

## LAW UNION OF ONTARIO – POLICING COMMITTEE

### SUBMISSION TO TORONTO POLICE SERVICES BOARD – APRIL 2, 2015

Carding is, and has always been, about intelligence gathering. It is not about building community trust. Call it by whatever euphemism you will, but the substance of the Board's proposed new carding policy is about the perpetuation of a general intelligence gather scheme that has been discredited, that has sown deep division and distrust in the community, and that has never been shown to actually enhance public safety.

If the objective is to rebuild the community's trust, lapsing into old ways of doing policing is not going to accomplish that.

Over the last year, the Board had been moving forward diligently to put in place a rights-based policy that mitigates the problems inherent with the practice of carding. The process it employed to do so was, by-and-large, open and transparent. Although the Board has not adopted the view of the Law Union of Ontario and many others who believe that carding should not be allowed at all, we constructively engaged with the Board in its efforts to construct a policy that at least curtailed the practice.

In December 2014, the newly constituted Board reaffirmed its commitment to the Community Contacts Policy and committed to working with the Chief to finalize the missing parts of the policy and the relevant procedures. Instead of finalizing the policy and developing procedures that are consistent with the policy, the Board and the Chief went behind closed doors to negotiate a rewrite of the policy in a manner that completely eviscerates it. Then the Mayor and the Chief went out last Friday to trumpet this new policy as some kind of landmark or milestone. Now, that policy is being presented to the public as something of a *fait accompli*. And just like that, the goodwill that the Board has sought to build up is being broken.

Yes, it is true that the Board has articulated a set of principles that amounts to: "the police have to follow the law, and respect the Charter and the Code." Those principles are part of the new policy, and they were mostly present in the original approved policy as well. Those principles amount to nothing more than telling officers they have to obey the law. However, the police have always been obliged to respect the *Charter* and the *Code* and other laws, and yet we still have the legacy of systemically discriminatory carding practices. Obviously, just saying that the police have to respect people's rights does not mean that they will, because they have not done so in the past. The carding data that has been reported in the Toronto Star tells that story clearly.

The Chair's letter to the Board (included in the agenda package for this meeting) states that the amended policy "continues to preserve all of the core principles" of the Community Contacts policy approved in April 2014. That is absolutely false. That is a statement of propaganda, not fact.

There are at least five core items that have been gutted from this policy:

#### Public Safety purpose

- There are no longer any clear restrictions on when someone can be carded – it is now completely open-ended because the new definition of “public safety purpose” is now completely open-ended. The new definition is so broad as to allow virtually any reason or pretense to card somebody, just like in the days before the Board passed its original policy.
- The Law Union’s position is that if carding is to be happening at all, it should only happen in very clearly circumscribed circumstances, and that a definition of “public safety purpose” that is consistent with what was contained in the original policy should apply (although it has been our contention that even that definition left open the possibility for abuse, and we previously recommended some specific amendments in that regard)

#### Receipts

- The new policy removes the requirement that officers provide a receipt in all instances that identifies the officer and the reason for the stop. It replaces it with a requirement that an officer only give a business card if one is requested, and does not require the officer to advise a person of the reason for being stopped and questioned.
- The Law Union states that accountability requires that receipts be offered in all cases. To help ensure that carding stops are not arbitrary, those receipts must clearly specify the purpose of the stop. Business cards don’t do that.

#### Duty to inform

- The new policy removes the obligation for police officers to advise people of their right not to participate in these carding interactions
- There is no question that people cannot be compelled to engage in these interactions, and this has been acknowledged in the Board’s policy and in the TPS draft procedure. The Board and the Service have also acknowledged concern about the risk of psychological detention. If one is concerned about mitigating the risk of psychological detention, and about promoting “free participation” in Community Engagements, at a minimum it would be necessary for an officer to advise a person of their right to leave before proceeding to extract their personal information.
- What reason could there possibly be not to advise someone of their rights in this context? The *only reason* not to advise people of these rights is that the police would prefer for people not to know their rights or exercise them in these interactions. If the Service is committed to promoting “free participation” in carding interaction, it should ensure that people engage in these interactions in which they are not legally obliged to participate with informed consent.

