

REPORT OF THE

Independent Street Checks Review

The Honourable Michael H. Tulloch

The Honourable Michael H. Tulloch is a judge of the Court of Appeal for Ontario.

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First, I wish to thank Chief Justice Strathy, Chief Justice of Ontario, and my colleagues on the Ontario Court of Appeal for their constant support and understanding while I was away from the Court serving as the Independent Reviewer.

Second, I thank all the team members on the Independent Street Checks Review. The success of this Review was a direct result of the team that supported me throughout this process. Each member brought a unique set of skills and expertise to this Review and each of their contributions was integral to its ultimate success. I could not have done this without their tireless commitment, dedicated service, and exemplary work over the past 18 months. Their contributions are numerous and invaluable. I am very grateful for everything they have done during the consultations under the Review and for the completion of this report.

Third, I would like to acknowledge and thank all of the stakeholders we met with

during our extensive police, community, and public consultations throughout the province. Consultations with a wide range of community members, experts, organizations, police services, and the public were a core component of this Review and of central importance to my approach. I will never forget the powerful contributions and submissions stakeholders made during these meetings and in a range of written submissions. These contributions and submissions informed my analysis and the recommendations in this report.

Fourth, I was fortunate to rely on a number of individuals to test ideas and approaches and review certain portions of my report. They know who they are. Their comments were so helpful in this process and I thank them.

Finally, and closest to my heart, is my family. Thank you for your unyielding support and belief in me and for dealing with my many absences and schedule under this Review over the past 18 months. I could not have undertaken this work without you and I am so grateful for you. You are my everything.

MICHAEL H. TULLOCH

Letter to the Minister of Community Safety and Correctional Services

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December 11, 2018

The Honourable Sylvia Jones
Minister of Community Safety and Correctional Services
25 Grosvenor Street
Toronto, ON M7A 1N8

Dear Minister Jones:

RE: The Independent Street Checks Review

I am pleased to provide you with my report in response to the terms of reference dated May 19, 2017.

Within this report, I have answered the questions outlined in the terms of reference. My answers and recommendations follow a broad consultation process and reflect the invaluable input of all of the various stakeholders and members of the public with whom I met.

Thank you for the opportunity to conduct this Review. I trust that you will find my recommendations helpful in moving forward to ensure that police-public interactions promote public confidence and keeps our communities safe.

Yours very truly,

A blue ink signature of Michael H. Tulloch.

The Honourable Justice Michael H. Tulloch
Independent Reviewer of O. Reg. 58/16

Letter to Participants and Stakeholders

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December 11, 2018

Dear Participants and Stakeholders:

RE: The Independent Street Checks Review

My consultation process is complete and I have now produced a report reflecting your submissions.

I want to take this opportunity to personally thank all of you for your participation in this process. Your contributions have been invaluable to my team and me. I am very hopeful that your input will result in police-public interactions that promote public confidence and keep our communities safe.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Michael H. Tulloch".

The Honourable Justice Michael H. Tulloch
Independent Reviewer of O. Reg. 58/16



Definitions

1. **Arbitrary:** “Depending on individual discretion ... founded on prejudice or preference rather than on reason or fact”.¹ According to subsection 5(4) of the Regulation, 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 reasonably suspect that identifying the individual may contribute to or assist in an inquiry described in clause 1(1)(a) or (b) or the gathering of information described in clause 1(1)(c).

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 location.

2. **Articulable cause:** A cause that can be justified in a stated explanation. Ar-

ticulable cause has been defined as “a constellation of objectively discernible facts which give the detaining officer reasonable cause to suspect that the detainee is criminally implicated in the activity under investigation”. It involves both an objective and subjective standard. This means that an officer’s subjective suspicion that a targeted individual is possibly engaged in some criminal activity is not sufficient. The officer’s suspicion must also be objectively reasonable; that is, supported by objective facts. Articulable cause is tantamount to reasonable suspicion, which is defined below.

3. **Attempt to obtain identifying information:** A face-to-face encounter in which a person is asked to identify themselves or to provide information for the purpose of identifying themselves, whether or not the information is actually collected. An attempt to collect identifying information, therefore, includes an actual collection of identifying information.

4. **Carding:** Situations in which a police officer randomly asks an individual to provide identifying information when there is no objectively suspicious activity, the individual is not suspected of any offence and there is no reason to believe that the individual has any information on any offence. That information is then recorded and stored in a police intelligence database.

5. **Child:** A person who is or, in the absence of evidence to the contrary, appears to be under the age of 12.

6. **Historical data:** Identifying information collected prior to January 1, 2017, to which the Regulation would have applied had it been collected on or after January 1, 2017.

7. **Identifying information:** Any information which, alone or in combination with other information, can be used to identify an individual. Identifying information includes information about an individual's race, age, sex, sexual orientation, gender identity, marital or family status, socioeconomic circumstances, and education, medical, psychiatric, psychological, criminal or employment history.

8. **Intelligence gathering:** The process whereby police collect information. It can be specific or random. Where intelligence is gathered in order to solve a crime that an officer reasonably suspects has already occurred or is about to occur, it forms part of an investigation that is exempt from the Regulation.

9. **Investigative detention:** The holding of a suspect without formal arrest during the investigation of the suspect's participation in a crime.² Courts have recognized a power to briefly detain for investigation an individual if there are reasonable grounds to *suspect* (as opposed to reasonable grounds to *believe*) that the individual is connected to a particular crime and that the detention is reason-

ably and objectively necessary. By contrast, where there are reasonable grounds to *believe* that the individual has committed, is committing or is about to commit an indictable offence, a police officer can arrest the individual. Investigative detentions cannot be based on mere suspicion, speculation, a spidey-sense, a guess or a hunch.

10. **Minor:** A person under the age of 18.

11. **Objective and credible reasons/grounds:** The criteria which defines suspicion that is more than a mere suspicion and less than reasonable suspicion and is grounded on objectively discernible facts. Police officers cannot simply state that they had a hunch for requesting identifying information. Objective and credible reasons must exist.

12. **Prohibited/protected grounds of discrimination:** The Ontario *Human Rights Code* prohibits discrimination or harassment based on certain personal characteristics. The specific protected grounds include: age, ancestry, citizenship, colour, creed, disability, ethnic origin, family status, gender identity and gender expression (recently added to the *Code*), marital status, place of origin, race, sex (including pregnancy), sexual orientation, receipt of public assistance (in housing) and record of offences (in employment).

13. **Random:** Without "definite aim, direction, rule or method ... lacking a definite plan, purpose or pattern".³ Random street checks refer to street checks that

do not have a direct aim or purpose other than to collect and record identifying information, and that are not based on objective grounds.

14. Random requests: Where a police officer makes a request for identifying information without suspecting the possibility of an offence or any reason to believe that the person has useful information.

15. Reasonable and probable grounds to believe: Reasonable and probable grounds to believe is a higher standard than reasonable suspicion. What distinguishes “reasonable suspicion” from the higher standard of “reasonable and probable grounds to believe” is “the degree of probability demonstrating that a person is involved in criminal activity, not the existence of objectively ascertainable facts which, in both cases must exist to support the search”.⁴

16. Reasonable suspicion: An expectation that a targeted individual is possibly engaged in some criminal activity.⁵ It must be based on something more than a mere suspicion and is something less than a belief based on reasonable and probable grounds. “Like reasonable and probable grounds, reasonable suspicion is an objective standard that requires “objectively discernable facts, which can be subject to independent judicial scrutiny”. However, reasonable suspicion is a lower standard than reasonable and probable grounds, looking at reasonable *possibility*, rather than reasonable *probability*.⁶ Reasonable

suspicion is tantamount to articulable cause, which is defined above.

17. Receipt: An individual who has been questioned by the police in a regulated interaction must be provided with a document that is often referred to as the “receipt”, which provides a record of the attempt to collect the information. Under the policies and procedures adopted under the Regulation by various police services, the receipt has also been called a “street check receipt/document”, “Collection of Identifying Information Receipt”, “Record of Interaction Form”, “Contact Card”, “Document of Interaction” or, simply, “document”.

18. Records management systems: Online database used to record, store, organize and make accessible information collected by police officers. This information is used to conduct analyses and produce reports. For instance, information collected from street checks before 2017 and regulated interactions after 2017 are stored within a specific module of a records management system.

19. Regulated interaction: Where police collect identifying information from an individual about the individual on or after January 1, 2017, and the Regulation applies to the interaction. Where an interaction qualifies as a regulated interaction, police officers are required to do a number of things, including provide a reason for the interaction and a receipt documenting the interaction.

20. Regulation: References to the Regulation refer to *Collection of Identifying Information in Certain Circumstances – Prohibition and Duties*, O Reg 58/16, under the *Police Services Act*, RSO 1990, c P-15.

21. Suspicious activity: The Regulation currently does not define this term. In this report, I have recommended adopting the following definition: a situation where, under all of the circumstances, there are objective, credible grounds to request identifying information. Police officers should be directed and trained that they may inquire into suspicious activities. Where I refer to suspicious activity in this report, I adopt this definition.

22. Street check: Identifying information obtained by a police officer concerning an individual, outside of a police station, that is not part of an investigation.

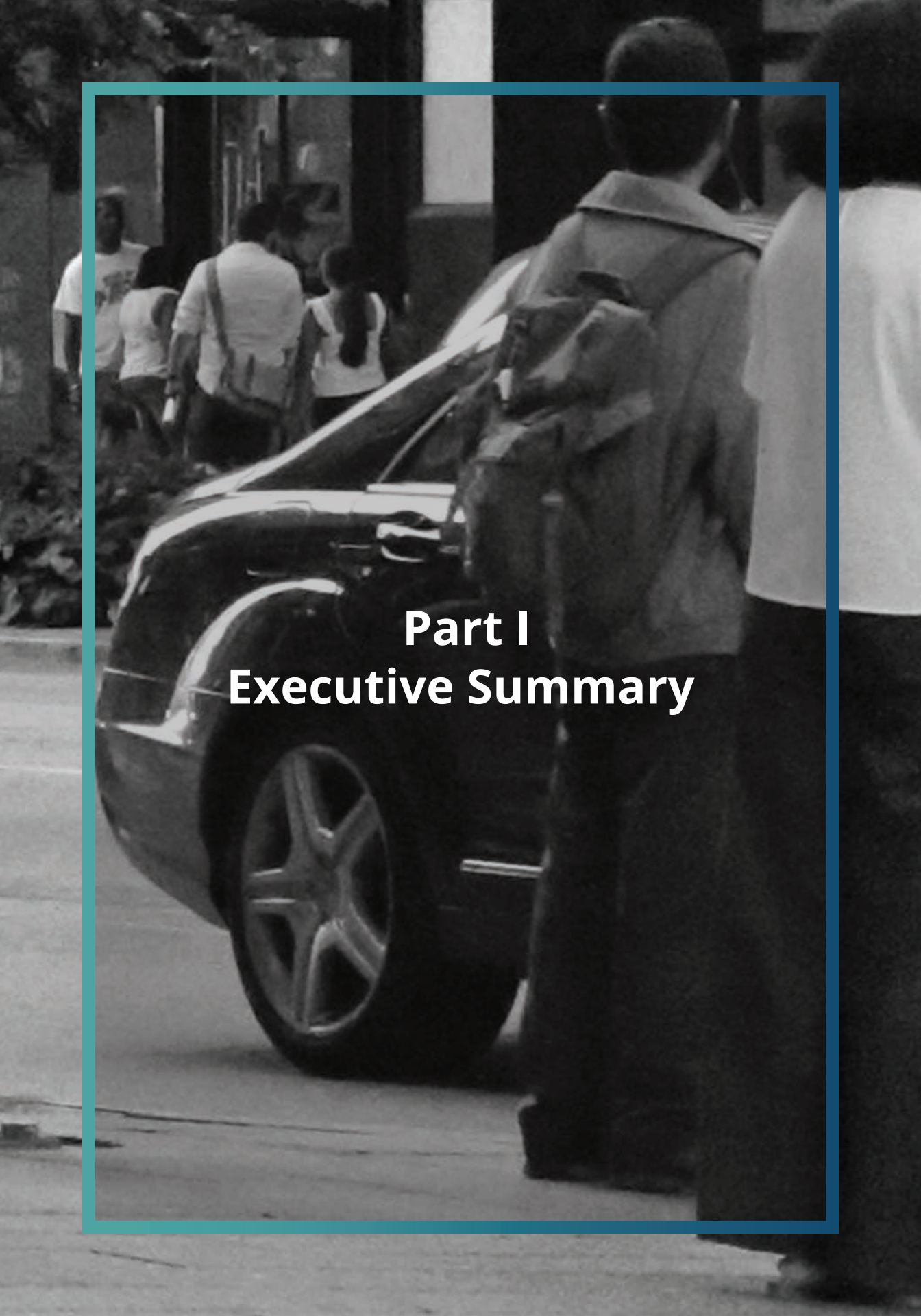
23. Targeted requests: Where a police officer makes a request for identifying information where the officer suspects the possibility of an offence or observes suspicious activities or suspects that the person will have useful information about offences.

24. Unconscious/implicit bias: According to the University of California San Francisco's Office of Diversity and Outreach, unconscious bias, also known as implicit bias, are "social stereotypes about certain groups of people that individuals form outside their own conscious awareness. Everyone holds unconscious beliefs about various social and identity groups,

and these biases stem from one's tendency to organize social worlds by categorizing. Unconscious bias is far more prevalent than conscious prejudice and is often incompatible with one's conscious values. Certain scenarios can activate unconscious attitudes and beliefs. For example, biases may be more prevalent when multi-tasking or working under time pressure".⁷ Most people have an unconscious or implicit bias in one or more areas. Implicit bias is the most difficult area to address because it occurs subconsciously. Many studies have shown that the general population hold stereotypes, and that most people may have an implicit bias against others of which they are unaware.⁸ The issue of unconscious bias must be recognized as a systemic issue and addressed not only by police officers, but also by prosecutors, judges and all actors within the criminal justice system. Implicit or unconscious bias is sometimes referred to as hidden bias, unintentional bias or implicit social cognition.

25. Verifier: A person whose responsibility it is to review the regulated interaction information submitted by police officers in order to verify that the information was collected properly and pursuant to all the requirements of the Regulation. The rank, title, and role of the person who serves as the verifier is different from service to service.

26. Young person: A person 12 or older but also under the age of 18.

A black and white photograph of a busy street scene. In the foreground, a person with a large backpack is walking away from the camera. To their left, a dark-colored car is parked on the street. In the background, several other people are walking in the same direction. The image is framed by a teal border.

Part I

Executive Summary

Executive Summary



1. On June 7, 2017, I was appointed by the Government of Ontario to lead an independent review of Regulation 58/16 (O. Reg. 58/16) and its implementation. Regulation 58/16, introduced in 2016, outlines Ontario's new rules on the collection of identifying information by police in certain circumstances, a practice that is commonly known as street checks (and sometimes referred to as carding).

2. In my capacity as the Independent Street Checks Reviewer, I reviewed the content of the Regulation and assessed whether police officers, chiefs of police and police services boards are complying with it. More specifically, the Review has looked at whether the Regulation reflects the government's goal of ensuring that police-public relations are consistent, bias-free and done in a way that promotes public confidence and protects human rights.

3. This report seeks to answer certain critical questions and provide recommendations on how to improve the Regulation and ensure that it serves the original intent and purposes for which it was enacted. In this Executive Summary (Part I of my report), I summarize: the background of this Review (Part II), the legal context (Part III), and my findings and recommendations (Parts IV and V).

Summary of Part II: Background

4. Crime prevention is essential to the maintenance of public safety, and the police must have proper tools in order to undertake this work. However, the public's trust in police is the bedrock on which police legitimacy is built: without it, police lose authority and the ability to do their jobs. This is the lens through which any analysis of street checks and carding must be done.

5. Street checks were originally intended as an investigative tool to capture the information of people who police had reason to suspect of being involved in criminal activity. Over time, however, it grew into a much less focused practice. Some police services began collecting and storing personal identifying information of many citizens without any belief that they were involved in criminal activity, and without much evidence that such databases were particularly useful in solving crime.

6. Many of the issues surrounding carding and street checks stem from a misunderstanding of the terms themselves. A street check is where information is obtained by a police officer concerning an individual, outside of a police station, that is not part of an investigation. This is a very broad category of police information gathering, and much of it is legitimate intelligence gathering of potentially useful information. Carding, as referred to in this report, is a small subset of street checks in which a police officer randomly asks an individual to provide identifying information when the individual is not suspected of any crime, nor is there any reason to believe that the individual has information about any crime. This information is then entered into a police database.

The public's trust in police is the bedrock on which police legitimacy is built.

7. In Chapter 2 of this report, I go over the history and evolution of street checks, as well as the impact of random street checks, including their benefits and costs. While proponents of random street checks argue that such stops can help deter crime and assist in criminal investigations, the many costs include: the negative effects on the physical and mental health of those carded; potential negative impacts on their employment and other opportunities; the loss of public trust and cooperation; and a reduction

in the perception of police legitimacy. These impacts are felt disproportionately by certain races and groups, particularly Indigenous, Black and other racialized communities, as well as youth and people from lower socioeconomic groups.

8. These issues ultimately led the Government of Ontario to file Regulation 58/16, which I am mandated to review. In Chapter 2, I also outline the history and purpose of the Regulation, and salient issues around the understanding, interpretation and application of the Regulation in Ontario. Within this context, I recommend that the Government of Ontario immediately proceed to implement or amend the Regulation in accordance with the recommendations I make in Chapters 5 to 12 of this report. I note that all recommendations and amendments must take into account the time and resources necessary for police services to ensure effective, proper training and implementation of the revised Regulation. The government should allocate additional resources to police services specifically for this purpose (Recommendation 2.1).

9. Under the terms of reference, the Government of Ontario asked me to answer a number of questions about a) the content of the Regulation and b) the implementation of the Regulation.

10. Regarding the content of the Regulation, I was asked to answer the following questions:

- Does the Regulation ensure that po-

lice–public interactions are consistent?

- Does the Regulation ensure that police–public interactions are conducted without bias or discrimination?
- Does the Regulation ensure that police–public interactions are done in a manner that promotes public confidence and keeps our communities safe?
- Does the Regulation appropriately reflect the principle that Ontario takes the protection of human rights very seriously and has zero tolerance for racism or any form of discrimination based on the prohibited grounds set out in section 1 of the *Human Rights Code*?
- Does the Regulation appropriately reflect the principle that Ontario stands opposed to arbitrary, random stops that do not have a clear policing purpose, and which are done solely for the purpose of collecting identifying information?
- Are there any recommendations that should be made regarding the content of the Regulation in light of the preceding questions?

11. On the implementation of the Regulation itself, I was asked to answer the following questions:

- Are there any challenges, operational or otherwise, in applying the Regulation and, if so, what are the recommendations as to how they could be addressed?
- Are the accountability and oversight mechanisms in the Regulation appropriate to ensure compliance with the Regulation and, if not, what are the rec-

ommendations as to how the mechanisms could be improved?

- Are there any amendments, policy and/or procedural changes recommended to improve the implementation of the Regulation?
- Are police officers and police chiefs generally in compliance with the Regulation?
- Are police officers and police chiefs specifically in compliance with the Regulation regarding:
 - the data retention and management requirements;
 - the elimination of performance targets;
 - the delivery of training;
 - the development of procedures; and
 - the provision of reports?
- Have police services boards developed policies that comply with the Regulation?
- Do the curriculum and related training materials developed by the Ontario Police College ensure compliance with the Regulation?
- Are there any recommendations to be made regarding the effectiveness of the training developed by the Ontario Police College?
- What are the approaches police services have adopted to implement the Regulation?
- Are there any recommendations regarding the approaches police services boards should take with regard to the

document to be provided to individuals following a regulated interaction, and is consistency required in that regard?

- Are there any recommendations regarding the approaches police services boards should take with regard to the retention of information collected pursuant to the Regulation, and is consistency required in that regard?
- Are there any recommendations regarding the approaches police services boards should take with regard to the establishment of age groups and racialized groups when reporting on the collection of data, and is consistency required in that regard?

12. These questions are numerous and complex, and they required in-depth analysis, research, consultations and outreach in order to answer them.

13. At this stage, I wish to outline the Review's consultation process. It was very important to me to hear from as many people as possible in order to develop recommendations that would make a tangible impact.

14. The terms of reference required that I consult with the Minister Responsible for Anti-Racism and the Independent Police Review Director. I was also required to conduct an independent survey of civilians to address certain issues around police compliance with the Regulation, and police-public interactions. This survey was conducted as part of the Review and a summary of its findings are threaded throughout the report and included in

Appendix E.

15. The overall consultation process under the Review took over 11 months, during which time I met with more than 2,200 people and received over 100 written submissions. Many stakeholders were consulted, including police services, community groups and organizations, public interest groups, individuals and academics.

16. I met with officials from 34 police services in Ontario, including police chiefs, members and police services boards, in order to understand their perspectives and the impact of the Regulation on their work.

17. There were 12 public consultations held throughout the province during which members of the public expressed their views, concerns and feedback on street checks and the Regulation, and made recommendations.

18. I met with Indigenous, Black and other racialized communities throughout the province. Hearing directly from these communities highlighted the historic and current issues these communities face with respect to the practice of street checks.

19. Consultations with all of these groups were essential to me, as they provided valuable context, information and insight into the issues I was asked to address under the Review. Their contributions shaped my recommendations in this report. I am deeply grateful to everyone I

met for their openness and willingness to share their knowledge, experiences, lived realities and expertise with me.

20. In addition to the consultations, I undertook extensive research on the legal issues implicated in the Review of the Regulation to answer the questions asked of me. I conducted a comparative analysis of other countries' approaches to these issues, with a view to identifying approaches or analytic frameworks that would be of particular relevance to the situation in Ontario.

The overall consultation process under the Review took over 11 months, during which time I met with more than 2,200 people and received over 100 written submissions.

21. In Chapter 4 of this report, I provide important contextual information on key legal concepts, statutes and constitutional provisions that underpin the analysis and recommendations in this report. My recommendations are set out in Parts IV and V, namely Chapters 5 to 12. I have included the full list of recommendations in Appendix A. In the following sections, I briefly summarize each chapter, and highlight the key recommendations made in Chapters 5 to 12.

Summary of Part III: The Context for the Independent Review

Chapter 4: Policing – Powers and Limits

22. In Chapter 4, I provide a summary of certain civil liberties and fundamental rights of individuals, as well as the applicable duties and powers of police officers and the limits on those powers that currently exist in our law. This summary serves as the legal context for the Regulation and my recommendations set out in later chapters.

23. People enjoy many individual rights, one of which is the right to walk about freely without state interference. Faced with police questioning on the street, a person is generally free to decline to answer and walk away. This, of course, does not prevent a police officer from being able to speak to people but, unless a police officer has grounds to arrest or detain a person, they cannot prevent someone from leaving an interaction.

24. The duties of police officers form an important part of the discussion in this chapter. Certain powers are granted to police officers in order to enable them to discharge their duties. These powers come from both statute (e.g. the *Criminal Code*) and from common law. Police duties include the preservation of peace, the prevention of crime and the protection of life and property. To discharge these duties, police officers may need to engage with members of the public, including

stopping and questioning them. But their ability to do so is not unlimited: a balance must be struck between protecting individual liberties and properly recognizing certain police functions.

25. To discharge their duties, police have certain limited powers to interfere with the ability of citizens to walk freely down the street. These powers include powers of arrest, statutory powers of detention and common law powers of detention.

26. Police officers can arrest a person with or without a warrant. When they are arresting a person without a warrant, they must find the person committing a criminal offence or have reasonable grounds to believe the person has committed or is about to commit an offence. Police also have some powers of arrest derived from other statutes. When individuals are arrested, police must advise them of the reasons for the arrest as well as their right to counsel, and individuals then have an obligation to identify themselves.

27. Police have a number of statutory authorities for stopping or detaining individuals, such as legislation regulating access to courthouses and airports, or providing for certain types of warrants (e.g. a warrant for DNA).

28. The main detention power that police have at common law is the power to detain for investigative reasons. Police have the power to briefly detain an individual for investigation if the police have objectively reasonable grounds to suspect that the individual is connected to a particu-

lar crime and that the detention is reasonably and objectively necessary. This reasonable suspicion must be based on something more than a *mere* suspicion or a “hunch” but can be something less than a belief based on reasonable and probable grounds that would justify an arrest. When an individual is subject to an investigative detention, the police must advise them of the reasons for the detention as well as their right to counsel. In these circumstances, individuals do not have to speak to police.

29. Detention does not automatically occur as soon as police engage an individual for investigative purposes; it only arises when a person is either physically detained (e.g. through handcuffing) or psychologically detained. Psychological detention occurs when a reasonable person in the person’s position would feel obligated to comply with a police direction or demand. Courts have outlined a number of factors to be considered when determining whether there has been a psychological detention, which I outline in Chapter 4. Ultimately, whether someone is psychologically detained is determined by taking into account all of the circumstances of the encounter and the conduct of the police.

30. In situations falling short of a “detention”, individuals have other protections against arbitrary conduct provided by statute, such as those provided by the Ontario *Human Rights Code* and Ontario’s *Anti-Racism Act, 2017*.

31. With this legal context in mind, I will

now summarize each of the following chapters, highlighting key recommendations.

Summary of Part IV: Collecting and Managing Identifying Information - Findings and Recommendations

Chapter 5: Application and Interpretation of the Regulation

32. In this chapter, I examine the circumstances in which the Regulation applies to an interaction between a police officer and an individual. I consider the general application of the Regulation, the meaning of identifying information, the categories of collections to which the Regulation applies and areas where the Regulation does not apply. I identify gaps in the Regulation's operation, based on concerns that the Regulation was intended to address, and I make recommendations to address those gaps.

