



Ontario
Human Rights Commission
Commission ontarienne des
droits de la personne

Ontario Human Rights Commission

Submission to the

Independent Street Checks Review

April 12, 2018

EXECUTIVE SUMMARY

Regulation 58/16: Collection of Identifying Information in Certain Circumstances – Prohibition and Duties (the “Regulation”) was developed in response to numerous reports of racial profiling in policing across the province, with the goal of “ensuring that police-public interactions should be conducted without bias or discrimination”¹. Unfortunately, in our view, the Regulation has not lived up to this promise and, as currently framed, cannot achieve its goal. Racial profiling in policing remains an ongoing reality for Indigenous, Black and other racialized communities. The Ontario Human Rights Commission (OHRC) is hopeful, however, that through this review and the recommendations that come out of it, the Regulation can be amended so that it can finally meet its promise.

From the outset of the regulatory drafting process, the OHRC has made a number of submissions to the Ministry of Community Safety and Correctional Services (“MCSCS”) geared towards reducing racial profiling in street checks and other police practices (see “Joint Response to Ontario Draft Regulation” (October 28, 2015); OHRC Submission to the Ministry of Community Safety and Correctional Services on Street Checks (December 11, 2015); OHRC Submission to MCSCS on Strategy for a Safer Ontario (April 29, 2016); Letter to Minister David Orazietti re Street Checks Regulation (August 10, 2016)).

Throughout those submissions, the OHRC has consistently raised three main concerns that have yet to be addressed and which continue to threaten the success of the Regulation.

¹<https://www.mcscs.jus.gov.on.ca/english/Policing/StreetChecks/StreetChecksIndependentReviewTaskForceTermsReference.html>

First, the scope of Regulation 58/16 is defined too narrowly. The exclusion of interactions where police are investigating a specific offence (which can be interpreted very broadly) and traffic stops threatens to render its mandate meaningless. There cannot be accountability for racial profiling in police interactions if, as appears to be the case in some police forces, only a small handful of interactions are being captured under the Regulation. In Ottawa, only seven public interactions with the Ottawa Police Service were found to fall within the scope of the Regulation between March 28, 2017 and December 31, 2017.² In Peel Region, that number for all of 2017 was two.³ If important changes are not made, the Regulation will remain ineffective

Second, the circumstances in which police are permitted to approach individuals in a non-arrest scenario and to collect identifying information should be further narrowed. The current Regulation permits the continued use of police tactics that have a disproportionate impact on Black, Indigenous and other racialized communities.

Finally, the OHRC has worked with the Ontario Association of Chiefs of Police (“OACP”) and the Ontario Association of Police Services Boards (“OAPSB”) to improve the methods of collecting personal information to ensure that the data collected is useful to understanding any human rights issues that may arise from current police practices.

RECOMMENDATIONS

1. Expand the scope of the Regulation to direct police services to establish permanent data collection and retention systems to record human rights identity-based data on, but not limited to, all stops of civilians, use of force incidents, and interactions where officers ask about immigration status or conduct immigration status checks.
2. Amend the Regulation to narrow and provide more guidance on the circumstances in which police may approach individuals in a non-arrest scenario and collect identifying information.
3. Adopt province-wide standards for collecting human rights-based data in accordance with the approach developed by the OHRC and endorsed by the OACP and OAPSB.

² Ottawa Police Services Board Agenda 41 (January 29, 2018); Chief’s report re: Collection of identifying information – duties & prohibitions policy: annual report at 4-5.

³ Peel Regional Police – Collection of Identifying Information in Certain Circumstances Annual Report, February 27, 2018.

Anti-Indigenous and anti-Black racism in policing is a reality

Street checks must be understood within the broader context of anti-Indigenous and anti-Black racism in the criminal justice system; a reality that has been confirmed by numerous research studies and recognized repeatedly by the Supreme Court of Canada and other courts.

An example of anti-Indigenous and anti-Black racism in the criminal justice system is racial profiling in policing, a form of systemic discrimination. It can occur in multiple forms of police interactions, including traffic stops, searches, DNA sampling, arrests, and incidents involving use of force. Racial profiling is a violation of the *Human Rights Code*.