#### Data collection and retention

- The old policy called for a protocol for the destruction of data not collected in accordance with the policy. Now, that data will be retained indefinitely and without oversight.
- The new policy also broadens the scope of what kind of personal information can be collected and retained (and potentially disclosed)
- The Law Union has repeatedly called for the old carding data to be purged. The CAPP report made the same recommendation. It is imperative that that be done, because that data was not collected in accordance with any applicable policy.
- It is also necessary to carefully limit the kind of personal information that will be collected and retained. The original policy was reasonable in this regard. The new policy opens the door to resume the way things were done before the Board's original policy.

#### Accountability

- The original policy called for carding data to be kept in a separate database for accountability, evaluation, risk management and professional standards purposes. That is no longer required, and it is not apparent whether such data will continue to be collected and retained.
- There is also no provision for independent monitoring or evaluation of the practice of carding. Such independent monitoring and evaluation is critical. The Board recognized that in commissioning the CAPP Report. Regrettably, the Board is no disregarding that report and the recommendations it retains, including the recommendation that youth no longer be targeted for carding.

Attached as Appendix "A" is a table summarizing the material changes to the policy.

Attached as Appendix "B" is an annotated copy of the original approved policy, showing the changes being proposed in the new policy.

What makes this new proposed policy all the more troubling is that the effectiveness of carding has never been empirically demonstrated or established. Indeed, the Chief suspended carding in January, and nobody is suggesting the public was any less safe since then because of that.

We note that we wrote to the Chief in January 2015 with respect to his order, and asked him at the time to take further measures to protect public safety (see Appendix "C", attached). Regrettably, we did not receive any response, and it is not apparent that any action was taken in this regard.

There are many good models of community policing. Carding does not belong to any of them. It appears that carding is just something that the Toronto police got into the habit of doing without appreciating how harmful this practice really is. That is why the Board stepped in to curtail this practice, after it had already gotten well out of hand.

The Law Union of Ontario therefore asks the Board to either: (a) adopt a policy requiring carding to cease altogether, because it really is not necessary or even legal; or (b) reaffirm its commitment to the Community Contacts policy adopted in April 2014 and require the Chief to

administer the police force in accordance with the objectives, priorities and policies established by the board, as he is required to do under s.41 of the *Police Services Act*.

The *Police Services Act* is clear, and Judge Morden's report on policing during the G20 is clear about what the Board's responsibilities and obligations are. The Chief reports to the Board, not vice versa. The Chief is legally required to implement Board policy. If he is not willing to do that, that is called insubordination. That is not reason for the Board to "mediate" away the core principles it embraced last April.

We need to rethink how the police interact with the community, about how police can build real and meaningful connections with the communities they serve. This new policy doesn't do that, and instead retreads old failed strategies.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Vilko Zbogar', with a stylized, cursive script.

Vilko Zbogar,

On behalf of the Law Union of Ontario, Policing Committee

Encl.

## APPENDIX A: Summary of material changes proposed to Toronto Police Services Board carding policy

April 2, 2015

ISSUE	COMMUNITY CONTACTS POLICY (approved April 24, 2014)	COMMUNITY ENGAGEMENTS POLICY (proposed), and Draft TPS procedure	COMMENT
Terminology used to describe carding	"Community Contacts"	CHANGED to: "Community Engagements"	No substantive change, just a new euphemism
Statement of Principles	Various statements of principle are included throughout the policy	Statements of Principle CONSOLIDATED into one section. Principles are derived from original policy, <i>Police Services Act, Charter, Code</i> , and Supreme Court jurisprudence	No substantive change, just reorganization
Public safety purpose	<p>Policy requires that carding follow "<b><i>an explicit definition of public safety...</i></b>" [Preamble]</p> <p>The definition is included in section 4. The circumstances in which carding can be initiated are clear and explicitly circumscribed:</p> <p><i>4(a). Valid public safety purposes justifying the initiation or recording of Contacts are:</i></p> <ul style="list-style-type: none"> <li><i>i. Investigating a specific offence or a series of offences;</i></li> <li><i>ii. Preventing a specific offence; and</i></li> <li><i>iii. Ensuring the community member who is the subject of the Contact is not at risk.</i></li> </ul> <p>[s.4(a)]</p>	<p>DELETED requirement to follow an explicit definition of public safety</p> <p>Definition DELETED from policy. New, very broad definition now included in TPS procedure:</p> <p><i>Public Safety Purpose means:</i></p> <ul style="list-style-type: none"> <li><i>• Preserving the peace,</i></li> <li><i>• Preventing crimes or other offences, and/or</i></li> <li><i>• The performance of common law duties, including the duty to protect life and property</i></li> </ul> <p><i>in accordance with the PSA, for the welfare and protection of the community, whether one or more persons or the public at large.</i> [at p.5]</p>	<p>There are no longer <b>meaningful circumscribed limits</b> on when carding can be initiated by a police officer. The new definition is so broad as to allow <b>virtually any reason or pretense</b> to card someone.</p> <p>Most of the circumstances where carding was not permitted under the original policy can now be justified under the new policy.</p>

