

Provincial Advocate
for Children & Youth

L'intervenant provincial
en faveur des enfants & des jeunes

Office of the Provincial Advocate
for Children and Youth

Submission to the Toronto Police Services Board on
The draft policy for “street
checks” and community contacts

April 8, 2014

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Legislative
Assembly
of Ontario



Assemblée
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April 8, 2014

Dear Friend:

I am happy to share with you my Office's submission to the Toronto Police Services Board on "The draft policy for 'street checks' and community contacts".

The key points from the submission include:

- The practice of street checks be suspended until such time that compliance with human rights legislation can be demonstrated
- The nature of the information requested and recorded by police in these types of encounters with civilians be publicly available and that blank copies of Form 306 be available on the website of the Toronto Police Service and the Toronto Police Services Board
- Information recorded by officers with respect to contacts is easily retrievable, searchable, and accessible by those exercising oversight responsibility, those working on their behalf, and other external bodies who are granted access in other ways such as a freedom of information request or by court order.
- The interim receipt process is confusing and should be eliminated
- A duplicate or mirror copy of information recorded as part of the community contact process should be provided at the time of the stop
- It should be both the policy and practice of the Toronto Police Service to eliminate any doubt as to whether a person has been detained by a police during this type of interaction; language used should be explicit so individuals stopped for street checks are told they not being detained and are free to leave
- Police officers should be required to advise people about their rights during these encounters
- Information that clearly outlines a person's rights during street check interactions should be made available on the website of the Toronto Police Service, the Toronto Police Services Board and disseminated widely throughout the community

Sincerely,

Irwin Elman
Provincial Advocate for Children and Youth

INTRODUCTION

“Police randomly stop you. You are not being charged. They ask you questions such as, where are you going, who your friends are, and where you live.”

Youth Quote

The Office of the Provincial Advocate for Children and Youth (“Advocate’s Office”) is an independent office of the Legislative Assembly of Ontario, established under the *Provincial Advocate for Children and Youth Act, 2007* to provide an independent voice for children and youth.

We submit the following paper for two reasons; the first is that the Office adheres to the belief that the lived experiences of young people are an important component to be considered in developing effective policies and practices. Secondly, as an advocacy body, our role is to provide government and organizations that have contact with young people with recommendations on how to improve and ensure the rights of young people are upheld and protected.

A number of young people have raised concerns to the Advocate’s Office about problematic interactions with police officers within the context of ‘carding’. The practice referred to by some members of the public as ‘carding’; was initially referred to by the Toronto Police Services Board as ‘carding’, later as ‘street checks’, more recently as ‘contacts’; and by the Toronto Police Service variously as ‘community engagement’, ‘community Inquiries’, and ‘street checks’.

Examples of the concerns reported by young people include being asked by police to provide personal information about themselves, their family or others; the negative tenor of the interaction between themselves and police when these situations occur; confusion about whether they are required to answer the questions that are posed by police officers; and uncertainty about the legal ramifications if they simply walk away.

The social cost of the practice of carding to the Toronto Police Service has been acknowledged by that organization:

The Service risks losing public trust when operational practices result, intentionally or unintentionally, in the alienation of individuals or groups within society. One of the most important practices impacting the relationship between the police and the community is the manner in which officers engage with the community and how those interactions are documented. Specifically, the recording of those interactions, referred to in the community as “carding”, has been at the centre of this debate.¹

And,

There are communities in Toronto who believe they have experienced biased-based policing during their interactions with police. This is especially prominent in the Black community, and particularly among Black youth, based upon some of their community engagement experiences.²

¹ Toronto Police Service, *The Police and Community Engagement Review: Phase II – Internal Report and Recommendations*, Toronto, 2013, [“PACER Report”], p. 3.

² *Ibid.*, p 4.

The purpose of this submission to provide our position on how to strengthen various aspects of the Toronto Police Services Board's draft policy for street checks and community contacts in light of the recommendations that have already been made by the Toronto Police Service in their report entitled, *The Police and Community Engagement Review*, also known as the *PACER Report*.