Anti-Indigenous racism

According to the Report of the Ipperwash Inquiry and Jonathan Rudin's paper commissioned by that Inquiry, there is a history of mistrust between Indigenous Peoples and the police, which is rooted in:⁴

- The legacy of colonialism
- The role of the police in attempts to assimilate Indigenous peoples, including through apprehending children to have them attend residential school, and later in support of child welfare agencies
- Government reliance on the police to resolve Indigenous rights disputes
- Over-representation of Indigenous peoples in the criminal justice system
- Racism on the part of the police.

The Supreme Court has repeatedly recognized the presence of anti-Indigenous racism in society and in the criminal justice system. In *R. v. Ipeelee*, the Supreme Court instructed courts to take judicial notice of such matters as “the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples.”⁵

In *R. v. Williams*, the Supreme Court acknowledged that there is widespread racism against Indigenous peoples including stereotypes about their “credibility, worthiness and

⁴ Ontario, *Report of the Ipperwash Inquiry*, vol. 2 (Toronto: Queen's Printer, 2007) at 275 and 276, online Ontario www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/report/vol_2/index.html [*Ipperwash Inquiry Report*]; Jonathan Rudin, *Aboriginal Peoples and the Criminal Justice System* (Toronto: Ipperwash Inquiry, 2005) at 1 and 33, online: Ministry of the Attorney General www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/research/pdf/Rudin.pdf [*Rudin Paper Commissioned by Ipperwash*];

⁵ *R. v. Ipeelee*, [2012] 1 SCR 433 at para. 60.

criminal propensity” and even the “equation of being drunk, Indian and in prison.” The Court agreed with the Canadian Bar Association which found that these stereotypes stand in the way of seeing Indigenous people as equals.⁶ The Supreme Court took judicial notice of the findings of the Royal Commission on Aboriginal Peoples and Report on the Cariboo-Chilcotin Justice Inquiry and concluded that “[t]here is evidence that this widespread racism has translated into systemic discrimination in the criminal justice system.”⁷

Citing its earlier decision in *Williams*, the Supreme Court held that the “excessive imprisonment of aboriginal people is only the tip of the iceberg insofar as the estrangement of the aboriginal peoples from the Canadian criminal justice system is concerned. Aboriginal people are overrepresented in virtually all aspects of the system.”⁸

There have been “over two decades of government studies and reports from across Canada which have documented the history and current reality of widespread racism experienced by Indigenous communities giving rise to systemic discrimination in the justice system.”⁹ Justice Iacobucci’s report, *First Nations Representation on Ontario Juries*, described several systemic barriers throughout Ontario’s justice system, from over-policing of Indigenous youth and the absence of translation services, to greater use of remands and a lack of post-discharge support for Indigenous offenders.¹⁰

Anti-Black racism

In October 2016, the United Nations Working Group of Experts on People of African Descent found that there is “clear evidence that racial profiling is endemic in the strategies and practices used by law enforcement” and urged the Government to “develop and implement an African Canadian Justice Strategy to address the anti-Black racism and discrimination within the criminal justice system.”¹¹

The Supreme Court has also repeatedly recognized the presence of anti-Black racism in society and the criminal justice system. For example, in *R v. R.D.S.*, the Court quoted from the Ontario Court of Appeal’s decision in *R. v. Parks*:¹²

⁶ *R. v. Williams*, [1998] 1 SCR 1128 at para. 58.

⁷ *Ibid.*

⁸ *R. v. Gladue*, [1999] 1 SCR 688 at para. 61.

⁹ *McKay v. Toronto Police Services Board*, 2011 HRTO 499 at para. 102.

¹⁰ The Honourable Frank Iacobucci, *First Nations Representation on Ontario Juries: Report of the Independent Review Conducted by the Honourable Frank Iacobucci* (2013) at 55-57, online: Ministry of the Attorney General www.attorneygeneral.jus.gov.on.ca/english/about/pubs/iacobucci/First_Nations_Representation_Ontario_Juries.html.