<p>Public safety purpose (cont'd)</p>	<p>Section 4 specifies some circumstances where carding is <i>not</i> permitted:</p> <p><i>4(b) Purposes that do not justify the initiation, continuation or recording of Contacts are:</i></p> <ul style="list-style-type: none"> <li><i>i. Gathering personal information for use in unspecified future investigation;</i></li> <li><i>ii. Investigating an unsupported suspicion;</i></li> <li><i>iii. Prolonging an interaction in the hope of acquiring the reasonable suspicion necessary to detain;</i></li> <li><i>iv. Meeting a quota or performance target; and</i></li> <li><i>v. Raising awareness of police presence in the community. [s.4(b)]</i></li> </ul> <p>Sections 5(a) and 6(b) refer to the requirement that officers only initiate carding and elicit information “<i>where they can articulate the public safety purpose of the information sought</i>”</p>	<p>This section is DELETED from the policy, except that Statement of Principles incorporates s.4(b)(iv) in stating that there is no quota for carding</p> <p>These sections are DELETED from the policy. There is no requirement that officers be able to articulate a public safety purpose prior to initiating carding. However, the TPS draft procedures require that officers articulate a public safety purpose for <b>recording</b> information obtained from a contact [p.6, s.2]</p>	
<p>Informing community members of their rights</p>	<p>Policy “<i>places an obligation to <b>proactively inform community members of their rights</b></i>” [Preamble]</p> <p>Policy requires Chief to establish procedures to ensure that “<i>Community members know as much as possible in the circumstances about their right to leave and the reason for the Contact</i>” [s.5(c)]</p>	<p>CHANGED - Policy now “<i>places an obligation to <b>respect community members’ rights</b></i>”</p> <p>DELETED.</p>	<p>Nothing in the new Policy requires <b>proactive disclosure</b> to a community member about their rights. Although the new policy encourages “free participation”, it does not allow for <b>informed consent</b> to being carded. This is internally inconsistent.</p>

<p>Informing community members of their rights (cont'd)</p>	<p>Policy further states that <i>“A Contact is not in compliance with this policy if the community member does not freely participate in the Contact”</i> [s.6(a)]</p> <p>Also, s.14(d) requires that officers be trained about <i>“the importance of telling an individual that they are free to leave if they are not detained or arrested”</i> [s.14(d)]</p>	<p>REPLACED with statement that: <i>“The Policy seeks to encourage Community Engagements in which the community member freely participates”</i> [s.4]</p> <p>DELETED from policy. The TPS training materials are not yet available, but they are unlikely to include such training given that the policy does not require it.</p>	
<p>Receipts</p>	<p>Policy requires Chief to establish procedures to ensure that: <i>“Service members <b>complete and offer a receipt</b> to the subject of the Contact identifying the Service member by name and badge number and <b>reason for the Contact</b>, at a minimum”</i> [s.5(f)]</p>	<p>DELETED</p> <p>TPS procedure now provides only that an officer <i>“offer to provide, or provide <b>if requested</b>, a Service Business Card with the officer’s contact information”</i> [at p.3 and p.6]</p>	<p>Officers no longer need to complete and offer a receipt. They may only offer a business card, <b>if one is requested</b>. Even if a business card is offered, it would not identify the <b>reason for the Contact</b>.</p>
<p>Data collection</p>	<p>Policy required that Contacts <i>“not lead to the collection of irrelevant personal information,”</i> i.e., information not relevant to the public safety purpose for the Contact [s.5(e) and s.8(a)-(c)]</p> <p>In particular, s.8(c) required that CSNs <i>“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”</i> [s.8(c)]</p>	<p>CHANGED. Now, policy requires that Community Engagements <i>“only lead to the retention, use or disclosure of material personal information.”</i> [s.6(a)]</p> <p>TPS procedure now requires a police officer to <i>“articulate the specific Public Safety Purpose in their memorandum books [only] if information obtained from the interaction is being further documented in a CER”</i> [p.6, s.2]</p>	<p>This change seems subtle, but it is significant. There is no definition of what may constitute <b>“material” personal information</b>, or clarity about what the information must be material to. Given the broad definition of “Public Safety Purpose” now proposed, all personal information would appear to be fair game for inclusion in the database, just like before the Board passed the original policy.</p>