1. LEGALITY OF THE PRACTICE

The Ontario Human Rights Commission has twice written to the Toronto Police Services Board to recommend that the current practice of carding be stopped “until policies and procedures are fully developed and completely and transparently assessed against the *Code* and the *Charter*”.³

The notion that police practice in this area must be compliant with the *Canadian Charter of Rights and Freedoms* and the *Ontario Human Rights Code* is not an extraordinary one. In fact, it is a common element in both the legal opinion received by the Toronto Police Service⁴ (as described in the *PACER Report*) and the legal opinion⁵ released publicly by the Toronto Police Services Board.

The Advocate's Office is not aware of any claim, either by the Toronto Police Service or the Toronto Police Services Board, that the current policies and practice of the Toronto Police Service in respect of carding meet the requirements of either the *Charter of Rights and Freedoms* or the *Ontario Human Rights Code*. Therefore, it is reasonable to recommend, like the Ontario Human Rights Commission did, that the practice be suspended until such time that compliance with human rights legislation can be demonstrated.

2. NATURE OF THE INFORMATION COLLECTED

One particularly important but still unanswered question in the debate on carding is the nature of the information requested and recorded by police in these types of encounters with civilians. As noted in the *PACER Report*,⁶

The apprehension of community members pertains to the three main areas of information content, usage, and retention which can essentially be distilled down to three anecdotal questions:

- *What are you writing down?*
- *How do you use it?*
- *How long will you keep it?*

With respect to the first question, the Toronto Police Service has not yet publicly confirmed what it is that they are writing down in the contact cards. The Toronto Police Accountability Coalition (TPAC), however, has posted a copy of a former version of the contact card (known as a Form 208) on their website. Of particular concern is that the form has spaces for police officers to indicate information such as birthplace, colour, eyes, hairstyle, height, weight, and body markings. One section on the card is entitled, “Young Person Information” and has space to

³ Barbara Hall, Correspondence July 2, 2013 and January 13, 2014, <http://www.ohrc.on.ca/en/ohrc-letter-toronto-police-services-board-current-practice-carding> and http://www.ohrc.on.ca/en/news_centre/letter-toronto-police-services-board-regarding-practice-carding.

⁴ *PACER Report*, p. 35.

⁵ Frank Addario, “*Legal opinion on police stops, community inquiries, detentions and record keeping*”. Dated December 6, 2013 at p. 4.

⁶ *PACER Report*, p. 66.

note information about whether the young person is attending school, the grade, the name of his or her parents and whether the parents are divorced or separated.

Although Form 208 has been renamed as Form 306 and apparently revised, there is information to suggest that a copy of this new form will not be publicly available.⁷

It should be remembered that the subjects of these police-civilian encounters have not been arrested or detained by police. Characterized in the *PACER Report* as “Community Inquiries” these encounters are defined as, “[a] simple meet-and-greet communication between an officer and a community member, wherein a limited exchange of information may occur”.⁸ Similarly, the draft policy under consideration today refers to the “collection, retention, use and disclosure of information arising from police-civilian contacts in **non-detention** and **non-arrest** contacts”.⁹ (Emphasis added.)

The Advocate’s Office is pleased to see the draft policy will require that categories in the newly named ‘Community Safety Notes’ be in compliance with the *Ontario Human Rights Code* and the *Municipal Freedom of Information and Protection of Privacy Act*. However, in keeping with section A. 1. a. of the draft policy — which states that the effect of contacts on the community is as important as the policing practices¹⁰ and, knowing that, according to the *PACER Report*, the community is very interested in knowing what the police are “writing down”— it is recommended that blank copies of Form 306 be available on the website of the Toronto Police Service and the Toronto Police Services Board.

