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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)

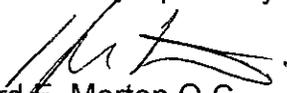
21. It should be noted that Justice LeForme did not have the benefit of being made aware of the use of the manner in which police operate when an individual declines to respond to police questioning.
22. Similarly, in R. v. Linton, now Superior Court Justice I. MacDonnell, in dismissing 4 charges of 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

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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 / CASRV CONTACT DETAILS		ZONE		TPS		TPS208	
		200805					
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 (S) <input type="checkbox"/> VEHICLE <input type="checkbox"/> REGISTRANT <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(G1)		CAREGIVER ADVISED	YES <input type="checkbox"/> NO <input type="checkbox"/>
MOTHER SURNAME(G1)		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 16/2012                      fax: 416-365-9371			