Pre-policy data retention	Carding data that was created prior to July 2013 was to be purged, where the collection and retention of the data was inconsistent with the policy. The Chief was directed to work with the Board on a “ <i>retention and destruction protocol</i> ” in this regard. [s.8(g)]	CHANGED. All carding data in the database will be retained. There is no provision for destruction of non-compliant data. [s.6(d)]	Notwithstanding the acknowledged problems with the way carding was practiced in the past, and notwithstanding the inherently discriminatory nature of carding, all of that data remains in the investigation database and can <b>continue to be used and disclosed to third parties.</b>
Accountability	Policy required that carding data be kept in a database separate from the intelligence database, for performance evaluation, risk management and professional standards [s.11]	DELETED  TPS procedures do not require that Community Engagements that are not deemed to serve a Public Safety Purpose be recorded in a database at all. [p.6, s.2]	No provision for keeping data for <b>accountability purposes.</b>  There will be no viable way to track non-compliant carding interactions if officers are not obliged to record data about such interactions in an accountability database.
Monitoring and evaluation	Reports on carding were to be submitted to the Board three times per year [s.19]  Policy provided for retention of external consultant or evaluator [s.10]  The Board in fact retained a company to undertake a survey of community satisfaction following the approval of the policy in April 2014 (the CAPP Report)	CHANGED from reporting three times per year to once per year. [s.13]  DELETED	No provision for <b>independent monitoring or evaluation</b>  None of the 10 CAPP Report recommendations are being incorporated into the policy, including a recommendation that the <b>carding of minors</b> be banned.





TORONTO POLICE SERVICES BOARD

"ENGAGEMENTS"  
[note change in terminology throughout]

COMMUNITY CONTACTS

<b>DATE APPROVED</b>	April 24, 2014	Minute No: P102/14
<b>DATE(S) AMENDED</b>		
<b>DATE REVIEWED</b>		
<b>REPORTING REQUIREMENT</b>		
<b>LEGISLATION</b>	<i>Police Services Act, R.S.O. 1990, c.P.15, as amended, s. 31(1)(c).</i> <i>Canadian Charter of Rights and Freedoms</i> <i>Ontario Human Rights Code</i> <i>Municipal Freedom of Information and Protection of Privacy Act</i>	
<b>ASSOCIATED POLICIES</b>	Race and Ethnocultural Equity Human Rights Collection, Use and Reporting of Demographic Statistics	
<b>DERIVATION</b>		

NEW SECTION: Joint Statement of Principles [see proposed policy]

Independent civilian oversight has always been necessary to maintain public trust in the police. The reform of police-community interactions needs to be public, transparent and ~~Board-controlled.~~ "subject to Board governance and oversight"

The Board does not condone and explicitly condemns any police practice that may have a discriminatory impact on any member or section of the community, including, specifically, racial profiling. This is not only a matter of Board policy but also of law. Policing must be carried out in a manner that fully respects and implements obligations under the Canadian *Charter of Rights and Freedoms* ("the *Charter*") and the Ontario *Human Rights Code* ("the *Code*"). It is believed, further, that practices consistent with this understanding are essential to promote legitimacy of policing as well as public trust and confidence in it.

This policy, therefore, seeks to ensure that there is a proactive rights-based approach to the way in which members of the Toronto Police Service interact with members of the public. Such interaction is fundamental to community-based policing. Service members must get to know the neighbourhoods they serve and they must be able to enter into conversations with residents of these neighbourhoods in order to provide effective service. They must be able also to gather and retain legitimate information. However, they must do so, and be trained and supervised to do so, within a clear framework, ~~following an explicit definition of public safety,~~ and in strict accordance with procedures that support this policy. As a rights-based policy, it also places an

"respect community members"

obligation to ~~proactively inform community members of their~~ rights under the *Charter* and the *Code*. As well, retention and use of information must be consistent with rights under the privacy laws.

The Board acknowledges that members of the Toronto Police Service are legally entitled to have conversations with members of the public. The Board recognizes that the way in which some conversations have been conducted and recorded has adversely affected individuals and communities and has had a demonstrated negative impact on public trust.