33. At the outset, I recommend that the Regulation expressly stipulate that its purpose or objective is to prevent arbitrary or random stops of individuals (Recommendation 5.1).

34. The Regulation applies to attempts to collect identifying information from individuals by police officers if the attempt is done for the purpose of: inquiring into offences that have been or might be committed; inquiring into suspicious activities to detect offences; or gathering information for intelligence purposes. I have recommended that officers be instructed that it also applies whether or

not an officer decides to ultimately discard the information (Recommendation 5.2). I have also made recommendations about standardizing the definition of what constitutes identifying information across jurisdictions. (Recommendations 5.3 and 5.4).

I recommend that the Regulation expressly stipulate that its purpose or objective is to prevent arbitrary or random stops of individuals

35. The Regulation specifically does not apply to a number of situations, including instances where a person is legally required to provide the information to a police officer. These instances arise where legislation, such as the *Highway Traffic Act*, the *Liquor License Act*, or the *Trespass to Property Act* enable police to obtain identifying information from individuals. I have recommended that the Province of Ontario consider the possibility of revising such Acts to include similar protections as those contained in the Regulation (Recommendation 5.5). I have also made recommendations regarding the application of the Regulation to vehicle stops and to passengers in vehicles (Recommendations 5.6 and 5.7).

36. I have explored and made recommendations about the circumstances to which the Regulation ought not to apply, including: where an individual appears to

match the description of a missing person, human trafficking victim, or other victim of crime; or where an officer is simply chatting with members of the community to build relationships (Recommendations 5.8 and 5.9). I also recommend that procedures developed by chiefs of police ensure that identifying information collected in such situations is not recorded in any regulated interactions database (Recommendation 5.10).

37. A key aspect of the Regulation is the distinction between *investigating* an offence, which is exempt from the Regulation, and *inquiring* into suspicious activities and general criminal activities, which fall under the Regulation's purview. I explain that, in the latter case, there should be some suspicion based on objective and credible grounds justifying an inquiry, albeit short of the reasonable grounds for suspicion required for an investigation. I make recommendations designed to ensure that this distinction is clear and that identifying information collected under this provision of the Regulation is collected in a manner and spirit in line with the Regulation's purpose (Recommendations 5.12, 5.13, and 5.14). I also recommend that regulated interactions should take no longer than reasonably necessary (Recommendation 5.11).

38. Next, I discuss the collection of information for intelligence purposes, which is the final category of collection to which the Regulation applies. This information gathering can be specific or random in nature. It is *specific* in nature when there is

a specific reason to believe the identifying information would be valuable police intelligence. In my view, these interactions are proper and should be subject to the Regulation.

39. Random gathering of information for intelligence purposes, however, amounts to the practice traditionally known as carding: people are being identified simply to create a database of individuals in the area. Two fundamental questions central to this Review are: *do random street checks actually work* and *should random street checks or carding ever be allowed?*

40. In contemplating whether random street checks work, I consider Canadian and international experiences and research, as well as my own observations from the many consultations conducted over the course of this Review. I conclude that random street checks, which take considerable time and effort for a police service to conduct, have little to no verifiable benefits relating to the level of crime or even arrests. In fact, even before the Regulation, many police services had already discontinued the practice because of its lack of effectiveness.

41. I also consider emergency situations and threats to public safety, and find that the tools police already have, without random street checks, allow them to effectively address such circumstances. I thus recommend discontinuing the use of random street checks altogether (Recommendation 5.15).

Chapter 6: Prohibition on the Collection of Certain Information

42. In this chapter, I address the question of when police officers are *not* authorized to collect identifying information.

43. Under section 5 of the Regulation, police officers are prohibited from collecting identifying information if “any part” of the reason for the attempted collection is because the officer perceives the individual to be part of a racialized group or the attempted collection is done in an “arbitrary way”. I recommend that other prohibited grounds of discrimination under the Ontario *Human Rights Code* and the individual’s socioeconomic status also be included in this section (Recommendation 6.1).

44. The collection of identifying information is, thus, considered to be improper if part of the reason for the collection is the person’s membership in a protected group (i.e. they are part of a group protected by a prohibited ground of discrimination under the Ontario *Human Rights Code* or on the basis of their socioeconomic status). That said, membership in a protected group, such as racial identity, is often a necessary component of a suspect description. As such, an officer can attempt to collect identifying information from individuals on the basis that they appear to be part of a protected group as long as the officer is seeking a particular individual and the officer has additional information regarding the individual other than their membership in a protected group.

45. The purpose of this requirement is to prevent people from being stopped and questioned for improper reasons or based on a vague description. The solution is to require a credible, reasonably specific description relating to the individual and their circumstances before a request is made for identifying purposes. I have made a recommendation on the phrasing of this section of the Regulation to assist with this issue (Recommendation 6.1).

46. As I mentioned above, police officers are also prohibited from collecting identifying information in an arbitrary way. A collection is considered to be arbitrary unless the police officer can articulate a proper reason for the attempted collection. I have made a recommendation to expand the section of the Regulation that specifies what those reasons can and cannot include (Recommendation 6.2). I also explore and give examples of circumstances in which police officers should and should not obtain identifying information from members of the public.

47. Finally, I close this chapter by addressing an issue that the Regulation currently does not canvass: the need for *all* police–public interactions to be conducted without bias or discrimination. I therefore recommend that: officers should be trained and have articulable reasons for initial inquiries and gathering information regardless of whether identifying information is requested; and that no part of the reasons for these interactions may be a ground prohibited by the Regulation (Recommendation 6.3).

Chapter 7: Duties Relating to Collection of Information

48. Chapter 7 focuses on the duties of police officers relating to the collection of identifying information. I begin the chapter by underscoring the importance of procedural justice and civility, noting that public confidence in the police is promoted when the police are perceived to be acting legitimately and they treat members of the public in a polite, respectful, open and dignified manner. When police are seen to be acting in a legitimate manner, people are more likely to follow police directives, report crime and cooperate in investigations.

49. When it comes to requests for identifying information, police have a duty to inform individuals of certain things before attempting to collect the identifying information. In this chapter, I outline the importance and timing of these notifications and what these notifications should include. I explain why there is a compelling reason to let people know the reason the information is being requested and how it will be used.

50. In this chapter, I recommend that requests for identifying information be made in a professional, civil manner (Recommendation 7.1). I make recommendations on what must be included in the rights notification that officers provide before requesting identifying information, the tone and manner that officers should use when notifying people of their rights and, finally, officer requests for supporting documentation (Recommendations

7.2, 7.3, and 7.4).

51. I pay close attention to requests for identifying information involving children under the age of 12. I make a recommendation about when officers can request identifying information from children and the special rules that apply in these situations (Recommendation 7.5).

Public confidence in the police is promoted when the police are perceived to be acting legitimately and they treat members of the public in a polite, respectful, open and dignified manner.

52. I then turn to a review of the document of interaction (also known as the “receipt”) and the importance of this document in promoting public confidence. I make recommendations on the province-wide standardization of the receipt, including details on the format of the receipt and the information to be contained on the receipt (Recommendations 7.6, 7.7, and 7.8).

53. I outline and explore the duty of officers to record the reason for collecting identifying information, including an examination of the other information that should be specifically recorded during and after a request for identifying information under the Regulation. I make recommendations on what a police offi-

cer must record during a regulated interaction (Recommendations 7.9 and 7.10).

54. I also recommend a format for and province-wide standardization of the form for police officers to input information obtained from these regulated interactions into their databases (Recommendations 7.11 and 7.12).

Chapter 8: Inclusion of Collected Information in Databases

55. This chapter is divided into two parts.

56. The first part looks at the inclusion of data collected from requests for identifying information after the Regulation came into force on January 1, 2017. I address when identifying information collected by a police officer may be entered into a database on a restricted and a non-restricted basis, depending on compliance with the terms of the Regulation, and the role of the chief of police and their designate in making this determination. To this end, I make a recommendation on the role of the chief of police and their designate in ensuring compliance with the Regulation (Recommendation 8.1). I also recommend when information should be included in a restricted versus a non-restricted database (Recommendation 8.2).

57. In this first part, I also outline situations where police can access restricted information, and make recommendations related to: the rules for accessing this information, documenting the access and the restrictions on the use of the informa-

tion (Recommendations 8.3, 8.4 and 8.5). When it comes to the retention of identifying information in police databases, I note that there is currently no consistent, province-wide time limit on retention. I recommend a definite time limit for the retention of data (five years), after which time it should automatically be destroyed unless needed for a specific, listed purpose in the Regulation (Recommendation 8.6). I further recommend that a police service may choose to destroy identifying information earlier than five years after it was collected (Recommendation 8.7).

58. Regarding the analysis of the identifying information in police databases, I outline the requirements for an annual, detailed review by the chief of police (or their designate) of an appropriately sized random sample of entries in the non-restricted database, with a recommendation about the need for clarity in what constitutes an appropriately sized random sample (Recommendation 8.8). When the chief of police's review determines that there was not proper compliance with the Regulation when identifying information was collected, this information must be kept in a restricted database. The chief of police must consider the results of the review and take appropriate actions to ensure that data is collected pursuant to the requirements of the Regulation. I also make a recommendation on the use of the collected, de-identified data for research purposes (Recommendation 8.9).

59. In the second part of Chapter 8, I address the retention of, access to and dis-

closure of data collected before January 1, 2017, to which the Regulation would have applied (also referred to as historical data). More specifically, the Regulation requires police services boards to develop policies and chiefs of police to develop procedures, respectively, regarding the retention of, access to and disclosure of historical data to which the Regulation would have applied.

60. The challenge I faced here is that identifying information collected before January 1, 2017, was not separated into different types of interactions. The pre-Regulation computer modules for street checks in the police databases included what are now considered regulated interactions and other, non-regulated interactions (e.g. tickets, observation checks). A reason for the sharp decline in the numbers of what are commonly referred to as street checks post-Regulation is that the numbers outlined pre-Regulation, which often were in the thousands, included both regulated and non-regulated interactions grouped together under the street checks module.

61. At present, the Regulation does not require identifying information collected before January 1, 2017, to be deleted after a certain time nor does it require information collected contrary to the Regulation's terms to be placed in a restricted database. These decisions are left to the respective policies and procedures, which I described above.

62. I noted that many communities and organizations in my consultations re-

quested that all historical data be destroyed, while other stakeholders indicated that historical data could be useful in future litigation or for possible missing persons investigations.

63. Given these considerations and to balance these perspectives, I recommend that historical data be destroyed five years after it was collected (Recommendation 8.12). I also make recommendations about storing historical data in restricted databases and the circumstances under which historical data can be accessed and used (Recommendations 8.10 and 8.11). Finally, I note that a police service may choose to destroy historical data earlier than five years after it was collected (Recommendation 8.13).

Summary of Part V: Operational, Policy and Procedural Challenges – Findings and Recommendations

Chapter 9: Training of Police and Public Education

64. As part of my mandate, I was asked to review the curriculum and related training materials on the Regulation prepared by the Ontario Police College and to make recommendations on the training provided to police officers across the province. The Regulation mandates that training be provided to any police officer who attempts to collect identifying information.

65. In outlining the origins and development of the training and determining whether the training provided complied with the Regulation, I review in detail

both the in-person training sessions and the online training modules that police officers were required to complete. I also outline the complexities in the initial delivery of the training in the fall of 2016, noting the rushed development and delivery of the training and the fact that police services only finalized procedures for the implementation of the Regulation after the training was delivered.

66. I find that the training failed to give adequate attention to the reason for the Regulation and, as such, failed to get strong buy-in from police officers who often viewed street checks as a Toronto-centric issue rather than a province-wide one. In my view, the training also failed to spend sufficient time on the Regulation itself and the legal bases for police stops.

67. While the training focused on front-line police officers who collect identifying information and the designates of the chiefs of police, there was no specific training for the data verifiers on their roles and responsibilities, nor was there training for police chiefs or their deputies on the reporting, data retention and oversight requirements of the Regulation. I make recommendations on expanding the training to supervising officers and ensuring that there is strong buy-in from supervisors (Recommendations 9.1 and 9.2). I also recommend that trainers be selected based on their credibility with other officers and support of the Regulation (Recommendation 9.3).

68. In my meetings with police services

in Ontario, I noticed that there was a lack of consistency in the training provided. Some services reported that the training was excellent while other services noted that the training was problematic and raised concerns among officers. Some officers felt that the training on implicit bias was founded on the incorrect assumption that all police officers are racist. However, I note that unconscious bias training is provided across many sectors. Unconscious bias is an issue that impacts all actors in the criminal justice system and everyone within society more generally. As such, I make observations and recommendations on how anti-bias and implicit bias training should be designed and implemented (Recommendations 9.4, 9.5, 9.6, 9.7, 9.8, and 9.9).

The training failed to give adequate attention to the reason for the Regulation and, as such, failed to get strong buy-in from police officers who often viewed street checks as a Toronto-centric issue rather than a province-wide one.

69. I highlight the importance of police and community cooperation in the development and delivery of training to police officers. I recommend that the training include: a consideration of adolescent development; specific segments regarding the geographic area and local realities of the police service; the application of the

Regulation in real-world scenarios; and a special focus on the ability to articulate reasons for a regulated interaction (Recommendations 9.4, 9.5, 9.6, and 9.10). I recommend that the training include testing (Recommendation 9.9). Given the complexity of the Regulation, I recommend that there be regular, periodic refresher training on the Regulation (Recommendation 9.11). Further, when a police officer transfers from one police service to another, I recommend that they receive training about the specific communities being served and their particular issues (Recommendation 9.12). In my view, the Ministry of Community Safety and Correctional Services should fund the ongoing training on the Regulation for all police services in Ontario.

70. I recommend the creation of a Code of Practice, similar to those used in the United Kingdom (UK), which would provide officers with clear, coherent, comprehensive instructions on the implementation of the Regulation. The Code of Practice would include: definitions of key terms and legal concepts; information on when the Regulation applies; protocols and procedures; and the importance of civility and professionalism (Recommendation 9.15). I recommend that the Code of Practice be made publicly available so that people have information on the Regulation and its application (Recommendation 9.18).

71. As outlined in my report on the Independent Police Oversight Review, I recommend again here that consideration

be given to establishing a College of Policing as the professional body for policing, and to modernizing the policing curriculum (Recommendation 9.13). A degree program or an expanded educational requirement would go a long way to ensuring that officers have the full suite of tools to undertake their critical work. I recommend developing a task force or working group to evaluate existing post-secondary programs in police studies or law enforcement issues, with a view to modernizing these programs and to updating the Ontario Police College curriculum to develop a full, stand-alone post-secondary degree in policing (Recommendation 9.14).

72. In addition, in this chapter I review the limited public information and lack of public education provided on the Regulation. The failure to properly inform the public has resulted in mass confusion regarding the Regulation, its specific terms and its operation in practice. I recommend that the Ministry of Community Safety and Correctional Services work with community groups, youth advocacy groups, legal aid clinics and school boards to develop and launch public education materials (Recommendation 9.16). I recommend that the Ministry create a full, cross-platform advertising and social media strategy on the Regulation (Recommendation 9.17).

Chapter 10: Performance Targets, Policies and Procedures

73. In Chapter 10, I outline the current requirements under the Regulation regarding the policies and procedures de-

veloped by police services boards and chiefs of police, respectively. My recommendations in this chapter are made to ensure clarity and consistency across the province.

74. I note at the outset of this chapter that the Regulation prohibits police services from imposing on its police officers performance targets for the collection of identifying information. This restriction was intended to prevent unnecessary and improper street checks and it is a good one.

The failure to properly inform the public has resulted in mass confusion regarding the Regulation, its specific terms and its operation in practice.

75. All policies and procedures must be consistent with the Regulation. The current Regulation requires policies and procedures to be developed regarding: the form of the receipt; the content of the annual report; and the retention, access and disclosure of information collected.

76. Police services and police services boards across the province are very different, and so are their policies and procedures. To address this issue, I recommend that there should be a minimum, consistent, province-wide policy to implement the Regulation that is binding on all police services boards (Recommendation 10.1).

77. To ensure the accuracy and consistency of information stored by police, I recommend that inaccurate information be restricted and eventually purged from the regulated interactions database (Recommendation 10.2).

78. I recommend that the policies seek to eliminate interactions based, even in part, on grounds of discrimination prohibited by the Ontario *Human Rights Code* (Recommendation 10.3). Police services boards may also develop policies that expand on the content of the Regulation for the purpose of protecting human rights and preventing discrimination (Recommendation 10.4).

79. Another major issue I heard about during my consultations is how police use the information they collect. Many individuals expressed the concern that they would be labelled a “usual suspect” or “known to police”, which would lead to further stops and negative treatment, and affect their employment prospects and travel. This is especially significant because there is no way to guarantee that information collected during a street check is reliable (e.g. someone could pretend to be someone else). I have made a recommendation aimed at addressing this issue (Recommendation 10.5).

80. Chiefs of police must develop procedures that are consistent with the policies developed by the police services boards. This has not always been the case, particularly where a police services board makes a policy that goes beyond the basic requirements of the Regulation. I recom-

mend that chiefs of police ensure their procedures are in line with their police services boards' policies (Recommendation 10.6). I also make a recommendation regarding the substance of the procedures: that they should seek to eliminate regulated interactions that are based, even in part, on a prohibited ground of discrimination under the Ontario *Human Rights Code* (Recommendation 10.7). The procedures can, of course, go beyond the requirements of the Regulation for the purposes of protecting human rights and preventing discrimination, as long as they meet the minimum standard set out in the Regulation (Recommendation 10.8). Finally, I recommend that the procedures be binding on chiefs of police (Recommendation 10.9).

Chapter 11: Reports and Compliance

81. In this chapter, I focus on the annual reports that, according to the Regulation, must be prepared by chiefs of police and reviewed by police services boards to ensure compliance with the Regulation.

82. The annual reports must include the following information regarding attempted collections of identifying information: the number of attempted collections; the number of individuals from whom identifying information was collected; the number of times specific sections of the Regulation were relied upon to exempt officers from certain rights notifications or from providing a receipt; the age, race and gender of the individuals from whom attempts to collect identify-

ing information were made and whether there was any disproportionate collections; the neighborhoods or areas where collections were attempted; instances of non-compliance with the Regulation; and the number of times members of a police service were allowed to access restricted information in the police service's database.

83. In reviewing the annual reports required under the Regulation from various services, I have noted that these reports have ranged in length anywhere from a paragraph in a police service's overarching annual report to a 20-page stand-alone report. The reports include different age ranges, racial categories and approaches to the number of compliant vs. non-compliant requests. These variations make it difficult to compare the implementation and impact of the Regulation across Ontario. I also note that some services have included the number of complaints and requests for information they have received with respect to regulated interactions while others have not. I recommend that a template annual report be developed for use by police services across the province (Recommendation 11.1).

84. The timeliness of annual reports is a concern. As of the time of writing, only 13 police services had made their reports publicly available. Currently, the Regulation does not include a timeline for submission of annual reports. I recommend that annual reports be made publicly available within the first six months of

the following calendar year (Recommendation 11.2).

85. I recommend that the annual report list the number of complaints and requests for information made with respect to regulated interactions (Recommendation 11.3). Furthermore, I recommend that the age groups of those requested to provide identifying information be standardized and that the information distinguish between children and adults, including a clear list of recommended age groups (Recommendations 11.4, 11.5 and 11.6). Similarly, I recommend that the racial groups of those requested to provide identifying information be standardized, including a list of recommended racial group categories (Recommendations 11.7 and 11.8).

86. At present, the Regulation requires that the data be analyzed to determine if identifying information is being collected from people disproportionately, but it does not define what “disproportionately” means. The result is that each police service could have a different interpretation of disproportionate. I canvass various jurisdictions including the United States and the United Kingdom, as well as practices within certain police services in Ontario, to bring clarity to the concept of disproportionate collections of information. I have made recommendations to address this issue and ensure consistency among police services, including defining the term disproportionate and making the analyzed, de-identified data publicly available (Recommendations 11.9, 11.10,

11.11 and 11.12).

87. In the context of disproportionate collections of identifying information, I underscore the importance of chiefs of police reviewing the practices of their police services and preparing reports summarizing their review as well as any proposals to address issues of concern. I recommend that: collected identifying information be monitored for compliance as it is received to ensure that it was properly obtained; and an early warning system be put in place to ensure officer compliance and to correct any unintentional mistakes (Recommendations 11.13, 11.14 and 11.15). Identifying concerns early ensures that officers not complying with the Regulation can receive instruction or retraining as required (Recommendation 11.16). I recommend that officers who persist in collecting identifying information in breach of the Regulation be subject to discipline (Recommendation 11.17).

88. Finally, in this chapter, I address the issue of disciplinary charges, noting that police officers could be sanctioned for obtaining information improperly but chiefs of police would not be sanctioned for using the improperly obtained information as long as the use of that information is allowed under the Regulation. I note that the disciplinary measures should not be limited only to those who are attempting to collect the identifying information contrary to the Regulation but should also include those who authorize or allow such conduct, including supervisors or chiefs of police. I recommend that the

Code of Conduct be amended to include both groups (Recommendation 11.18).

89. During my consultations, I also heard about repeated instances where officers refused to provide their name or badge number to members of the public when requested. I make a recommendation to address this concern by noting that it should be considered misconduct for officers who are not engaged in covert operations to refuse to provide their name and badge number if requested (Recommendation 11.19).

Chapter 12: Other Policy and Procedural Recommendations to Improve the Implementation of the Regulation

90. This Review focuses on Regulation 58/16 and its specific terms and provisions. However, the terms of reference for the Review ask me to consider any overarching amendments and policy and/or procedural changes to improve the implementation of the Regulation.

91. Within these parameters, I have considered some ways in which the issues regarding street checks intersect with police practice more generally. To this end, I have made some observations and recommendations in the areas of community policing, partnerships with Indigenous communities, locally-based policing, youth education, and diversity and inclusion in police services.

92. Community policing is a vital part of policing in Ontario and goes a long way

to establish and maintain the strong police–community relations essential for building public trust in police. After outlining some examples of strong, positive community policing programs in Ontario, I recommend that police services in Ontario receive adequate funding for greater community involvement (Recommendation 12.1).

93. I heard during my consultations with police and Indigenous communities that the relationship between police and many Indigenous peoples throughout Ontario is a complex one. Respectful relationships between police and Indigenous communities takes time and commitment. I recommend that police services increase outreach to establish meaningful and equitable partnerships with Indigenous communities (Recommendation 12.2).

94. Throughout my consultations, I heard from many stakeholders that they were concerned that police officers did not live within the communities they served, resulting in a lack of strong direct links to or deep knowledge of the communities they police. Given the emphasis on community-based policing, I believe it is beneficial to have police officers hired to work in the community in which they live, and I make a recommendation that efforts be made by police services to hire people who live within the city or region they will serve (Recommendation 12.3).

95. Seeing the vital role that community police officers serve, I recommend that they should be engaged in a local community for a sufficient period of time to

form meaningful relationships within that community (Recommendation 12.4).

96. Further, based on my consultations with youth across the province and my review of Saskatchewan's K-12 rights education program, I recommend that there be a similarly robust curriculum in Ontario schools to teach youth about: their rights and responsibilities; Indigenous and Black history; and information about the Regulation and its operation (Recommendation 12.5).

Community policing is a vital part of policing in Ontario and goes a long way to establish and maintain the strong police–community relations essential for building public trust in police.

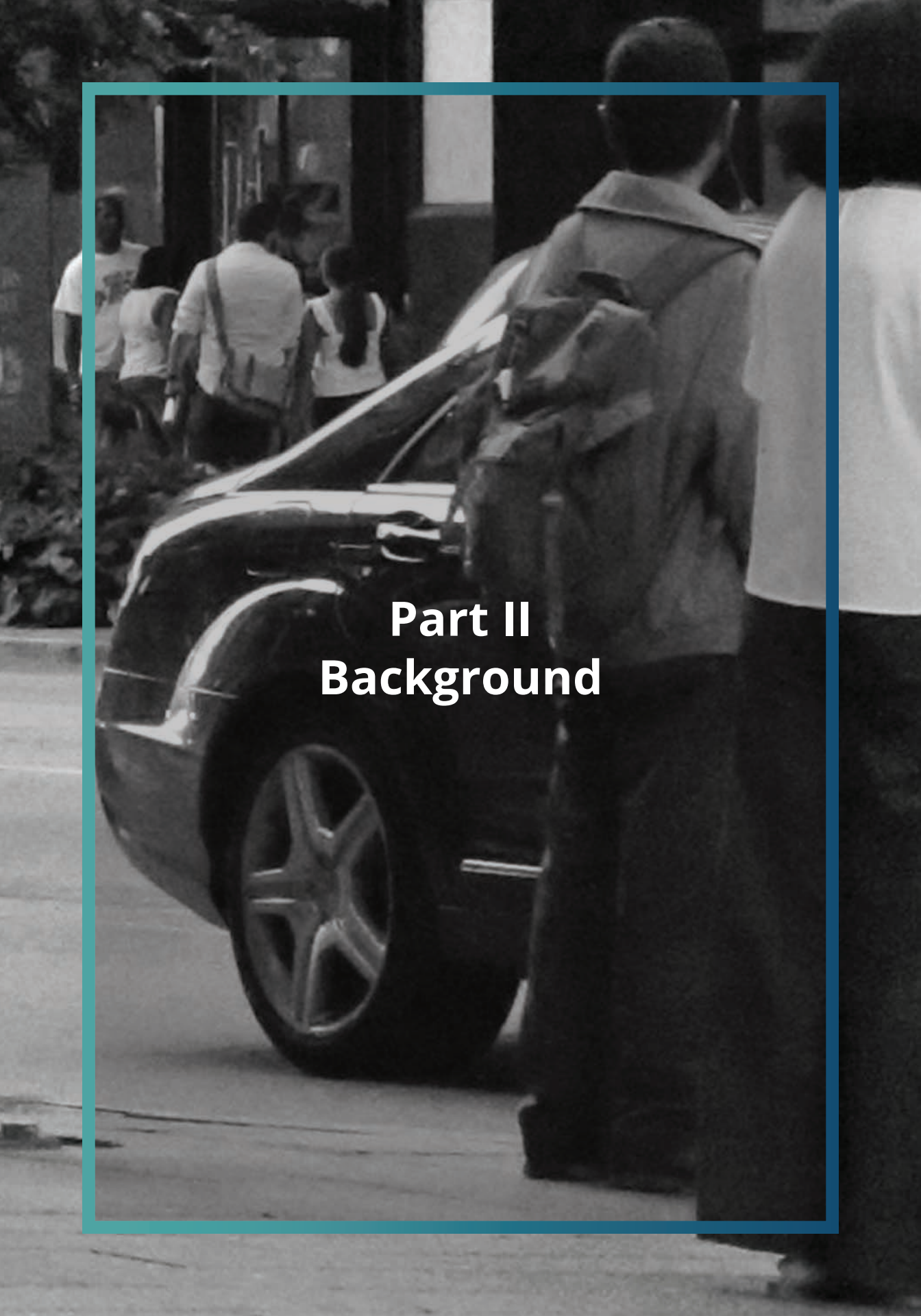
97. Finally, part of the perception of discrimination in regulated interactions may result from the fact that the police officer requesting identifying information may be of a different racial background than the person to whom the request is made. I believe that a diverse, inclusive police service, at all ranks, will address this concern and make a valuable difference.

