

# Toward A New Chapter In Our History

**How the New Ontario Regulation  
Provides an Opportunity to Renew  
Police-Community Relations**

February 2016



Citizen Empowerment Project



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# About the Citizen Empowerment Project

The Citizen Empowerment Project (CEP) is a non-profit public education organization focused on Canadian law and policy issues, including energy, criminal justice and democratic participation. The campaigns and initiatives led by CEP include the Policing Literacy Initiative (PLI), a youth-driven grassroots group focused on building trust and collaboration between police and disadvantaged communities.

Since it was founded in 2013 after the tragic deaths of Sammy Yatim and Trayvon Martin, PLI's work has included the 2014 documentary about carding and police-community relations, *Crisis of Distrust: Police and Community in Toronto*, and the 2015 research report, "What We Can Learn from Policing and Public Safety in Toronto: A Canadian Response to Tragic Events in Ferguson and New York City."

## About the Authors

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**Lindsay Holder** is a graduate of Western University, and a current JD student at Osgoode Hall Law School. She has a background working in the violence against women sector and intends to use her law degree to further her work in this area. Currently, Lindsay is enrolled in the Poverty Law intensive at Osgoode, as a student caseworker in the Social Assistance, Violence and Health division at Parkdale Community Legal Services.

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**Giselle Shareei** studied international development at York University and is currently a JD student at Osgoode Hall Law School. Giselle is one of the co-founders of the Osgoode Society Against Institutional Injustice and has been working to end racial profiling and improve police and community relations for the past three years. She plans to practice immigration and refugee law in the future, with a focus on providing legal services to vulnerable groups.

**Grace Yogaretnam** is a second year student at Osgoode Hall Law School, working at the intersection of constitutional, aboriginal, and criminal law. She is a passionate about increasing access to justice, legal innovation, and community organizing. Grace is also an associate editor of the Osgoode Hall Law Journal, and a contributing writer to the *Obiter Dicta*, with a BA in political science.

## Acknowledgments

This project was supported by a grant from the Toronto Police Services Board's Special Fund as a community outreach initiative. The Toronto Police Services Board is a seven member civilian body that oversees the Toronto Police Service, Canada's largest municipal police service. The opinions contained herein are those of the authors and do not necessarily represent the position or policies of the Toronto Police Services Board or its members.

The Citizen Empowerment Project would like to thank our community partners from across Toronto that co-hosted our events in fall 2015, including East Scarborough Storefront, Helping Neighbourhoods Implement Change, Osgoode Society Against Institutional Injustice, St. Alban's Boys & Girls Club and George Brown College's Community Workers Program. We also thank the many community organizations and engaged community members from across the Greater Toronto Area that attended our consultation dinners, including the Boys & Girls Club of East Scarborough, Oakdale Community Centre and Renatta Austin, Lawyer & Notary.

This project would not have been possible without support from Osgoode Hall Law School and the leadership of amazing students in Osgoode's "Community Organizing & the Law" seminar.

# Executive Summary

This Citizen Empowerment Project report is based on a series of Policing Literacy Initiative community consultation dinners in fall 2015. At these events community members from the Greater Toronto Area gathered to discuss the Government of Ontario's consultation draft regulation on carding and to provide feedback and recommendations for how police services, police services boards, community groups and activists can move forward in 2016 to strengthen police-community relations.

Carding, which is sometimes referred to as police carding or street checks, is often used to describe a wide range of police stops and may also be used colloquially as a euphemism for racial profiling. There exists a serious need for a common language between police and community organizations in discussing important matters like carding. *For the purposes of this report, carding is defined as the practice of stopping civilians not suspected of an offence to collect their personal information.*



Community members identified five big ideas considered in the provincial regulation. These big ideas are listed below along with accompanying recommendations for police services, police services boards, community groups and activists:

## 1 The Right To Walk Away

- Policies and procedures created in response to new provincial rules should clarify when the right to walk away does or does not apply. More importantly, when the regulation is applicable, there should be clear guidelines on how that right is to be communicated.
- Significant public education and training is needed to help individuals of all ages learn how to exercise the right to walk away, where the right to walk away applies or does not apply and how to report violations if the right to walk away is not declared or respected.

## 2 The Provision of Receipts

- Standardize the approach to issuing receipts; develop consistent guidelines that provide greater certainty for when an individual is entitled to documentation of a police stop.
- Explain the procedures for analyzing and processing requests and complaints related to the issuance of receipts and the role of the Office of the Independent Police Review Director.

## 3 Exceptions to the Regulation

- Provide additional clarification about when the regulations apply and do not apply.
- Establish and promote the accountability mechanisms needed to address community concerns that are not addressed in the new provincial regulation.

Community consultations also revealed three fundamental qualities of positive police-community interactions based on what community members want to see change in policing and also what community members appreciate about some of their previous positive interactions with officers. These qualities are lawfulness, effective communication and collaboration.

Finally, this report concludes by emphasizing the need for police services, police services boards, community groups and activists to develop long-term community engagement strategies. Our recommendations are:

- **Create educational resources that can be used by both police and community groups.**
- **Share the responsibility of engagement through training.**
- **Video resources would be most effective in reaching youth.**
- **Clearly illustrate what positive police-community interactions looks like.**

## 4 The Collection, Retention and Use of Data

- Restrict access to personal information collected through carding. Where appropriate, delete data obtained in the past and in the future after a defined period of time.
- Undertake public education efforts to explain who can access data obtained through police stops and how.
- Police should be mandated to release the raw (non-identifying) data to the public, so that independent third parties can analyze the data from a range of perspectives and for various statistics.

## 5 Perceived and Experienced Bias in Policing

- Make sure to promote all of the currently existing accountability mechanisms needed to address community concerns that are not addressed in the new provincial regulation (e.g. Special Investigations Unit and Office of the Independent Police Review Director).
- Create public education and community engagement resources, like a know your rights video, as a way to communicate the rights and obligations introduced in the provincial regulation and inform the public about training relevant to the regulation.
- Review best practices on how to address bias in police services (e.g. “fair and impartial policing” training offered by Dr. Lorie Fridell) and, where appropriate, enhance police training to minimize the impact of bias.



## SECTION A

# Introduction

### Context

2015 was a year dominated by discussions of race, public trust and policing across the world. The province of Ontario was no different. Significant attention was garnered across Ontario by community concerns about the practice of carding, the disproportionate impact of carding on African-Canadians and other racialized communities and the response of local police services and police services boards. Indeed, carding came to be both a local reference point for what were global conversations about law enforcement and also an issue that defined perceptions of public trust in some local communities.

Carding, which is sometimes referred to as police carding or street checks, is often used to describe a wide range of police stops and may also be used colloquially as a euphemism for racial profiling. There exists a serious need for a common language between police and community organizations in discussing important matters like carding.

*For the purposes of this report, carding is defined as the practice of stopping civilians not suspected of an offence to collect their personal information.*

In 2016 the Government of Ontario will finalize a new provincial regulation to address community concerns related to the practice of carding. This regulation was released to the public in draft form for the purposes of consultation on October 28, 2015 and titled “Collection of Identifying Information in Certain Circumstances - Prohibition and Duties.” The stated purpose of the draft regulation is to: “expressly prohibit the random and arbitrary collection of identifying information by police” and “establish clear new rules for voluntary police-public interactions where identifying information is collected.”

The consultation period for the province’s draft regulation ended on December 12, 2015 and involved the participation of a wide range of organizations. It is expected that any changes to this regulation and its eventual finalization will occur in early 2016. The Ministry of Community Safety and Correctional Services has announced that the regulation’s effect on the “random and arbitrary collection of information” will commence in spring 2016 and effect on “voluntary interaction with the police” will commence in summer 2016.

