training of police officers:
  - conducting Contacts in a manner that promotes public confidence. This includes training about the importance of contacts which are free of discrimination;
  - that detention can be psychological and that restrictive police conduct can create a detention;
  - the importance of telling an individual that they are free to leave if they are not detained or arrested;
  - the use of respectful language, tone and demeanour during Contacts;
  - Contacts are not a tool to be used to prolong an interaction in the hope of acquiring the reasonable suspicion necessary to detain;
  - requiring public reports to the Board in January, May and September of each year containing full data and statistics related to Contacts.

A full text of the policy is available at (<http://www.tpsb.ca/policies-by-laws/board-policies/send/5-board-policies/102-community-contacts-policy>)

Implementation of this new policy was problematic for the Toronto Police Services in 2014 as indicated by the following:

- In fleshing out specific procedures of the new Community Contact Policy, the Board requested the Police Service to work with a community consultation committee which had been previously established under the Police and Community Engagement Review (PACER), a program initiated by the Police to address the growing distrust of police by marginalized groups such as the Black and First Nations communities. The citizen committee members said senior officers felt informing citizens of their rights (when initiating a contact) would be a “burden.” Further, the draft procedures also left out a narrow definition of when police could card, which was mandated by the board (*Toronto Star, Jan 6, 2015*)
- Also a third party (former Ontario Chief Justice Warren Winkler) had to be engaged to resolve differences between the Toronto Police Force and the Board over specific aspects of the Policy and an acceptable balance between of the needs of Police to maintain public safety i.e. carry out community contacts and while respecting the Charter and human rights including privacy of individuals being contacted. The specific points of disagreement between the Board and Police Service were on the details of the data collection, retention and disclosure of personal information.

In November, 2014 the Toronto Police Services Board received a report evaluating the new implementation of the new carding policy which they had approved in the April of that year. The report was completed by the firm Logical Outcomes, an external consultant, hired by the Board to evaluate the effectiveness of new carding policy and practices by conducting a survey of 400 people in one division (#31) of the Toronto Police Services. The following is an extract from the executive summary of Logical Outcomes report:

- *Through our research, we learned that very few members of the public are aware of the new policy or the formal procedures involved in carding. We also learned that there is wide spread dissatisfaction with the way that police interact with members of the community. In general, the level of trust in the police is low and many participants expressed negative views regarding the police. For example, a large number of respondents believe that police regularly abuse their power. In addition, there is a view that police racially profile members of the community. Compellingly, this belief was identified among both racialized and non-racialized groups. While a significant number of respondents identify small improvements in the relationship between police and community residents since June 2014, roughly 40% still feel that the relationship between police and community is poor. (<http://tpsbc.ca/component/jdownloads/send/27-2014/437-dec15-pub>)*

The Board met in December 2014 to discuss the Logical Outcomes report. Twenty deputants attended the meeting including former mayor Barbara Hall, the Chief Commissioner of the Ontario Human Rights Commission; former mayor John Sewell of the Toronto Police Accountability Coalition; Noa Mendelsohn Aviv, Director of the Canadian Civil Liberties Association; Anthony Morgan of the African Canadian Legal Clinic; Audi Dharmalingam and Jason Merai of the Urban Alliance on Race Relations; Kniah Singh and Ibrahim Abd Rahman of the Osgoode Society Against Institutional Injustice; Vilko Zbogor of the The Law Union of Ontario; Kingsley Gilliam and Valarie Steele of the Black Action Defense Committee; Audrey Campbell community member of PACER and Cutty Duncan of the Campaign to Stop Police Carding. It was a very persuasive showing of civic concern regarding the practice of carding.

While some of the deputants called for an end to carding, others urged that the police implement the revised contact policy which the Board had approved in April which included extensive modifications to eliminate the offensive elements of the practice. During this period the police continued carding in the context of the PACER report phase 2 presented to the Board in October 2013. In that report it states that the police will continue to take Community Safety Notes on the basis that it is a legitimate police action under the Polices Services Act. In addition the Police sought 3 legal opinions that it is legal police action to approach individuals to volunteer information. It became apparent to the Board that operationally, the Police force was not fully implementing the revised policy as the Board had directed. The only major change they had implemented since the policy was approved was to issue carded individuals a receipt of their interview.

Also, in December 2014, at his first meeting as a member of the Toronto Police Services Board, newly elected Mayor John Tory clearly stated his preference to end carding as he stated that (the continuation of carding was) "corrosive in a way that is fundamentally inconsistent with how we do things in Toronto and Canada. And how we live." (*Toronto Star Jan 6, 2015*).

As a result of the public controversy over carding reflected in the number and status of stakeholders which presented deputations to the Board to cancel or better restrict the practice of carding by the police service, and the critical report by Logical Outcomes on the very poor implementation of the 2014 community contacts policy, the Chief of Police temporarily placed a moratorium on carding in Toronto as of January 2015.