Public trust in the police is essential to effective policing. Creating a policy that governs interactions between Service and community members will enhance public trust and cooperation with the police. The collection, retention, use and disclosure of information gathered in ways consistent with this policy and for a valid public safety purpose can be a legitimate and effective policing tool.

In this policy, "Contacts" are non-detention, non-arrest interactions between Service 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. "Community Safety Notes" ("CSNs") are investigative records of information that will be generated by some Contacts.

The objectives of this policy are to:

- a. Improve police-community interactions and eliminate the collection, retention, use and disclosure of irrelevant personal information;
- b. Identify the circumstances in which it is appropriate to initiate a Contact or create a CSN;
- c. Eliminate discrimination from Contacts;
- d. Collect, retain, use and disclose information only to:
  - i. Ensure accountability in the initiation of Contacts and the creation of CSNs, and
  - ii. Fulfill policing duties under s. 42 of the *Police Services Act*;
- e. Improve community confidence in the Service's ability to provide non-biased policing;
- f. Enhance awareness of human rights and civil liberties under the *Charter*, the *Code* and Board policies;
- g. Ensure the provision of effective training on how to conduct Contacts in a way that promotes community trust; and
- h. Ensure effective oversight of Contacts by the Board through periodic, independent evaluation and public reporting of Contact-related data.

It is therefore, the policy of the Toronto Police Services Board that:

## Principles

1. The Chief of Police will establish procedures regarding Contacts that:
  - a. Minimize the potential negative effects of Contacts on the community;
  - b. Reflect the goal of police legitimacy by ensuring Contacts are conducted in the spirit of trust building with the community and are directed toward effective policing;
  - c. Ensure compliance with the *Charter* generally and, in particular, the s. 9 protection against arbitrary detention and the s. 15 right to equal treatment under the law;
  - d. Ensure compliance with the *Code* generally and, in particular, the s. 1 freedom from discrimination based on race, place of origin, age, colour, ethnic origin, gender identity or gender expression; and
  - e. Ensure compliance with the *Municipal Freedom of Information and Protection of Privacy Act* (“MFIPPA”) generally and in particular, with Part II of MFIPPA.
  - f. "Equip service members with business cards which maybe offered to members of the community with whom the Service members are in contact"

## Definition of Public Safety Purpose

2. Service members may only initiate and record Contacts that serve a valid public safety purpose.
3. The Chief will include in procedures ~~a definition of public safety purpose that is consistent with this policy. The procedure will acknowledge the potential negative impact of Contacts on the community and prohibit the collection, retention, use or disclosure of irrelevant information.~~ "guidelines for exercising discretion consistent with this Policy"
4. ~~Until the Chief prepares a policy compliant definition of public safety purpose, the following applies:~~
  - a. ~~Valid public safety purposes justifying the initiation or recording of Contacts are:~~
    - i. ~~Investigating a specific offence or a series of offences;~~
    - ii. ~~Preventing a specific offence; and~~
    - iii. ~~Ensuring the community member who is the subject of the Contact is not at risk.~~
  - b. ~~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.~~

### ~~Initiating Contacts: Data Collection for Investigative Purposes~~

~~5. The Chief will establish procedures regarding the initiation of Contacts to ensure that:~~

- ~~a. Service members only initiate Contacts where they can articulate the public safety purpose of the information sought;~~
- ~~b. Service members 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;~~  

[Note: Statement of joint principles now includes the language of s.5b]
- ~~c. Community members know as much as possible in the circumstances about their right to leave and the reason for the Contact;~~
- ~~d. Service members understand that disengagement from a Contact is an acceptable, valued and sometimes necessary policing step;~~
- ~~e. Contacts do not lead to the collection of irrelevant personal information; and,~~
- ~~f. Service members complete and offer a receipt to the subject of the Contact identifying the Service member by name and badge number and reason for the Contact, at a minimum.~~

~~6. A Contact is not in compliance with this policy if:~~

- ~~a. The community member does not freely participate in the Contact; or~~
- ~~b. The Service member elicits or attempts to elicit personal information without an articulable basis to believe the information will serve a public safety purpose.~~

4. "The Policy seeks to encourage Community Engagements in which the community member freely participates."