98. I know that diversity and inclusion has a range of tangible benefits in policing, including dispelling myths and stereotypes, bringing in new perspectives, building connections to diverse communities and engendering a deep-

er understanding of the communities served. Current statistics demonstrate a noticeable lack of diversity in policing at all levels, and I believe more must be done to ensure that the profession is representative of Canadian society.

99. Having a diverse police service alone will not ensure stronger police–community relations or automatically solve all the concerns raised in this report. It should be recognized that police culture is a powerful force that can have a strong impact on all officers – regardless of racial identity, sexual orientation, gender or Indigeneity – compelling them to adopt the prevailing, hierarchical norms of the organization.

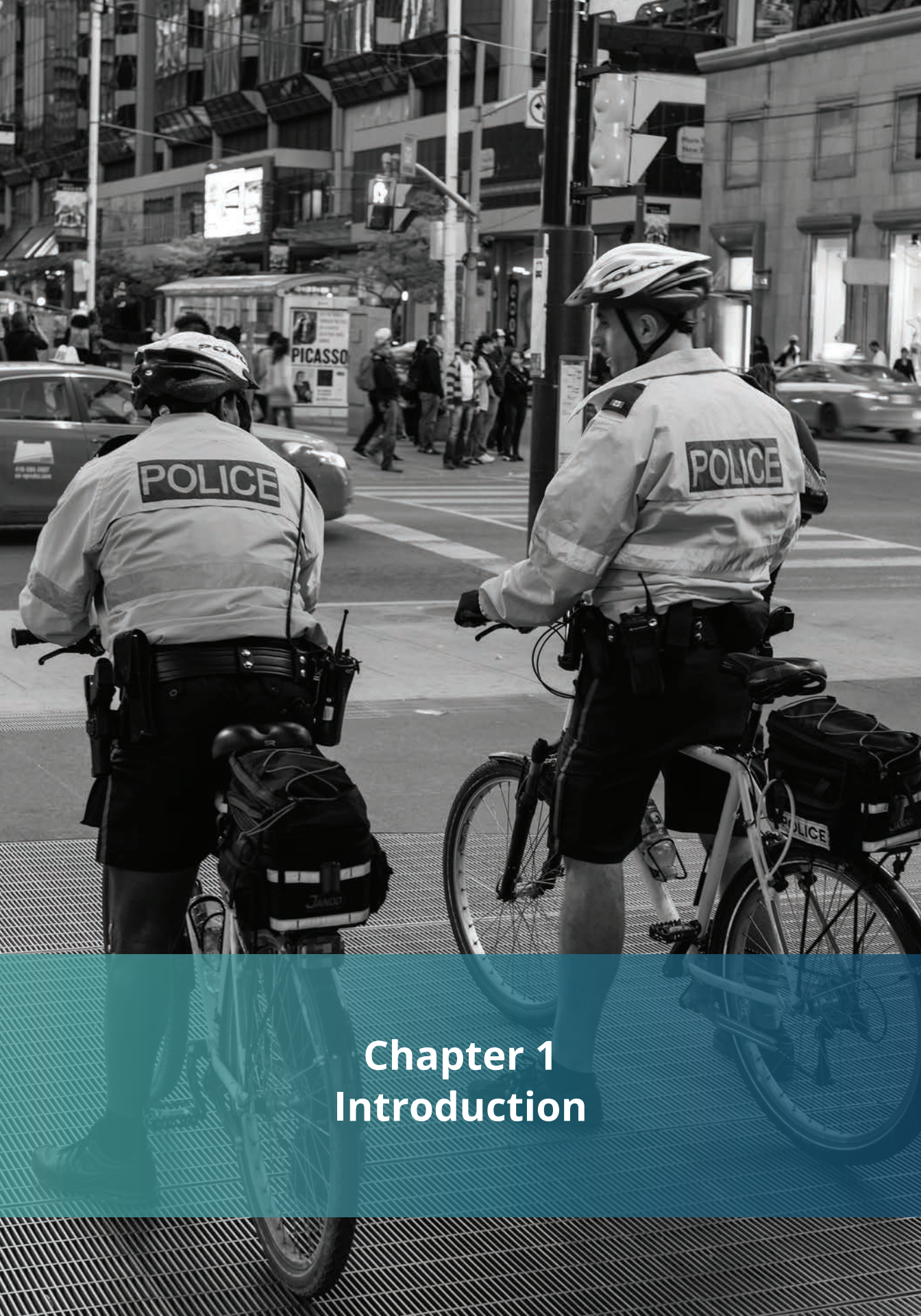
100. I make a range of recommendations to address this issue, including conducting periodic surveys and reviews, and developing diversity and inclusion strategies (Recommendations 12.6, 12.7, 12.8, 12.9, 12.10, 12.11, 12.12, 12.13 and 12.14).

A black and white photograph of a busy street scene. In the foreground, a person with a large backpack is walking away from the camera. To their right, another person in a white shirt is partially visible. In the background, a dark-colored car is parked or moving slowly, and several other people are walking on the sidewalk. The entire image is framed by a teal border.

Part II

Background





Chapter 1

Introduction

1. For decades, various police services in Ontario have utilized the practice of street checks, sometimes referred to as “carding” (in reference to the cards on which the information is recorded), as a means to gather personal information from citizens who police officers suspect may be involved in criminal activities.

2. This targeted practice, which was used as a crime prevention measure, was widely viewed by the policing community as a valuable intelligence gathering tool in the fight against crime.

3. Over time, street checks evolved into a general, uncontrolled practice that did not have the checks and balances required to ensure its usefulness. The very definition of the term “street checks” became vague. Different police services within Ontario ascribed different police practices to the term and, in many police services, the number of street checks conducted became a measure of officer performance. As a result, police officers were incentivized to engage in poor practices.

4. The degree to which the practice devolved became, at times, quite ridiculous. In order to meet the required quotas, the bar for suspicious behaviour was lowered, and then dropped entirely. I was informed by police stakeholders that some police officers recorded the names and birthdates obtained from tombstones to submit as street checks. Groups of young people on their way to school were stopped and asked for their identifying information, sometimes with only the racialized members of the group being

questioned. Young men simply playing basketball were stopped and collectively asked to provide their identifying information.

5. What was once a useful investigative tool became an unfocused practice that was disproportionately applied to the most marginalized communities and against the most disadvantaged people. It was conducted without any measurement of its effectiveness, including its effectiveness as a crime prevention tool. Instead of capturing people involved in criminality, this tool captured and recorded the identity and personal information of hundreds of thousands of individuals who did not have any criminal history. In essence, it amounted to a general documentation of anyone the police felt was suspicious. That subjective suspicion varied greatly with each police officer. To make matters worse, the system had no fair, objective process for individuals to have their street check records removed or nullified.

6. Because of the nature of various police records management systems, as well as the access and exchange of information between police services, many innocent individuals’ reputations and lives were tarnished as a result of this practice.

7. During my consultations, these points were poignantly captured in a submission to the Review by a retired deputy chief of police of one of the 12 largest police services outside of Toronto. He stated the following:

I absolutely despise the manner in

which this once useful tool has evolved. In my day – you know, the neo-Jurassic period of policing – we had “suspect cards”. These were filled out and entered police files only if officers checked a person who had a criminal record, or was on probation or parole. They were an effective tool in putting a person (who had a documented criminal history) in a particular place at a particular time. Many new investigative leads were generated as a result. The cards were never used for anything else that I was aware of.

I am very disappointed (but not shocked or even surprised) to see traditional police and civic leaders who are stubbornly defending the carding system. This controversy could easily have been virtually eliminated if the police had sat down with the community and talked openly. Perhaps a joint police/community panel could have navigated the issues into a system that would have worked for everyone.

When I was a young officer, we learned a great deal from the actions of more senior officers who we perceived as “good” or “effective models”. We never received formal instruction on effective patrol at Police College or through the police service itself. But we did receive the informal street policing message loud and clear that to be really effective you had to stop everything that moved after midnight and particularly in lower income areas. I think that particular practice is also alive and well.

8. During my consultations, I met with police officers at all levels as well as from small, medium and large police services throughout Ontario. The message delivered to me in those meetings was consistent. The practice of street checks was originally intended to be an investigative tool to capture the information of people who had a criminal record, were on probation or parole, or were suspected of being involved in some type of criminal activity. The majority of the police leaders concurred that this practice was once an effective one. The information obtained in these encounters was useful in tracking individuals involved in criminality as well as placing a person in a particular location at a particular time. As a result, new investigative leads were generated.

Because of the nature of various police records management systems, as well as the access and exchange of information between police services, many innocent individuals' reputations and lives were tarnished as a result of this practice.

9. However, the practice eventually evolved from targeted inquiries of people suspected of criminal activity to inquiries of people who simply looked suspicious and, eventually, to completely random inquiries. This latter practice is what most people think of when they think of “carding”.

10. In practice, the people who were subjected to these street checks were not necessarily reflective of the resident populations of the communities where they lived. In essence, the end result was significant levels of disproportionate application to marginalized, racialized and Indigenous people. To many of these people, carding was not viewed as a completely random collection of information but rather a focused collection of their personal information despite the fact that the majority of them had no criminal involvement.

11. The disproportionate collection of identifying information from Indigenous, Black and other racialized communities led to a loud outcry from a wide cross-section of people and groups throughout the province of Ontario, who called for a ban on the practice of carding.

12. Some people argue that the disproportionate collection of street check data indicates a discriminatory practice. Others argue that the numbers reflect other factors, such as the nature or location of calls for service and the composition of the people on the street available to be questioned.

13. This report will not answer the question of why people were stopped disproportionately, because the answer to that question has not been conclusively determined. This report will study in depth the Government of Ontario's recent efforts to regulate street checks and address ways to ensure that street checks are conducted fairly and properly.

14. The practice of carding must be placed in its historical context. Modern day policing in Canada is based largely on the principles of Sir Robert Peel, former Prime Minister of the United Kingdom and creator of the Metropolitan Police in London, and are captured in his nine Principles of Law Enforcement, 1829. For the purposes of this Review, the first four, as well the seventh of those principles bear repeating:

1) The basic mission for which police exist is to prevent crime and disorder as an alternative to the repression of crime and disorder by military force and severity of legal punishment.

2) The ability of the police to perform their duties is dependent upon public approval of police existence, actions, behaviour and the ability of the police to secure and maintain public respect.

3) The police must secure the willing cooperation of the public in voluntary observance of the law to be able to secure and maintain public respect.

4) The degree of cooperation of the public that can be secured diminishes, proportionately, to the necessity for the use of physical force and compulsion in achieving police objectives.

7) The police at all times should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police.⁹

15. The police are the only members of

the public who are paid to give full-time attention to the duties which are incumbent on every citizen to protect and promote the community's welfare.

16. These principles of Sir Robert Peel remain the guiding principles of policing in Canada and most other Commonwealth jurisdictions, and are the key principles which differentiate a police service from the military.

17. A consistent thread throughout these principles is the importance of securing and maintaining the respect and trust of the public. In other words, according to Sir Robert Peel, the legitimacy of police authority rests upon establishing the public's trust in the police as an institution. Without the public's trust, there is no confidence in the legitimacy of police authority. It is within this contextual framework and historical background that the practice of street checks will be examined.

18. Because of the lack of any persuasive evidence that random street checks served any useful purpose, coupled with the negative publicity surrounding the practice, most police services cut back or eliminated random street checks long before street checks became regulated.

19. At the time of concluding this report, Toronto hit its highest homicide rate since 1991. This has led many people to blame the new Regulation governing street checks and the large reduction in the number of street checks for the increase in violent crime.

20. As will be addressed in this report, the answers are not that simple – particularly as the large reduction in the number of street checks occurred years before 2018 and the Regulation only came into effect in 2017.

There is a critical balance to be struck between the interests of community safety and the protection of civil liberties and human rights.

21. The police have an important and legitimate role and duty to serve and protect the safety of the community. To do this important work, they must be able to interact with the public, gather information and conduct investigations to prevent and solve crimes. But there is an equally important concern on the part of the public, who have a constitutional right to walk the streets freely and without being unreasonably impeded by the police who, in their professional role, act as an arm of the state.

22. While properly conducted street checks are a legitimate investigative and intelligence gathering tool, safeguards must be put in place to ensure that this practice is not applied disproportionately against marginalized, racialized and Indigenous communities. There is a critical balance to be struck between the interests of community safety and the protection of civil liberties and human rights.

23. This was the aim of the Regulation. A consideration and analysis of the Regulation forms the basis of this report. Throughout this report, I examine whether this objective has been achieved and, if not, what we can collectively do to strike the proper balance between these two principles in the context of police–community engagement.

24. I have divided the report into 12 chapters. After this introduction, in **Chapter 2 Street Checks**, I explore the definitions of street checks and carding, the history and evolution of this practice, and its impact on communities in Ontario, before introducing the new Regulation.

25. **Chapter 3 Mandate and Methodology** sets out the scope of this Review and how it was conducted.

26. **Chapter 4 Policing – Powers and Limits** explores civil liberties and fundamental rights of individuals, as well as the applicable duties and powers of police officers and the limits on those powers currently recognized by Canadian law.

27. **Chapter 5 Application and Interpretation of the Regulation** focuses on the circumstances in which the Regulation applies and does not apply.

28. **Chapter 6 Prohibition on the Collection of Identifying Information** discusses the prohibition on the collection of information based on certain prohibited grounds as well as the prohibition on the arbitrary collection of identifying information.

29. **Chapter 7 Duties Relating to Collection of Information** addresses police officers’ duties when identifying information is requested and collected.

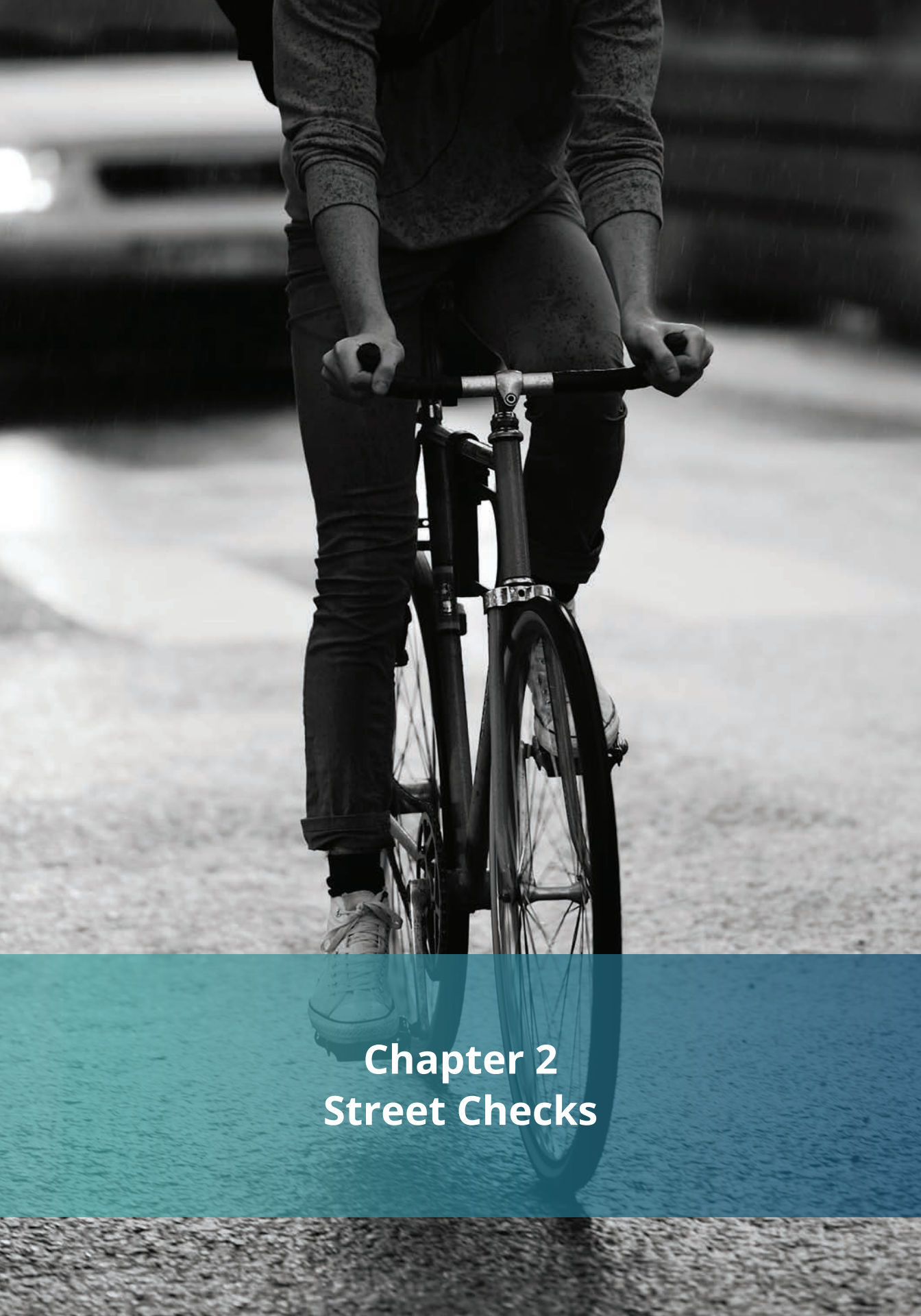
30. **Chapter 8 Inclusion of Collected Information in Databases** explores the retention of data collected from street checks conducted both before and after the Regulation.

31. **Chapter 9 Training of Police and Public Education** examines the current and proposed training on the Regulation provided to police officers, as well as proposed public education and information on the Regulation and its application.

32. **Chapter 10 Performance Targets, Policies and Procedures** discusses the removal of performance targets under the Regulation and the role of policies and procedures developed by police services boards and chiefs of police.

33. **Chapter 11 Reports and Compliance** focuses on the reporting requirements and compliance mechanisms under the Regulation.

34. Finally, **Chapter 12 Other Policy and Procedural Recommendations to Improve the Implementation of the Regulation** looks at several key overarching amendments and policy and procedural changes to improve the implementation of the Regulation.

A black and white photograph of a person riding a bicycle on a street. The person is wearing a long-sleeved shirt, dark pants, and sneakers. The background is blurred, showing a car and a building. A teal-colored overlay covers the bottom portion of the image, containing the chapter title in white text.

Chapter 2 Street Checks

Introduction

1. What are street checks? What is the history and impact of the police practice of conducting street checks? What are the origins of Regulation 58/16?

2. In this chapter, I answer those questions. I begin by clarifying the various definitions of street checks and carding, before describing the history of the practice and how it has changed over time. I then explore the impact of street checks as well as the benefits and costs of this practice, drawing on extensive research and my consultations with police, Indigenous, Black and other racialized communities, service providers, human rights and civil liberties organizations, and other stakeholders throughout the province. Finally, I introduce the history and current framework of Regulation 58/16, outlining some of the complexities of the Regulation and its evolution, before turning to the origins of this Review.

What is a Street Check?

3. It became apparent during consultations with both members of the public and police stakeholders, as well as from a review of media coverage, that there is a widespread misapprehension of key terms. Parties are debating the relative merits of carding or street checks without having a common understanding of what those terms mean.

4. Members of the public are concerned about carding, and many people have asked for carding to be banned. From the

public's perspective, any police-initiated interaction with a member of the public in which a charge is not laid, whether random or otherwise, is considered carding. For the public, carding is predominantly seen as an arbitrary interaction by the police with the public.

5. Randomness is the key feature that defines carding. Carding refers to situations where a police officer randomly asks an individual to provide identifying information when the individual is not suspected of any crime nor is there any reason to believe that the individual has information about any crime. That identifying information is then recorded and stored in a police records management system or database. Throughout this report, the term “carding” will be used to describe this type of scenario.

6. Carding is not the same as what police services commonly refer to as conducting street checks, although the two terms have erroneously become synonymous.

7. Historically, street checks included interactions between police and individuals beyond random requests for identifying information. For example, simple observations of individuals made and recorded by police officers without any communication or interaction with the individual were captured in the records management system as a street check. If an individual was stopped for a traffic violation and a record was made that the person had a gang tattoo or was wearing gang colours, it would qualify as a street check. If a police officer asked if a person

needed assistance, it could be considered a street check.

8. Compounding the problem is the fact that the term “street check” is not even used consistently between police services. Among police services, a “street check” is the general term used for interacting with members of the public (for a variety of purposes) and the subsequent recording of information obtained from this interaction in a database. Police have had their own terms or titles to label this practice and process over the years. Moreover, each police service utilizes proprietary records management systems (RMS) to record and store collected information. The “street check” or “regulated interaction” module in those RMS allow for police–public interactions to be recorded and stored. The types of police interactions that qualify to be inputted into that module as street checks can vary between police services. For many services, street checks were a catch-all category for a multitude of different types of information.

9. To distinguish carding from street checks, for the purposes of this report, I will loosely refer to a street check as being information obtained by a police officer concerning an individual, outside of a police station, which is not part of an investigation. Carding constitutes a small subset of what falls under the overarching street checks umbrella.

10. When a police service defends the continued use of street checks, many members of the public believe that the

police service is defending the continued practice of carding. That is not the case. Few, if any, police services continue to support widespread collection of identifying information from people not suspected of involvement in crime, for the simple purpose of creating a police database. In my view and in the view of many police services I consulted with during this Review, carding is a practice that no longer has any place in modern policing.

Carding is not the same as what police services commonly refer to as conducting street checks, although the two terms have erroneously become synonymous.

11. Police services, however, do support collecting and recording identifying information in legitimate police interactions because that information can assist in performing lawful police functions.

History of Street Checks and Carding

12. The practice by law enforcement of asking for identification is a longstanding one, and its purpose and effects vary, based on the historical perspective from which it is viewed. In some communities, it is simply viewed as an innocuous practice. It is seen as one of the many tools of law enforcement, whereby police officers proactively collect the identifying information of various individuals within their community who are either unknown to

the police or viewed as suspicious and, at some point in time, may be involved in some form of crime.

13. To the policing community, this practice is viewed as a legitimate form of intelligence gathering, which is essential to maintain a safe and peaceful community. Throughout North America and Western Europe, as well as various other Commonwealth countries, different variations of this practice are utilized by law enforcement agencies.

14. Historically, Indigenous, Black and other racialized communities have had different perspectives and experiences with practices such as street checks and carding.

15. From the perspective of a large segment of the Black community, the historical origins of the random indiscriminate requesting of personal identifying information by the state is analogous to the historic practice of the issuance and mandatory enforcement of slave passes. Such passes were issued by slave owners to allow slaves to leave for a specified time to go to a limited area and had to be produced on request.¹⁰

16. During my consultations, Indigenous communities in Ontario voiced a similar concern about the practice of random street checks and its impact. Many likened the practice to the historic Off-Reserve Pass System instituted by the then Canadian Department of Indian Affairs in 1885. This practice was highlighted in the 1996 *Report of the Royal Commission*

on Aboriginal Peoples. The pass system was intended to keep outsiders from entering reserves to conduct business with Indigenous persons without the permission of the Indian Agents. Similarly, Indigenous people were not permitted to leave the reserve without the permission of the Indian Agents.¹¹

Carding is a practice that no longer has any place in modern policing.

17. Indigenous people caught without a pass were either incarcerated or returned to their reserves. The pass system remained in place for nearly 60 years, controlling and curtailing the movement of Indigenous people off reserves.¹²

18. During my consultations across the province, participants from Indigenous, Black and other racialized communities shared with me these historical perspectives. They noted that random carding in its current form shared certain public shaming and fear-inducing characteristics with these historic practices by showing Indigenous, Black and other racialized people that their presence in certain spaces was always in question.

19. Within Canada, the modern day practice of street checks can be traced to the years following World War I, when the Royal North-West Mounted Police (RNWMP) began recruiting secret agents to track subversive individuals.¹³

When the RNWMP joined forces with the Dominion Police to form the Royal Canadian Mounted Police (RCMP) in 1920, the practice continued.¹⁴ Agents were tasked with tracking whether any labour organizations had Bolshevik tendencies.¹⁵ Similarly, during World War II, the RCMP relied on informants and agents to advise them of any activity that could be construed as pro-Nazi.¹⁶

20. The practice then evolved in slightly different but parallel ways across the province of Ontario, ultimately leading to a point where individual police officers were empowered to collect information for intelligence purposes at their discretion.