In April 2015, the Board approved a revised Community Contacts Policy renamed **the Community Engagements Policy** following a public meeting held earlier in the month in which the results of the evaluation of the implementation of the Community Contacts by Logical Outcomes Report was discussed. This meeting was attended by essentially the same deputants who had advocated either a banning of carding or the imposition of strict controls at previous meetings.

The revised Policy consisted of a Statement of Principles agreed to between the Toronto Police Service and The Toronto Police Services Board to guide the practice of community engagements by police officers. Key provisions of the policy are summarized below. A full text of the policy is available at ([http://www.torontopolice.on.ca/media/text/20150327-tpsb\\_community\\_engagements.pdf](http://www.torontopolice.on.ca/media/text/20150327-tpsb_community_engagements.pdf))

- banning police officers from using " race, place of origin, age, colour, ethnic origin, gender identity or gender expression in deciding whether to initiate a community engagement unless one or more of these factors form part of a specific, victim or witness description."
- recognition that the police have a legitimate right to interact with the community individuals as part of their duty to investigate and prevent crimes and keep the public safe;

- Prohibiting the use of the number of engagements as measure of an officer's performance;
- The police officer must be aware of committing "psychologic detention" i.e. giving the impression to the individual he is being detained by the officer by tone of voice, manner of speech etc when in fact the individual is not being detained.
- officers may only initiate and record Community Engagements that serve a valid public safety purpose;
- the development of appropriate training for officers on procedures to carry out this policy;
- semi annual reports by the Chief of Police to the Board on the implementation of the policy including number of community engagements;

In mid June 2015, as a result of the public controversy over carding in the GTA the Ontario government announced that it would regulate the practice of carding of all police forces in the province. In announcing the government intention, the Minister of Community Safety and Correctional Services Yasir Naqvi stated in the legislature:

“We as a government stand opposed, Speaker, to any arbitrary, random stops by the police simply to collect information when there are no grounds or reason to do so. We have heard from the community that street checks, by definition, are arbitrary as well as discriminatory and therefore cannot be regulated; they must simply be ended. The province agrees that these types of stops must end.”

In the same month, following the provincial announcement, Mayor John Tory, a member of the Toronto Police Services Board presented a motion to the Board :

- that the TPSB "support a permanent cancellation of carding";
- an extension of the suspension of carding ordered by the the Chief of Police;
- the Board work with the Police Service, the Provincial government and other stakeholders to develop a totally new community engagement policy;
- the Chief of Police advise on the board:
  - on the cost, legality and practicality of purging historical data information gathered by police through past carding practices and;
  - the cost, legality and practicality of having information collected from community engagements held by a third party accessible to police upon restricted application. (*full text of Tory's motion <http://tpsb.ca/component/jdownloads/send/7-2015/180-june-18>*)

The Board discussed this proposal and approved it with significant modifications, mainly:

- that the board rescind the Community Engagement Policy it approved in April 2015 (just two months previous);
- the Board reinstate the Community Contact Policy it previously passed in April 2014. (see above)
- Mayor Tory's motion regarding the extension of the suspension of carding was dropped and;
- the Board be advised of required modifications to the Community Contact Policy of 2014 due to regulatory changes for street checks or carding that the Province was developing.

At this meeting there were more than 30 prominent current and former politicians, civil servants and community leaders to demand an end to the controversial practice of carding including, Roy McMurtry, former Ontario Chief Justice and Attorney General; Mary Anne Chambers, a former MLA, and Gordon Cressy former popular city councillor.

In reverting to the April 2014 Community Contact Policy, the Toronto Police reinstated the practice of carding with the addition of issuing a receipt as was being practiced prior to the temporary suspension of carding in January 2015.

In developing the new carding regulation, the Ministry held public consultations with community organizations, police forces, academics, community groups and civil liberty organizations and the general public on a draft regulation. The ministry received a total of 510 submissions. These included 476 submissions from members of the public and 34 submissions from groups and organizations, including a brief from the Ontario section of the Federation of Asian Canadian Lawyers.

In March 2016 the final regulation titled ***Ontario Regulation 58/16 Collection of Identifying Information in Certain Circumstances - Prohibitions and Duties*** was issued. A full text of the regulation is available at (<https://www.ontario.ca/laws/regulation/160058>). The new regulation contained many of the provisions of the Community Contacts policy adopted by the TPSB in April 2014 and readopted in June 2015.

