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Submissions to the Toronto Police Services Board Meeting Nov 18, 2013

Re:

1. Police and Community Engagement Review (PACER Report), Toronto Police Services
 2. “Police Carding and the Issue of Profiling”, Dr. Alok Mukherjee, Chair, Toronto Police Services Board
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1. CCLA shares the concerns expressed by the Chair, and continues to be alarmed about the ongoing racial profiling and race-based harassment of people in this city – in particular young black men.
2. CCLA agrees that a denunciation of this practice is an important measure. Concrete measures to stop street checks and end racial profiling must also be taken.

CCLA recommends that such concrete measures include the following:

A. A prohibition against carding or street checks.

It is unlawful and unconstitutional, in our view, to stop, question, detain, and/or search a person and/or record their information in a police database, if the interaction is not voluntary and in the absence of a proper investigative purpose, as set out below.

B. A policy that spells out the circumstances in which it is permissible for police to conduct such stops.

There may be many situations in which police will seek to engage with a community, ask questions, seek to learn the issues and concerns of local residents, and so forth. The policy should establish that such interactions may take place only if the interactions are voluntary, and that the onus is on the police to ensure that such interactions are truly voluntary, as set out below.

¹ The Canadian Civil Liberties Association (CCLA) is a national organization with thousands of supporters drawn from all walks of life. The CCLA was constituted to promote respect for and observance of fundamental human rights and civil liberties and to defend and foster the recognition of those rights and liberties.

With respect to all other interactions, the policy should express clearly that police may stop, question, and/or detain a person, if the police are investigating a specific offence and they have reasonable suspicion that the person is connected to that offence, and the stop is necessary.

In addition, without derogating from the above, the policy should clarify:

- “Community engagement” and “general investigation” do not constitute reasons for involuntary stops.
- A “voluntary stop” is a problematic concept that needs to be examined and clarified. Power balances between police and the individuals they stop lead many individuals to conclude that they have no choice but to comply.
- Power imbalances between police and individual persons – in particular young, racialized persons – are not perceived, they are real:
 - The law creates a real imbalance. The *Police Services Act*, *Criminal Code*, and common law among others, empower officers to carry weapons, conduct arrests, detain, search, and more.
 - The weapons worn and displayed by police officers create a real imbalance.
 - Lack of information creates an imbalance. It is generally the case that, absent any other information, a young person will believe they are required to stay, obey, reply to the questions, and follow the directions of a police officer – an authority figure in uniform.
 - Real life experience can create an imbalance. Some young people, in particular those whose communities have been the subject of profiling, have had or heard of encounters in which certain officers did not take “no” for an answer – encounters that did not end well for the person who was stopped. There are also situations in which a young person will independently reach the reasonable conclusion that it is not advisable and/or not safe for them to walk away or refuse to answer a police officer’s questions.
- Given power imbalances between police and the persons they stop and/or question and/or search, it will be very difficult for a person to refuse to comply. If so, such compliance is not “voluntary.”

- In light of the above, there must be a presumption that when a police officer stops and/or questions and/or searches and/or records data about an individual, the individual's compliance is not voluntary.
- If an interaction is going to be truly voluntary, everyone needs to know this and feel secure to act in accordance with this knowledge.
- If the police are interacting with individuals and taking advantage of the fact that the individuals do not know they can walk away, or are intimidated – this is unfair and lacks good faith. And clearly it is no way to earn public trust.
- Clear guidelines are needed to confirm which stops and/or searches may be voluntary. For example, an officer wishing to engage a member of the community should, at the least, need to inform the person that she or he is not required to stay, and not required to answer questions. Additional factors may involve the history between police and that individual and/or their community, and the degree of trust in the community towards police.

C. Accountability Tools

In light of the long history of racial profiling, public trust is seriously compromised with certain communities. To overcome this, greater openness and transparency are needed. These should include:

- Internal audits within the Service;
- Direct responsibility of the most senior officers in the Service;
- Regular audits and reviews of police practices by an external, independent, civilian oversight body with proper access to information and proper investigative authority.

D. A Copy of Information Recorded by Police

- a. Advocates who wish to end racial profiling have not asked for and do not wish to see increased stops, questioning, or documentation of individuals.
- b. What advocates and academics demand is that when police have engaged in such encounters, and when they record data about an individual in their database, that that individual receives a copy of the record (subject to genuine and legitimate policing needs that may justify withholding some of the information).
- c. Many advocates and academics – in Canada and outside Canada – have called for such copies to be provided to the individual in question, as a critical accountability tool.

- d. Such copies appear to also have played a role in forcing officers to seriously consider the necessity of stops.
- e. The copy in question should be created by way of carbon copy or print-out. In this way, the record received by the individual is identical to that recorded in police databases (subject to genuine and legitimate policing needs that may justify withholding some of the record).
- f. The use of a carbon copy or print-out will not cause redundancies or extra paperwork for the officers, nor will it cause a delay for the individual receiving the copy.
- g. What the copy will do is provide a critical accountability tool that can be used by the individual, and later by the supervising and senior officers, as well as internal and external auditors, to examine the record and verify its accuracy and the lawfulness of the interaction. Such verification will be important for members of the community who feel police may have conducted themselves inappropriately in some circumstances, and for the police who may have conducted themselves appropriately and now have a tool to build public trust.
- h. Immediately following the interaction, the individual can check the copy and verify:
 - i. Whether the officer accurately recorded the individual's racial appearance. This will ensure that race-based numbers in the database are accurately recorded; and
 - ii. Whether the reason a person is stopped, as told to them by police, is the same reason recorded in the database. Such a reason can also later be cross-referenced against other police records. Thus, for example, individuals stopped by police are frequently told that they match the description of a suspect from a nearby offence. If the individual receives a written record of that information, it will be easier later to check this against reports of nearby offences and suspect descriptions. Such a check may be conducted by a supervising and/or senior officer, an internal and/or external civilian audit body, and/or the OIPRD. Such a check, and the information on which it is based, is potentially extremely valuable for the individual, the community and the Service. If an officer has acted inappropriately or unlawfully, the supervising officer can take appropriate action with the officer and with the individual, in an effort both to improve the Service and build public trust. The individual is provided a tool to seek recourse if a stop is unjustified. And the Service has the opportunity to demonstrate its

clean hands in those circumstances where the stop was permissible as set out above.

- i. In light of the informational and power imbalances, and the need to rectify a long history of race-based harassment, it is critical that the copy provided to an individual also contain information about how to complain if they feel the stop was not justified or was not conducted appropriately.

E. Data analysis

Data collected by the Service must continue to include race-related information in order for it to be possible to monitor and analyse police stops, as recommended by the Chair.

F. Expert Assistance

The Service and Board should commission reports and seek assistance from academics and advocates with expertise in this area.