21. In Toronto, for example, the institutionalized process of street checks, which has colloquially been called “carding”, began in 1957 when police services were amalgamated to create the Metropolitan Toronto Police Force.¹⁷ The practice of street checks, as it was then called, was aimed at finding information on persons of interest to assist detectives.¹⁸ Officers recorded information about these subjects on “Suspect Cards”, which were also known as “R41 Cards”.¹⁹ Police then forwarded those cards to detectives.²⁰ Initially, these checks were intended to be targeted, not random. Police officers specifically sought out information about persons of interest to detectives.²¹ Over time, police officers were given more discretion to investigate people on the street and the practice gradually expanded.

22. Similarly, the Ontario Provincial Police (OPP) traces its practices to the implementation of contact cards in 1976. These cards captured information such as: name, date of birth, sex and race; whether the individual was a passenger, pedestrian or suspect; and any vehicle information. I heard that the evolution of the OPP’s practice was largely focused on vehicle stops rather than pedestrian stops.

23. The intensification of carding in Toronto, which ultimately sparked much of the controversy around the practice, began when the Toronto Police Service instituted the Toronto Anti-Violence Intervention Strategy (“TAVIS”) and used what were then known as “208 cards” in an effort to reduce the level of gun violence.²² This was in response to an unprecedented spike in gun violence across Toronto in 2005. The year included the murders of Livette Olivea Miller and Jane Creba, and the shooting of four-year-old Shaquan Cadougan. It was subsequently labelled “The Year of the Gun” and culminated in 87 murders, 52 of those by gunfire.²³

24. TAVIS had teams of officers specifically policing high-crime and high-risk neighbourhoods in an intentionally visible manner. Any interaction that took place when TAVIS was in force constituted a valid reason for completing a 208 card, which widely expanded their use. Over time, the practice became colloquially known as “carding” and evolved to no longer target persons of interest to detectives, but rather anyone who the police

deemed “of interest” during the course of their duties.

25. The TAVIS initiative resulted in an increase in the number of times that individuals were stopped and asked to provide identifying information. For the most part, the people were not acting suspiciously nor were they suspected of having committed any crime. While pursuing the laudable objective of reducing violent crime, the exercise of coercive police powers strayed further and further from its original scope.

What began as a legitimate police practice became one with high potential for abuse.

26. Over time, other police services also intensified their carding practices, giving officers greater discretion to stop individuals and record information for general intelligence gathering purposes. While TAVIS is an extreme example that drew much media attention, some variation of carding appears to have been part of the policy of most police services in Ontario. That said, many police services did not view their practice as discriminatory or arbitrary, and some police services argue that they have been drawn into a situation that was not of their own making.

27. The Year of the Gun in Toronto and the increase in violent crime were not the only impetus for increased intelligence gathering. Technological advances – in-

cluding the new and growing use of computers and electronic records management systems by police services – allowed for information to be collected, stored and retrieved in an unprecedented manner.

28. Many police services used street checks, in addition to traffic tickets and other indicators, to measure officers’ job performance. There is a strong likelihood that performance measurement provided an incentive for some officers to stop and question individuals in order to boost their performance statistics. During my consultations, I heard from police officers that the pressure to undertake street checks was intense. This pressure was so extraordinary that I heard of at least one instance where an officer collected names from tombstones in a cemetery and identified them as people that they had street checked in order to meet their performance targets. These examples crystalized for me that what began as a legitimate police practice became one with high potential for abuse.

The Impact of Carding

29. The impact of carding is multifaceted. Media coverage, advocacy movements from a range of organizations and critical public conversations have highlighted the many dimensions of this practice.

Benefits of Carding

30. Proponents of random carding argue that the stops may help deter crime, solve a crime that may be committed in the future or provide information that

could help solve a crime that has already occurred. In that regard, carding is considered both reactive and proactive policing.

31. One of the fundamental principles of policing set out in 1829 by Sir Robert Peel, former Prime Minister of the United Kingdom, is to recognize that “[t]he test of police efficiency is the absence of crime and disorder, and not the *visible evidence* of police action in dealing with them”.²⁴

32. In other words, a proactive program that prevents crime from happening in the first place is better than a reactive program that helps solve crimes after they have occurred.

33. The benefits of proactive over reactive policing continue to be recognized, as long as proactive policing does not collide with individual rights.²⁵ The collision with individual rights is what distinguishes the lawful practice of conducting a street check from the arbitrary practice of carding.

34. Even for reactive policing, a police database compiled using information obtained from lawful street checks can be utilized to provide the names of potential witnesses or suspects. Street checks data can provide information related to gangs or crimes, such as sexual assaults and break and enters.

35. Another benefit of the practice identified during my consultations is that a police database of information obtained from street checks can potentially link a

person to a gang or organized crime, help track their movements or be used to obtain a warrant if the person is found to accompany known criminals. Street checks can also exonerate people from suspicion of a crime by providing them with an alibi if they were being checked by the police at the time an offence occurred.

36. There is also some evidence that a targeted stop and search program can be effective in reducing violent crime, particularly at crime “hot spots” – at least while the program is in place.²⁶ For example, in New York City, there was an increasing problem with gun violence. The stop, question, frisk program, in conjunction with other police initiatives, removed 50,000 guns from the streets in its first three years. It is important to note, however, that the rate at which guns were found was extremely low in relation to the number of people stopped and searched.²⁷

37. Targeted programs involving searches in crime hot spots arguably have been linked to crime declines not only in New York, but also New Orleans and Los Angeles.²⁸

38. A request to “stop and account” or to provide identification is less intrusive than a stop that is made for the purpose of a frisk or search. As a result, a street check that does not involve a frisk or search is easier to justify. Many argue that, with a request for identification, the intrusion into a person’s time is minimal and the benefits of the program outweigh the concerns.

39. Police services that have employed random street checks to any degree are always able to show some productive result of the program. Inevitably weapons or drugs will be uncovered in some of the street checks. Random carding will occasionally reveal people who are wanted by the police or in breach of bail conditions. The practice can identify offenders who plague communities in which they do not reside and where they should not be.

40. Some research conducted in the United Kingdom concludes that the reduction in the number of stops and searches there has resulted in an increase in the homicide rate.²⁹ North American police services, along with their European counterparts, have asserted that street checks have solved crimes that might not have been solved otherwise. As a result, there is often a preponderance of public support for a policy of street checks – at least among those who are not themselves subject to the street checks.³⁰

41. I feel that it is necessary for me to address one specific example that arose repeatedly during my visits to various police services across Ontario. Members of various police services suggested that a street check helped find the murderer of Cecilia Zhang in Toronto. Many have suggested that the street check in question arose randomly. I wish to clarify that this is inaccurate.

42. A month before Cecilia Zhang disappeared, police received a complaint about a suspicious car by a river near a fish sanctuary. Local residents contacted po-

lice because fishing is not allowed at the sanctuary. When the police responded to the call, they came upon a car with three male occupants. The men were in possession of fishing rods and indicated that they were looking for a place to fish.

43. Illegal fishing is a by-law infraction. As such, the officer recorded the names of the three males, including that of Min Chen. The three men did not have any fish so the officer simply issued them a caution. The body of Cecilia Zhang was subsequently discovered near the same location. A tenant in the Zhang home reported that a boy named Min had visited her there. The information recorded from that interaction – which was not a random street check or even a street check at all – linked Min Chen to the area where the body was found, ultimately resulting in a confession.³¹

44. As a result, the Cecilia Zhang case does not support the proposition that the police should be authorized to randomly request and record identifying information. It simply reinforces that when identifying information is properly obtained during a police investigation, as it was in that case, that information might be useful to help solve a crime.

Costs of Carding

45. While there are many potential benefits to the practice of carding, they come at a tremendous social cost.

46. Youth, especially Indigenous, Black and other racialized youth, and youth in

low-income housing, are disproportionately impacted by street checks. “[W]hile the ‘street’ constitutes a meaningful part of everyday life for many marginalized youth, their presence and visibility in that space makes them ready targets for heightened police surveillance and intervention”.³² A street check is often a young person’s first contact with the police.

47. During my consultations with members of the public and police, I heard of instances where groups of young Black men were asked for identifying information while playing basketball. Similarly, I heard from Black parents that when their children were hanging out with white friends, police would only ask their children for identifying information and not their white friends. These first interactions with police have a long-term impact on young people. They can establish either a friendly or an antagonistic relationship with police that will last a lifetime.

48. Studies also have shown that people who have been asked to stop and provide identification experience the stop in much the same way as a stop and search.³³ One American study concluded that there is a negative effect on the physical and mental health of those living in areas where there are high levels of pedestrian stops by police.³⁴

49. Carding and even lawful street checks can also impact employment and educational opportunities. During the consultations, I heard from both members of police services and members of the public that this was a significant concern. Ap-

plicants who had good backgrounds and no prior police involvement have been turned down for employment with police services because their names showed up on a street check database as being associated with gangs. I also heard of other instances where people who shared the same or similar name with people who had a long history of street checks were denied employment opportunities with police services.

50. The Toronto Police Services Board acknowledged the impact of street checks on young people seeking careers in law enforcement during its December 15, 2005 meeting, where it found that:

Because Blacks and other racialized persons are more likely to be stopped by the police, they are more likely to have their names recorded on contact cards. Those contact cards come back to haunt them during the recruitment process, when investigators conducting background checks assume that their prior contact with the police “means they’re guilty of something” – and they are eliminated from competition.³⁵

51. During my consultations, I heard of another example that also captured media attention. That case involved Ayaan Farah, a 31-year-old Somali Canadian woman who worked for Transport Canada at the Pearson International Airport for eight years before losing her job in 2014.

52. Transport Canada revoked Ms. Farah’s security clearance based on information obtained from street checks, specifically

two allegations provided by the Toronto Police Service in 2014. In neither case did she have a clear and ongoing relationship with anyone engaged in serious criminal activity, and yet notations on street checks to this effect were retained under her name in the police database.³⁶

53. In August 2016, the Federal Court of Canada quashed Transport Canada's decision to revoke Ms. Farah's security clearance. The court found that Transport Canada failed to give Ms. Farah sufficient information to defend herself against allegations that she had links to individuals with criminal records. The court held that Transport Canada's decision was both "procedurally unfair and substantively unreasonable".³⁷

54. In addition to the impact on employment, street checks and data retained from street checks have prevented Indigenous, Black and other racialized individuals from pursuing educational opportunities. One example is the case of Knia Singh, a Black Toronto lawyer. Mr. Singh told *Toronto Star* reporters and advised me during my consultations that he has been carded nearly 30 times.³⁸ In 2014, as part of a criminal law class in law school, he requested a ride-along to head out on patrol with Toronto police officers. Mr. Singh believes that his request was denied because of erroneous, contradictory and irrelevant information about him recorded by the police during numerous street checks starting when he was as young as sixteen. Mr. Singh has no criminal record. Mr. Singh also told reporters

that his Freedom of Information request produced over 50 pages of personal data recorded by the police, mostly during traffic stops.³⁹

55. Street checks have also been used by agencies in non-criminal legal proceedings. For example, a child protection agency tried to use police contact cards to prove that parents were drug dealers simply because they were often carded in an area frequented by drug dealers.⁴⁰

56. The improper use of race as a factor in carding and investigating suspicious activities has been recognized by the courts.⁴¹ The Supreme Court of Canada has held that:

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.⁴²

57. In practice, the people who were subject to carding were not necessarily reflective of the resident populations of the communities where they lived. Studies and media articles have focused on the racial aspect of carding and its disproportionate impact on Indigenous, Black and other racialized communities.⁴³ In the years 2010 and 2012, a series of articles in the *Toronto Star* discussed the disproportionate number of Black people being

carded. The *Toronto Star* reported that, by 2013, Black people were approximately 17 times more likely to be carded than white people in certain parts of downtown Toronto.⁴⁴

58. The 2005 *Kingston Data Collection Project*, one of the first studies in Canada on racial profiling in policing, concluded that Black residents in Kingston were over-represented in traffic stops (2.7 times) and in pedestrian stops (3.7 times) compared to their representation in the city's general population.⁴⁵

59. The Ottawa Police Service's 2016 *Traffic Stop Race Data Collection Project* found that Black drivers were stopped 2.3 times more than expected based on the driving population. Middle Eastern drivers were stopped 3.3 times more. Young Black drivers (ages 16–24) were stopped 8.3 times more than expected and young Middle Eastern drivers were stopped 12 times more than expected.⁴⁶

60. According to the *Toronto Star*, in 2015, Black people in Brampton and Mississauga were three times more likely to be stopped by the police. They formed 21% of all street checks, even though they were only 9% of the population.⁴⁷ In Ottawa, there are reports that racialized men interacted with police nearly four times their percentage of the population.⁴⁸ The *Black Experience Project*, a 2017 survey of the Greater Toronto Area's Black community, found that 79% of young Black men reported having been stopped by the police in public spaces.⁴⁹

61. An analysis of the available pre-Regulation street check data conducted for this Review provided support for these findings. While the Toronto Police Service performed the highest *number* of street checks, the disproportionate *rate* of pre-Regulation street checks involving one or more racial groups existed in the data provided by all police services analyzed, including Hamilton, Kingston, London, Ottawa, Peel, Waterloo, York and the OPP, as well as Toronto.

62. In some regions of Ontario, this disproportionate rate also relates to Indigenous people. For Indigenous people in Ontario, there is a complex, sometimes traumatic history with police. There is a need for greater dialogue and respectful engagement between police and Indigenous people. Chapter 10 of my March 2017 *Report of the Independent Police Oversight Review* provided background about the history of Indigenous engagement with police, how Indigenous people were policed historically and how they are policed today. The Independent Police Oversight Review focused on reviewing Ontario's three civilian police oversight bodies to improve their transparency, accountability and effectiveness. Many of the concerns I heard throughout my extensive consultations with Indigenous communities, youth and leadership across the province during this Review, including those related to racial profiling and the negative history of police-Indigenous relations, are consistent with the concerns I highlighted in Chapter 10 of my previous report. I underscore them again here.

63. Historically, identifying information has been collected disproportionately from some segments of society in certain areas of Ontario. That fact has been substantiated through numerous studies and surveys, and is beyond serious contention.⁵⁰ In fact, the civilian survey, conducted under this Review (which is introduced in the next chapter, outlined in detail in Appendix E and referenced throughout the report) noted the disproportionate impact of the practice of carding on Indigenous, Black and other racialized communities.

64. The fact of the matter is that, throughout the world, police stops are conducted disproportionately toward one or more minority groups in every jurisdiction in which statistics are kept. The stakes are very high for members of racialized groups when it comes to “random” police checks because those checks can impact their lives in many ways, including their educational and employment opportunities.

65. Effective law enforcement is highly dependent on the cooperation of members of the public. The police must be able to act in a manner that fosters this cooperation.⁵¹ When a segment of society believes that it has been unfairly targeted by the police, it will de-legitimize the police in their eyes.⁵² The low positive result rate from random police stops means that the vast majority of the people being stopped have done nothing wrong. That undermines public trust in the police, ties up police resources and erodes the per-

ception of police legitimacy.

66. It has been said that “[t]he worst enemy of effective policing is the absence of public confidence”.⁵³ The concern that the practice of carding discourages cooperation with the police has been supported in several studies.⁵⁴ People who mistrust the police may become more likely to take matters into their own hands rather than call the police for assistance.⁵⁵

67. When people stop cooperating with the police, either by not reporting crimes or not assisting as witnesses to crimes, crimes will go unsolved and/or unpunished.⁵⁶ There is a risk that the number of crimes uncovered or solved because of carding could be outweighed by the number of crimes that are not reported or prosecuted because of the negative community reaction to the police.

68. Studies from the United States suggest that experiencing an inappropriate interaction with police may desensitize young people from guilt regarding potential acts of crime, effectively moving them in a more permissive direction toward crime.⁵⁷ Similar results have been reported in Canada.⁵⁸ Studies have suggested a link between the perception of being discriminated against and gang membership.⁵⁹ More specifically, an aggressive practice of carding may contribute to youth violence in Canada.⁶⁰ In other words, carding might not deter young people from committing crime, but actually contribute to an inclination toward a criminal lifestyle.

69. The practice of carding in Toronto created considerable public resentment, alienation and mistrust of the police in certain parts of the population. The Toronto Police Services recognized this public dissatisfaction.

70. In 2012, the Toronto Police Service reviewed the practice of carding, resulting in the release of the *Police and Community Engagement Review* (PACER report), which included a series of recommendations on issues such as data retention and performance of officers when collecting information.⁶¹

71. The results of the review, released in 2013, began to curtail the practice of carding. Focus shifted to collecting information only for a valid public safety purpose. As a result, the quality of the collected information began to improve.

72. In November 2014, the Toronto Police Services Board commissioned a report from an external consultant, Logical Outcomes. The purpose of the report was to evaluate the community contacts policy after street check reforms had been adopted by the Toronto Police Service as a result of the PACER Report.⁶² The Logical Outcomes Report suggested that people were unaware of the changes to the carding policy, and that there was a perception that the system of carding continued to involve an abuse of power by the police, often conducted based on racial profiling. The report made a number of recommendations, including a ban on the carding of minors and specific retention periods for the data collected.

73. The public and media backlash over carding caused many police services to voluntarily curtail or eliminate the practice. By the end of 2014, the Toronto Police Service announced that it would end the practice of carding. The Toronto Police Service currently maintains that legitimate, lawful street checks should be an intelligence-led process.

The Government's Response: Regulation 58/16

74. In response to the public's concerns about carding, the Province of Ontario enacted Regulation 58/16 under the *Police Services Act*, establishing new rules under which police officers may collect identifying information.⁶³ While other provinces, municipalities and police services are grappling with this issue, Ontario is the first province in Canada to create such a regulation.

75. The Regulation was filed on March 21, 2016, but fully came into effect on January 1, 2017.

76. The Regulation applies when a police officer requests an individual to provide identifying information in certain circumstances, which can include both targeted and random requests for information.

77. Targeted requests involve situations where a police officer suspects the possibility of an offence or that the person will have useful information about offences. Random requests involve the collection of identifying information for the pur-

poses of creating a database of information without necessarily suspecting the possibility of an offence or having any belief that the person has useful information. This latter category is what has traditionally been referred to as carding.

78. In either a targeted or random encounter, there exists a possibility that identifying information will be requested for improper reasons.

79. The stated purpose of the Regulation is to limit the circumstances under which police officers can request that individuals provide identifying information. Any requests for information are to be made consistently and without bias, and in a manner that promotes public confidence while also keeping communities safe

80. Police services now refer to interactions in which the Regulation applies as being “regulated interactions”. I will use this term throughout this report.⁶⁴

81. At the same time that the Regulation was filed, the province amended another regulation under which it is expressly considered misconduct for a police officer to unlawfully detain an individual or to either collect or attempt to collect identifying information from an individual in a manner that is not permitted by the Regulation.⁶⁵

82. The filing of the Regulation followed a broad process of consultation. A draft copy of the Regulation was provided to various stakeholders including legal groups, community advocates and organizations, policing partners, academics,

human rights groups and government agencies.⁶⁶

83. Following consultations held between July and December 2015 and the receipt of hundreds of submissions, the draft Regulation was amended to incorporate many of the changes suggested by those stakeholders and the new amended Regulation was filed.

Any requests for information are to be made consistently and without bias, and in a manner that promotes public confidence while also keeping communities safe.

84. The Regulation does not prohibit the practice traditionally referred to as carding. It tries to ensure that requests for identifying information are not made arbitrarily or for an improper reason, such as the individual’s race. It also aims to ensure that any response to the request for information is provided voluntarily.

Issues with the Understanding, Interpretation and Application of the Regulation

85. Many police services viewed the issue of carding as being relevant to the Greater Toronto Area and specifically the City of Toronto, rather than to smaller rural areas. Police officers in smaller communities noted that they often already know the people within their community so

there is no need to ask for identifying information.

86. Police services in smaller communities felt that the solutions required to address problems in large urban areas may not necessarily be required or practical for small rural areas.

87. The Regulation as it is drafted is a confusing and somewhat convoluted document to read. It was perceived by most stakeholders throughout my consultations – police and community members alike – as being too complicated and hard to follow. They felt it was written for lawyers, not police officers or community members. They wanted it to be simplified. Even lawyers who I have consulted with agree.

88. For example, the Regulation sets out the information that a police officer must record in a regulated interaction. The required information does not include the location of the stop or the age or race of the person stopped. Only by inference later in the Regulation – when such information is required to be analyzed – does it become apparent that such information must be recorded in every stop encounter.

The Regulation as it is drafted is a confusing and somewhat convoluted document to read.

89. Some terms are defined in the Regulation after the terms have already been

used. For example, “attempt to collect identifying information about an individual from an individual” is used in section 1 and not defined until section 4. In section 1, the Regulation describes investigative detention without actually calling it investigative detention.

90. Police officers want to better understand when the Regulation applies. For example, if in a casual conversation with a member of the public, the person volunteers their name, does the Regulation apply? If a call for service is received from a member of the public, does the Regulation apply? Does the Regulation apply if a person is stopped in a motor vehicle and the person is suspected of being wanted on an outstanding warrant? There remains much confusion as to the circumstances governed by the Regulation. This confusion has resulted in many officers being reluctant to engage in conversation with members of the public for fear of inadvertently contravening the Regulation.

91. The Regulation requires police services boards to develop policies and police chiefs to develop procedures to implement the Regulation. As a result, each jurisdiction had to examine and analyze the Regulation and prepare the necessary materials, as well as develop and obtain the required documents and forms.

92. The Ontario Association of Chiefs of Police drafted a model policy and procedure to implement the Regulation. That model policy and procedure was adopted in whole or in part by many police services.

93. Even with a draft model policy and procedure, police services and police chiefs struggled to come up with their own policies and procedures within the time allowed. Many police services and police services boards felt that they were given insufficient time to implement the Regulation by the deadline of January 1, 2017.

94. Furthermore, all police officers who attempted to collect identifying information were required to be trained on the Regulation. That meant that training materials had to be developed and administered. All of this involved considerable time and expense.

Many services felt that the training was insufficient and the timeframe in which services had to deliver the training was unrealistic.

95. The initial training materials were drafted and administered. The training materials were then improved, which required officers to return for updated training. The training was not necessarily consistent between jurisdictions. For example, some officers were trained on unconscious bias while others were not. Many services felt that the training was insufficient and the timeframe in which services had to deliver the training was unrealistic.

96. The technology vendors providing the computer programs in which the identifying information is stored in Ontario – Niche Records Management System and Versaterm Inc. – also required time to formulate the modules for the new systems.

97. Most police services noted that it was difficult to implement the Regulation when there was no funding or support for the development of the policies and procedures, the training and the development of databases.

Recommendation 2.1

The Government of Ontario should immediately proceed with amending the Regulation in accordance with the recommendations made in this report. All amendments must take into account the time and resources necessary for police services to ensure effective, proper training and implementation of the revised Regulation. The government should allocate additional resources to police services specifically for this purpose.

The Review

98. The Regulation requires the Minister of Community Safety and Correctional Services to conduct an independent review of the Regulation. It also requires that a report on the findings of the review be published no later than January 1, 2019.⁶⁷

99. This is that Review and report.



Chapter 3

The Independent Review: Mandate and Methodology

Introduction

1. The terms of reference outline the mandate, consultation and review process, and reporting requirements of this Review.

2. In this chapter, I explain the requirements in the terms of reference and what I was asked to do, including the questions I was asked to answer. I then describe my process for conducting the Review, including the civilian survey, the consultation and outreach process – the meetings I had with a broad range of stakeholders in Ontario and beyond – and the in-depth research.

The Mandate

3. The purpose of this report is to answer certain questions and provide recommendations to improve the Regulation. The terms of reference, which are signed by the Minister and referenced in a legal document known as an Order in Council, set out the questions I have been asked and the methods I am to use to answer those questions. The Order in Council and the terms of reference can be found in Appendix B.

4. The Province of Ontario asked a number of questions related to both the content and implementation of the Regulation.

5. The questions related to the content of the Regulation are:

1) Does the Regulation ensure that police–public interactions are consistent?

2) Does the Regulation ensure that police–public interactions are conducted without bias or discrimination?

3) Does the Regulation ensure that police–public interactions are done in a manner that promotes public confidence and keeps our communities safe?

4) Does the Regulation appropriately reflect the principle that Ontario takes the protection of human rights very seriously and has zero tolerance for racism or any form of discrimination based on the prohibited grounds set out in section 1 of the *Human Rights Code*?

5) Does the Regulation appropriately reflect the principle that Ontario stands opposed to arbitrary, random stops that do not have a clear policing purpose, and which are done solely for the purpose of collecting identifying information?

6) Are there any recommendations that should be made regarding the content of the Regulation in light of the preceding questions?

6. To answer those questions, I must begin by considering the wording of the Regulation itself. I must examine both what the Regulation does and does not do. I also must look at the Regulation's intent and determine whether the Regulation, as it is worded, achieves that intent.

7. There are many more questions relat-

ed to the implementation of the Regulation that I must address, including:

1) Are there any challenges, operational or otherwise, in applying the Regulation and, if so, what are the recommendations as to how they could be addressed?

2) Are the accountability and oversight mechanisms in the Regulation appropriate to ensure compliance with the Regulation and, if not, what are the recommendations as to how the mechanisms could be improved?

3) Are there any amendments, policy and/or procedural changes recommended to improve the implementation of the Regulation?

4) Are police officers and police chiefs generally in compliance with the Regulation?

5) Are police officers and police chiefs specifically in compliance with the Regulation regarding:

- a. the data retention and management requirements;
- b. the elimination of performance targets;
- c. the delivery of training;
- d. the development of procedures; and
- e. the provision of reports?

6) Have police services boards developed policies that comply with the Regulation?

7) Do the curriculum and related training materials developed by the Ontario Police College ensure compliance with the Regulation?