ACCOUNTABILITY AND TRANSPARENCY IN CONTACTS

I. DISCONTINUATION OF HARD COPIES OF CONTACT CARDS

The *PACER Report* recommends that the “physical hard copy” contact cards be discontinued and replaced by having officers directly enter the information into their memo books, “the details of which to be submitted at a later time directly into the electronic application”.¹¹ It is not clear *when* the details from the community contact will be entered into the electronic application or by *whom*.

On the face of it, the recommendation raises concerns because the cards, which are discrete objects, *seem* easily accessible when required for scrutiny or data entry, whereas information contained in memo books *seems* inaccessible because the information is embedded within the reams of other information the officer has noted down as he or she goes about their day.

Both the public and the Toronto Police Services Board need to be assured the information recorded by officers with respect to contacts is easily retrievable, searchable, and accessible by those exercising oversight responsibility, those working on their behalf, and other external bodies who are granted access in other ways such as a freedom of information request or by court order.

⁷ Toronto Police Services Board, *Meeting Minutes*, October 7, 2013 at p.16.

⁸ *PACER Report*, p. 3.

⁹ Toronto Police Services Board, *Special Public Meeting Agenda April 8, 2014, on the draft Toronto Police Services Board policy for “street checks” and community contacts*, p. 1.

¹⁰ *Ibid.* p. 2.

¹¹ *PACER Report*, p. 23.

2. RECEIPTS AND MIRROR COPIES

The *PACER Report* contains a suggestion by front line officers that the interim receipt process be replaced with a reference number. It was further noted that only 20% of those who were offered a receipt accepted it¹², that community members found the receipt “confusing”¹³ and that the idea of receipts has been characterized by people in the community and the media as a “public relations exercise”.¹⁴

It is important to note that the idea of issuing receipts came from the Toronto Police Service. The Toronto Police Services Board, and various deputants wanted something quite different — a “mirror” or duplicate copy of the form that officers filled out during the carding process.

On April 5, 2012 the Toronto Police Services Board approved a motion, “to provide everyone stopped a **copy** of the contact card (Form 208) made by the officer, including the reason for the stop”.¹⁵ (Emphasis added.) The motion was deferred to allow the Chief of Police to report back on cost and operational implications.

Seven months later, the Chief of Police advised the Board that the Toronto Police Service would provide a receipt to members of the community subject to a street-check and indicated that the receipt would include the name of the person to whom the receipt would be issued, the name of the officer, the date of the stop and the reason for the stop.¹⁶ The minutes from this meeting indicate that the Board, “noted the distinction” between the type of information that would be made available as the result of the receipt suggested by the Chief and the type of information that was actually being entered into the contact cards.¹⁷

After various twists and turns, an interim receipt process was implemented in July 2013.¹⁸ In November 2013, the Toronto Star published a report that carding had decreased by more than 75% after July when police had been directed to issue receipts.¹⁹

The *PACER Report* outlines the concerns expressed by frontline officers about issuing receipts: *The new interim Community Inquiry Report Receipt...has become a topic of concern for frontline officers, due to the information printed on the back that provides an individual with immediate access to the complaint process.*²⁰

The Advocate’s Office is in agreement that the interim receipt process is confusing and should be eliminated. Instead, Officers should provide duplicate or mirror copies of the information recorded as part of the Community Contact process. If the Toronto Police Service has articulated an argument as to why duplicate copies of the information documented cannot be provided, the Advocate’s Office is not aware of it. Since the information collected by police in these circumstances is based only upon the verbal exchange between the Officer and the community member during the specific action in question, is difficult to see how the release of that information to the person who just provided it can be harmful to public safety, especially in view of the requirement in the draft policy²¹ that the categories of information collected by police must be compliant with the *Ontario Human Rights Code* and the *Municipal Freedom of Information and Protection of Privacy Act*.

¹² Ibid. p. 79.

¹³ Ibid. p. 49.

¹⁴ Ibid. p. 42.

¹⁵ Toronto Police Services Board, *Meeting Minutes*, April 5, 2012, p. 27.