### ~~Recording Contacts: Data Retention for Investigative Purposes~~

~~7. The Service may record information arising from Contacts in the form of CSNs where:~~

~~"Collection and"~~

~~"and retain"~~

~~"compliance with this policy"~~

- ~~a. The Contact was initiated and conducted in compliance with this policy; and~~
  - ~~b. Recording the information would serve a valid public safety purpose.~~
8. The Chief will establish procedures regarding the retention, use and disclosure of personal information arising from Contacts to ensure that:
- ~~a. **Contacts do not** lead to the retention, use or disclosure of **irrelevant** personal information; **"They only"** **"material"**~~
  - ~~b. Service members understand they have a duty not to complete CSNs where it becomes apparent during the course of a Contact that a CSN would serve no valid public safety purpose;~~
  - ~~c. CSNs 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;~~
  - ~~d. The Service will not use the quantity of CSNs prepared to measure performance and productivity of individual Service members; **[Note: Statement of joint principles now contains a statement to this effect]**~~
  - ~~e. Categories of information in CSNs are developed in consultation with the Ontario Human Rights Commissioner and the Office of the Information and Privacy Commissioner;~~
  - ~~f. 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~~
  - ~~g. 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. **"The retention of information from Community Engagements currently in the investigative database shall be consistent with this Policy."**~~

**~~Recording Contacts: Data Retention for Accountability and Transparency Purposes~~**

- 9. The Chief, in consultation with the Board, will commit to collecting data about Contacts that can be used to evaluate the effectiveness of police services in Toronto. The community's level of satisfaction with police services will be a measure of effectiveness. **"Public safety is another measure of effectiveness"**
- 10. ~~The Chief, in consultation with the Board, will determine the type of data that will be collected, the duration of its retention and the scope of any internal or external consultation or evaluation of Contacts. The Chief and the Board will work collaboratively to identify and retain any external consultant or evaluator.~~

- ~~11. The Chief will ensure that any information collected for the purpose of evaluating Contacts is non-identifiable, kept separately, is held in a database accessible for performance evaluation, risk management or professional standards and is not entered into the investigative database.~~
- ~~12. The Chief will give the Board any internal or external report or data related to Contacts upon request from the Board.~~
13. The Board and the Service will only use the data collected under this part of the policy to improve the effectiveness of police services in Toronto.

## Training

14. The Chief will ensure that Service members at all levels, ~~as appropriate,~~ receive the training necessary to conduct Contacts in accordance with the law and Board policy. This training will include:
  - a. Instruction about conducting Contacts in a manner that maximizes effective policing; **"and enhances community trust"**
  - ~~b. Instruction about conducting Contacts in a manner that promotes public confidence. This includes training about the importance of contacts which are free of discrimination;~~
  - ~~c. Instruction about the principle enunciated by the Supreme Court of Canada (e.g., in *R v. Grant*) that detention can be psychological and that restrictive police conduct can create a detention;~~
  - ~~d. Instruction about the importance of telling an individual that they are free to leave if they are not detained or arrested;~~
  - ~~e. Instruction about the use of respectful language, tone and demeanour during Contacts; and~~
  - ~~f. Instruction that Contacts are not a tool to be used to prolong an interaction in the hope of acquiring the reasonable suspicion necessary to detain.~~
15. The Chief will ensure that Service members ~~who are reassigned or temporarily assigned to a new neighbourhood or Division communicate and cooperate with community-based liaison officers~~ and receive any other support, **training and resources** necessary to familiarize themselves with the new assignment. **"are familiar with the neighbourhood and the community to which they are assigned"**
- ~~16. The Chief will ensure that Service members responsible for creating and supervising the initiation of Contacts and the creation of CSNs receive the training necessary to assist in data collection as described in section E of this policy.~~
17. The Chief will provide to the Board copies of all training modules on Contacts for review upon request from the Board.