8) Are there any recommendations to be made regarding the effectiveness of the training developed by the Ontario Police College?

9) What are the approaches police services have adopted to implement the Regulation?

10) Are there any recommendations regarding the approaches police services boards should take with regard to the document to be provided to individuals following a regulated interaction, and is consistency required in that regard?

11) Are there any recommendations regarding the approaches police services boards should take with regard to the retention of information collected pursuant to the Regulation, and is consistency required in that regard?

12) Are there any recommendations regarding the approaches police services boards should take with regard to the establishment of age groups and racialized groups when reporting on the collection of data, and is consistency required in that regard?

8. Trying to answer all these questions has not been an easy task. I have examined the questions for over a year, travelling considerable distances and hearing from many people and organizations.

The Methodology

9. Under the terms of reference, I am required to consult with the Minister Responsible for Anti-Racism. I am also required to seek the input of the Independent Police Review Director about any complaints made by members of the public regarding the Regulation.⁶⁸

The Survey

10. The terms of reference also required me to conduct an independent survey of civilians – collecting and analyzing data – to address certain issues. The purpose of the survey is to determine whether police officers and police chiefs complied with the Regulation's limits on the collection of information and the duties related to the collection of information.

11. The survey, which was conducted by the Institute for Social Research at York University between March 28 and June 25, 2018, had two components: a random telephone call survey and an online survey for visitors to the Street Checks website which was created for the Review.

12. A summary of the survey results is found in Appendix E. I reference some of the survey findings throughout this report.

The Consultations

13. Many stakeholders were consulted, including the public and the police. Specifically, I met with various community groups and organizations, public interest groups, as well as individuals and aca-

demics. Their insights and perspectives assisted me greatly. I also received a broad range of valuable written submissions.

I needed to know what experiences people have had, what their concerns were and what recommendations they would like to see implemented.

14. I believed it was vitally important to hear from members of the public. There is a widespread misunderstanding of both the definition and application of street checks. As indicated earlier, even police services have used the term “street checks” to mean different things at different times. There has not been a uniform definition of the term or its application, and this misunderstanding has been compounded by a number of media reports, most of which do not apply a uniform definition.

15. Street checks have not affected all members of the public in the same way or to the same degree. I needed to know what experiences people have had, what their concerns were and what recommendations they would like to see implemented.

16. I met with 34 police services in Ontario, hearing from police chiefs, police officers, police associations and police services boards. I believed it was important to understand why police officers

make requests for identifying information, particularly related to the practice traditionally known as carding. I needed to understand the objectives of these requests and whether those objectives have been met.

17. A series of 12 public consultations were held in Thunder Bay, Brampton, Hamilton, Ajax, Markham, Windsor, London, Ottawa, Sudbury and three locations in Toronto. During these public forums, members of the public were able to express their concerns and make recommendations. I also travelled to Kitchener-Waterloo to consult with community members.

18. To meet and talk to Indigenous people and Black and racialized communities, I travelled to: Thunder Bay, Toronto, Windsor, London, Ottawa, Sudbury, Sault Ste. Marie, Timmins, and North Bay. I also travelled to Kenora, Wauzhushk Onigum (Rat Portage) First Nation, Sioux Lookout and Lac Seul First Nation specifically to consult with the Indigenous communities there. In addition, I consulted with members of Black and racialized communities in Kingston, Hamilton, Durham, Peel and York Region.

19. As part of my public engagement with First Nations, I wrote to all 134 First Nations in Ontario, Indigenous political and territorial organizations in Ontario, Indigenous Friendship Centres, Inuit and Métis groups and communities, as well as service providers and organizations – including schools and academic institutions

– that work with and serve Indigenous communities.

In total, I met with over 2,200 people, and received over 100 written submissions.

20. I met with leaders, members of elected Chiefs and Council, elders, young people including students, legal and law enforcement professionals including First Nations police officers and police chiefs, community members, individuals who work with organizations serving Indigenous communities and representatives of Indigenous organizations.

21. Hearing directly from Indigenous, Black and other racialized communities was the best way for me to understand the historic and current issues related to the police practice of street checks.

22. In total, I met with over 2,200 people, and received over 100 written submissions.

The Research

23. The questions to be answered involve many different issues.

24. The first is a legal issue. When can police officers stop people to request identifying information, and when can they not? Answering that question involves considering both the common law, which grants police certain powers historically,

as well as statutory law such as the *Criminal Code*, various other federal and provincial statutes including the *Police Services Act*, the Canadian *Charter of Rights and Freedoms* and, more specifically, section 9 of the *Charter* which addresses the right against arbitrary detention. It also involves determining both the duties and powers of police officers, and the limits on those powers.

25. Because this Review considers the longstanding disproportionate use of street checks against some groups by some police officers in certain areas of the province, it was necessary to examine relevant human rights law, including anti-discrimination laws.

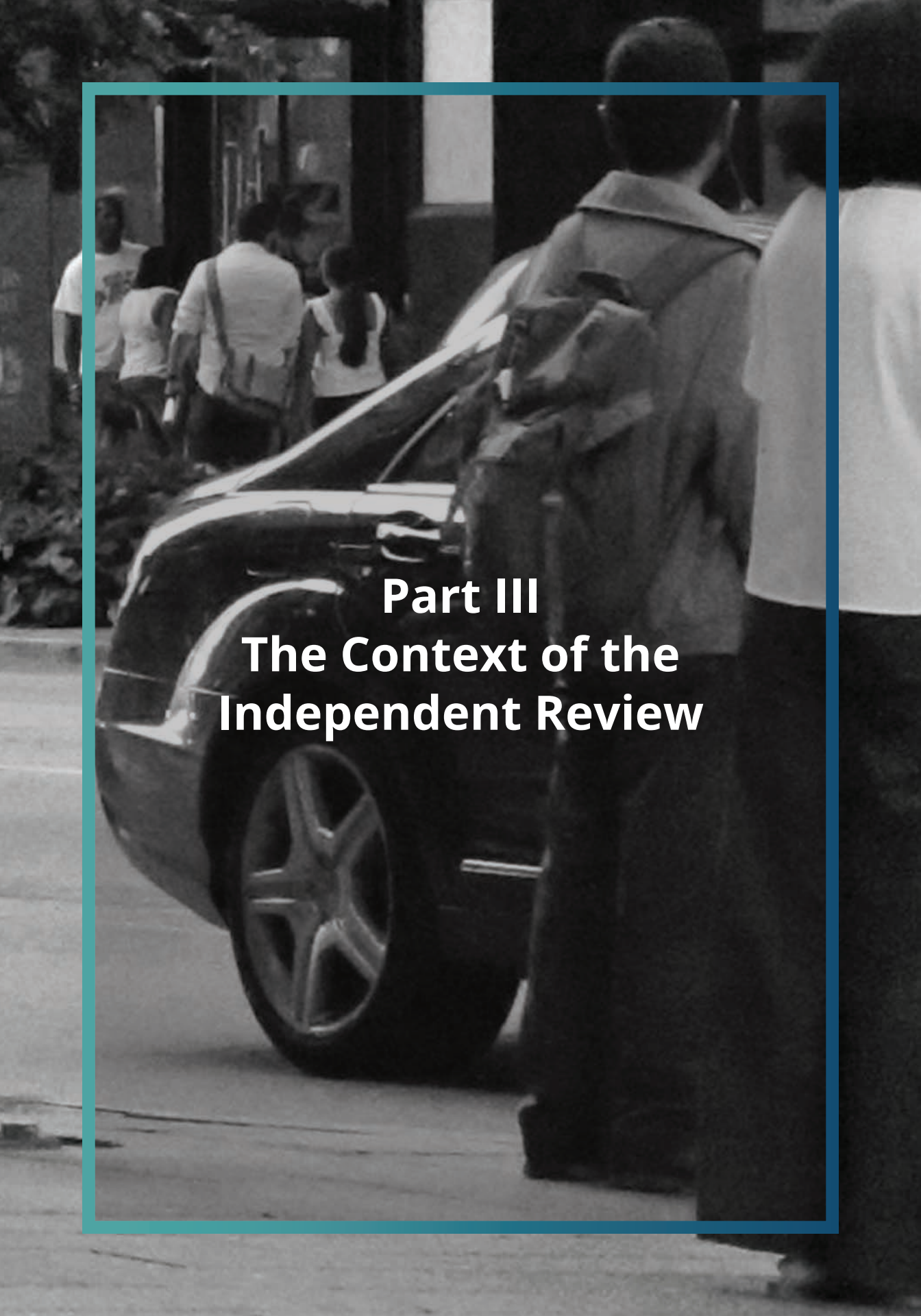
26. The issues related to police officers requesting identifying information from members of the public are not unique to Ontario. Many countries around the world have faced similar problems and tried various approaches to solve them.

27. I have examined how other countries have tried to deal with these issues, including the United States, the United Kingdom and Northern Ireland, Australia, Bulgaria, France, Hungary, Japan and Spain.

28. All of these jurisdictions approach police stops and requests for identifying information differently. Some of these approaches are effective, and some less so. For the purpose of this Review, it is useful to see what other jurisdictions have done. I discuss some of the reforms in the body

of this report and compare them, where applicable, to the Ontario experience.

29. As a result of the survey, consultations and research, I believe that I can now provide answers to the questions as well as recommendations that will help both the public and the police understand the complexities of the issues surrounding the practice of street checks and arrive at the balance required for the police to do their jobs without infringing on the civil liberties of members of the public.

A black and white photograph of a busy street scene. In the foreground, a person with a large backpack is walking away from the camera. To their left, a dark-colored car is parked on the street. In the background, several other people are walking in the same direction. The image is framed by a teal border.

Part III

The Context of the Independent Review



Chapter 4

Policing: Powers and Limits

Introduction

1. To properly understand the Regulation and the concerns it is intended to address, we must take a step back and review certain civil liberties and fundamental rights of individuals, as well as the applicable duties and powers of police officers and the limits on those powers currently recognized by our law.

2. In this chapter, I will explore individual rights and protections, including the right to walk about freely, the right against arbitrary detention and statutory protections emanating from the Ontario *Human Rights Code* and the Ontario *Anti-Racism Act*. Next, I will turn to the duties of police officers, with an emphasis on both their statutory duties in Ontario and their common law duties. I then will examine the circumscribed powers of police officers recognized by law, including the powers of arrest and powers of detention. Under the powers of detention, I will outline the statutory and the common law powers of detention, such as investigative detention and other common law powers to stop or detain. I will conclude the chapter with a focus on police questioning that does not amount to detention.

I. Individual Rights and Protections

The Right to Walk About Freely

3. Absent a legal rule to the contrary, people are free to move about as they please.⁶⁹ In particular, in common law people have “a right to travel unimpeded down a public highway”⁷⁰ or, said differ-

ently, a right “to walk the streets free from state interference”.⁷¹ Young people – indeed all people – also “have a right to ‘just hang out’, especially in their neighbourhood, and to move freely without fear of being detained and searched on a mere whim”.⁷²

4. Faced with police questioning on the street, a person is generally free to decline to answer and walk away. While citizens may have a “moral or social duty” to assist the police, there is no general legal obligation for them to do so.⁷³ If a person does decline to assist, the officer must allow them to be on their way.⁷⁴

5. However, the presumptive right to walk down the street unimpeded by police does not mean that police officers cannot engage with people and ask them questions. Police engagement with the community can take many forms. In certain instances, the police may have a legal duty to engage with people going about their business on the street.

6. But an officer can only prevent a person from leaving by invoking legal powers of arrest or detention.⁷⁵ If the person is arrested or detained without proper legal grounds, their right against arbitrary detention will have been violated.

7. The right to circulate freely in the community is a common law civil liberty that has echoes in the fundamental constitutional freedoms protected by the Canadian *Charter*, in particular the section 9 protection against arbitrary detention.

8. In a society where the police have at their disposal excessive powers, there is a risk of individual liberties being suppressed. On the other hand, in a society where police lack sufficient ability to investigate and prevent criminality, there is a risk of lawlessness. It is without dispute that both extremes should be avoided. Striking an appropriate balance between society's expectations and the evolution of the law can be a difficult exercise. In the context of policing, it is always important to start from the foundation that "the police are the public and the public are the police". The legitimacy of one requires the approval and respect of the other. It cannot be forgotten that "the public" is an all-encompassing term. Policing practices and their implementation must be fair to all. A practice that further exacerbates inequalities or marginalization should be viewed as failing.

The Right Against Arbitrary Detention

9. Section 9 of the *Charter* protects individuals against arbitrary detentions by the state.

10. What is a "detention" and when is it considered to be "arbitrary"?

11. Not every interaction with or questioning by the police amounts to a detention. A "detention" under section 9 of the *Charter* refers to a suspension of the individual's liberty through a significant physical or psychological restraint. The guarantee against arbitrary detention is intended to protect individual liberty

from unjustified state interference.⁷⁶ This protection goes beyond physical restraint and encapsulates incursions on mental liberty "by prohibiting the coercive pressures of detention and imprisonment from being applied to people without adequate justification".⁷⁷

Policing practices and their implementation must be fair to all.

12. When people *are* detained by the police, section 10 of the *Charter* provides that they need to be informed of the reason for the detention and their right to retain and instruct counsel.⁷⁸ Section 7 also affords them the right to remain silent.⁷⁹

13. As I explain below, the police are authorized by law to detain people in certain circumstances. A *lawful* detention is not "arbitrary" within the meaning of section 9 of the *Charter*, provided the law itself is not arbitrary.⁸⁰ If a law authorizes a detention based on an officer's discretion, the exercise of discretion is arbitrary if there are no criteria governing how it is exercised.⁸¹

14. A detention is *unlawful* if the police are not exercising a lawful authority to detain. An *unlawful* detention is not automatically an arbitrary detention; however, all arbitrary detentions are *unlawful* by virtue of section 9 of the *Charter*.⁸²

15. A detention is arbitrary within the meaning of section 9 of the *Charter* if it is “capricious, despotic or unjustifiable”.⁸³

16. Section 15 of the *Charter* also prevents people from being detained for discriminatory reasons.⁸⁴

Other Statutory Protections

17. In situations that fall short of “detention”, individuals have other statutory protections against arbitrary police conduct.

Ontario Human Rights Code

18. Ontario’s *Human Rights Code* protects Ontarians in their interactions with the police by requiring that police provide equal treatment with regard to services.⁸⁵ Police services are subject to section 1 of the *Code*.⁸⁶

19. Police officers themselves also have a statutory duty to uphold the *Human Rights Code*.⁸⁷

Ontario Anti-Racism Act, 2017

20. The preamble of the recently passed *Anti-Racism Act, 2017* commits the Government of Ontario to eliminate systemic racism and promote equality, and the *Act* itself requires the government to maintain an anti-racism strategy that aims to eliminate systemic racism and advance racial equity.⁸⁸

21. Those objectives are to be accomplished through initiatives designed to:

- identify and remove systemic barriers

that contribute to inequitable racial outcomes for all racialized communities, including Indigenous and Black communities; and

- advance racial equity and address the adverse impact of different forms of racism, including anti-Indigenous racism, anti-Black racism, anti-Semitism and Islamophobia.⁸⁹

22. The *Act* also requires the government to set targets and indicators to measure the strategy’s effectiveness.

23. The Regulation can be seen as part of Ontario’s commitment to achieving the goals of the *Anti-Racism Act, 2017* by imposing limits on police powers that could be exercised in a manner inconsistent with that Act. It is often said that, not only must justice be done, it must also be seen to be done. The manner in which street checks were being performed by policing services may have lacked a discriminatory intent but, in the case of some services, there was a disproportionate application.

II. The Duties of Police Officers

24. Police officers are agents of the state and may act only to the extent that the law empowers them to do so.⁹⁰ The powers granted to officers are designed to enable them to discharge their duties. It is therefore important to understand the parameters of those duties and their impact on police officers’ ability to perform their duties and to do their jobs – a large part of which is to respond to the safety and security needs of the community, as well as to engage and interact with indi-

viduals and the public.

25. The duties of a police officer are either set out in a statute or derive from the common law.

Statutory Duties of Police Officers in Ontario

26. The statutory duties of police officers in Ontario are set out in the *Police Services Act*.⁹¹ They include preserving the peace, preventing crime, apprehending offenders and assisting victims of crime. The Act also recognizes that police officers have common law duties.⁹²

27. The duties of police officers, as outlined in the *Police Services Act*, must be read in light of the declaration of principles governing the *Act*, which include safeguarding fundamental rights while recognizing the need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society as well as the need for cooperation between the police and the public.⁹³

Common Law Duties of Police Officers

28. The courts have recognized that “the principal duties of police officers are the preservation of the peace, the prevention of crime, and the protection of life and property”.⁹⁴ The police also have a common law duty to “solve crimes and bring the perpetrators to justice”.⁹⁵

29. To discharge their legal duties, police officers may have a duty to engage with members of the community in certain

circumstances, including stopping and questioning them. Individuals may have a right to walk about freely, but they also want to be able to walk about safely.

Individuals may have a right to walk about freely, but they also want to be able to walk about safely.

30. Police duties and police powers, however, do not necessarily correspond. There are limits on the powers police officers may exercise when performing their duties: “[w]hile the police have a common law duty to investigate crime, they are not empowered to undertake any and all action in the exercise of that duty”.⁹⁶ The Supreme Court of Canada has been unequivocally clear: “the power to detain cannot be exercised on the basis of a hunch”.⁹⁷ This falls in line with the Court of Appeal for Ontario’s reasoning that “there is no general power to detain whenever that detention will assist a police officer in the execution of his or her duty”.⁹⁸

31. In other words, “[t]he law imposes broad general duties on the police but it provides them with only limited powers to perform those duties”.⁹⁹ That is because “[i]ndividual liberty interests are fundamental to the Canadian constitutional order”¹⁰⁰ and a “society that values police efficiency and effectiveness above other values would be a police state”.¹⁰¹ A

balance must be struck.

32. In an effort to strike that delicate balance between “adequately protecting individual liberties and properly recognizing legitimate police functions”, Canadian law affords the police certain circumscribed powers to restrict a person’s liberty and freedom of movement.¹⁰²

33. To properly understand the Regulation, it’s important to understand where it fits in the current framework of police powers recognized by our law.

III. Circumscribed Powers of Police Officers Recognized by Law

34. While all citizens have a presumptive right to walk the streets free from state interference, police officers are granted limited powers to interfere with that right.

35. What then, are those powers, as granted to them by statute or the common law?

Powers of Arrest

36. The *Criminal Code* provides that police officers can arrest a person with or without a warrant.

37. The police can obtain an arrest warrant when they have reasonable grounds to believe that a particular person has committed an offence.

38. An officer may also arrest a person without a warrant if the officer finds the person committing a criminal offence or the officer has reasonable grounds to believe the person has committed or is

about to commit an indictable offence.¹⁰³

39. Other statutes, such as the *Controlled Drugs and Substances Act*, also specifically set out powers of arrest under similar circumstances.¹⁰⁴

40. People who are under arrest are not free to go and have an obligation to identify themselves, although they do have a constitutionally guaranteed right to remain silent.

41. Police officers must inform the person that they are under arrest and inform them of certain *Charter* rights, including the right to counsel.

Powers of Detention

Statutory Powers of Detention

42. The *Criminal Code* and other statutes provide for a number of different types of warrants that can be obtained by the police, including some that may allow for a detention, such as a warrant to obtain a DNA sample or a general warrant that permits a detention in a manner that is incidental to a search and seizure.¹⁰⁵ Certain legal thresholds need to be met for officers to obtain a warrant. A person who is the subject of a warrant must comply with the terms of the warrant.

43. The police also have a number of other statutory powers to detain, search or otherwise inconvenience citizens. One example is the power to control access to a defined area. For example, there is legislation that regulates the public’s access to buildings such as courthouses and

airports.¹⁰⁶ These statutes typically require individuals to consent to a search before being able to enter a building.¹⁰⁷ In certain instances, the statute may require people to identify themselves.

44. Another example is the *Trespass to Property Act*.¹⁰⁸ That *Act* gives police and other persons the authority to arrest – without a warrant – people who are believed, on reasonable and probable grounds, to be trespassing.¹⁰⁹ Specifically, people can be arrested if they have entered the premises without the permission of the occupier or if they have engaged in activity on the premises that is prohibited under the *Act*.¹¹⁰ The police may also arrest without warrant someone who has made “fresh departure” from the premises if the person refuses to give their name and address or the police have reasonable and probable grounds to believe that the name or address given is false.¹¹¹

45. It is important to note that the police may be appointed as agents by a city to enforce the *Trespass to Property Act* in city housing projects. In those cases, the police are authorized to make inquiries to ensure those in the complex are residents.¹¹²

46. Some statutes also grant the police particular powers in the context of certain regulated activities, such as driving. Unlike the ordinary right of movement that applies to pedestrians, driving on a highway is not a fundamental liberty.¹¹³ While people have a fundamental liberty at common law “to circulate freely along public roadways, particularly on foot”, the

liberty to proceed on a public highway in a vehicle is a “qualified liberty” and, thus, is more easily restricted.¹¹⁴

47. Ontario’s *Highway Traffic Act* authorizes a police officer to stop vehicles for highway regulation and safety purposes, even when the stops are random.¹¹⁵ However, the detention authorized in this situation is limited by its purpose. The detention must be at the roadside and be brief, unless the police establish other grounds for a detention. The police may require drivers to produce documents they are required to have with them, and they may detain the vehicle and its occupants while checking those documents against information in police databases. The police may also assess the mechanical fitness of the vehicle, examine equipment for compliance with safety standards and, from outside the vehicle, make a visual examination of the interior to ensure their own safety in the course of the detention. The *Act* does not, however, authorize more intrusive examinations or inquiries related to matters not relevant to highway safety concerns.¹¹⁶

48. While a roadside stop is limited to highway regulation and safety concerns, the mere existence of another purpose motivating the stop does not render the stop unlawful. In other words, “dual purpose” stops are permitted. However, for the stop to be justified, both purposes must be proper and the stop may not infringe on the liberty or security of any detained person beyond that contemplated by subsection 216(1) of the *Highway*

Traffic Act (highway regulation and safety).¹¹⁷

49. If an officer wishes to stop a vehicle for a purpose that is *unrelated* to highway regulation and safety, the officer cannot rely on subsection 216(1) as a pretext to achieve this other purpose.¹¹⁸ When road safety concerns are removed as a basis for the stop, then the police powers associated with those concerns cannot be summoned to legitimize the stop. Some other legal authority must be found.¹¹⁹

50. That being said, it *is* permissible for police to conduct a traffic stop to gather intelligence in an investigation of criminal activity. The courts have recognized that gathering intelligence falls within the ongoing police duty to investigate criminal activity.¹²⁰ Again, driving is a highly regulated activity that can be more easily restricted than walking down a public sidewalk.

51. However, when police officers make a traffic stop, “the only questions that may justifiably be asked are those related to driving offences. Any further, more intrusive procedures could be undertaken only based upon reasonable and probable grounds”.¹²¹ Similarly, “[r]andom stop programs must not be turned into a means of conducting either an unfounded general inquisition or an unreasonable search”.¹²²

52. For example, if a police officer wants to identify associates of known gang members, the officer can properly stop their vehicles to obtain the drivers’ iden-

tity if there is also a legitimate traffic-related reason to stop the vehicle.

53. Officers can only conduct a search of the vehicle or seek to identify the passengers if, in the course of the traffic stop, they develop the requisite legal grounds to do so.

Common Law Powers of Detention

54. The police also have powers of detention pursuant to the common law.

55. In essence, a “detention” means that a person is not free to go. In these circumstances, as in the case of an arrest, the person has the right to be informed of their right to counsel and of the reason for their detention.¹²³ The person continues to have no obligation to speak to the police.¹²⁴

56. The main police detention power at common law is the power to detain for investigative reasons.

Power of Investigative Detention

57. The common law recognizes the power to briefly detain an individual for investigation if the police have reasonable grounds to *suspect* (as opposed to reasonable grounds to *believe*) that the individual is connected to a particular crime, and that the detention is reasonably and objectively necessary.¹²⁵

58. This power does not amount to a general police power to detain for investigative purposes.¹²⁶ In other words, police officers cannot detain a person simply because they are conducting a criminal

investigation. Brief investigative detentions are only allowed when it is objectively reasonable for the officer to suspect that the particular individual is linked to a criminal offence.¹²⁷

59. This power stems from the police's duty to investigate crime and keep the peace, which in turn requires them to "be empowered to respond quickly, effectively, and flexibly to the diversity of encounters experienced daily on the front lines of policing".¹²⁸

60. An "investigative detention" has also been described as "a reactive power dependent upon a reasonable belief that the detained person is implicated in a prior criminal act".¹²⁹ Such a detention is different from a R.I.D.E. program stop, which does not require the police to suspect criminal activity.

61. Suspicion based on reasonable grounds or "reasonable suspicion" must be based on something more than a *mere* suspicion or a "hunch" and something less than a belief based on reasonable and probable grounds.¹³⁰

62. The Kingston Police Service adopted the following definition of "reasonable suspicion" in its bias-free policing procedure:

"Reasonable suspicion" is suspicion founded on a set of articulable facts and circumstances that would warrant a person of reasonable caution in believing that a violation of the law has been committed, is about to be committed, or is in the process of being

committed by the person or persons under suspicion. This suspicion may be based on observations, training, and experience or information received from credible sources.

Investigative detentions cannot be based on mere suspicion, speculation, a spidey-sense, a guess or a hunch.