Once the provincial regulation is finalized and takes effect, the challenge of implementing the province’s new rules and ensuring its expressed intent reaches the ground will be left to Ontario’s local police services and police services boards, community groups and activists. This challenge will persist well beyond 2016 and will need to remain a top priority if public trust in policing is going to be gained and strengthened.



## Purpose

The purpose of this report is to assist local police services, police services boards, community groups and activists with their efforts to create local policies, procedures, campaigns, programs and initiatives in response to the regulation finalized by the Government of Ontario in 2016. To do so, this report will provide analysis and share community feedback regarding the ideas considered by the Government of Ontario in the 2015 consultation draft of its regulation titled “Collection of Identifying Information in Certain Circumstances - Prohibition and Duties.” This report will also provide recommendations for how community engagement, public education and law enforcement can continue to improve across Ontario in 2016 and beyond.

## Process

In fall 2015, the Citizen Empowerment Project organized three Policing Literacy Initiative community consultation dinners. The goal of these events was to lead participants through a discussion about the ideas contained in the Government of Ontario’s draft regulation. These dinners were organized in partnership with community groups that serve Neighbourhood Improvement Areas, which are designated by the City of Toronto as requiring special attention because residents in these neighbourhoods face numerous inequalities. Participants in these events included approximately 150 residents of the Greater Toronto Area with various professional backgrounds, including lawyers, social workers, police officers, students, elected officials, academics, youth workers, activists and educators. More than half of these participants are youth from the African-Canadian community.

### Policing Literacy Initiative Community Consultation Dinners

	Dinner #1	Dinner #2	Dinner #3
<b>Date:</b>	October 29, 2015	November 10, 2015	November 20, 2015
<b>Neighbourhoods:</b>	Weston-Mt. Dennis and Jane And Finch	East Scarborough	Moss Park and Regent Park
<b>Community partners:</b>	St. Alban’s Boys & Girls Club, Helping Neighbourhoods Implement Change, Osgoode Society Against Institutional Injustice	East Scarborough Storefront	George Brown College’s Community Workers Program
<b>Approximate number of participants:</b>	50	50	50

Each community consultation dinner started with a presentation by Osgoode Hall Law School students summarizing the province’s draft regulation and its implications if finalized. This presentation was followed by in-depth small group discussions about carding, police-community interactions and community engagement. The feedback and recommendations provided by participants are summarized and discussed in this report.



## SECTION B

# Summary of Community Feedback

## The Impact of Carding Before the Regulation

In our community consultation dinners, participants expressed a lack of clarity about what carding actually is. For example, some community members believe that they are being carded any time they interact with the police, such as during a traffic stop. There were also many questions around what an individual's rights and responsibilities are in different circumstances, such as when the individual is on Toronto Community Housing property. We focused our discussion of carding on the practice of stopping civilians not suspected of an offence to collect their personal information.

In order to determine if the ideas considered in the provincial regulation are responsive to the needs and wants of communities in Toronto, we dedicated a portion of our community consultation dinners to discussing the impact of carding prior to the regulation and its legacy in various communities. Community members we consulted with are generally critical of carding and want an end to the practice. There is an overall feeling that carding is an abuse of police power that enables racial profiling and biased policing. Carding was described to us as a form of surveillance targeted towards neighbourhoods with lower socio-economic factors and higher concentrations of racialized individuals; moreover, many people we spoke to believe that carding inherently involves some degree of racial profiling.

We heard many accounts from youth about when they had been carded. Most of the personal stories were negative and the youth consistently told us that they are not treated fairly by police officers in their interactions. Youth and parents alike also expressed concern over exercising their constitutional rights in their interactions with police due to concerns about safety and communicating with officers.

It is important to note that in our events we observed and were told numerous stories reflecting a traumatic experience with police for racialized and African-Canadian communities. This trauma is partially based on lived experience in Ontario and also based on the many tragic police use of force incidents across North America. This trauma will not be addressed with a provincial regulation alone, but will require a long-term commitment to changing police-community relations and building public trust.



## Community Feedback on the New Regulation

The Policing Literacy Initiative community consultation dinners provided a rich discussion of the praise and criticisms that community members had with respect to the new regulation. We heard from community members that they understand that in order to make changes to a practice as pervasive as carding, the change may have to come in stages. The new regulation is therefore seen as a “step in the right direction.” Community members did express some hope that, if executed in an effective way, the regulation could help reduce arbitrary stops and decrease the anxiety that is present between police and community members in the neighbourhoods that are most often subject to high rates of police stops.

Throughout our discussions, community members identified five big ideas for police services, police services boards, community groups and activists to engage with:

**1**

The Right  
to  
Walk Away

**2**

The  
Provision  
of Receipts

**3**

Exceptions  
to the  
Regulation

**4**

The Collection,  
Retention and  
Use of Data

**5**

Perceived and  
Experienced Bias  
in Policing

These five big ideas are expanded on throughout the report and serve as key themes for decision makers to consider when assessing the new provincial regulation and subsequent policies and procedures.

## 1

# The Right to Walk Away

When attempting to collect identifying information in a voluntary interaction where an individual is not legally obligated to speak to the police, the consultation draft of the provincial regulation indicates police officers will have a duty to inform individuals that they are not required to remain in the presence of the officer. This right to not comply with a police stop is hereafter called the right to walk away, or the right to disengage from police in a voluntary interaction.

*Regulatory Provision At Issue: Part III. Section 5(1)(a)-(b)*

**Psychological detention** is defined by the Supreme Court of Canada in a case called *R. v. Grant* (2009). Psychological detention can occur in two situations: 1) when an individual has a legal obligation to comply with a police stop; or 2) when a reasonable person would believe they have to comply with a police stop, even when they have the legal right to walk away.



## Praise

Community discussions regarding the right to walk away provided valuable feedback on the new regulation. Community members feel that this aspect of the regulation has the potential to greatly empower youth and helps bring an end to Charter violations related to psychological detentions. Participants understand that police officers approach individuals on the street in the interest of fostering healthy community relations. At the same time, community members have a fundamental desire to develop trust and respect in the interest of growing safer communities. The community is open to police being present within their neighbourhoods, but not at the cost of their own personal safety or constitutional rights. This presents an excellent opportunity for the public to be educated on police practices that improve public safety, while also respecting the legal rights of community members.

## Concerns

Community discussions revealed concerns regarding the limited circumstances under which the right to walk away would apply. There is a need to educate the public about how the new regulations apply to the practice of carding, and not other policing activities. Community concerns include the limitations of having the right to walk away when individuals experience psychological detention and the challenge for members of the public to understand the narrow set of police-community interactions where the right to walk away will apply.

There were also concerns regarding the lack of clarity in the regulation about when the right to walk away could be exercised. For example, in the draft regulation a police officer is not required to inform the individual about their right to walk away if doing so would likely compromise a police investigation of a particular offence. This allows for a broad exception as many forms of police questioning may be tied to an investigative purpose. Community members also have concerns regarding the discretionary power that police officers can exercise when carrying out their duties and how the discretion may allow for inconsistency in when an individual can exercise the right to walk away. There are also concerns that carding will be justified if it is carried out in relation to general crime prevention or for the purposes of detecting illegal activities.