The key points of the regulation are:

- Section 1 - specifies that police can stop individuals for purposes of investigating a crime, preventing a crime, suspicious activities or intelligence gathering;
- Section 2 - specifically prohibits the police in making stops on purely racial grounds or arbitrarily i.e. can't be just stopping any black or asian man - has to be a black or asian man, with a limp in mid twenties in a red coat or driving a white van. Further specifies that sex and approximate age cannot be used to justify stopping an racialized individual
- Section 3 - specifies that the police must inform the individual stopped that the individual does not have to cooperate and to tell the individual stopped the reason for the stop;
- also specifies that the police does not have to inform the individual the reason for the stop if it might compromise an ongoing investigation; the safety of the individual, disclose an undercover police officer or someone whose identity is protected by law such as underage youth;
- Section 6 specifies that the police must offer the individual stopped a document which provides the name of the officer, the badge number, the date, time, place of the stop, information of how to access the Independent Police Review Director and how to access the information collected through the Municipal Access to Information Act;
- specifies that the individual can refuse the offer the document ;
- specifies the conditions under which the officer does not have to offer the document.
- Section 8 specifies that the police must record the reason for the stop; whether the individual was told he had to right not to cooperate; if not why; was given the reason for the stop, if not why;
- Section 9 specifies that information collected in a stop can be placed in the police database if all procedures for collecting the information as stipulated in the regulation were followed;
- specifies that the information placed in the database must be reviewed within 30days by the chief of police or his designate to ensure that all procedures were followed in collecting it and if it was not followed to removed it;
- specifies an detailed annual review of a sample of information collected in stops to ensure procedures are being followed;
- Section 10 specifies that police cannot use the number of stops attempted and /or completed as any measure of performance of an officer;
- Section 11 specifies mandatory training for police officers in how to conduct stops specifically in regard to informing the individuals of their right to refuse an interview; respecting to right of the individual to refuse an interview, to discontinue an interview in process; providing a document of the interview; recognizing and avoiding racial, ethnic or gender bias in conducting

interviews; recognizing and avoiding the imposition of "psychological detention" to an individual.

Section 15 specifies a detailed annual public report of activities covered by this regulation conducted by a police force.

Section 17 stipulates an comprehensive review of the regulation be conducted by an independent reviewer for the Minister of Community Safety and Correctional services by January 2019.

### **Stakeholder Reactions.**

Reactions to the new regulation were mixed. The Canadian Civil Liberties Association issued a statement saying they thought the new regulation a "mixed bag". While acknowledging that the new regulation addressed the problem of targeting young black men, the organization stated:

*"However, several key concerns with the regulation remain and new ones have emerged. These include: no new protections to ensure that youth who are stopped by police have the opportunity to consult with a parent or lawyer; individuals are no longer informed of their right to walk away from a "voluntary" police encounter; police reports on stops do not have to be made available to the public; and while there will be a new independent review of the regulation (as we had recommended), this review will not necessarily monitor for compliance with the regulation or for community responses to its effectiveness. Perhaps of greatest concern, the regulation leaves a great deal of improperly collected data in the hands of police for no legitimate policing purpose, and it does so indefinitely." (<https://ccla.org/new-ontario-carding-regulation-a-mixed-bag/>).*

The Urban Race Relations Alliance (UARR) stated the following:

*"As an organization that contributed to the consultation process, the UARR views the March 22, 2016 release of new regulations prohibiting arbitrary race-based police street checks (carding) announced by the Minister of Community Safety and Correctional Services as a long-overdue step in the right direction. However, it falls short of addressing some of the key issues around police transparency, accountability, and commitment to addressing the root causes underlying the practice of carding: racial bias and anti-black racism that fuels racial profiling. The regulations also do not address the reality that black youth continue to be targeted by police in their neighbourhoods throughout our city." (<https://urbanalliance.ca/2016/03/26/urban-alliance-on-race-relations-uarr-statement-on-new-carding-regulations/>).*

The Toronto Police Association (the union representing police officers) was reported as:

*"Association President Mike McCormack predicts the regulation, which takes effect Jan. 1, will prevent officers from gathering the "intelligence" they need to solve crimes. No hardened "gang banger" is going to hang around and talk to police after being told "you don't have to provide any information," he said. "Our officers will still engage (with the public) and still be professional, but I don't know if this is going to meet the requirements of specialty units... (guns and gangs, the holdup squad, etc.) to gather intelligence, to investigate crimes (Toronto Star, Mar 26 2016).*

Black Lives Matter representative stated:

*"Rodney Diverlus of Black Lives Matter T.O. says he's disappointed the province didn't take a stand on what his movement believes is a long-standing problem of anti-black racism in policing and ban street checks altogether. "After decades of speaking out about these issues, we're way beyond band-aid solutions," he says. "If it's taken this long just to get to these regulations, how long will it take for the government to deliver real change?" (Toronto Star, Mar 26 2016)*

### **Conclusions:**

The passing of the new provincial regulation on carding in March of this year served to quiet the particular controversy over carding practices in Toronto, however, it's effectiveness is still be tested at this stage as it is not yet fully implemented, nevertheless , the regulation is an improvement for the following major reasons:

- it prescribes in some detail the practice of carding for the police thereby giving police officers specific guidelines on how carding is to be carried out;
- it stipulates the mandatory training for police officers in the specifics of the regulation in carrying out street checks;
- it acknowledges the civil rights of individuals being stopped and stipulates their right to refuse to be interviewed and walk away;
- it forbids police from stopping an individual solely on their basis of skin colour or clothing and other irrelevant features;
- it stipulates systematic reporting of carding to oversight boards;
- it provides for a thorough third party review of the regulation in two years after implementation.

