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June 20, 2013

Toronto Police Services Board
40 College Street
Toronto, Ontario
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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