63. Another way to say that there are "reasonable grounds" that justify detaining a person for investigation is "if the detaining officer has some "articulable cause" for the detention".¹³¹

64. What does that mean? "Articulable cause" means a cause that can be justified in a stated explanation. It has been defined as "a constellation of objectively discernible facts which give the detaining officer reasonable cause to suspect that the detainee is criminally implicated in the activity under investigation".¹³² It involves both an objective and subjective standard.¹³³

65. This means that an officer's subjective suspicion that an individual is possibly engaged in some criminal activity is not sufficient. The officer's suspicion must also be objectively reasonable; that is, supported by objective facts.¹³⁴

66. Investigative detentions cannot be based on mere suspicion, speculation, a spidey-sense, a guess or a hunch.¹³⁵ That is because "subjectively based assessments

can too easily mask discriminatory conduct based on such irrelevant factors as the detainee's sex, colour, age, ethnic origin or sexual orientation".¹³⁶ While a police officer's training and experience may lead to a certain intuition in detecting crime, that intuition should not be based on a person's physical characteristics, unless those physical characteristics match a suspect's description or are relevant in some other appropriate way.

67. Can an officer detain a person on the basis of *suspicious activity*, even though the person is not suspected of any actual *offence*? The law as it has developed does appear to allow for a brief detention to investigate suspicious activities, as long as the suspicion is reasonably based and there is an articulable cause for the detention.¹³⁷

68. When a person is the subject of an investigative detention, the police must advise them of the reasons for the detention in clear and simple language, as well as their right to counsel.¹³⁸

69. A detention does not necessarily occur the moment the police engage an individual for investigative purposes.¹³⁹ It's important to consider "whether or not the interaction involved a significant deprivation of liberty".¹⁴⁰ A detention within the meaning of sections 9 and 10 of the *Charter* does not arise every time a person, even a suspect, is stopped or even interviewed for purposes of identification.¹⁴¹ The courts have held that when police officers ask people who are acting suspiciously to identify themselves,

they may simply be asking an exploratory question that does not necessarily trigger a detention or right to counsel.¹⁴²

70. There is no investigative detention and the person's *Charter* rights do not come into play unless there is a significant physical or psychological restraint.¹⁴³ Investigative detention can arise when a person is either physically detained (e.g. by handcuffing, placing the person in a police cruiser or any other manner of physical restraint on liberty) or psychologically detained.

Not every police encounter constitutes a detention.

71. Police officers must be particularly sensitive to whether their manner of approaching individuals could result in a psychological detention, thereby triggering the need to make people aware of their *Charter* rights.

72. I want to reiterate: not every police encounter constitutes a detention. Police have the latitude to interact with members of the public, even for investigative purposes, without triggering sections 9 and 10(b) of the *Charter*. Even in the case of suspects, not every person stopped for the purposes of identification or even interview is being detained within the definition of the *Charter*. As long as police interactions involve no significant physical or psychological restraint, the

Charter rights under sections 9 and 10(b) are not engaged. The moment at which an encounter crystallizes into a detention depends on the circumstances of that particular interaction.¹⁴⁴

Psychological Detention

73. The ancient command “stop in the name of the law” signals a deep-rooted and widely held belief that a person must stop when requested to do so by a police officer. This belief exists whether or not physical restraint is used.

74. People can be psychologically detained when they are legally required to comply with a police direction or demand (e.g. a roadside breath sample) or when there is no legal obligation to comply with the demand but a reasonable person in the person’s position would feel obligated to do so by reason of the state conduct.¹⁴⁵

75. In cases where there is no physical restraint or legal obligation, it may not be clear whether a person has been detained. To determine whether reasonable people in the individual’s circumstances would conclude they had been deprived of the liberty of choice, the following factors should be considered:

- a. The circumstances giving rise to the encounter as would reasonably be perceived by the individual including whether the police were: providing general assistance; maintaining general order; making general inquiries regarding a particular occurrence; or singling out

the individual for focused investigation.

- b. The nature of the police conduct including: the language used; the use of physical contact; the place where the interaction occurred; the presence of others; and the duration of the encounter.

- c. The particular characteristics or circumstances of the individual where relevant including: age; physical stature; minority status; and level of sophistication.¹⁴⁶

76. Because psychological detention is not determined subjectively, it is not enough for the person who is stopped to personally believe that they had to comply and were not free to go. However, even though the test is objective, the individual’s particular circumstances and perceptions “may be relevant in assessing the reasonableness of any perceived power imbalance between the individual and the police, and thus the reasonableness of any perception that he or she had no choice but to comply with the police directive”.¹⁴⁷ Ultimately, whether someone was psychologically detained is determined by taking into account all the circumstances of the encounter and the conduct of the police.¹⁴⁸

77. Sometimes the actions of a police officer may reasonably lead to a simple request being construed as a direction or command.¹⁴⁹ For example, people can be psychologically detained when: a police officer blocks their way, they are sur-

rounded by police officers or a police officer holds their possessions.

78. A person may also be psychologically detained when an officer's general inquiry turns into a suspicion and the nature of the questioning becomes more like an interrogation.¹⁵⁰ The line between general questioning and a focused interrogation, which amounts to detention, may be difficult to draw.¹⁵¹

79. The physical or mental characteristics of people being questioned can influence their belief as to whether or not they are free to leave. Factors that may contribute to a psychological detention include low intelligence, emotional disturbance, youth and lack of sophistication.¹⁵²

80. Our courts have also recognized that, because of their racial identity, some people feel compelled to obey a police officer when asked to stop and answer questions.¹⁵³

81. Whether a "reasonable person" understands that they have the ability to walk away from a police interaction "is of particular relevance to visible minorities who may, because of their background and experience, feel especially unable to disregard police directions, and feel that assertion of their right to walk away will itself be taken as evasive and later be argued by the police to constitute sufficient grounds of suspicion to justify a ... detention".¹⁵⁴

82. The effect of race on the psychological perception of being detained cannot be ignored. Canadian courts have recog-

nized the existence of both conscious and unconscious racial bias within Canadian institutions, particularly within the criminal justice system.¹⁵⁵

The effect of race on the psychological perception of being detained cannot be ignored.

83. If a police officer is in doubt as to whether a person feels they are being psychologically detained, the officer can advise the person "in unambiguous terms that he or she is under no obligation to answer questions and is free to go".¹⁵⁶

84. If there is no significant physical or psychological restraint involved in brief detentions to identify or interview suspects, then the protections afforded by sections 9 and 10 of the *Charter* do not apply. The police have reasonable latitude to investigate an occurrence without the contact between the citizen and the police constituting a psychological detention.¹⁵⁷

Other Common Law Powers to Stop or Detain

85. The common law also affords police additional powers to stop or detain an individual or otherwise interfere with their liberty. Given the "infinite variety of situations in which the police and individuals interact", these situations are not necessarily pre-defined.¹⁵⁸ Whether any given police action is lawful may well depend on a particular set of circumstances.

As police duties evolve, so too may their powers.

86. Well before the enactment of the *Charter*, the common law had started to acknowledge an ability to recognize police powers, which later became known as the ancillary powers doctrine and/or the Waterfield test, originally stemming from the English case *R v Waterfield*.¹⁵⁹

Just because it might be useful for the police to have a certain power does not mean that they should have that power.

87. The language of *Waterfield* is helpful to understanding the test. The English Courts stated that “it would be difficult... to reduce within specific limits the general terms in which the duties of police constables have been expressed” and opted instead to consider “what the police constable was actually doing and in particular whether such conduct was prima facie an unlawful interference with a person’s liberty”.¹⁶⁰ In these comments, the English court seemed to opine that it was better to look at the specific facts of each case, rather than trying to identify a broad police power being employed. Legitimizing the “street check” practice as it was prior to the Regulation would have been counter to this principle – providing the police with a broad power rather than looking at the specific facts of each case. As per *Waterfield*, there is a two-step test to apply when considering whether a

police officer has a recognized power at common law.¹⁶¹

88. The first step is to determine if the police conduct falls within the general scope of a duty imposed on the police either by common law or by statute.

89. If the conduct does fall within such a duty, the second step is to determine whether the conduct can be justified. In other words, the police are empowered to interfere with individual rights and liberties when executing their duties as long as the interference is justified in the circumstances.

90. In the second step, the court must strike a balance between the competing interests of the police officer’s duty and the person’s liberty or other individual interests. In light of the circumstances, is the police action reasonably necessary to carry out the particular duty? The factors to be weighed in the second step include:

- 1) The importance of the duty to the public good;
- 2) The extent to which it is necessary to interfere with liberty to perform the duty; and
- 3) The degree of interference with liberty.¹⁶²

91. Our courts have been careful to recognize that, when deciding whether the police have a common law power necessary to their duty, it does not “mean that the Court should always expand common law rules, in order to address perceived gaps

in police powers or apprehended inaction by Parliament, especially when rights and interests as fundamental as personal privacy and autonomy are at stake”.¹⁶³ Just because it might be useful for the police to have a certain power does not mean that they *should* have that power. “We want to be safe, but we need to be free”.¹⁶⁴

92. While the police may have powers that are reasonably necessary to perform their duties, it may be more difficult for them to justify the existence and exercise of a power when they are involved in preventive policing (proactive policing) as opposed to investigating past or ongoing crimes (reactive policing).¹⁶⁵ “[P]roactive policing is in many ways more efficient and effective than reactive policing”; however it “must be limited to steps which do not interfere with individual freedoms”.¹⁶⁶ What has never been allowed by our courts is a general power to detain and question members of the public in the general performance of policing duties.

93. One example of a police power that has been recognized based on this common law test is the power to arrest or detain someone to prevent an apprehended breach of the peace. The breach must be imminent and the risk that it will occur must be substantial. The mere possibility of some unspecified breach at some unknown point in time does not suffice. “[T]he requisite necessity arises only when there is a real risk of imminent harm. Before that point is reached, proactive policing must be limited to steps

which do not interfere with individual freedoms”.¹⁶⁷

Police Questioning That Does Not Amount To Detention

94. As noted previously, the police are generally free to ask questions of anyone on the street, regardless of whether an offence has been committed.¹⁶⁸ However, the person being questioned does not have to answer and can proceed on their way.¹⁶⁹ Unless the officer has grounds to arrest or detain the person, the officer cannot compel the person to remain.¹⁷⁰

95. Again, a brief stop for the purpose of asking questions does not necessarily amount to a detention. If there is no “significant physical or psychological restraint” involved, then there is no detention and the protections given under sections 9 and 10 of the *Charter* do not apply.

96. The definition of detention “gives the police leeway to engage members of the public in non-coercive, exploratory questioning without necessarily triggering their *Charter* rights relating to detention”.¹⁷¹

97. Prior to the Regulation, some police services had no clear or consistent parameters related to their members’ ability to question individuals and request identifying information when the questioning did not amount to detention.

98. During these interactions between police and the public, there is potential for abuse that requires proper oversight.¹⁷²

There is also the potential for innocent misunderstanding. Both parties to the interaction need to understand the rules of engagement. The Regulation seeks to address this gap.

Summary

99. Police officers do not have an automatic right to detain a person for questioning. In other words, the police cannot prevent a person from walking away unless there are reasonable grounds to suspect that the person is connected to a particular crime and the detention is reasonably necessary.

100. When a police officer reasonably suspects that a person is connected to a criminal offence, the officer may detain that person for further investigation. This constitutes a valid investigative detention.

101. Stops for investigative purposes involving brief delays that do not involve significant physical or psychological restraint do not constitute a detention and do not trigger rights under sections 9 or 10 of the *Charter*.

102. On the other hand, stops for investigative purposes involving longer delays that do involve significant physical or psychological restraint constitute an investigative detention and trigger section 9 or 10 rights.

103. Investigative detentions for crimes that have been committed or are ongoing must involve a clear link between the person being investigated and the crime.

104. If an officer has reasonable and probable grounds to believe that a person has committed, is committing or is about to commit an offence, the officer can arrest the person.

105. If there is no arrest or detention, an officer has no right to compel the person to remain. Unless provided for by statute or the common law, a person does not have a duty to identify themselves.¹⁷³

106. Not everyone who is stopped (and not formally detained) by the police will understand that they have the right to proceed on their way without answering questions.

107. If a person reasonably believes, even if that belief is erroneous, that they have no choice but to cooperate with police, a psychological detention may occur. These concerns, if objectively reasonable, would trigger police obligations to advise the person of their right to counsel and of the reason for the detention.

108. Given the inherent power imbalance in a police interaction with an individual, particularly when the person is young, suffers from mental health issues or is a member of a racialized group, it is especially important for police to ensure that the person is genuinely cooperating voluntarily.

109. When a police officer, without bias or discrimination, asks an individual to provide information, and the person voluntarily provides information, then there is no question that the information was properly obtained.

110. To avoid any issue as to whether information is being provided voluntarily and the person does not feel compelled to comply, the police may consider informing people that they do not have to answer the questions, and that they are free to go.

Part IV
Collecting and Managing
Identifying Information
- Findings and
Recommendations



Chapter 5

Application and Interpretation of the Regulation

Introduction

1. Now that we have explored the history and impact of carding and street checks, introduced the Regulation, examined certain civil liberties and fundamental rights of individuals, and reviewed the applicable duties and powers of police officers, we can turn to the specific terms of the Regulation.

2. This chapter will examine Part I of the Regulation relating to the circumstances in which the Regulation applies to an interaction between a police officer and an individual. In particular, I consider the general application of the Regulation, the meaning of identifying information, the categories of collections to which the Regulation applies and areas where the Regulation does not apply. Along the way, I identify certain gaps in its operation, based on the concerns that the Regulation was intended to address, and make recommendations to address those gaps.

3. Before delving into Part I of the Regulation, I note that the Regulation does not expressly stipulate its purpose or objective. Since one of its main purposes is to prevent arbitrary or random stops of individuals for the sole purpose of collecting their personal identifying information, that objective should be expressly stated at the outset of the Regulation.

Recommendation 5.1

The Regulation should expressly state that no police officer should arbitrarily or randomly stop individuals to request their identifying information.

4. Given the Regulation's objective, I conclude the chapter by raising two fundamental questions that are central to the analysis: *do random street checks actually work* and *should random street checks ever be allowed?* I answer these questions by drawing on Canadian and international experiences and research, as well as my observations from the consultations conducted under this Review.

Application of the Regulation

Definitions

5. The Regulation applies to attempts to collect identifying information from individuals by police officers if the attempt is done for the purpose of: ***inquiring*** into offences that have been or might be committed; ***inquiring*** into suspicious activities to detect offences; or ***gathering*** information for intelligence purposes. I will return to these three categories below.

6. "Police officer" is not defined in the Regulation but would have the same meaning as it has under the *Police Services Act*.¹⁷⁴ Law enforcement officials not classified as a "police officer" – for example, First Nation constables, special constables, municipal law enforcement

officers and auxiliary officers – would not be covered.¹⁷⁵ The Regulation also specifically does not apply to a police officer appointed under the *Interprovincial Policing Act, 2009*.¹⁷⁶

7. An “attempt” to obtain identifying information means a face-to-face encounter during which a person is asked to identify themselves or provide information for the purpose of identifying themselves – whether or not the information is actually collected.¹⁷⁷ An “attempt” to collect identifying information, therefore, includes an actual collection of identifying information.

8. It also includes a situation where the police officer decides not to retain the identifying information received after having requested it. It was reported that some police officers are not recording regulated interactions when the officer ultimately decided the identifying information was unhelpful and discarded it. In fact, those situations still qualify as regulated interactions and a record should be made.

Recommendation 5.2

Officers should be instructed that the requirements of the Regulation apply when a police officer requests identifying information in a regulated interaction, whether or not the officer retains and records the identifying information.

9. The Regulation applies to attempts to obtain identifying information about an individual from that same individual.¹⁷⁸ It does not prevent attempts to obtain identifying information about an individual from a different individual through surveillance or a check of a database. While the ability of police officers to obtain identifying information in this manner was raised as a concern during our public consultations, this practice would be virtually impossible to regulate. It is also not possible to control what people decide to say about others or when they are captured by surveillance or other means.

Identifying Information

10. The Regulation does not explicitly define the term “identifying information”. As already noted, however, an attempt to collect identifying information is described in the Regulation as 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...”.¹⁷⁹

11. What, then, could be considered “information for the purpose of identifying the individual”? This could potentially include the person’s name, address, date of birth, employment location, whether they have a criminal record, their identification, such as a driver’s licence, and so on. Even questions such as “where are you coming from” or “where are you going” could arguably be information requested for the purpose of identifying the individual.

12. The Toronto Police Services Board, for instance, has defined “identifying information” in its policy as:

[A]ny information that, alone or in combination with other information, can be used to identify an individual. It may include information about an individual’s race, age, sex, sexual orientation, gender identity, marital or family status, economic circumstances, and education, medical, psychiatric, psychological, criminal or employment history.

There should be greater clarification in the Regulation as to the meaning of the term “identifying information”.

13. Without a standardized definition, the Regulation could be applied inconsistently between jurisdictions. There should be greater clarification in the Regulation as to the meaning of the term “identifying information”, which should be defined along the lines established by the Toronto Police Service.

Recommendation 5.3

The term “identifying information” should be defined in the Regulation in a way that is similar to the definition adopted by the Toronto Police Service, such as:

“Identifying information” means any information which, alone or in combination with other information, can be used to identify an individual. Identifying information includes information about an individual’s race, age, sex, sexual orientation, gender identity, marital or family status, socioeconomic circumstances, and education, medical, psychiatric, psychological, criminal or employment history.

14. The Regulation refers to “asking” for identifying information.

15. As some police services are moving toward the use of body-worn cameras, a captured image could be seen to qualify as “identifying information”, even though there is no actual request for information.

16. Nevertheless, the definition of identifying information should not include general video surveillance or the incidental photographing or recording of an individual during an encounter, such as could occur when an officer wears a body-worn camera. Otherwise, virtually

all interactions between police officers and the public would be captured by the Regulation, contrary to its intended purpose.

Recommendation 5.4

The definition of identifying information should not include video surveillance or the incidental photographing or recording of an individual during a regulated interaction, such as could occur when an officer wears a body-worn camera.

Explicit Exceptions to the Application of the Regulation

17. Importantly, the Regulation specifically excludes investigations of an offence from its application. I will return to this exception below.

18. The Regulation also specifically provides that it does not apply if:

- i. the individual is legally required to provide the information to a police officer;
- ii. the individual is under arrest or is being detained;
- iii. the officer is engaged in a covert operation;
- iv. the officer is executing a warrant, acting pursuant to a court order or performing related duties;

or

- v. 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.¹⁸⁰

19. As indicated in the previous chapter, when a person is under arrest or being detained, the *Charter* affords the person important protections including the right to be informed of the reason for the arrest or detention and the right to counsel. I, therefore, think it appropriate that the Regulation does not apply in those circumstances.

20. Similarly, I see the three last exceptions listed above as appropriate and believe that applying the Regulation to those situations would be unworkable. They are also not one of the problematic situations that the Regulation was intended to address.

21. With regard to the first exception (i.e. instances where an individual is legally required to identify themselves), I think it important to point out that such situations are quite common, particularly in cities and semi-public spaces. As described in the previous chapter, police officers can rely on legislation such as certain provisions of the *Highway Traffic Act*, the *Liquor Licence Act*, the *Trespass to Property Act* or the *Criminal Code* to obtain identifying information.¹⁸¹

22. In the case of the *Trespass to Property Act*, the police enter into agreements with the landlords of certain properties whereby the police are able to act as the landlords' agents and, in that role, they are entitled to request identification from individuals on these properties to ensure that they are not trespassing. These properties can potentially include subway or bus stations, parks, community centres, malls and community housing complexes.

23. During my consultation with the Provincial Advocate for Children and Youth, I heard that this is an issue of concern. The reality, however, is that the law grants owners of private property the right to both restrict or allow entry to anyone, subject only to the provisions of human rights legislation. Those who enter private property, including public spaces on private property, such as apartment buildings, shopping malls or subways, enter on the basis of an implied license, which is revocable by the owners of the space.

24. The alternative to having the police enforce the *Trespass to Property Act* on these types of properties is to use private security guards, most of whom do not have the same level of training as police officers or the same level of professional or legal obligations or oversight. So, in my view, provided that police officers are given the level of training recommended by this report, I see no problem with them continuing to enforce the *Trespass to Property Act* in these types of spaces.

Recommendation 5.5

The Province of Ontario should consider revising other Acts empowering police to obtain identifying information to contain similar protections as those contained in this Regulation.

25. One particularly notable exception that falls under this category is the identification of a person operating a motor vehicle. The ability afforded by law to randomly stop vehicles for traffic-related purposes leaves open the concern about discriminatory traffic stops, which is sometimes referred to colloquially as “driving while Black”. Discriminatory traffic stops constitute racial profiling.¹⁸² Racial profiling in traffic stops has been found to exist in several reported cases.¹⁸³

26. To the extent that the Regulation excludes situations where a person is legally required to provide identifying information, such as a driver during a highway traffic stop, it creates a potential for inconsistent interactions between the police and the public. Given that driving is a highly regulated activity – and properly so – it is not feasible to subject police–driver interactions to the Regulation and allow drivers to not identify themselves to the police. As for prohibiting discriminatory traffic stops, there are already mechanisms in place to minimize the risk of abuse of the power to stop for traffic-related concerns.¹⁸⁴

27. What *can* be done, however, is to ensure that the Regulation applies to requests for identifying information from *passengers* in the context of a traffic stop. Many police services have already adopted policies or procedures that apply the Regulation to vehicle stops.

28. Because some police services boards have adopted policies that the Regulation applies to vehicle stops and others have not, the Regulation is being applied inconsistently.

29. The Regulation does not apply when a person is legally required to provide identifying information or when a person is reasonably suspected of committing or having committed an offence. For example, the police may lawfully detain passengers in vehicles for investigative purposes when they have reasonable suspicion that the passenger is connected to a crime.

30. A vehicle stop that would qualify as a regulated interaction would be when the officer requests identifying information from a passenger when the officer does not reasonably suspect that person of an offence. While this may find limited application in practice, it would also apply to the driver of a vehicle if they are not being stopped and asked for identification for a traffic-related purpose or because of a reasonable suspicion that any other offence has occurred – but rather for one of the purposes covered by the Regulation.

Recommendation 5.6

The Regulation should apply to vehicle stops that are not otherwise exempt from the Regulation.

Recommendation 5.7

The Regulation should specifically apply when identifying information is requested from passengers of vehicles during vehicle stops when the passenger is not in violation of the *Highway Traffic Act*, the *Criminal Code*, or any other Act of Parliament or Legislature.

Implicit Exceptions to the Application of the Regulation

31. The Regulation applies only if the attempt is done for the purpose of: (1) ***inquiring*** into offences that have been or might be committed; (2) ***inquiring*** into suspicious activities to detect offences; or (3) ***gathering*** information for intelligence purposes. Therefore, it does not apply to other situations where a police officer might need to know a person's identity, such as when providing assistance to that person or attempting to confirm the identity of an individual who matches the description of a missing person, human trafficking victim or other victim of

crime.¹⁸⁵ Similarly, the Regulation does not apply if an officer is simply chatting with members of the community – in a way that does not qualify as a regulated interaction – and discusses their personal situation without recording the information or having any intention to do so. This distinction has been recognized by several police services boards in their new policies.

32. Many police services have adopted policies or procedures that specify that the Regulation does not apply to situations that are intended to foster community relations. While the rationale for that qualification is understandable, concerns have been expressed by some members of the public that this exception could allow identifying information to be collected and recorded in such situations without recourse.

33. For example, is a “well-being check” actually motivated by a concern for a person’s welfare or is it an indirect attempt to obtain identifying information? In that circumstance, the focus of any questioning should be on the person’s situation and well-being, and only extend to requesting their identity when necessary.

34. Police officers should not be discouraged from assisting members of the public because of concerns over having to fill out paperwork. The Regulation should not apply unless the police officer intends or intended to record and store the person’s identifying information in the data-

base or module for regulated interactions. In certain circumstances, it may also be necessary for the police to record and store the person’s identifying information in another database in order to be able to follow-up on the well-being of the person who was checked. This information, however, should not be stored in the database for regulated interactions.

Recommendation 5.8

The Regulation should state expressly that it does not apply to attempts to confirm the identity of an individual who matches the description of a missing person, human trafficking victim or other victim of crime.

Recommendation 5.9

The Regulation should state expressly that it does not apply to interactions that have a community-building purpose, meaning on-duty police contact with members of the community meant to foster positive relationships and/or assist members of the public without gathering identifying information for an investigative or intelligence purpose.

Recommendation 5.10

The procedures developed by chiefs of police should ensure that identifying information requested by police officers in social situations or for the purpose of fostering community relations or assisting members of the public is not recorded and stored in any regulated interactions police database.

Investigations, Suspicious Activities and General Criminal Activity

35. As indicated above, the Regulation specifically does not apply to an attempted collection of identifying information made by a police officer for the purpose of **investigating** an offence that the officer reasonably suspects has been or will be committed.

36. The Regulation does, however, apply to **inquiries** into suspicious activity and general criminal activity.

37. As a result, the Regulation applies when an officer requests identifying information when generally “inquiring” into potential offences but not if the officer is “investigating” an actual offence that an officer reasonably suspects has been or will be committed.

38. The Regulation does not further define the terms “inquire” or “investigate”. Given the above, however, it appears that the intention is to distinguish between

interactions that result from a *reasonable suspicion* that an offence *has been* or *will be* committed (an investigation) and interactions where an offence “*may have been* or *might be* committed” or there are “suspicious activities” that *may* lead to “detecting” offences (an inquiry). In other words, there is some suspicion justifying an inquiry but no “reasonable grounds” for the suspicion required for a lawful investigative detention.

Police officers should not be discouraged from assisting members of the public because of concerns over having to fill out paperwork.

39. In the case of “gathering information for intelligence purposes” (the third and last category), there is no requirement that there be any semblance of a past or future offence. I address this category below.

40. I will try to give a concrete example of how the Regulation appears to be intended to operate. Imagine the following four scenarios:

Scenario One: A police officer sees a man in a deserted alley in the middle of the night.

Scenario Two: A police officer sees a man in a deserted alley in the middle of the night carrying a crowbar.