¹¹ www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20736&LangID=E.

¹² *R. v. R.D.S.*, [1997] 3 SCR 484 at para. 46.

Racism, and in particular anti-black racism, is a part of our community's psyche. A significant segment of our community holds overtly racist views. A much larger segment subconsciously operates on the basis of negative racial stereotypes. Furthermore, our institutions, including the criminal justice system, reflect and perpetuate those negative stereotypes.

In accepting the existence of racism in Canadian Society, the Supreme Court, quoting the Nova Scotia Family Court, stated "A person would have to be stupid, complacent or ignorant not to acknowledge its presence, not only individually, but also systemically and institutionally."¹³

In *R. v. Spence*, the Supreme Court again quoted from *R. v. Parks* and re-stated the following from Stephen Lewis' 1992 report:¹⁴

First, what we are dealing with, at root, and fundamentally, is anti-Black racism. While it is obviously true that every visible minority community experiences the indignities and wounds of systemic discrimination throughout Southern Ontario, it is the Black community which is the focus. It is Blacks who are being shot, it is Black youth that is unemployed in excessive numbers, it is Black students who are being inappropriately streamed in schools, it is Black kids who are disproportionately dropping out, it is housing communities with large concentrations of Black residents where the sense of vulnerability and disadvantage is most acute, it is Black employees, professional and non-professional, on whom the doors of upward equity slam shut. Just as the soothing balm of "multiculturalism" cannot mask racism, so racism cannot mask its primary target. It is important, I believe, to acknowledge not only that racism is pervasive, but that at different times in different places, it violates certain minority communities more than others. As one member of the Urban Alliance on Race Relations said: "The Blacks are out front, and we're all lined up behind."

Twenty-five years later, Stephen Lewis' words still ring true for many members of the Black community.

Recent studies confirm the reality of systemic discrimination and racial profiling in policing.

The OHRC has repeatedly highlighted the reality of systemic discrimination in policing, including racial profiling.¹⁵

¹³ *Ibid.*, at para. 47.

¹⁴ *R. v. Spence*, [2005] 3 SCR 458 at para. 32.

More recent studies continue to confirm this reality. For instance, the Black Experience Project – a study of the Greater Toronto Area’s Black community conducted by Environics Institute for Survey Research in partnership with Ryerson’s Diversity Institute and others – was released in 2017 and raised significant concerns about racial profiling in policing. Sixty percent of young Black men interviewed for that project reported having been harassed or treated rudely by the police, and 79% reported having been stopped in public places by the police.¹⁶ Overall, the report documents that negative experiences with police services are common and stand out as much worse than with other public institutions.¹⁷

Similar experiences of racial profiling and police distrust have been identified in the course of extensive community consultations recently undertaken independently by the Ministry of Children and Youth Services and the OHRC.¹⁸

These experiences are confirmed by data collected by the Ottawa Police Service’s (“OPS”) Traffic Stop Race Data Collection Project, which arose as a result of a human rights complaint in which a young Black man alleged that he experienced racial profiling by OPS officers. The York University research findings arising out of that data are consistent with racial profiling. The researchers found that Black and Middle Eastern people experienced disproportionately high incidences of traffic stops. Black drivers were stopped 2.3 times more than you would expect based on their driving population and Middle Eastern drivers were stopped 3.3 times more. Young male Black drivers (age 16-24) were stopped 8.3 times more than would be expected based on their driving population, while young male Middle Eastern drivers were stopped 12 times more.

These recent studies demonstrate that there continues to be an urgent need to address and combat the use of racial profiling in policing.