¹⁶ Toronto Police Services Board, *Meeting Minutes*, November 14, 2012, p. 11.

¹⁷ Ibid.

¹⁸ Toronto Police Service Board, *Meeting Minutes*, June 20, 2013, p. 31.

¹⁹ Jim Rankin and Patty Winsa, “Carding by Toronto police drops sharply”, November 18, 2013

²⁰ *PACER Report*, p. 46.

²¹ Section C. 7. b.

3. RIGHTS INFORMATION

Two components of the draft policy are of particular interest to the Advocate's Office: (1) the principle that Toronto Police Service procedures must ensure "civilians know as much as possible in the circumstances of their right to leave and the reason for the Contact"²²; and (2) Officers will be "instructed about the importance of telling an individual they are free to leave if they are not detained or arrested".²³

This is a significant and a welcome step forward. Previously, the onus was on the subject of the interaction with police to determine whether or not he or she was free to leave. While some might find it easy to determine if they are actually detained by police or free to leave, most of the young people who have raised concerns with the Advocate's Office had no idea whether they had any rights in these circumstances.

Although it might be legally permissible to train officers to use the correct language during these encounters thereby signaling to the community member he or she is not being detained without explicitly saying so, the Advocate's Office does not believe this is the correct approach given the history of the practice and the concerns that have been uncovered as the result of the Toronto Star investigative reports on this issue in 2002, 2012 and 2013. It should be both the policy and practice of the Toronto Police Service to eliminate any doubt as to whether a person has been detained by police during the type of interaction that is the focus of this debate. To that end, the Advocate's Office recommends that police officers should be required to advise people about their rights during these encounters and that information clearly outlining these rights is available on the websites of the Toronto Police Service, the Toronto Police Services Board and disseminated widely throughout the community.

CONCLUSION

The PACER Report asserts the overall goal of data collection is to ensure public safety.²⁴ Of equal importance is to ensure practices build public trust. As it is currently used, data collection disproportionately targets specific communities. There must be adequate monitoring, transparency and oversight, to ensure both public safety and public trust.

Over the past two years, there have been various public meetings, an official sub-committee of the Toronto Police Services Board was formed, and motions, recommendations, submissions and reports made. And yet, like the participants in the Red Queen's race in Lewis Carroll's *Through the Looking Glass*, we seem to be no further ahead. One might say that there has been a lot of running around, but in at least two ways, we are in the same place as we were when the race, or public debate, started: it is not clear whether the current practice is legal, and very little has occurred that would have the effect of making the process more transparent.

It has become evident, in the midst of these discussions on carding that the practice will continue. The Advocate's Office seeks the implementation of a transparent process, open to public scrutiny. The process should include the sharing of information, including public disclosure of the information to be collected, providing a mirror copy of the contact card, and that the information recorded on the contact cards be easily retrievable, searchable, and accessible for those with oversight responsibility.

²² Section A. 1. d.

²³ Section D. 8. d.

²⁴ *PACER Report*, p. 7.

It is time for the Toronto Police Services Board to exhibit leadership on this issue and take strong decisive action. Toronto Police Service policies, procedures, and practices must exceed legislative requirements²⁵ as a means to instill community trust in all residents while at the same time, continuing to ensure public safety.

RECOMMENDATIONS

- **The interim receipt process is confusing and should be eliminated.**
- **A duplicate or mirror copy of information recorded as part of the community contact process should be provided at the time of the stop.**
- **It should be both the policy and practice of the Toronto Police Service to eliminate any doubt as to whether a person has been detained by a police during this type of interaction.**
- **Police officers should be required to advise people about their rights during these encounters.**
- **Information clearly outline a person’s rights during these “carding” interactions should be made available on the website of the Toronto Police Service, the Toronto Police Services Board and disseminated widely throughout the community.**

²⁵ Including of the Charter of Rights and Freedoms, the Ontario Human Rights Code and the Municipal Freedom of Information and Protection of Privacy Act

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