Scenario Three: A police officer sees a man in a deserted alley in the middle

of the night carrying a crowbar. Behind the man is a car with a broken window and there is glass on the ground.

Scenario Four: A police officer sees a man in a deserted alley in the middle of the night breaking a car window with a crowbar.

41. In the first scenario, without more information (e.g. a rash of recent break-ins in the area), there is no reason to suspect the person of any criminal activity. Requesting this person's identifying information would be random and not based on any objective criteria.

42. In the second scenario, there is no reasonable suspicion that an offence has occurred or is about to occur, simply because the person is carrying a crowbar. There is a reason for the police officer to be suspicious because it is unusual for a person to be carrying a crowbar in an alley at night. That suspicion is more than mere suspicion because there are objective and credible reasons to make an *inquiry*. The officer has a duty to inquire. The police officer can ask the person why he is carrying a crowbar in an alley at night without physically or psychologically detaining the person. The Regulation applies to this situation if identifying information is requested.

43. In the third scenario, there are reasonable grounds to suspect that an offence has occurred and that this person is connected to the offence. A police officer can briefly detain the person to *investigate*. The Regulation does not apply.

44. In the fourth scenario, there are reasonable and probable grounds to make an arrest. The Regulation does not apply.

45. In other words, where a police officer *reasonably believes* that a person committed an offence, an arrest may be made. Where an officer *reasonably suspects* that a particular person committed an offence, that person may be briefly detained for investigation (an "investigative detention") without triggering the Regulation. Where there is reasonable suspicion that an offence has been or will be committed and the officer requests identifying information from any person in the course of investigating that offence (i.e. not only the person reasonably suspected of having committed the offence), the Regulation still does not apply. Where, however, police are inquiring into potential offences or suspicious activities without having any "reasonable grounds to suspect" that an offence has been or will be committed, the Regulation applies if identifying information is requested.

Recommendation 5.11

The Regulation should specify that a regulated interaction should take no longer than is reasonably necessary to satisfy the purpose of the interaction, and that police officers should not prolong a regulated interaction in the hope of acquiring reasonable suspicion to detain.

46. There are potential problems even when a verifiable offence is being investigated. For example, the police could rely on the fact that they are conducting an investigation to request identifying information from people who do not appear to have any connection to the offence being investigated, whether as a suspect or potential witness. An “investigation” should not be used as a blanket authorization to collect personal data.

The police have never had at their disposal a power to detain and question members of the public in the general performance of policing duties.

47. It is important to note, specifically in Toronto, that the vast majority of street check interactions between the public and the police were categorized under the umbrella of a general investigation. This has no true meaning and lacks any clarity on what was actually being investigated. As noted in the previous chapter, the police have never had at their disposal a power to detain and question members of the public in the general performance of policing duties. Often criticism centers on the notion that carding was removed as an acceptable police practice. In this context, nothing was taken away.

48. The Regulation should specify that requests for identifying information should be made during investigations only where

there is reason to believe that the person approached may potentially have some involvement in the matter, either as a suspect or witness.

Recommendation 5.12

Remove subsection 1(2) of the Regulation and replace with:

Despite subsection (1), this Regulation does not apply with respect to an attempted collection made by a police officer for the purpose of investigating an offence the officer reasonably suspects has been, is being or will be committed, and the person from whom the identifying information is requested appears to have some connection to the offence whether as a suspect or as someone who has helpful information about the offence.

“Suspicious” Activities

49. I consider further below whether the Regulation should apply to random requests for identifying information. Here, I consider the Regulation’s application to inquiries into “*suspicious activities*”. This terminology suggests that the inquiries are not random. Rather, an individual would be targeted not simply because they happen to be walking down the street or in a certain area at a particular time, but rather because they are engaged in some form of suspicious activity.

50. However, some stakeholders are concerned that the reference to *suspicious activities* could be interpreted very broadly and include behaviour that is simply out of the ordinary due to an individual's cognitive impairment or destitution, or simply because it is outside usual societal norms. One stakeholder noted that an earlier directive of one police service defined *suspicious activity* as "behaviour that can be characterized as unusual or out of place".

51. That definition is too broad. For example, there is a "race out of place" concern relating to minorities being more likely to be searched in predominantly white neighbourhoods.¹⁸⁶

52. Police officers may view anything as suspicious. Even contradictory actions have been deemed by police officers to be suspicious, such as not making eye contact with police officers or staring at police officers, and driving too fast or driving too slow.¹⁸⁷ In one court decision involving carding, police officers found everything to be suspicious, including walking, trotting, running, head turning, slowing down, getting into a high-end car, being young, being Black and being in the back seat of a car.¹⁸⁸

53. Police are often called to reports from the public of a person engaging in *suspicious activity*. That activity might appear to be innocuous to the police officer. Is the situation an investigation (to which the Regulation does not apply) or an inquiry (to which the Regulation does apply)?

Some police services have included in their training materials that responses to calls for service from the public are not to be considered regulated interactions.

54. It is critical that there be clarity as to what constitutes suspicious activities, given that what is considered suspicious can be highly subjective.

55. As indicated earlier in Chapter 4, pursuant to case law, suspicion based on reasonable grounds or reasonable suspicion means something more than a *mere* suspicion or a hunch and is something less than a belief based on reasonable and probable grounds.¹⁸⁹

56. The Kingston Police Service adopted the following definition of "reasonable suspicion" in its procedure regarding bias-free policing:

"Reasonable suspicion" is suspicion founded on a set of articulable facts and circumstances that would warrant a person of reasonable caution in believing that a violation of the law has been committed, is about to be committed, or is in the process of being committed by the person or persons under suspicion. This suspicion may be based on observations, training, and experience or information received from credible sources.

57. In my view, suspicious activities must be viewed within the context of objective suspicion.

Recommendation 5.13

“Suspicious activity” should be defined in the Regulation to mean an activity where, under all of the circumstances, there are objective, credible grounds to request identifying information.

Recommendation 5.14

Police officers should be directed and trained that when there is a suspicious activity and it is feasible to do so, a police officer should first make inquiries of an individual to confirm or dispel the officer’s suspicion without requesting identifying information.

Gathering Intelligence

58. In addition to collecting identifying information for inquiries into general criminal activity and suspicious activities, the Regulation allows the gathering of identifying information for intelligence purposes.¹⁹⁰

59. The courts have recognized that the gathering of police intelligence is well within the ongoing police duty to investigate criminal activity.¹⁹¹

60. When intelligence is gathered in order to solve a crime that has already oc-

curred, it forms part of an investigation that is exempt from the Regulation.

61. What about police intelligence that is gathered proactively? There are a few ways that police services might obtain such information.

62. For example, a police officer asks an individual if there are known gang members in the area or if gang members in the area wear certain colors. That request is for information for intelligence gathering purposes or related to general criminal activity in the community. However, the Regulation does not apply because there was no request made for identifying information.

63. If the officer asks the person to identify themselves, then the Regulation applies and the officer must be able to articulate the reasons why asking that person to provide their own identifying information was necessary to gather intelligence information or inquire into general criminal activity in the community.

64. The person must first be informed of the reason why the identifying information is being requested and then told that they do not have to provide their identifying information. Again, there are safeguards in the Regulation to ensure that identifying information is not disproportionately requested in encounters of this nature.

65. Under the current Regulation, a request for identifying information for intelligence gathering purposes may be specific or random.

66. An example of a *specific* request is when a police officer stops a car for a traffic violation and discovers that the driver has a lengthy criminal record and is a known drug dealer. The officer then requests that the passenger of the car also provide identifying information. The passenger is not suspected of an offence, but information about those found in the company of a known criminal might provide valuable police intelligence. There is, therefore, a specific reason to target the passenger. In my opinion, and as articulated above, the Regulation *should* apply to the collection of identifying information from the passenger. However, due to privacy concerns, it may not be advisable or appropriate for the officer to disclose to the passenger the reason for the request (e.g. the disclosure of information that the other person has a criminal record). Perhaps in such circumstances, police officers should advise that the reason for the request cannot be disclosed and the officer's record of the regulated interaction should include a reference to the privacy concerns at issue. That reason should not be accessible to the person who is asked to provide the identifying information in any FOI request related to the regulated interaction.

67. On the other hand, when the intelligence gathering is *random* and the person's identity is the focus and intention of the request, rather than simply incidental to the police officer's inquiry, it amounts to the practice traditionally known as carding. The police service is establishing a database in order to deter, detect and

solve crimes by identifying any and all people in an area.

The courts have recognized that the gathering of police intelligence is well within the ongoing police duty to investigate criminal activity.

68. For example, imagine that a police service determines that drug transactions are often occurring at a particular street intersection. There have been many complaints from the local community. The police service would like to know who is hanging out at that intersection because that intelligence could help locate or identify a suspect. As a result, the police service asks its officers to make random inquiries of everyone found at that intersection and obtain their identifying information if possible. Since the police are seeking information regarding a specific type of offence at a specific location after being informed that this situation is occurring, the sole reason for the requests is not simply that people are present in a high crime neighbourhood. While the reason for the requests is specific, the people that are stopped are selected randomly. The sole focus of such a request is to gather names and create a database of people in this area.

69. The Regulation tries to balance the desire to prevent discriminatory stops with a desire to keep communities safe by still

affording police the ability to gather the data necessary to deter and solve crimes. The Regulation seeks to achieve this by requiring the police to record information about everyone approached and analyze that data to determine whether the information is being requested appropriately.

70. The Regulation is an improvement over the prior situation where individuals did not have to be told the reason for requesting identifying information or that they did not have to provide identifying information. However, it still allows for the random – albeit non-discriminatory – collection of identifying information.

The Regulation tries to balance the desire to prevent discriminatory stops with a desire to keep communities safe by still affording police the ability to gather the data necessary to deter and solve crimes.

71. Given the Regulation's objective, it is important to consider whether the practice of completely randomly collecting identifying information should be permitted at all. During my consultations, I heard from many stakeholders who are incensed that the Regulation does not ban carding completely but regulates it and implicitly approves of it as a proper and necessary police practice.

72. While many stakeholders approve of

the Regulation's approach to controlling inquiries into suspicious activities or potential offences, they view the catch-all of gathering information for intelligence purposes as being the worm in the apple of the Regulation.

73. Before deciding what, if any, recommendations should be made with regard to the police practice traditionally known as carding, which is still permitted in some respects by the Regulation, it is necessary to examine whether random street checks actually work.

Do Random Street Checks Actually Work?

74. The Peel Regional Police Service reported that, after the number of street checks dropped by 95% from pre-Regulation in 2014 to post-Regulation (2016 and 2017), there were significant increases in the number of shootings and fire-arm related occurrences, as well as large decreases in the seizure of guns and other weapons and reductions in the number of solved crimes. There have also been recent reports of a spike in gun crime in Ottawa and Toronto.

75. Some people are now drawing a connection between the recent spike in gun crime in some Ontario cities and the reduction in the number of street checks. Others argue that the spike in gun crime results from many factors, including cutting police resources and reducing the number of police officers, removing police officers from schools, opening supervised injection sites, scrapping mandatory min-

imum sentences for gun crimes, granting bail to dangerous criminals and/or a fluctuation to be expected when statistics span a number of years.

76. Linking a recent spike in crime in some cities with a reduction in the number of street checks is a difficult conclusion to draw. Many other jurisdictions in Ontario did not report any increase in crime after a reduction of street checks. In fact, violent crime in Toronto declined in the years leading up to 2014, despite the fact that the Toronto Police Service voluntarily curtailed the number of street checks during that time.¹⁹² Toronto also experienced a 65% increase in gun seizures from 2017 to 2018, despite the fact that Toronto reported few regulated interactions in 2017 and 2018.¹⁹³

77. The recent increase in gun violence in Toronto appears to relate more to the number of fatalities than the number of incidents. The *Toronto Star* reports that shooting incidents in Toronto increased 10% for the period from January 1 to July 23, 2018, compared to January 1 to July 23, 2016, while shooting deaths in 2018 were up 16% for the same period. There is an anomaly between 2016 and 2017 in that the statistics show that there was a significant decrease in gun deaths between those years. This was followed by a 70% increase in shooting fatalities from 2017 to 2018.¹⁹⁴

78. It was also reported that during the same 2016 - 2018 period, the number of shootings declined by a combined 40% in some neighbourhoods which have been

historically designated as priority neighbourhoods by the United Way due to their disproportionately high incidences of poverty and crime. These neighbourhoods include Rexdale, Jane and Finch, and Lawrence Heights.¹⁹⁵

79. Gun violence statistics alone do not paint a complete picture of the post-Regulation situation in Ontario.

80. On November 21, 2018, Statistics Canada reported its findings on the 2017 Canadian homicide rates. Notably, January 1, 2017, is the time when the Regulation fully came into effect. In 2017, Ontario reported the second largest decline in the total number of homicides among the provinces in Canada.¹⁹⁶ More specifically, homicides dropped from 206 in 2016 to 196 in 2017, constituting a rate decline of 1.47 to 1.38 per 100,000.¹⁹⁷

81. Statistics Canada reported that, in 2017, there was a country-wide increase in homicides – largely due to guns and gangs – with the homicide rate hitting its highest rate since the year 2009. The provinces that particularly drove up the homicide statistics were British Columbia and Québec. The provinces with the greatest reduction in homicides in 2017 were Saskatchewan and Ontario.¹⁹⁸ The year that the Regulation came into effect, the Ontario homicide rate actually went down.

82. Police officers remain able to stop and question people reasonably suspected of being implicated in an offence without triggering the operation of the Regula-

tion. That includes not triggering any requirement to advise people that they do not have to provide their identifying information, unless the police service has a policy in place that includes that requirement, as some do.

83. Police officers remain entitled to approach people and question them without asking for identifying information without triggering the Regulation. Police officers remain able to search people for weapons when the officer reasonably suspects that the person is carrying a weapon. That reasonable suspicion can arise during the course of a regulated or non-regulated interaction. The Regulation does not prevent the lawful seizure of guns or weapons.

Police officers remain entitled to approach people and question them without asking for identifying information without triggering the Regulation.

84. It could still be argued that the spike in crime is due to the fact that there are now fewer street checks than before the Regulation.

85. As has already been noted, the apparent large reduction in the number of street checks over the past few years could result from many factors. The different definitions of street checks mean that fewer stops today qualify as a street check than prior to the Regulation. That does

not necessarily mean that there are fewer street checks, but rather that fewer checks today qualify as street checks. That would not affect the crime rate.

86. Some contend that the recent rise in crime is due to the fact that police are required to tell people that they do not have to provide their identifying information in regulated interactions. However, that occurs only when the police officer has less than a reasonable suspicion that the person is implicated in an offence or the officer is gathering intelligence information. In neither situation was a person ever required to provide identifying information.

87. Finally, the Regulation does not take away any important police method of gathering information, so that potential concern could not explain any increase in crime. Police officers never had the ability to require someone to provide their identifying information in circumstances to which the Regulation would have applied. People often provided their identifying information with the mistaken belief that they were required to do so, and there was little incentive for the police officer to advise them otherwise. The Regulation simply gives effect to the existing law that people do not have to provide their identification when there are no reasonable grounds to believe the person has committed an offence.

88. I also noted during the Review that many police officers are conducting fewer street checks due to concerns regarding the interpretation of the Regulation.

Some officers are concerned that if they do engage with the public, they will become the subject of complaints from the public. Others were confused by the wording of the Regulation and are reluctant to approach members of the public in the absence of lawful grounds for an investigative detention or arrest.

89. Notably, there have been no formal complaints to the Office of the Independent Police Review Director about police officers related to regulated interactions and, thus, no officers have been disciplined through this process.

90. The argument for random carding then becomes circular. Some police street checks were proper. The improper practice of random carding led to the Regulation. The Regulation led many police officers to not conduct any street checks, whether proper or not. The lack of any street checks at all might have encouraged some types of crime to increase. This increase in some crimes has led some people to argue that we should return to random carding. This assumes that it was the reduction of random street checks that caused the increase in some crimes, as opposed to the reduction of all street checks.

91. The solution to those issues is not for police officers to fail to conduct street checks when it is prudent and appropriate to do so. The solutions include: providing training to police officers to better understand the Regulation; supporting police officers who conduct proper street checks when there is a subsequent public complaint; and educating the public about

the Regulation generally, the reasons for street checks and the fact that people are required to provide identifying information in some situations.

92. The Regulation did not eliminate street checks. Without any restriction, police officers can stop, question and ask people to identify themselves – if the officer reasonably suspects criminal activity. Without any restriction, police officers can stop and question people, without asking them to identify themselves – if the officer has less than reasonable suspicion of criminal activity. In either situation, if the police officer reasonably suspects the person has a gun, a search can be conducted.

93. The only thing that has changed is that, if a police officer requests a person's identity with less than reasonable suspicion of criminal activity or to gather intelligence, there has to be a good, justifiable or "articulable" reason for asking them to provide their identity. That is not an onerous requirement.

94. There is nothing in the Regulation that prevents police officers from continuing to perform their duties in a proactive manner. Perhaps the focus should shift away from trying to link an increase in crime to a reduction in the number of street checks. Instead an assessment should be undertaken of the impact of the Regulation within police services. The approach within police services should not be one of resistance, but rather one seeking solutions that fall in line with the authorities provided by law. A new

approach to what constitutes “proactive policing” is necessary.

95. Overall, it is difficult to see anything contained in the wording of the Regulation or in its proper application that would cause a spike in gun crime or violent crime.

96. Another argument is that performing random street checks or carding is valuable in both solving crime as well as increasing conviction rates. Consider this example: the police receive a report that three people have committed a robbery. Two of them are arrested fleeing the scene and the third escapes. Police run the names of the two arrested individuals in their records management system and discover that, on two previous occasions, these two individuals were in the company of a third individual. This information leads the police to arrest the third individual and solve the crime. Over and over again, I heard from various police stakeholders that this scenario outlines one of the values of random carding.

97. The difficulty with this scenario, however, is we really do not know the context which led up to the police receiving the personal information of any of these individuals. We do not know the nature of the previous police contact or the articulable reasons for collecting the information in the first place. The third person may have been suspected of some other crime, the police may have received information that they were involved in gang related activities or they may have had previous criminal records. Without the contextual in-

formation, it is difficult to assess whether or not the initial collection of identifying information from the third person was, indeed, random.

A new approach to what constitutes “proactive policing” is necessary.

98. What is clear from the consultations and research conducted during this review is that random carding – or the random stopping and collecting of identifying information from members of the public who are not suspected of any crime or of being involved in any criminal activity for the purpose of creating a database of information – disproportionately affects and negatively impacts innocent law-abiding Indigenous, Black and other racialized people. The societal and social costs far outweigh its benefits.

99. Viewed through the lens of Indigenous, Black and other racialized communities, the practice of random street checks or carding evokes a very different response. Historically, Indigenous, Black and other racialized communities have experienced systemic discrimination and inequality throughout North America. Profiling and surveillance of these communities goes back centuries, and this historical context is critical in understanding why the randomness of carding is viewed by these communities as tantamount to racial profiling.

100. The question then becomes, what

is racial profiling? In the context of policing, the Supreme Court of Canada has adopted the following definition of racial profiling:

Racial profiling is any action taken by one or more people in authority with respect to a person or group of persons, for reasons of safety, security or public order, that is based on actual or presumed membership in a group defined by race, colour, ethnic or national origin or religion, without factual grounds or reasonable suspicion, that results in the person or group being exposed to differential treatment or scrutiny.

Racial profiling includes any action by a person in a situation of authority who applies a measure in a disproportionate way to certain segments of the population on the basis, in particular, of their racial, ethnic, national or religious background, whether actual or presumed.¹⁹⁹

101. The Court of Appeal for Ontario adopted the following definition of racial profiling:

Racial profiling is criminal profiling based on race. Racial or colour profiling refers to that phenomenon whereby certain criminal activity is attributed to an identified group in society on the basis of race or colour resulting in the targeting of individual members of that group. In this context, race is illegitimately used as a proxy for the criminality or general criminal pro-

pensity of an entire racial group.²⁰⁰

102. The Supreme Court of Canada has noted that “profile characteristics are not a substitute for objective facts that raise a reasonable suspicion of criminal activity. Profile characteristics must be approached with caution precisely because they risk undermining a careful individualized assessment of the totality of the circumstances”.²⁰¹

103. The long-term effect of randomly carding individuals in these communities, most of whom are law abiding citizens, is the alienation of entire communities from police. Throughout my consultations, I was told by Indigenous, Black, and other racialized people that they all want to feel safe within their communities and that they rely on the police to keep their communities safe. However, when they or their family members are randomly carded, they lose trust and confidence in the police and are reluctant to cooperate with the police, which then adversely affects community safety.

104. As detailed more thoroughly in Chapter 2, an aggressive policy of random street checks has been shown to result in a loss of public trust and cooperation with the police, and may even promote crime.

105. A report prepared for the Toronto Police Services Board noted that, with regard to street stops by the police: “it is easy to exaggerate the usefulness of these stops, and hard to find data that supports the usefulness of continuing to carry

them out”.²⁰² The ultimate conclusion reached by the authors of that report was that: “the evidence that it is useful to stop, question, identify and/or search people and to record and store this information simply because the police and citizens ‘are there’ appears to us to be substantially outweighed by convincing evidence of the harm of such practices both to the person subject to them and to the long term and overall relationship of the police to the community”.²⁰³

An aggressive policy of random street checks has been shown to result in a loss of public trust and cooperation with the police, and may even promote crime.

106. This finding is supported by many police services which report that purely random street checks produced low quality intelligence. However, further research into the possibility of street checks having a deterrent effect on the carrying of illegal firearms may be warranted.

107. The Canadian experience is not unique. In the United Kingdom, the findings are similar. It has been noted that there is a “paucity of evidence on the effectiveness of stop and search” which directly “contrasts a growing body of evidence that identifies significant costs in terms of reduced public trust and confidence”.²⁰⁴

108. The results of studies in the United

Kingdom have shown that the net effect of the practice of random police stops on public opinion of the police is negative.²⁰⁵ A policy of discriminatory use of stop and search powers has been linked to riots in the United Kingdom in 1981 and 2011, in Paris in 2005 and in Copenhagen in 2008 and 2009.²⁰⁶

109. While it has been difficult to gauge the total effectiveness of the stop and search policy in the United Kingdom given the lack of data, reports suggest that the information that does exist indicates that stop and search plays only a minor role in detecting or deterring offenders or reducing crime.²⁰⁷

110. The research shows that, when extraordinary powers were used in the United Kingdom to search people for knives, one of the jurisdictions that was the second lowest user of these powers had the highest drop in the rate of knife crime. At the same time, another jurisdiction that had the second highest use of the search powers experienced a large increase in knife crime.²⁰⁸ According to these studies, there seemed to be little correlation between the use of the search powers and the crime rate.

111. Similarly, when the police practice of stop, question and frisk was declared to be unconstitutional in New York, the homicide rate continued to drop despite the drastic reduction in the number of people stopped. Despite the 55-fold drop in the number of stops and searches conducted – from 685,724 in 2011 to 12,404 in 2016 – the rate of major felony crimes

in New York hit its lowest level in decades in 2016.²⁰⁹

112. The reforms instituted in New York, such as requiring police officers to have articulable cause for a stop and search, and to issue a receipt with contact information to make a complaint after a police stop, are reflected in the Regulation. Imposing such requirements and dramatically reducing the number of police stops does not necessarily correlate to an increase in violent crime. The fact that New York imposed these requirements and crime went down consistently over many years while, in some jurisdictions in Ontario, the violent crime rate has recently increased, suggests that there are other factors than the Regulation at play.

113. In the United Kingdom, Her Majesty's Inspectorate of Constabulary released a report in 2013 which found that when the Metropolitan Police Service reduced its use of extraordinary stop powers by almost 90%, there was no associated impact on violent crime rates.²¹⁰ This makes it very difficult to argue that an increase in the homicide rate or in the number of knives being carried as weapons is due to a reduction in the number of stops and searches alone.

114. With regard to deterrence, the College of Policing in the United Kingdom analyzed the data for the 10-year period ending in 2014 to try to determine if more stop and search meant less crime.²¹¹ Its conclusion was that higher overall rates of stops and searches conducted under any search power were fol-

lowed by a slightly lower than expected rate of some crime, such as drug offences. Searches conducted under specific police powers also had slightly lower than expected rates of crime for some offences. The associations were weak, with the strongest associations being for drug offences and the weakest for violent crime.²¹²

115. The low correlation indicated that there was only limited evidence that stop and search had a meaningful deterrent effect. The effect of a stop and identify (or request for identification) – as opposed to stop and search – could be expected to have even less of a correlation.²¹³

116. The authors of the study concluded that a large increase in the use of stop and search would deliver only a modest reduction in crime, which would be offset by the associated financial and opportunity costs and loss of public trust.²¹⁴

117. The report also concluded that a stop and search policy was more effective when targeted to specific crime types at a local level rather than a general practice at a borough level. That was particularly the case if the stop and search powers were exercised as part of a broader strategy to solve the underlying causes of a particular crime problem or to target active prolific offenders responsible for a disproportionate number of priority offences.²¹⁵

118. While the exercise of stop and search powers may provide useful results in some places at some times, it is not known whether the program is more or less effective than other methods of

policing.²¹⁶ Some evidence indicates that the strongest crime prevention gains did not result from random street checks but were generated by strategies to modify the local conditions, such as cleaning up and securing vacant lots, demolishing abandoned buildings, improving street lighting, adding video surveillance and performing code inspections of disorderly venues.²¹⁷

119. The use of technology such as public cameras, facial recognition software or even terahertz laser scanner to detect weapons can help to limit the possibility of racial profiling, depending on how that technology is used. It should be noted that urban centres within the United Kingdom are blanketed by surveillance cameras in all public areas. In most cities, police have unfettered access to these cameras.