¹⁵ See, for example, *OHRC Submissions to the Independent Review of Police Oversight Bodies*. Section: “Systemic discrimination in policing is a reality”, November 15, 2016. <http://ohrc.on.ca/en/ohrc-submission-independent-review-police-oversight-bodies>

¹⁶ *The Black Experience Project in the GTA: Overview Report*. July 2017 at p. 47. <https://www.theblackexperienceproject.ca/wp-content/uploads/2017/07/Black-Experience-Project-GTA-OVERVIEW-REPORT-4.pdf>

¹⁷ *The Black Experience Project in the GTA: Executive Summary*. July 2017 at p. 4. <https://www.theblackexperienceproject.ca/wp-content/uploads/2017/04/Black-Experience-Project-GTA-EXECUTIVE-SUMMARY.pdf>

¹⁸ Anucha, U., Srikanthan, S. Siad-Togane, R. & Galabuzi, G.E. (2017). *Doing Right Together for Black Youth: What we Learned from the Community Engagement Sessions for the Ontario Black Youth Action Plan*. Youth Research and Evaluation eXchange (YouthREX). Toronto, ON <https://exchange.youthrex.com/report/doing-right-together-%EF%BF%BC%EF%BF%BC-black-youth-what-we-learned-community-engagement-sessions-ontario> ; *OHRC Response to the Race Data and Traffic Stops in Ottawa Report*, November 28, 2016. <http://www.ohrc.on.ca/en/ohrc-response-race-data-and-traffic-stops-ottawa-report>

1. The scope of the Regulation must be expanded and human rights data must be collected for all police interactions.

All interactions with the public (aside from merely informal or casual interactions) should be subject to the Regulation, and should require police to collect human rights data in respect of the targeted individual.

To this end, and consistent with its submissions to the Independent Review of Police Oversight Bodies, the OHRC recommends that the Regulation be amended to direct police services to establish permanent data collection and retention systems to record human rights identity-based data on, but not limited to, all stops of civilians, use of force incidents, and interactions where officers ask about immigration status or conduct immigration status checks. The data should be standardized, disaggregated, tabulated, publicly reported by each police service, and provided to the institution. The data should include age, gender, perceived race, and officer perception of whether the individual has a disability, including a mental health disability.¹⁹

Both the Ottawa Police Service's Traffic Stop Race Data Collection Project and the experience of police forces in the United States and the United Kingdom demonstrate that the broader collection of human rights data is feasible and can be used to identify and address racial profiling in policing. As of 2014, 18 U.S. states had legislatively mandated the collection of human rights data on police stop and search incidents, while other police forces have done so voluntarily.²⁰ In the UK, s. 95 of the *Criminal Justice Act 1991* requires the Home Secretary to publish information to assist persons involved in the administration of justice (including police) to comply with their duty to avoid discrimination. This has led to the imposition of human rights data collection requirements for police stops.²¹

¹⁹ Ontario Human Rights Commission Submission to the Independent Review of Police Oversight Bodies, November 15, 2016, Recommendation 2. http://www.ohrc.on.ca/en/ohrc-submission-independent-review-police-oversight-bodies#_edn41

²⁰ Brooks, Cornell, Roslyn Brock and Barbara Bolling. 2014. *Born Suspect: Stop-and-frisk and the Continued Fight to End Racial Profiling in America*. Baltimore, MD: NAACP at 9 and Appendix I; See also, Engel, Robin, J. Cherkaskas and R. Tillyer. 2007. *Traffic Stop Data Analysis Study Report: Final Literature Review and Review of Other Jurisdictions*. Cincinnati, OH: University of Cincinnati Policing Institute; Tillyer, Rob, Robin S. Engel and Jennifer Calnon Cherkaskas, *Best Practices in Vehicle Stop Data Collection and Analysis*, 33 *Policing: Int'l J. Police Strat. & Mgmt.* 69 (2010) at 72-73; Engel, Robin and Kristin Swartz. 2014. "Race, Crime and Policing." In Sandra Bucurious and Michael Tonry (Eds.) *The Oxford Handbook on Ethnicity, Crime and Immigration*. New York: Oxford University Press: 135-165.

²¹ Bowling, Ben and Coretta Phillips, *Disproportionate and Discriminatory: Reviewing the Evidence on Police Stop and Search*, 70 *Mod. L. Rev.* 936 (2007) at 941-942. See also Miller, Joel, *Stop and Search in England: A Reformed Tactic or Business as Usual?* 50 *Brit. J. Criminol.* 954 (2010).