*Regulatory Provision At Issue:  
Part III, Section 5(2)(a); Part I, Section 1(1)(d)*

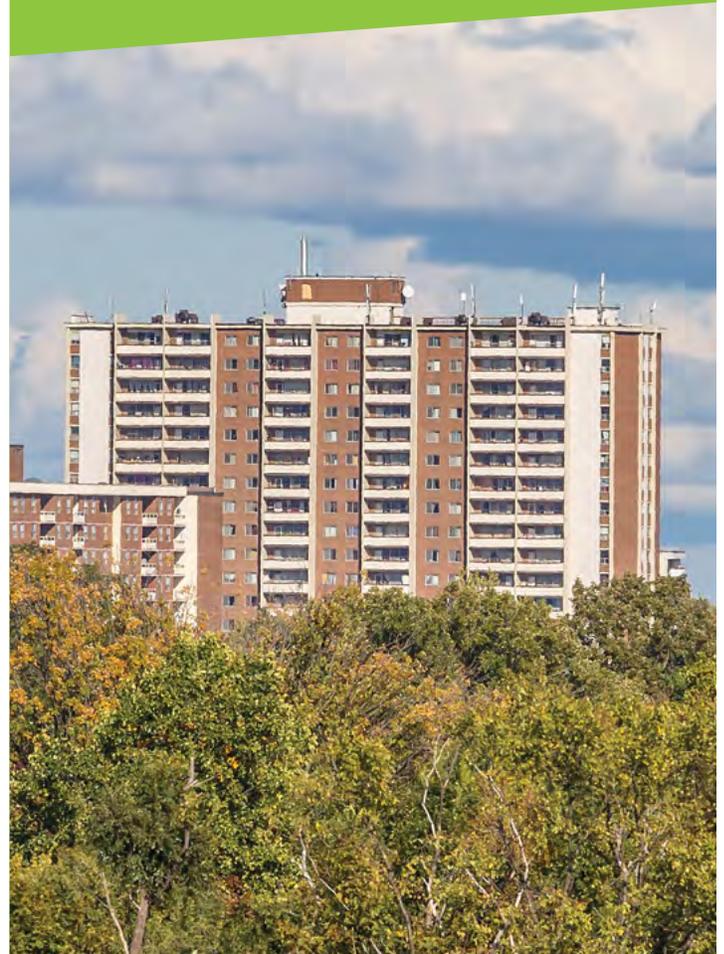
## Recommendations

### RECOMMENDATION:

**Policies and procedures created in response to new provincial rules should clarify when the right to walk away does or does not apply. More importantly, when the regulation is applicable, there should be clear guidelines on how that right is to be communicated.**

### RECOMMENDATION:

**Significant public education and training is needed to help individuals of all ages learn how to exercise the right to walk away, where the right to walk away applies or does not apply and how to report violations if the right to walk away is not declared or respected.**



## 2

# The Provision of Receipts

The province's draft regulation introduces a requirement for police officers to provide a document (colloquially referred to as a 'receipt') to individuals from whom they attempt to collect identifying information. These receipts, at a minimum, must include:

- The officer's name and identification number (e.g. badge number)
- The date, time, location and reason for the collection
- Information about how the individual can contact the Office of the Independent Police Review Director to, for instance, file a formal complaint
- How to access the personal information that was collected



## Praise

The issuance of receipts was universally heralded as the most positive provision in the regulation because it is seen as the only mechanism in the regulation that increases police accountability where there are abuses of discretionary powers. Community members feel this is the most important aspect of the regulation and the best hope for improving police-community relations on the ground. Community members value the mechanism for the potential redress that documentation enables. In the interest of fairness, community members are able to utilize receipts as a means of making the disciplinary process more transparent and participatory, which can also increase the capacity of police services to assess the performance of officers. Making it easier for individuals to file complaints, where appropriate, builds confidence that police services are committed to offering police services sensitive to the needs and wants of the public.

*Regulatory Provision At Issue:  
Part III, Section 6(1)-(3)*

## Concerns

Community discussions highlighted the broad discretion that police officers have in deciding whether or not to provide a receipt. The draft regulation uses a standard of reasonableness to determine whether or not a receipt should be issued. Community members would like greater clarity on what exactly is meant by the term “reasonable” as it appears in the draft regulation.

There is also concern among parents and youth about what to do with receipts once they are issued. Citizens are left to presume they should report problematic interactions with officers during police stops to the Office of the Independent Police Review Director; however there is no assurance that an investigation will be launched or any firm indication of what remedies are available to citizens. While police officers who do not obey the regulations can be subject to disciplinary action, it is unclear based on the draft regulation whether that will happen only in cases where the Chief (or the Chief’s delegate) finds data collected within the 30 day period to have been collected illegally. Part of this ambiguity is due to the fact the police services and police services boards have not yet developed their own policies and procedures to implement the provincial rules.

Another concern raised by participants was that the regulation does not effectively prevent an officer who conducted a street check from subsequently characterizing the interaction as casual. If an officer deems an interaction to be casual, he or she will not be required to issue a receipt based on the requirements of the draft regulation. Thus, receipts may not be issued with consistency and individuals may not know when they are entitled to such documentation.

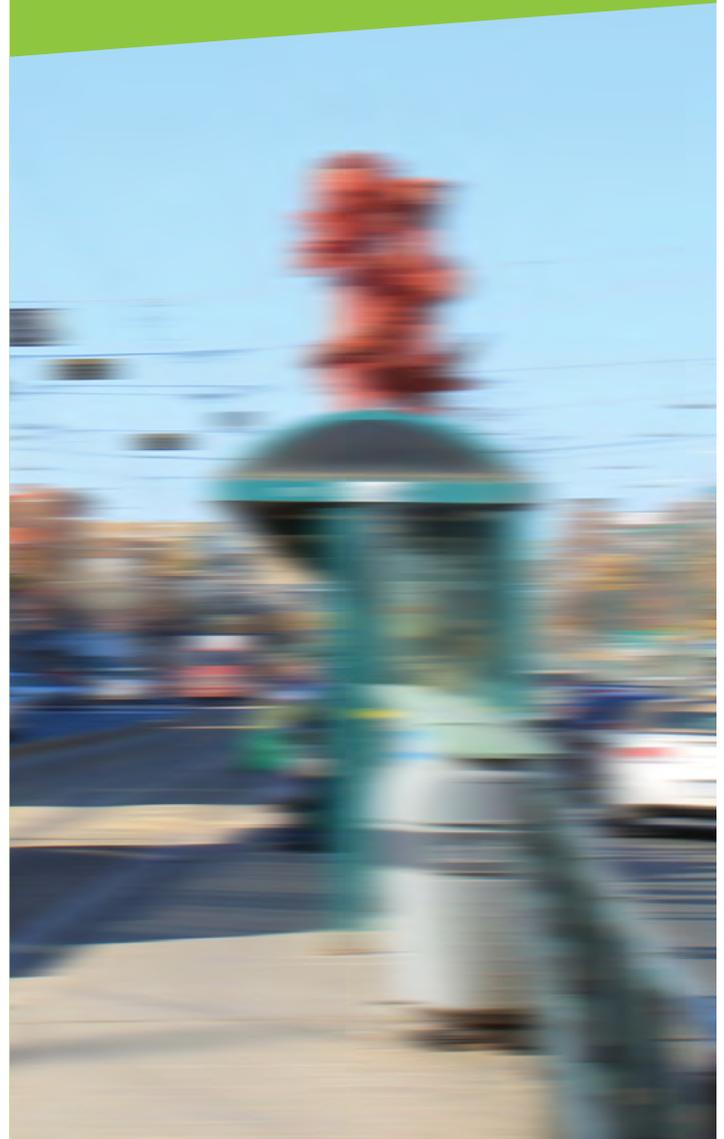
## Recommendations

### RECOMMENDATION:

**Standardize the approach to issuing receipts; develop consistent guidelines that provide greater certainty for when an individual is entitled to documentation of a police stop.**

### RECOMMENDATION:

**Explain the procedures for analyzing and processing requests and complaints related to the issuance of receipts and the role of the Office of the Independent Police Review Director.**



# 3

## Exceptions to the Regulation

The draft regulation outlines a number of exceptions where the provincial regulation, including the right to walk away and the issuance of receipts, does not apply.