A number of stakeholders hold a considerable amount of skepticism as to its effectiveness. Such skepticism can be attributed to the following key reasons:

- Some key stakeholders wanted to have the practice of carding by the police stopped completely. In contrast, the first clause of the new regulation clearly stipulates the right of the police to stop anyone for the purposes of gathering information regarding an offense that has been committed or to prevent an offense that might be committed;
- The regulation exempts police officers from key restrictions in carrying out street checks under certain conditions which are broadly defined and therefore left to interpretation by the police officer;
- The regulation does not require the police officer provide the individual stopped and questioned a copy of the information taken but only a receipt identifying the police officer, the time and date of the questioning, information how to contact the Independent Police Review Director and to use the Access to Information process to access to the information recorded in the interview;
- The regulation leaves to local police boards to deal with information collected by police prior to the inception of this regulation;

The tracking of the carding issue is instructive in a number of important ways:

- it provided insight into the importance of civilian oversight over a critical government function, that of law enforcement. Carding was allowed to evolve from a legitimately accepted routine police function into a full blown discriminatory and unjust authoritarian practice over several decades due to inadequate management and oversight in keeping up with the rapid social change in a growing city;
- the amount of effort that had to be mobilized to bring about needed change was enormous - as evidenced by the duration of the issue and the number of organizations that had to be involved to bring about the required change in practice;
- the interplay between the Toronto Police Service and the Toronto Police Services Board over carding was particularly long and drawn out. The outright defiance of the TPS in failing to implement carding policy set by the Board over a period of 4 years is indicative of an important institutional problem that requires attention. Hopefully, the current review of the Ontario Police Services Act will address this issue by specifying the relationship between civilian oversight boards and operational police forces.

Some TorontoNAJC members and JCs may ask what has carding have to do the JCs and the JC community. Awareness of and speaking out against racial discrimination and violation of human and civil rights is a critical responsibility which each citizen and organization in a democracy carries. That

Black community leaders spoke out against adverse police behaviour in the application of carding and street checks is commendable. That the Toronto Star and its reporters had the perseverance to undertake a detailed analyses of street checks by the Toronto Police is commendable and underscores the importance of a free press. That numerous organizations such as the Ontario Human Rights Commission, Urban Alliance on Race Relations, Toronto Police Accountability Coalition and others groups spoke out forcibly against the offensive aspects of carding is encouraging. The involvement of the Provincial Ministry of Community Safety and Correctional Services while late was nevertheless instrumental in quieting the controversy by agreeing to write a specific regulation on carding under the Police Services Act - something which in hindsight seemed like an obvious thing to do from the very beginning to avoid the controversy.

As this report is completed, the public controversy over policing with racial and racist overtones as it affects members of the black community continues in a number of different issues in Toronto and the Greater Toronto Region. The Toronto chapter of Black Lives Matter (BLM) recently temporarily halted the Pride parade in Toronto demanding that the Toronto Police be banned from participating in the parade along with some other demands. Earlier this spring BLM staged a sit-in protest at the entrance of the Toronto Police HQ building. BLM and the Black African Legal Clinic were protesting that the Special Investigation Unit's report into the police shooting of Andrew Loku, a black man living in assisted housing for mentally disturbed people who was shot because he was threatening a neighbour and brandishing a hammer, did not fully provide sufficient details of the situation which had been brought forward by witnesses. The SIU is an independent provincial unit which investigates serious police enforcement actions. The SIU report found no fault on the part of the police officer who shot Loku and did not name the officer. Subsequently, the Ontario coroner office's announced it would undertake an inquiry into Loku's death and the Toronto Police Services Board and the Toronto Police Service announced that they will make public reports on any police action investigated by the SIU in the future in order to increase transparency of their actions. In Peel Region,(adjacent to Toronto) the Peel Police Senior Officers Association has called for the resignation of the chair of the Peel Police Services Board, a visible southeast Asian, who initiated an equity and diversity audit of that police force calling the action "insulting" to the police force and its chief Jennifer Evans. In response, the mayors of Mississauga and Brampton who are members of the Board publicly supported the Chairman. The Board called for an audit after a group called the Peel Coalition Against Racialized Discrimination provided evidence from the force's own carding data.

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