The limited scope of the current Regulation is illustrated by the low number of street checks reported by the Ottawa Police Service and the Peel Regional Police Service.²² There cannot be accountability for racial profiling in police-public interactions if only a small handful of interactions fall within the scope of the Regulation.²³

The exclusion of all investigations involving a specific offence from the scope of the Regulation significantly undermines the goal of reducing racial profiling because it ignores the fact that racial profiling continues to occur when officers are investigating a specific offence. As currently drafted, the Regulation provides for no restrictions on police contacts if the investigation of a specific offence is claimed, even if the contact has no clear or identifiable link (temporal, geographic, or otherwise) to the investigation.

In its previous submissions, the OHRC highlighted several clear examples of racial profiling that would not be captured under the current version of the Regulation. This includes the case of *Phipps v. Toronto Police Services Board*, one of the leading cases on racial profiling in Ontario.²⁴

Since those submissions were made, additional examples of judicially-recognized racial profiling have arisen that would not be captured by the current version of the Regulation. In the case of *Elmardy v. Toronto Police Services Board*²⁵, for instance, the Divisional Court found that police had engaged in racial profiling when they stopped and assaulted a Black man walking down a Toronto street. The police claimed that they had stopped the individual on a reasonable belief that he had violated his bail terms. While the trial judge in that case rejected the evidence of the police officers, and the Divisional Court found that the only reasonable inference from the evidence was that the stop was racially motivated, this will not always be the case. The Regulation should not create an incentive for police to mischaracterize their interactions with the public as incidences of investigating specific offences.

The Regulation should also be expanded to include stops made under the *Highway Traffic Act*. From the leading case of *R. v. Brown*²⁶ to the more recent decision of the Ontario Court of Justice in *R. v. Thompson*²⁷, courts have recognized that many traffic stops can be and are made as a result of racial profiling or “discriminatory hunches”. Excluding traffic stops from the ambit of the regulation means that there will be no ability to assess the prevalence of racial profiling in one of the most frequent areas of police/community interaction. In summary, in order for the Regulation to achieve its

²² See Notes 2 and 3, *supra*.

²³ Ottawa Police Services Board Agenda 41 (January 29, 2018); Chief’s report re: Collection of identifying information – duties & prohibitions policy: annual report at 4-5

²⁴ *Shaw v. Phipps*, 2012 ONCA 155.

²⁵ *Elmardy v. Toronto Police Services Board*, 2017 ONSC 2074 (Div. Ct.)

²⁶ *R. v. Brown* (2003, 64 OR (3d) 161 (CA).

²⁷ *R. v. Thompson*, [2016] OJ No. 2118 (OCJ)

broader purpose of identifying and reducing racial profiling in policing, all aspects of police interactions with the public must be included within its scope and the subject of human rights-based data collection. Limiting the Regulation to one specific police procedure such as the practice of “carding” has rendered it incapable of achieving its promise.

2. The Regulation should provide more guidance on the circumstances in which police may approach individuals in a non-arrest scenario and collect identifying information.

While the scope of the Regulation must be broadened to ensure that all but the most minor police interactions with the public are adequately identified, the Regulation must also work to limit the circumstances in which a police officer may approach an individual in a non-arrest scenario and collect identifying information.

In its submissions to the Ontario government on its Strategy for a Safer Ontario, the OHRC recommended that the government

“adopt and implement all appropriate standards, guidelines, policies and strict directives to address and end racial profiling, including clear guidelines on when and how police stop and question people; an appropriate framework for rights notification; and a prohibition on conducting immigration status checks on victims, witnesses or individuals under investigation, unless there are credible, non-discriminatory and *bona fide* reasons for doing so.”²⁸

The Government failed to include these recommendations in its new *Police Services Act, 2018*. The review and amendments of the Regulation offers a new opportunity for Ontario to address this important issue and ensure that racial profiling is addressed in a uniform manner throughout the province.