## Praise

Participants told us that the exceptions in the draft regulation are somewhat helpful in bringing clarity to which police-community interactions will be impacted by the new provincial rules. However, the community feedback we received included limited praise for the exceptions because of a general desire to see the scope of the provincial rules expanded rather than limited.

## Concerns

There appears to be a great deal of ambiguity around the applicability of the new regulations. It is these areas of uncertainty that have left community members feeling skeptical about, and vulnerable to, what the actual effects of the regulations will be.

*Regulatory Provision At Issue:  
Part III. Section 5(2)(a); Part I. Section 1(1)(d)*

Participants repeatedly mentioned being uncertain of when an officer does not have to provide a receipt because they are “investigating a particular offence” and when an officer is allowed to card someone reasonably suspected of engaging in “illegal activities.” Community members also feel the provision about casual interactions may protect officers who are simply engaging in conversation with individuals from being subject to the carding protocols. There are also concerns over community expectations for the impact of the provincial regulation. For example, traffic stops are included in the exceptions to the new provincial rules because traffic stops are not voluntary interactions with police; however, traffic stops suspected of racial bias are repeatedly used by community members when discussing the experience of carding. Greater clarification is required to ensure the public understands why the exceptions are in place and how community concerns that are not included in the provincial regulation can be addressed through other policies or procedures.

*Regulatory Provision At Issue:  
Part I. Section 1(2)(f)*

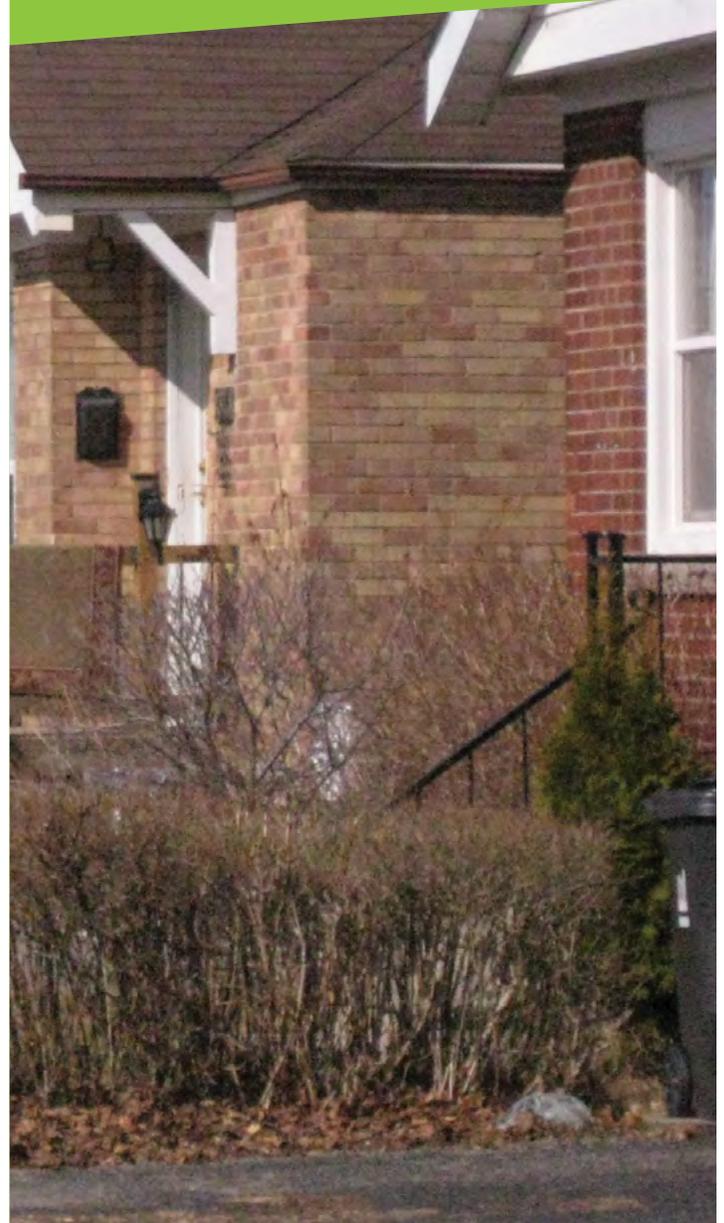
## Recommendations

### RECOMMENDATION:

**Provide additional clarification about when the regulations apply and do not apply.**

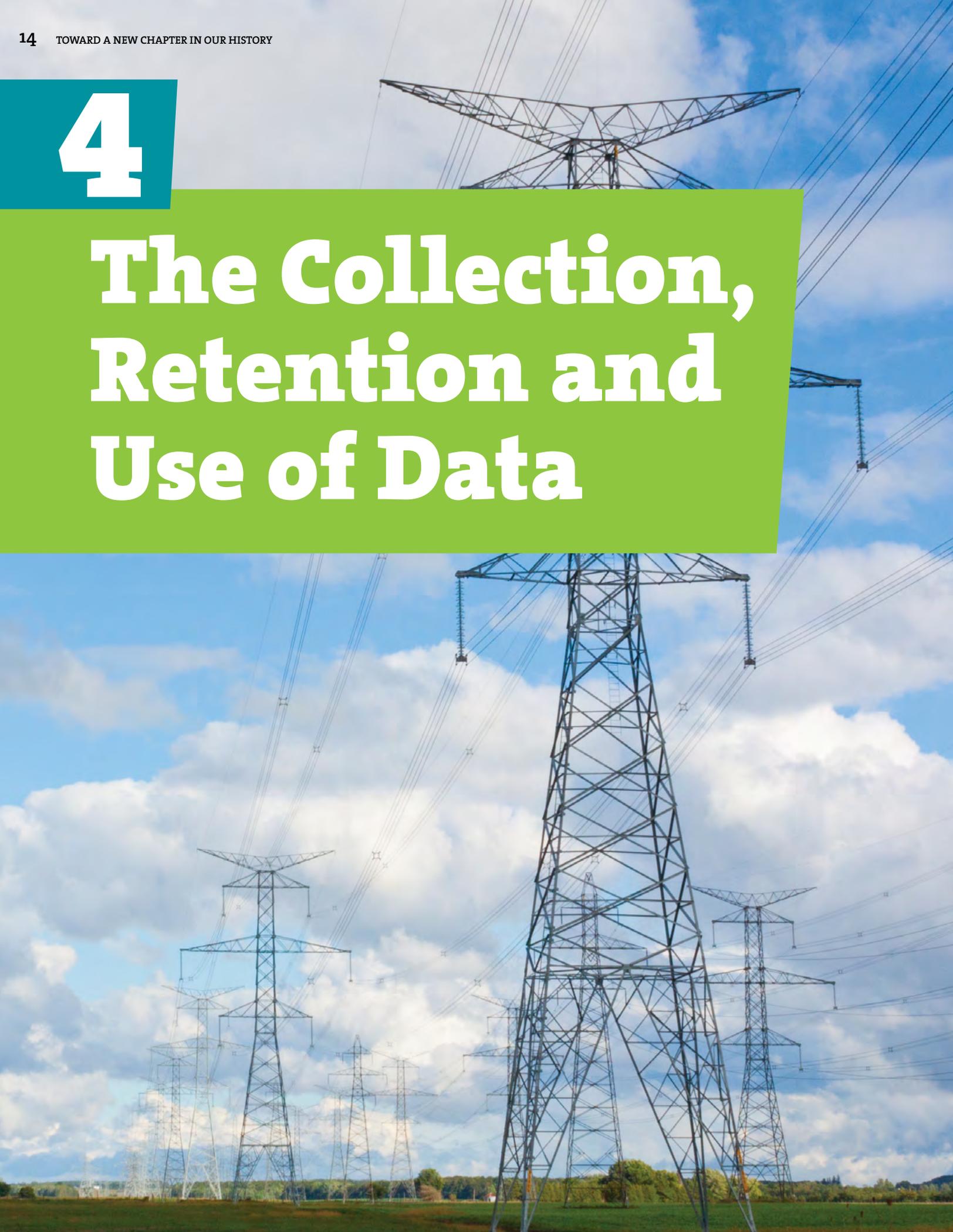
### RECOMMENDATION:

**Establish and promote the accountability mechanisms needed to address community concerns that are not addressed in the new provincial regulation.**



# 4

# The Collection, Retention and Use of Data



## Praise

Many participants are grateful to see that the draft regulation includes a reporting requirement for the police to monitor trends in annual data collection. They are also pleased to see the inclusion of provisions around data management and accountability. There are, however, a number of questions about the collection, retention and use of data collected both before and after the regulation was established.