## Supervision

18. The Chief will establish procedures regarding Contacts to ensure that:

- a. Service members receive effective supervision related to Contacts;
- b. Supervisors are trained to ~~critically examine the circumstances leading to the Contact and any resulting CSNs to determine compliance with this policy and are held accountable for any failure to do so;~~ and "ensure"
- c. ~~Service members are subject to the full range of disciplinary measures in relation to Contacts where discipline is justified.~~

## Reporting

19. For the purposes of transparency, accountability and assisting the Board in assessing compliance with this policy, the Chief will submit a public report to the Board in ~~January, May and September of each year~~ containing full data and statistics related to Contacts. "and training"

"September 2015 and March 2016 and in March of each year thereafter"

# LAW UNION OF ONTARIO

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## **FOR IMMEDIATE ATTENTION**

January 24, 2015

BY FAX TO: 416-808-8002

William Blair  
Chief, Toronto Police Service  
40 College Street  
Toronto, Ontario  
M5G 2J3

Dear Chief Blair:

### **Re: Suspension of carding**

We are advised from recent media reports that you have ordered members of the Toronto Police Service to suspend carding as of January 1, 2015 until further notice. The Law Union of Ontario welcomes a “no carding” policy as the best policy, and supports a permanent suspension of the practice.

The Policing Committee of the Law Union also urges you to take three further immediate measures to protect the public, as described herein, pending an opportunity for the Toronto Police Services Board to comprehensively address the carding issue at its next meeting.

#### 1. All arbitrary stops should cease, not just the recording of those stops

The Law Union’s concern is not just with the intelligence-gathering practice known as carding, but with *any* arbitrary stops of members of the public that are based in whole or in part on stereotypes or assumptions. It is therefore of concern that recent media reports indicate that the Toronto Police Association responded to your order by stating that: “the suspension of carding should not have an impact on how officers interact with the public, only with how those interactions are recorded.” The implication of that statement is that officers may continue to



arbitrarily stop and question people outside the context of specific investigations as long as they do not submit the information they obtain from those stops for entry into the database. Such an interpretation of your direction is dangerous and unacceptable. It must be made absolutely clear to the police and to the public that the police will not just cease *recording* arbitrary stops in the general intelligence database, but will cease arbitrarily stopping members of the public altogether.

**The Law Union therefore requests that you immediately clarify your order by ordering members of the Toronto Police Service not to arbitrarily stop and question *any* person, whether for purposes of carding or not.**

On a longer term basis, the Law Union will request that the Toronto Police Services Board adopt a policy that goes beyond the current carding policy and which prohibits the Toronto Police Service from stopping and questioning a person outside the context of a specific investigation, under false pretenses, or for any arbitrary purpose.

2. Disaggregated data about police stops should still be collected

It remains important and necessary for the police to collect and record disaggregated data or race-based statistics about the individuals they stop and question, provided that personal information (name, contact information, identification numbers, etc.) is not attached to that information in any intelligence database. Both international and domestic organizations have highlighted the importance of collecting disaggregated data, and recognize that such information is necessary to monitor whether policing is being done in an unbiased manner. To be clear, it remains the Law Union's position that amassing law-abiding people's personal information into a general intelligence database is unlawful, especially when minority youth are disproportionately targeted, and we welcome your directive that Toronto Police suspend this practice. However, some of the same kinds of information that were collected under the carding program should continue to be collected for *accountability* purposes.

**The Law Union therefore requests that you direct members of the Toronto Police service to continue to collect *disaggregated* data from the persons they stop (to include race and gender as mandatory), and record that information in a database that does not include personal identifying information about the persons stopped.**

The Law Union will also be asking the Board to mandate such record-keeping as part of a long-term policy.

3. Non-disclosure of existing carding data

If carding is being suspended, the use of the data collected under the carding program must also be suspended for the sake of consistency and fairness.

Therefore, immediate action must be taken to prevent the disclosure of any existing carding data to third parties. Disclosure of such information to third parties in response to reference checks can destroy people's lives and career prospects.

In addition, in order to help ensure that members of the public are treated fairly in their encounters with the police, carding records should not be included in the information disclosed to officers when they run a check on an individual. Information collected during “general investigation” or other arbitrary carding stops may be prejudicial to the victims of the practice and may be inaccurate, and reliance on this information by police officers may negatively affect how they interact with carding subjects. This is especially a concern for Black and Brown youth who have disproportionately been targeted by the carding program, and who will therefore be disproportionately negatively impacted if officers continue to access and rely on carding data.

**The Law Union therefore requests that you immediately order that no carding information be disclosed to any third party or used by police officers.**

As a more permanent solution, the Law Union will continue to urge the Board to direct that all personal identifying information about any person who was carded be purged from any intelligence database, and that only disaggregated data be retained.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Vilko Zbogar', with a stylized flourish at the end.

Vilko Zbogar  
on behalf of the Law Union of Ontario, Policing Committee

c.c.: Alok Mukherjee, Chair, Toronto Police Services Board