In the current version of the Regulation, the connection required between an individual and police work to permit a street check is very weak. It permits police tactics that will likely have a disproportionate impact on Black, Indigenous and other racialized communities. For example, simply living in or visiting a building where there is suspected gang or drug activity would likely provide enough connection to gather personal information from any resident or visitor and satisfy the Regulation.

The OHRC has repeatedly called on the province to take additional steps to address and end racial profiling in policing, including a call for the province to adopt criteria for when an officer may approach an individual in a non-arrest scenario, and criteria for

²⁸ Ontario Human Rights Commission Submission to the Ministry of Community Safety and Correctional Services on the Strategy for a Safer Ontario, April 29, 2016. <http://ohrc.on.ca/en/strategy-safer-ontario-%E2%80%93-ohrc-submission-mcscs#overlay-context=en>

what may not form a basis for an officer approach. The OHRC continues to believe that more stringent criteria are necessary in order to effectively reduce racial profiling in policing.

In both the Joint Response to the Draft Regulation prepared by the OHRC and over 20 community groups and individuals, and its own submissions on the Strategy for Safer Ontario, the OHRC has recommended specific language to regulate this conduct. We have reproduced that language from the Joint Response below at Appendix A. The OHRC re-iterates its recommendation that this language be incorporated into the Regulation.

3. Human rights data should be collected in a consistent manner that permits meaningful analysis.

The OHRC remains concerned that the Regulation does not provide sufficient guidance to allow for meaningful and useful data collection. We have developed a list of categories that we believe are more suitable for meeting the objectives of the Regulation and have requested that MCSCS mandate its use by all police services in the province as soon as possible. This proposed approach has been endorsed by the Ontario Association of Chiefs of Police and the Ontario Association of Police Services Boards. While we approached MCSCS with a proposal to mandate this uniform approach, to date it has not been accepted or promoted by the Ministry.

The Regulation currently allows for chiefs of police to select any and as many racial categories for data collection as those provided in the Statistics Canada National Household Survey (“NHS”).²⁹ This is an overly expansive list of categories which increases the chances that officers will inaccurately identify the racialized and Indigenous people they engage with. Moreover, this would undermine the prospect of accurate and meaningful data being collected for disproportionality analysis.

To make sure that the Regulation’s requirements for race-based data collection are satisfied in a way that the data can be meaningfully analyzed to address systemic discrimination, the OHRC recommends the racial categories identified in the table below be employed. These categories are a modified version of the racial categories used by the OPS.

Based on our experience in advising and providing guidelines on police and other sector human rights data collection – including the experience of the Ottawa Police Service in undertaking its data collection project – the OHRC recommends that the racial

²⁹ See Statistics Canada, “Visible Minority and Population Group Reference Guide, National Household Survey, 2011,” online: Statistics Canada www12.statcan.gc.ca/nhs-enm/2011/ref/guides/99-010-x/99-010-x2011009-eng.cfm.

categories identified in the table below be used by all Ontario police forces in collecting human rights data.

Recommended Race Categories for Police Stop Data Collection	National Household Survey, 2011 – Race Categories
Indigenous	Aboriginal First Nations (North American Indian), Métis, Inuk (Inuit)
White	White
Black	Black
East Asian, Southeast Asian	Chinese
	Filipino
	Korean
	Japanese
	Southeast Asian (e.g. Vietnamese, Cambodian, Malaysian, Laotian, etc.)
South Asian	South Asian (e.g. East Indian, Pakistani, Sri Lankan, etc.)
Middle Easterner	Arab
	West Asian (e.g. Iranian, Afghan, etc.)
Latin American	Central American, South American
	Mexican, Cuban, Puerto Rican, etc.

These categories were developed in recognition of the fact that instant “first impression” perceptions of race are most useful for collecting and analyzing racial profiling data. These categories group together key racialized sub-groups that may appear similar to the average police officer. The resulting larger groups are easier to identify as distinct, which should make the data more accurate. For example, while the NHS includes categories like “Chinese,” “Filipino,” “Korean,” “Japanese” and “Southeast Asian,” the OPS subsumed these groups under the categories “East Asian, Southeast Asian.”