*Regulatory Provision At Issue:  
Part III. Section 8(5)(1)-(2)*

## Concerns

One of the most important questions raised in our community consultation dinners was: If racial profiling by police officers was unconstitutional (in theory) before the regulations, and now illegal as per the regulation itself, how is it legal for police to keep the data they have collected through racial profiling, up until the date the regulations take effect? Participants also consistently asked: For data collected after the regulation take effect, how can it be legal for the police to keep the data that was obtained improperly, after the 30-day period? We heard concerns that carding allowed police services to collect data unfairly or illegally and now, by not addressing the data already collected, the provincial regulation is permitting the retention of potentially unfairly or illegally collected data.

*Regulatory Provision At Issue:  
Part III. Section 8(5)(1)-(2)*

Another concern raised by participants includes how data collected from different police-community interactions will be stored and if data collected from police stops addressed by the provincial regulation will be pooled with data collected via other means, like traffic stops. Community members noted that the storage of this data has implications on who can access it and the means by which this information can be released.

*Regulatory Provision At Issue:  
Part III. Section 8(7)*

Community members do not know how police services will assess the data, what questions they will ask or will not ask, how that will affect the results of their analysis, or what aspects of the analysis they will share with citizens. Requiring the police to monitor annual trends in data collection, affords police services the ability to partner with community organizations and/or other independent organizations with the capacity and expertise to illuminate problematic trends including those related to racism and sexism, as well as efficacy.

*Regulatory Provision At Issue:  
Part IV. Section 13(2)*

## Recommendations

### RECOMMENDATION:

**Restrict access to personal information collected through carding. Where appropriate, delete data obtained in the past and in the future after a defined period of time.**

*Please note: This recommendation aligns with recommendation 21 of the 2013 Police And Community Engagement Review report by the Toronto Police Service, which states that personal information collected through carding (e.g. community safety notes) should be retained for a maximum of seven years.*

### RECOMMENDATION:

**Undertake public education efforts to explain who can access data obtained through police stops and how.**

*Please note: This recommendation aligns with recommendation 27 of the 2013 Police And Community Engagement Review report by the Toronto Police Service to conduct a multi-faceted public education campaign under corporate communications.*

### RECOMMENDATION:

**Police should be mandated to release the raw (non-identifying) data to the public, so that independent third parties can analyze the data from a range of perspectives and for various statistics.**

*Please note: This recommendation aligns with recommendation 28 of the 2013 Police And Community Engagement Review report by the Toronto Police Service, which encourages public reporting on personal information collected through carding (e.g. community safety notes).*



## 5

# Perceived and Experienced Bias in Policing

Police culture and attitude is an important factor in achieving successful police-community relations. In our conversations with community members, we heard repeatedly that when people interact with the police, they want to feel safe and to be treated with respect and dignity. They want police officers to not view them as adversaries, but rather as partners. All community members we spoke to expressed that they want a police presence in their neighbourhood, but want this presence to bear resemblance to cooperation as opposed to surveillance.

The perceived and experience of bias in policing was by far the most discussed aspect of carding and police-community relations at the community consultation dinners. Many young boys and men shed tears openly and in public spaces when talking about their experience of being carded. They talked about the need for healing, better relationships with the police, and of the impact receiving heartfelt apologies would have had in their communities.

These discussions reflect how important the issue of biased policing is for many community members and also the hopes and expectations attached to the provincial regulation, which the public expects can have some positive impact on the biases in law enforcement in Ontario.

It is important to note that the existence of bias in law enforcement undermines both police legitimacy and officer safety in the community. Thus it is critical, not only from the community perspective but also from the police perspective, to address bias in policing.

## Praise

Participants were grateful that police will receive anti-bias training at regular intervals. Community groups want to know more about the curricula used in police training and how to help take the curricula out of the police station and create more community involvement. This will help police officers get to know community members as human beings, and vice versa.

Participants felt that while it is impossible to define every type of police interaction or circumstance, the regulation's prohibition on racial profiling helps to define what absolutely should not happen, regardless of the scenario. Community members also praised the regulation's declaration that carding quotas cannot be considered in the reviews and promotions of officers. We were told this aspect of the regulation can build public trust by taking away incentives that may lead to or may have previously led to discrimination on the basis of race or class in carding.

## Concerns

Many of the concerns we heard about the provincial regulation as it relates to biased policing are focused on the limits of what the regulation will be able to accomplish. For example, participants feel that prohibiting arbitrary police stops is a necessary aspect of ending racial profiling in carding, but it does not address the disproportionate racial impact that will likely still occur in policing because of the disproportionate racial impact of poverty, unemployment and various aspects of the criminal justice system. Participants are also concerned that the regulation will not adequately address what they have labeled over-policing in low-income and racialized neighbourhoods. Moreover, the regulation does not address the use of community policing strategies as a means of rebuilding the public trust and healing relationships between citizens and police services, which is a top priority for community groups.

### *Regulatory Provision At Issue: Part II. Section 4(1)(a)*

There are additional concerns that “reasonable suspicion” and “suspicious activity,” which are discussed in the draft regulation as justifications for police stops, may still be determined through officer discretion in ways that reflect bias. Officers need discretion to do their jobs but “reasonable suspicion” of criminal activity could still be based on biased perceptions. For example, one participant asked what would happen if an officer suspected that black youth gathering together on street corners were selling drugs? Would that be sufficient to justify carding black youth congregating in their own neighbourhoods, simply because the act of gathering was deemed suspicious by an individual officer? Or what if those youth resisted carding, could an officer then refuse to notify youth of their right to walk away because doing so was interfering with their ability to investigate a particular crime? Ultimately, participants are concerned that “fishing expeditions” might still be allowed, despite the introduction of new provincial rules.

