

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 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*.

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 ²the 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. At its November 14, 2012 meeting, the Board required the Chief to review 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.