It is important to recognize that race categories for police stop data collection should be based on the officer’s visceral perception of race. It is often difficult for officers – and the public at large – to immediately and accurately discern the ancestry or race of people they first encounter.

We recommend that police services across the province use standardized racial categories as set out above. A uniform approach to categorizing racial groups will be more effective to analyze data and make comparisons between municipalities.

Finally, along with collecting race information, we recommend that the street check data collected include age and sex to facilitate more meaningful analysis. In addition to race data, the OPS also collected data on age and sex and correlated these with race.

Conclusion

Racial profiling in policing is an invidious problem that is not only discriminatory, but leads to mistrust between communities and the police and results in less effective policing. As currently drafted, Regulation 58/16 has failed to provide an effective pathway for identifying and reducing racial profiling in policing.

Nonetheless, the OHRC continues to believe that by (1) broadening the scope of the Regulation, (2) limiting circumstances in which police are permitted to approach an individual in a non-arrest scenario and collect identifying information, and (3) adopting province-wide standards for collecting human rights-based data in accordance with the above recommendations, the Regulation can become an important tool to improve policing and rebuild trust with racialized communities.

We thank you for the opportunity to make these submissions and look forward to reviewing your final report and recommendations.

Appendix A

1. A police officer may not approach an individual in a non-arrest scenario that involves and/or is for the purpose of asking for and/or obtaining identification, personal information and/or information about an individual's circumstances, except for legitimate non-arbitrary non-discriminatory policing activities as set out in clause 2 below ("Clause 2").
2. A police officer may only approach an individual in a non-arrest scenario that involves and/or is for the purpose of asking for and/or obtaining identification, personal information and/or information about an individual's circumstances if:
 - a. The approach is solely for the purpose of investigating a specific criminal offence or series of specific criminal offences and the officer has reasonable suspicion that the individual is implicated in the criminal activity under investigation and/or the officer has reasonable belief that the individual is connected to the offence as a victim and/or witness; or,
 - b. The approach is solely for the purpose of preventing a specific type of offence from occurring and the officer has reasonable suspicion that the individual is implicated in the criminal activity under investigation and/or the officer has reasonable belief that the individual is connected to the offence as a victim and/or witness;
 - c. The officer believes that the approach and request for identification, personal information or an individual's circumstances is necessary to prevent an imminent or apparent risk or harm to the individual or another identified person;
 - d. The officer is aware that the approach is necessary because the individual is under a statutory obligation to provide a license or identification, such as when an individual is operating a motor vehicle;
 - e. The officer is aware that the approach is necessary for the enforcement of a provincial statute or municipal by-law; or,
 - f. The officer is securing a potential crime scene, participating in a security detail or acting in an emergency, and requests identification from an individual in a restricted area or seeking to enter a restricted area in order to determine whether the individual should have access to the area and under what conditions.
3. The following are not a basis for Community Contacts and shall not satisfy Clause 2 of this Position:

- a. An unspecified future offence or criminal investigation, or a “general investigation”;
- b. Profiling or stereotyping based on race, gender identity, gender expression, sexuality, mental health, socioeconomic status, and/or other prohibited grounds of discrimination under the Charter or the Human Rights Code;
- c. A person’s exercise of his or her right to remain silent, right to object to being approached, or right to walk away;
- d. A “hunch” or unsupported suspicion or belief, whether based on intuition gained by experience or otherwise;
- e. Mere presence in a particular neighbourhood, high-crime neighbourhood or “hot spot”;
- f. A suspect, victim or witness description that lacks sufficient detail other than race;
- g. Meeting a quota or performance target for number of Community Contacts; and,
- h. Raising awareness of police presence in the community.

4. For greater certainty:

- a. An approach in the absence of reasonable suspicion or reasonable belief as set out in 2(a) or 2(b), for the purpose of eventually acquiring such reasonable suspicion or belief, shall not satisfy 2(a) or 2(b).
- b. Prolonging any interaction with the intent of acquiring reasonable suspicion or belief as set out in 2(a) or 2(b) shall not satisfy 2(a) or 2(b).