### *Regulatory Provision At Issue: Part II. Section 4(2)(1)-(3); Part I. Section 1(2)(d)*

## Recommendations

### **RECOMMENDATION:**

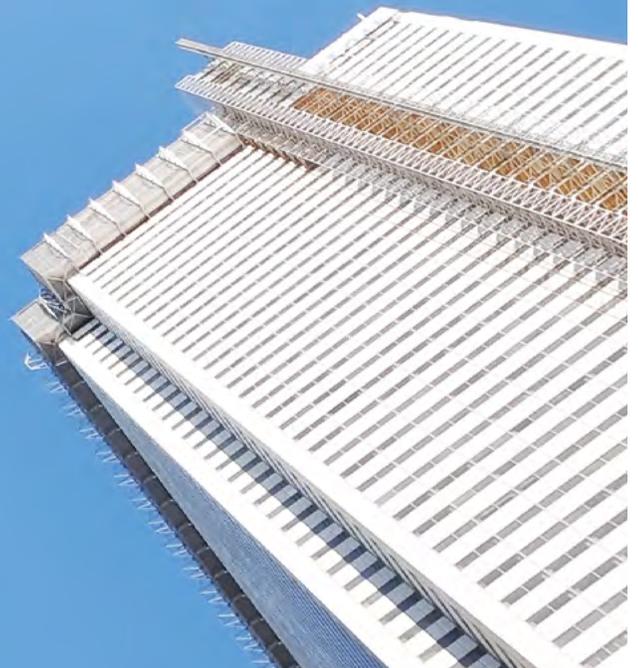
**Make sure to promote all of the currently existing accountability mechanisms needed to address community concerns that are not addressed in the new provincial regulation (e.g. Special Investigations Unit and Office of the Independent Police Review Director).**

### **RECOMMENDATION:**

**Create public education and community engagement resources, like a know your rights video, as a way to communicate the rights and obligations introduced in the provincial regulation and inform the public about training relevant to the regulation.**

### **RECOMMENDATION:**

**Review best practices on how to address bias in police services (e.g. “fair and impartial policing” training offered by Dr. Lorie Fridell) and, where appropriate, enhance police training to minimize the impact of bias.**



# What do positive police-community interactions look like?

*“A critical part to starting a new chapter in our history is not just understanding harmful aspects of police-community interactions, but also understanding what makes for positive police-community interactions.”*

The provincial regulation on carding provides an opportunity to renew police-community relations in Ontario by introducing new rights and obligations. A critical part to starting a new chapter in our history is not just understanding harmful aspects of police-community interactions, but also understanding what makes for positive police-community interactions. We have identified three qualities (Lawfulness, Effective Communication and Collaboration) of positive police-community interactions that we offer for consideration to police services, police services boards, community groups and activists. These qualities are based on what community members want to see change in policing and also what community members appreciate about some of their previous positive interactions with officers. Community members also believe police-community interactions that embrace these qualities will help address the legacy of carding in racialized and African-Canadian communities.

Certainly, we recognize that police-community interactions are complex and difficult to standardize, so this is meant to be an incomplete but nonetheless important reflection of the community feedback we received and our perspective on how these community members want to experience policing in Ontario.

## Lawfulness

Lawfulness refers to police officers abiding by relevant regulations, laws and policies in place that define the rights and obligations citizens and police have in police-community interactions. Community members want to have confidence that police officers understand, respect and promote the constitutional rights and civil liberties of Canadians. To build that confidence, officers should model what following the law looks like and promote opportunities for community members to hold officers accountable to those laws (e.g. by providing receipts after a police stop has occurred). Members of the public are confident that the Canadian law and legislation (e.g. *Canadian Charter of Rights and Freedoms*, *Human Rights Code*, *Police Services Act*) prohibit racial profiling and other forms of biased policing. Community members want to experience policing that embraces and exemplifies the intent and spirit of the law.



## Effective Communication

One of the most important aspects of effective communication in police-community interactions is compassion. On the side of a civilian it is having compassion for the responsibilities and obligations officers have in keeping cities safe and thereby demonstrating the requisite respect that should be shown toward police officers. On the side of a police officer, compassion must include sensitivity to the power imbalances between police and vulnerable citizens – particularly youth, seniors and those with mental illness. Power imbalances also exist when police interact with communities that have a fear of racial profiling and police use of force, which is a significant concern in African-Canadian communities, as has been demonstrated in the public debate about carding. It is important to interact with civilians in a way that does not suggest they are being stereotyped, profiled or treated with bias of any sort. The right to walk away should help with this power imbalance, but additional effort should be made to further integrate compassion into communications between police officers and community members.

Another important aspect of effective communication is building police-community relationships in non-punitive contexts, especially for youth. We have heard from youth that police are visible in low-income communities, particularly in schools, but this often feels like surveillance when youth do not know exactly why officers are present and what they hope to accomplish. Youth also consistently reported how their experience of, and attitude toward being stopped, would change if officers merely said hello and introduced themselves before attempting to stop them; however, the officers who stop them are often not the same officers they may meet in schools or at youth programs.

## Collaboration

Community members understand that local police services across Ontario already have various collaborative relationships with a diverse range of agencies and organizations. However, community members have consistently told us that they are looking for (in some cases, additional) collaborative relationships that would help shape and influence police-community interactions. For example, community members are interested in working with police services to educate the public about the rights and obligations that arise from the new provincial regulation. This includes getting involved in the process police services and police services boards will undertake to create policies and procedures that determine how the right to walk away and the provision of receipts will be implemented locally.

Collaboration should also significantly expand to include, where appropriate, community members in police officer training. Some police services in Ontario already do collaborate with community groups in officer training; however, even these police services do not make these opportunities to collaborate well known. Police services should bring anti-bias training that officers presently receive outside the academy and into communities. This will allow officers to develop first-hand knowledge about the social, cultural, economic, and political history of the specific communities they serve.



## What makes for good community engagement?

*“... an engagement strategy is critical to a positive and constructive culture of accountability...”*

A significant amount of time at our community dinners was dedicated to understanding community needs for education, outreach and training as it relates to the Ontario regulation on carding. Community members we met with unanimously agree that work needs to be done by police services, police services boards, community groups and activists to ensure Ontarians understood the real world implications of the provincial regulation.

We conclude from our observations and analysis that a comprehensive community engagement strategy is necessary to ensure that the positive aspects and limitations of the regulation are understood by the public. An engagement strategy would also help ensure community members perceive and experience a break from the history of carding toward a new chapter in police-community relations. Further, an engagement strategy is critical to a positive and constructive culture of accountability, in which community members know what to expect from police officers and can identify when the provincial rules are being followed and when they are not being followed.

The following are recommendations for effective community engagement. These recommendations are applicable to police services, police service boards, community organizations, activists and any other groups committed to improving police-community relations.

### Create educational resources that can be used by both police and community groups.

There exists a serious need for a common language between police and community organizations in discussing important matters like carding. Community members also feel more confidence that public institutions are transparent when the materials shared with community members are also being used in officer training. Communication is critical to building trust and collaboration between police and community groups, but communication is inherently challenging when there is little common language. Shared educational resources can bridge communication gaps if the creation of resources are collaborative and involve police, educators and community organizations.



## Share the responsibility of engagement through training.

It is unrealistic to expect that any one organization can effectively lead an engagement strategy that reaches every community in Ontario. Toronto alone has significant geographic and transit diversity that makes it difficult for people to travel so engagement must come to all areas of a city or town. To do so, educational resources must be made readily available to groups across Ontario and training offered to empower local leadership to advance local engagement strategies. This could be established, for example, by creating a citizen's police college for people who are not officers to receive accredited education on policing issues by police services and police services boards. Training for members of the public should include:

- information about the law and policies that shape police-community interactions
- how to advise community members to interact with police
- how police officers are being trained to interact with community members; and
- how to support community members who would like to praise or complain about officer behaviour

## Video resources would be most effective in reaching youth.

We received significant support for our suggestion to create video content outlining the provincial rules and how their implications for police-community interactions on the ground. It was suggested that video content of less than ten minutes would be easy for youth to share via social media and could also be integrated into youth programs and classroom activities. Video content of this nature could be animated or live-action but should emphasize the voice and experience of youth. The popular "23 1/2 Hours" YouTube video by Dr. Mike Evans was well received in our discussions as a successful example of an educational sketch animation video.

## Clearly illustrate what positive police-community interactions looks like.

Parents, educators, youth workers and community leaders have consistently expressed a need for direction in how they can prepare children and youth for interactions with police officers. The provincial regulation provides an opportunity to develop a community engagement strategy through which community members can learn how to expect officers to behave, but also to look at how community members are being asked to behave. For example, if officers are going to be required to advise community members they have a right to walk away in voluntary interactions with police officers, then community members will need to be shown how they can exercise that right in a way that is safe and respectful of an officer. Community members will also need to understand how police-community interactions will transition from voluntary to involuntary and vice versa. Moreover, in illustrating positive police-community interactions, police services and police services boards can also help the public understand the complexity of police-community interactions and the necessary role of officer discretion. It is only with these clear, unambiguous suggestions from police services and police service boards that community members will feel safe providing directions to children and youth who interact with police.



Appendix

# Collection of Identifying Information in Certain Circumstances - Prohibition and Duties

**(Consultation Draft)**



Citizen Empowerment Project



**Disclaimer:**

This consultation draft is intended to facilitate dialogue concerning its contents. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.

**ONTARIO REGULATION**

to be made under the

**POLICE SERVICES ACT:**

**A CONSULTATION DRAFT**

**COLLECTION OF IDENTIFYING INFORMATION IN CERTAIN CIRCUMSTANCES  
– PROHIBITION AND DUTIES**

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## PART I APPLICATION AND INTERPRETATION

### **Application — attempts to collect**

1. (1) This Regulation applies with respect to an attempt by a police officer to collect identifying information about an individual from the individual, if that attempt is done in the course of,

- (a) conducting a general investigation into offences that might be committed in the future if there are no specifics regarding those offences;
- (b) gathering information, for criminal intelligence purposes, about individuals known or reasonably suspected to be engaged in illegal activities;
- (c) implementing programs to raise awareness of the presence of police in the community; or
- (d) inquiring into suspicious activities for the purpose of detecting illegal activities.

(2) This Regulation does not apply with respect to an attempt by a police officer to collect identifying information from an individual if,

- (a) the individual is legally required to provide the information to a police officer;
- (b) the individual is under arrest or is being detained;
- (c) the officer is engaged in a covert operation;
- (d) the officer is investigating a particular offence;
- (e) the officer is executing a warrant, acting pursuant to a court order or performing related duties;
- (f) the attempted collection is made in an informal or casual interaction and the officer has no intention, at the time of the attempted collection, of recording the information; or
- (g) the individual from whom the officer attempts to collect information is employed in the administration of justice or is carrying out duties or providing services that are otherwise relevant to the carrying out of the officer's duties.

### **Application — information collected**

2. (1) This Regulation applies with respect to identifying information collected on or after July 1, 2016 as a result of an attempt to collect to which this Regulation applies.

(2) This Regulation applies with respect to identifying information that was collected before July 1, 2016 only as provided under paragraph 7 of subsection 11 (1) and under subsection 12 (1) in relation to that paragraph.

**Interpretation — attempt to collect identifying information**

3. (1) For the purposes of this Regulation, an attempt to collect identifying information about an individual from the individual is an attempt to collect identifying information by asking the individual, in a face to face encounter, to identify himself or herself or to provide information for the purpose of identifying the individual and includes such an attempt whether or not identifying information is collected.

(2) For greater certainty, photographing or recording an individual is not an attempt to collect identifying information from the individual for the purposes of this Regulation.

**PART II  
PROHIBITION — CERTAIN COLLECTIONS OF INFORMATION**

**Limitations on collection of certain information**

4. (1) A police officer shall not attempt to collect identifying information about an individual from the individual if,

- (a) any part of the reason for the attempted collection is that the officer perceives the individual to be within a particular racialized group unless,
  - (i) the officer is seeking a particular individual in the course of doing anything set out in subparagraph 1 i or ii of subsection (2), and
  - (ii) being within the racialized group forms part of a credible description of the particular individual or is evident from a visual representation of the particular individual; or
- (b) the attempted collection is done in an arbitrary way.

(2) For the purpose of clause (1) (b), an attempted collection by a police officer from an individual is done in an arbitrary way unless the officer has a reason that the officer can articulate that complies with all of the following:

1. The reason includes details about the individual that cause the officer to believe that identifying the individual may be relevant to,
  - i. gathering information, for criminal intelligence purposes, about individuals known or reasonably suspected to be engaged in illegal activities; or
  - ii. inquiring into suspicious activities for the purpose of detecting illegal activities.

2. The reason does not include either of the following:
  - i. that the individual has declined to answer a question from the officer which the individual is not legally required to answer, or
  - ii. that the individual has attempted or is attempting to discontinue interaction with the officer in circumstances in which the individual has the legal right to do so.
3. The reason is not only that the individual is present in a high crime neighbourhood.

### **PART III DUTIES RELATING TO COLLECTIONS OF INFORMATION**

#### **OFFICER DUTIES WHEN ATTEMPTING TO COLLECT INFORMATION**

##### **Duties to inform when attempting to collect information**

**5.** (1) A police officer who attempts to collect identifying information about an individual from the individual shall, as required under the procedures developed under section 12,

- (a) inform the individual that he or she is not required to remain in the presence of the officer; and
- (b) inform the individual why the information is being collected.

(2) A police officer is not required to inform the individual under a clause of subsection (1) if the officer has a reason, which he or she can articulate and that includes details relating to the particular circumstances, to believe that informing the individual under that clause,

- (a) would likely compromise a police investigation of a particular offence;
- (b) would likely allow a confidential informant to be identified; or
- (c) might compromise the safety of an individual.

##### **Document for individual**

**6.** A police officer who attempts to collect identifying information about an individual from the individual shall, unless it would be unreasonable in the circumstances to do so, give the individual a document that contains at least the following information:

1. The officer's name and officer identification number and the date, time and location of the attempted collection.
2. Information about how to contact the Independent Police Review Director.

3. An explanation that the individual can request access to information about himself or herself that is in the custody or under the control of a police force, under the *Municipal Freedom of Information and Protection of Privacy Act* in the case of a municipal police force, or under the *Freedom of Information and Protection of Privacy Act* in the case of the Ontario Provincial Police, and information about how to contact persons to whom such a request may be given.

**Police officer must record reason and other information**

7. A police officer who attempts to collect identifying information about an individual from the individual shall record the following:

1. The officer's reason required under section 4, including the details referred to in paragraph 1 of subsection 4 (2).
2. Whether the individual was informed as required under subsection 5 (1) and, if informing the individual under clause 5 (1) (b) was not required under subsection 5 (2), the reasons why that was not required.
3. Whether the individual was given a document referred to in section 6.
4. Such other information as the chief of police requires the officer to record.

INCLUSION OF COLLECTED INFORMATION IN POLICE DATABASES

**Collected information in police databases**

8. (1) This section applies with respect to the inclusion, in databases under the control of a police force, of identifying information about an individual collected by a police officer from the individual.

(2) The chief of police shall ensure that the requirements under this section are complied with.

(3) Access to identifying information shall be restricted in accordance with subsection (7) unless the information may be included, under this section, without limiting the access of members of the police force

(4) Identifying information may be included in a database without limiting the access of members of the police force if,

- (a) a person designated by the chief of police has reviewed the information, as well as the officer's reason required under section 4 (including the details referred to in paragraph 1 of subsection 4 (2)), and has determined that the officer appears to have had a reason that met the requirements of section 4; or
- (b) the database indicates that a review and determination described in clause (a) has not been done for the information.

(5) The following apply with respect to the review and determination described in clause (4) (a):

1. The review and determination shall be done within 30 days after the information was first entered into a database under the control of the police force and the indication required under clause (4) (b) shall be retained until that review and determination has been done.
2. If it is determined that the officer does not appear to have had a reason that met the requirements of section 4, the identifying information shall be retained, subject to the procedures developed under section 12 in relation to paragraph 6 of subsection 11 (1), in a database under the control of the police force but access to such retained information shall be restricted in accordance with subsection (7).

(6) Access to identifying information shall be restricted in accordance with subsection (7) after the fifth anniversary of the date on which the information was first entered into a database under the control of the police force.

(7) The following apply with respect to identifying information to which access must be restricted:

1. No person may access the information without the permission of the chief of police.
2. A chief of police may permit members of his or her police force to access the information only if the chief of police is satisfied that access is needed,
  - i. for the purpose of an active police investigation,
  - ii. in connection with legal proceedings or anticipated legal proceedings,
  - iii. in order to prepare a report relating to the provision of police services, which will not identify the individuals from whom the information was collected,
  - iv. for the purpose of complying with a legal requirement, or
  - v. for the purpose of evaluating a police officer's performance.

#### RESTRICTIONS ON PERFORMANCE TARGETS

##### **Performance targets not to be used in evaluating work performance**

**9.** A chief of police shall ensure that no performance target based on any of the following factors is used to evaluate the work performance of a police officer on his or her force:

1. The number of times, within a particular period, that the officer collects or attempts to collect identifying information about individuals from the individuals.

2. The number of individuals from whom the officer collects or attempts to collect identifying information within a particular period.

## **PART IV OTHER MATTERS**

### TRAINING

#### **Chiefs of police must ensure training**

**10.** (1) A chief of police shall ensure that every police officer on his or her police force who attempts to collect identifying information about an individual from the individual has successfully completed the training described in subsection (2) within the previous 36 months.

(2) The training referred to in subsection (1) is training that includes, at a minimum, training on the following topics:

1. The right of an individual not to provide information to a police officer, the limitations on this right and how to ensure that this right is respected.
2. The right of an individual to discontinue an interaction with a police officer, the limitations on this right and how to avoid unlawfully psychologically detaining an individual.
3. Bias awareness, discrimination and racism and how to avoid bias, discrimination and racism when providing police services.
4. The rights that individuals have to access information about themselves that is in the custody, or under the control, of a police force.
5. The initiation of interactions with members of the public.

### POLICIES AND PROCEDURES

#### **Boards and Minister must develop policies**

**11.** (1) A board shall develop policies regarding the following matters:

1. Attempts by police officers to collect identifying information about individuals from the individuals.
2. The informing of individuals, by police officers, as required under subsection 5 (1).
3. The document to be given to individuals under section 6.
4. The entry of identifying information about individuals collected by police officers from the individuals into databases under the control of a police force.

5. The training referred to in section 10.
6. The retention of, access to, and disclosure of identifying information collected on or after July 1, 2016, including the retention of identifying information collected contrary to this Regulation.
7. The retention of, access to, and disclosure of identifying information collected before July 1, 2016 with respect to which this Regulation would have applied had the collection taken place on July 1, 2016.

(2) The policy developed under paragraph 6 of subsection (1) shall provide that identifying information collected contrary to this Regulation shall not be retained longer than is reasonably necessary,

- (a) to comply with the reporting requirements under section 13; or
- (b) in connection with legal proceedings or anticipated legal proceedings, including to comply with disclosure obligations in relation to the prosecution of offences.

(3) The duties imposed by subsections (1) and (2) on boards in relation to municipal police forces apply to the Minister of Community Safety and Correctional Services in relation to the Ontario Provincial Police.

(4) The policies developed under this section shall be consistent with this Regulation.

#### **Chiefs of police must develop procedures**

**12.** (1) A chief of police shall develop procedures regarding the matters set out in subsection 11 (1).

(2) The procedures developed under subsection (1) shall be consistent with this Regulation and the relevant policies developed under section 11.

### REPORTS, REVIEWS AND COMPLIANCE

#### **Annual report**

**13.** (1) This section applies to,

- (a) an annual report provided by a municipal chief of police to a board under section 31 of Ontario Regulation 3/99 (Adequacy and Effectiveness of Police Services) made under the Act; and
- (b) the annual report provided by the Commissioner under subsection 17 (4) of the Act.

(2) A chief of police shall ensure that his or her annual report includes the following information in relation to attempted collections of identifying information:

1. The number of attempted collections.
2. The number of individuals from whom collections were attempted.
3. The number of times subsection 5 (2) was relied upon by a police officer to not inform an individual as would otherwise be required under subsection 5 (1).
4. The number of attempted collections from individuals who are perceived, by a police officer, to be within the following groups based on the sex of the individual:
  - i. male individuals, and
  - ii. female individuals.
5. For each age group established by the chief of police for the purpose of this paragraph, the number of attempted collections from individuals who are perceived, by a police officer, to be within that age group.
6. For each racialized group established by the chief of police for the purpose of this paragraph, the number of attempted collections from individuals who are perceived, by a police officer, to be within that racialized group.
7. A statement, based on an analysis of the information provided under this subsection, as to whether the collections were attempted disproportionately from individuals within a group based on the sex of the individual, a particular age or racialized group, or a combination of groups and if so, any additional information that the chief of police considers relevant to explain the disproportionate attempted collections.
8. The neighbourhoods or areas where collections were attempted and the number of attempted collections in each neighbourhood or area.
9. The number of determinations, as described in clause 8 (4) (a), that a police officer did not appear to have had a reason that met the requirements of section 4.
10. The number of times members of the police force were permitted under subsection 8 (7) to access identifying information to which access must be restricted.

(3) A chief of police shall establish age groups for the purpose of paragraph 5 of subsection (2).

(4) A chief of police shall establish racialized groups for the purpose of paragraph 6 of subsection (2) and shall do so in a way that allows the information required by subsection (2) relating to the racialized groups to be comparable to the data referred to in the following paragraphs, as released by the Government of Canada on the basis of its most recent National Household Survey preceding the period covered by the chief of police's annual report:

1. For each derived visible minority group set out in the National Household Survey, the number of individuals who identified themselves as being within that group.
2. The number of individuals who claimed Aboriginal identity.

(5) This section does not require the inclusion of information about anything that occurred before July 1, 2016.

**Chiefs of police must review practices and report**

**14.** (1) If an annual report referred to in section 13 reveals that identifying information was attempted to be collected disproportionately from individuals perceived to be within a group, the chief of police shall review the practices of his or her police force and shall prepare a report setting out the results of the review and his or her proposals, if any, to address the disproportionate attempted collection of information.

(2) A municipal chief of police shall provide his or her report to the relevant board, and the Commissioner shall provide his or her report to the Minister of Community Safety and Correctional Services.

(3) When a board receives a report from a municipal chief of police under subsection (2), and when the Minister of Community Safety and Correctional Services receives a report from the Commissioner under subsection (2), the board or the Minister, as the case may be,

- (a) shall publish the report on the Internet in a manner that makes it available to the public free of charge; and
- (b) may make the report available to the public free of charge in any other manner that the board or the Minister, as the case may be, considers appropriate.

**Chiefs of police must make records available**

**15.** (1) For the purpose of carrying out a duty, or exercising a power, under clause 3 (2) (b), (d), (e) or (h) of the Act, the Minister of Community Safety and Correctional Services may request a chief of police to make available to an employee in the ministry, within the period specified in the request, any record that is relevant to that duty or power and is in the possession or under the control of the chief of police's police force.

(2) A chief of police shall comply with a request made under subsection (1).

**Review of Part III**

**16.** The Minister of Community Safety and Correctional Services shall ensure that a review of Part III is conducted and that a report on the findings of the review is published no later than July 1, 2021.

**COMMENCEMENT****Commencement**

**17. (1) [Commencement].**