120. In 2005, increased gun violence was a major issue of concern for citizens as well as law enforcement and government officials in Ontario. This period was dubbed the “year of the gun” by various newspapers. As a result, the government of Ontario retained former Ontario Chief Justice Roy McMurtry and former MPP Alvin Curling to study the issue and report back with recommendations. The end result was an extensive five-volume report. Their conclusion was that gun violence should be reduced by addressing the root causes of youth violence through methods including repairing community relations, empowering youth and neighbourhoods, and identifying which neigh-

bourhoods need the most assistance as well as early intervention strategies for at risk youth.²¹⁸

121. In July 2018, it was reported that 90% of the gun violence in Toronto up to that point in time in the year was gang related.²¹⁹ There is a strong link between a sense of social alienation due to discrimination and young people joining gangs.²²⁰ There is also evidence that a substantial number of these young people who are experiencing or perpetrating youth violence are being regularly subjected to police stops.²²¹ In light of this research, it does not appear that carding is the main solution to the problem of youth or gang violence or gun crime. If anything, it appears to exacerbate the problem.

122. Some police services have noted that the recent move toward multi-sectoral risk intervention models provides better results for crime prevention than street checks. In those models, professionals from health and social service agencies and organizations along with police services create situation tables.²²² The situation tables, which include representatives from education, police and justice services, primary health care, community health and hospital services, community mental health and addictions, child protection services, housing and homelessness support services, sexual assault and victim support services, identify people who are at “acutely elevated risk” as well as which agency could best intervene to help these people.²²³ Information is shared between the interveners, usually

with the person's consent, to help people meet their immediate needs and reduce their level of risk.

123. For the police partners, in addition to assisting those with mental health concerns, there could be a focus on the most pressing of criminal activities and victimization (i.e. gang and gun violence). The police, as an equal partner with other agencies, can identify those most at risk of gang membership for intervention. These programs require resources to allow agencies to develop the processes to share information as well as to develop trust and rely on each other. Some police services in the Province of Ontario are already using this model.

124. This approach finds support in other jurisdictions. Between the years 2007 and 2017 – after adopting a public health approach to the problem rather than increasing the overall rate of stops and searches – the rate of violent crime in Scotland was cut almost in half and the rate of crimes involving weapons dropped by two-thirds.²²⁴

125. So is it better for police services to employ hundreds of officers to question thousands of people who are *not* reasonably suspected of committing any offence or to employ those same officers to focus on those individuals who actually *are* reasonably suspected of committing an offence? The data indicates that the better use of police resources is a more focused approach. Shifting resources to crime prevention will be of assistance.

126. A widespread program of random street checks involves considerable time and effort for a police service, with little to no verifiable results on the level of crime or even arrests. Some police services reported that there are other ways to gather data or use data that they already have more effectively, rather than stopping people randomly and asking for identifying information.

Should Random Street Checks or “Carding” Ever be Allowed?

127. The lack of empirical evidence that carding is a useful police practice, particularly after factoring in the social cost of the practice, leads to an inevitable question. Should police officers *ever* be allowed to randomly stop people on the street and request them to provide identifying information purely for intelligence gathering purposes?

128. The lack of evidence of the effectiveness of the police practice traditionally known as carding has led many police services to discontinue the practice.

129. Police services in Ontario reported conducting fewer regulated interactions in 2017. Those interactions were conducted mainly for the purpose of inquiring into suspicious activities or general criminal activity. In 2017, there were few to no regulated interactions conducted for the purpose of gathering information for intelligence purposes, despite the ability to do so.

130. Removing the ability to conduct

such inquiries would not appear to significantly impair the ability of police services to perform their functions.

131. The Vancouver Police Department proposed a policy on street checks in January, 2016.²²⁵ The policy is still being developed and has yet to be implemented, although it is expected to be implemented in late 2018 or early 2019.²²⁶

The lack of evidence of the effectiveness of the police practice traditionally known as carding has led many police services to discontinue the practice.

132. That policy noted that “[s]treet [c]hecks **are not** the indiscriminate obtaining of personal information for the purpose of creating a database on members of the public”.²²⁷ Instead, street checks are allowed only for non-arbitrary and non-discriminatory articulable reasons that serve a valid investigative and/or safety purpose and which include: investigating a suspected offence or series of offences; preventing an offence; ensuring the safety of members of the public; and ensuring the individual who is the subject of the contact is not at risk of harm.²²⁸

133. In the Vancouver policy, when a police officer determines the suspicion is unfounded or there is no investigative or safety concern, no computerized record is kept of the interaction. If there is an investigative value or public safety pur-

pose, a computerized record is made of the reason for the interaction as well as all “entity information” collected and all relevant information and observations from the street check.

134. In the preamble to its policy governing the Regulation, the Toronto Police Services Board noted that the goals and objectives of the policy include ensuring that police officers not gather identifying information in a regulated interaction solely for the purpose of building a body of general information or prolonging an interaction in the hope of acquiring reasonable suspicion to detain. “Building a body of general information” is the crux of the practice of random carding.

135. Police services may be concerned that an inability to randomly request identifying information for intelligence purposes will interfere with their ability to address emergency situations and threats to public safety. Setting aside what I have said above about the limited value of random street checks data, there is no real cause for such concerns.

136. Street checks in response to emergency situations and threats to public safety are, by their very nature, not random: they are not requests for identifying information that do not have a tangible aim or purpose apart from collecting information for a database. They are targeted requests where the officer minimally suspects possible offences or is making inquiries to detect specified offences or that relate to persons who may have useful information about offences.

137. When addressing specific issues, the police have the ability to request identifying information either: as part of an investigation into specific criminal activity (which is exempt from the Regulation); or as part of a regulated interaction by inquiring into suspicious activities or potential offences or for specific intelligence gathering purposes. For example, consider the following scenarios:

- There is a large spike in gun crime in a particular neighbourhood. There have been several shootings and people are afraid to go outside at night. Police have reason to suspect an active gang dispute. Police are able to request identifying information pursuant to the Regulation from individuals they observe associating with known gang members as part of their targeted intelligence gathering. They can do so without randomly stopping everyone on the street and asking for their identification. Police can also more heavily monitor the neighbourhood and conduct observation checks as well as have conversations with individuals where they do not request identifying information. This practice allows them to engage in more frequent inquiries into offences, potential offences or suspicious activities they encounter, particularly with those who may be associated with a gang. The Regulation applies to the officers collecting identifying information from individuals unless they are investigating a specific shooting or other offence and have reason to engage the person in the context of their investigation.
- Police hear that a dangerous repeat offender has been seen multiple times in a particular neighbourhood. Police may visit the neighbourhood to speak to individuals who might have information about the person's activities, whereabouts and associates – for example, the owner of a store where the offender has been seen – without asking for these individuals' identifying information. In this situation, the Regulation does not apply. Police can also approach people who were observed to associate with the repeat offender in order to identify those associates. Such a request for identifying information is targeted and would constitute specific intelligence gathering. In this case, the Regulation applies to the officers' collections of identifying information. The objective and credible reasons for requesting the identifying information will be simple to explain.
- Police receive a 911 report that individuals are showing off handguns at a particular restaurant. Police are able to attend and, based on the information given in the 911 report, conduct an investigation that involves requesting identifying information from individuals who are present. This is an investigation into a specific offence that the officer reasonably suspects has been or will be committed, and the Regulation does not apply.

138. It is hard for me to imagine a scenario where the police's inability to randomly stop people to conduct street checks for general intelligence gathering

purposes would interfere with their ability to address emergency situations and threats to public safety.

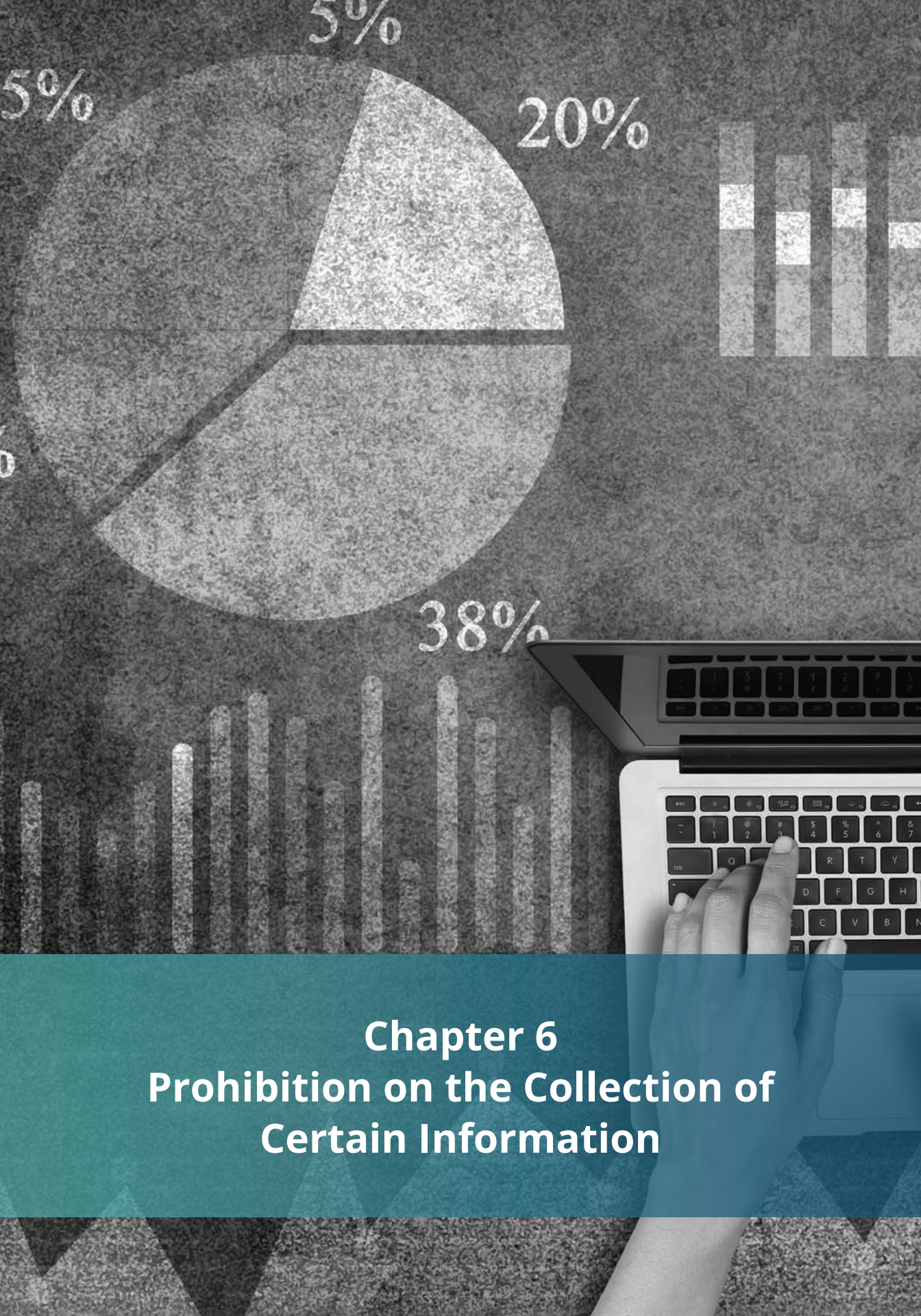
It is recommended that the practice of randomly stopping individuals to gather their identifying information for the creation of a database for intelligence purposes be discontinued.

139. As outlined in detail earlier, there is little to no evidence that a random, unfocused collection of identifying information has benefits that outweigh the social cost of the practice. Given the social cost involved with a practice that has not definitively been shown to widely reduce or solve crime, it is recommended that the practice of randomly stopping individuals to gather their identifying information for the creation of a database for intelligence purposes be discontinued in those remaining jurisdictions that still employ the practice.

140. To assist in clarifying the operation of the Regulation and my recommended changes, please see the infographic at Appendix D.

Recommendation 5.15

No police service should randomly stop people in order to collect and record identifying information and create a database for general intelligence purposes.



Introduction

1. When are police officers not authorized to collect identifying information? This question, which is addressed in section 5 of Part II of the Regulation, is the focus of this chapter.

2. This chapter will examine the prohibition on the collection of information based on certain prohibited grounds as well as the prohibition on the arbitrary collection of identifying information, and provide a range of associated recommendations.

3. The Regulation limits the identifying information that can be collected. A police officer shall not attempt to collect identifying information if “any part” of the reason for the attempted collection is because the officer perceives the individual to be part of a “racialized group” or if the attempted collection is done in an “arbitrary way”.²²⁹

4. The aim of this part of the Regulation is to ensure that an individual’s race is not any part of the reason for requesting personal identifying information. When police are looking for a particular individual, race can certainly be one of the identifying factors but it should not be the sole or primary reason for requesting identifying information. When police are not looking for a specific individual (e.g. where they are conducting general intelligence gathering), race should not be part of the reason without an objectively credible explanation. The Regulation expressly prohibits requests for information where the

only descriptors of an individual are their race, sex and age: a more specific description is required in order to justify a request for identifying information.

Collection of Identifying Information based on Prohibited Grounds

5. While the Regulation currently prohibits the collection of identifying information based on an individual’s race, it does not expressly prohibit the collection of identifying information based on any of the other prohibited grounds set out under the Ontario *Human Rights Code* or on the basis of a person’s socioeconomic status.

6. Similar to an individual’s race, a prohibited ground on its own should also not be the reason or part of the reason for requesting identifying information. The only exception to this is when the police are looking for a particular individual and one of these factors is material to the description or identity of the individual police are seeking. For example, a police officer cannot stop an individual and ask for identifying information simply because they are a person with a disability. However, if police are seeking a particular individual who they know is a person with a disability, that information should form part of the description of the individual and, thus, would be a reasonable part of why police stop someone fitting that description. To illustrate, imagine an eye witness indicates that a male with one arm robbed a store. She did not see his face or hair because he was wearing a

mask. A short time later, a male with one arm is spotted in the area of the robbery. Police should be able to approach this individual even though the description includes two prohibited grounds (disability and gender) if there are additional pieces of information – in this case, the location of the individual.

7. Some police services already include this type of restriction in their policies and procedures.

8. The Regulation is very specific about when an officer can use race as part of the reason for an attempted collection of identifying information. Under the Regulation, an officer *can* attempt to collect information from individuals on the basis that they appear to be part of a racialized group if: the officer is seeking a particular individual; that individual was described as being in that racialized group (or appears to be so in a photograph or other visual representation); and the officer has additional information about the individual other than their racialized group.²³⁰

9. Racial identity is a necessary component of a subject description. Some police officers note that a person's colour is a more reliable component of a description than other factors, such as their clothing, which can be easily shed or changed after an event.

10. The Regulation sets out examples of what “additional information” – in addition to the perceived inclusion of the person in a racialized group – could justify a request for identifying information. The

additional information could include: the appearance of the individual, including information about the individual's clothing, height, weight, eye colour, hair colour or hair style; the location where the individual might be found; the type of vehicle the individual might be found in; the associates the individual might be found with; or the individual's behaviour.²³¹

11. The “additional information” specifically cannot consist only of the sex of the individual, the approximate age of the individual or both.²³² For example, the officer could have a description of a “20-year-old white man”, but the officer cannot ask all men who appear to be 20 years old and white to provide identifying information. However, if the description was a 20-year-old white man *and* he was described as being tall, or heavy, or in a red jacket, or had blue eyes or black hair, or was near a certain spot, or was in a certain type of car, or was staggering, then a person fitting that description could be asked to provide identifying information.

12. Some community members are concerned that this definition will allow questioning based only on the description “young Black man in a hoodie”, because such a description would be sufficient to comply with the Regulation. Even a description of a young Black man with black hair would qualify.

13. The Regulation must try to ensure that general descriptions involving race are not used as a justification to stop and question a large number of people.

14. If there was a report of a robbery by a young Black man in a hoodie, then questioning a person who fit that description would make sense; however, it would be preferable to have further information describing, for example, the likely location of the person or the colour of the hoodie. In any event, if there had been a robbery then the questioning would be part of an investigation and not an inquiry, and the Regulation would not apply.

15. The Regulation attempts to pin down when a person's race may form part of the reason that the person is asked to provide identifying information. The concern is to prevent people from being stopped and questioned for improper reasons or based on a vague description. The solution is to require a credible, reasonably specific description relating to the individual and their circumstances before requesting identifying information.

16. The Regulation currently provides several examples of the additional information that may be considered. To make the Regulation shorter and simpler, it could be rephrased to set out the result that is sought, which is to require greater specificity in individual descriptions.

Recommendation 6.1

Remove subsections 5(1), (2) and (3) of the Regulation, and replace with:

5 (1) A police officer shall not

attempt to collect identifying information from an individual if:

(a) any part of the reason for the attempted collection is a prohibited ground of discrimination under section 1 of the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19, or is due to the individual's socioeconomic status, or

(b) the attempted collection is done in an arbitrary way.

(2) A police officer may consider if an individual is part of a group protected by a prohibited ground of discrimination under section 1 of the Ontario *Human Rights Code* or the individual's socioeconomic status ("protected group") if:

(a) the officer is seeking a particular individual;

(b) being within a protected group(s) forms part of a credible, reasonably specific description relating to the individual or is evident from a visual representation of the individual; and

(c) the description consists of more than the individual's membership in a protected group(s).

Arbitrary Collection of Identifying Information is Prohibited

17. The Regulation sets out the parameters for collecting and storing an individual's identifying information. As a society, we place a high social value and privacy interest on an individual's personal information as well as the state's power and responsibility to protect such information from both arbitrary collection and use. As such, no attempted collection of identifying information can be done in an arbitrary way.²³³ An attempted collection of identifying information is deemed by the Regulation to be done in an arbitrary way unless the police officer can articulate a proper reason for collecting the identifying information.²³⁴

The Regulation must try to ensure that general descriptions involving race are not used as a justification to stop and question a large number of people.

18. Specifically, the proper reason must include *all* of the following information:

1) There are details about the individual that cause the officer to reasonably suspect that identifying the individual may assist in inquiring into offences that have been or might be committed, inquiring into suspicious activities to detect offences or gathering information for intelligence purposes.

2) The reason does not include the fact that the individual declined to answer questions that they were not legally required to answer or that they discontinued or attempted to discontinue the interaction with the officer when the individual was legally entitled to discontinue the interaction; *and*

3) The reason was not simply that the individual was found in a high crime location.²³⁵

19. A request for information cannot be based solely on the fact that the person was found in a high crime location, although being in a high crime location can form part of the reason. As some police services have noted, many residents of high crime neighbourhoods request increased police involvement. Asking for information from individuals in those neighbourhoods is an operational necessity, but it cannot be done in an arbitrary way.

The Circumstances for the Request

20. While an inquiry under the Regulation does not require a reasonable suspicion that an offence has been or will be committed, there must be a reason for requesting identifying information that is not arbitrary and that reason must include details *about the individual* that cause the officer to *reasonably suspect* that *identifying the individual* may contribute to or assist in an inquiry or the gathering of information.²³⁶

21. The Regulation does not state that the reason can include details about the *circumstances* that cause the officer to reasonably suspect that identifying the individual may contribute to or assist in an inquiry, although the details about the individual could be construed to include the circumstances in which the individual was found.

Recommendation 6.2

The wording of clause 5(4)(1) should be changed to “details about the individual and/or the circumstances” that cause the officer to reasonably suspect that identifying the individual may contribute to or assist in an inquiry.

The Need to Obtain Identifying Information

22. One of the primary purposes of the Regulation is to outline the appropriate circumstances in which police officers should obtain identifying information from members of the public. As indicated, regular interactions and communication between the police and members of the public are to be encouraged and, in most cases, do not require the police to seek names or other identifying information. Below are some of the circumstances that may trigger the application of the Regulation. For example, if there is no reasonable suspicion that an offence

has occurred or might occur, but there are objective and credible reasons to suspect that identifying a person may assist to determine if an offence has occurred or might occur, then the Regulation applies.

23. Similarly, if the interaction between the police and a member of the public is purely to gather information for intelligence purposes, and there is a request by the police for the identity of the person, then such an inquiry may be covered by the Regulation.

24. In other words, where there is a possibility that a crime has occurred or might occur, police officers can ask people questions, without detaining them, in order to confirm or dispel their suspicions.

25. If the interaction between the police and the member of the public extends to the point where the police ask the person to provide their identifying information, then the Regulation applies, and the officer must be able to articulate the reasons why they consider the person to have information that is needed under the circumstances. The officer should be able to properly explain what it was about the individual and the circumstances that seemed suspicious or what led to the belief that there was a possibility that a crime had or might occur, and why the person who was asked to provide identifying information might be able to assist in that regard.

26. I will again use the scenarios from the last chapter.

Scenario One: A police officer sees a

man in a deserted alley in the middle of the night.

Scenario Two: A police officer sees a man in a deserted alley in the middle of the night carrying a crowbar.

Scenario Three: A police officer sees a man in a deserted alley in the middle of the night carrying a crowbar. Behind the man is a car with a broken window and glass on the ground.

Scenario Four: A police officer sees a man in a deserted alley in the middle of the night breaking a car window with a crowbar.

27. As already noted, the Regulation does not apply to the third and fourth scenarios.

Interactions and communication between the police and members of the public are to be encouraged and, in most cases, do not require the police to seek names or other identifying information.

28. In the first scenario, the officer generally would not have a reason to question the man in the absence of additional information (e.g. a recent rash of break-ins in the area). If the officer questions the man for intelligence gathering purposes and requests identifying information, the Regulation applies and, under the Regulation, the officer would need to articulate

a reason for the request.

29. In the second scenario, there is no reasonable suspicion that an offence has occurred, but it is a possibility. There is somewhat more than mere suspicion that something odd is occurring that might relate to an offence. There are objective and credible reasons to make an inquiry.

30. No part of the objective and credible reasons can relate to the person's racial background or should relate to other prohibited grounds of discrimination unless they form part of a description, which is absent based on the facts as I have laid them out. As long as the totality of the circumstances, apart from the prohibited grounds of discrimination, objectively and credibly warrant inquiry, then questions can be asked. The police officer can ask the person why he is carrying a crowbar down an alley at night.

31. When the officer asks the person why he is carrying a crowbar down an alley at night, the Regulation does not apply because no identifying information has been requested. If the man indicates that he is bringing the crowbar to his house and the officer asks the person to identify himself or provide his address, then the Regulation applies. The request as to where the person lives may be justified because the person would be likelier to be carrying the crowbar to his home if the home was located nearby rather than across town.

32. As I recommended above, the officer should be required to articulate why requesting identifying information is ne-

cessary to the inquiry. In other words, if the officer's suspicion was alleviated by the individual's responses without asking for identifying information, then no request for identifying information should be made.

33. In none of the above scenarios can any part of the reason for the request for identifying information: be due to the fact that the individual is perceived to be part of a particular racialized group; relate to other prohibited grounds of discrimination; or be due to the individual's socio-economic status because no description was given and the officer was not looking for a particular individual. The request cannot be made in an arbitrary way.

34. All requests for identifying information may assist police with inquiries. This is because once the information is recorded, it can be accessed in the event that it is subsequently determined that an offence actually had been or was subsequently committed, even though this was unknown to the officer at the time the request was made. As per my previous recommendation, the officer will have to articulate what it was about the person who was stopped that led to objective and credible grounds to suspect that the identifying information would be of assistance.

35. The current wording of the Regulation leaves the door open to potential misuse of authority. For example, under the current Regulation, an officer could see a bicycle in an empty parking lot that might be stolen or could be stolen if it is

left unattended. That possibility does not need to be reasonable. The officer could ask people in the area to identify themselves. It is not reasonable to expect that the bike will be stolen but it is reasonable to suspect that identifying the people will assist with the inquiry in the event that the bike was or might be stolen. The details about an individual, including that they were in the same parking lot as the bike, could be used to justify a request for identifying information.

36. The requirement for articulable cause as set out in the Regulation relates to the police officer being able to articulate the need to have identifying information rather than requiring articulable reasons for making the initial inquiry itself. As is required later in the Regulation, the officer must tell the person the reason for the request for identifying information.²³⁷

37. I make this distinction because the Regulation currently allows police officers to commence inquiries for improper reasons such as the individual's race, as long as the inquiry does not continue to the point of requesting identifying information.

38. To take the example of the man with the crowbar, in my view, no part of the reason for the question "why are you carrying a crowbar in an alley at night" should relate to the person's racial background, even if no identifying information is subsequently requested.

39. It is possible that some groups are asked general, non-identifying questions

more often than others. To that extent, the Regulation does not ensure that all police–public interactions are conducted without bias or discrimination but rather only those interactions in which identifying information is requested.

40. As I have already noted in Chapter 4, some interactions between the police and the public are already subject to much stronger protections than those contained in the Regulation: detentions, arrests and searches are subject to *Charter* protections.

To ensure all encounters are conducted without bias, a standard of conduct should be established that would apply any time that police officers ask individuals questions based on more than mere suspicion, but less than reasonable suspicion, of an offence.

41. To ensure all encounters are conducted without bias, a standard of conduct should be established that would apply any time that police officers ask individuals questions based on more than mere suspicion, but less than reasonable suspicion, of an offence. It would be impractical for all of the Regulation’s requirements for collecting identifying information to also apply to such interactions. However, a requirement for officers to be able to articulate reasons for the initial inquiry or

gathering of information would support non-discriminatory interactions.

Recommendation 6.3

Officers should be trained and informed that they should have articulable reasons for initial inquiries and gathering of information. No part of the reasons for the initial inquiry or gathering of information may be a ground prohibited by the Regulation.



Chapter 7

Duties Relating to Collection of Information

Introduction

1. What are police officers' duties when identifying information is requested and collected? That question is addressed in section 6 of Part III of the Regulation. In addition to the duties specified in the Regulation, police officers must follow the procedures established by the chiefs of police.²³⁸

2. This chapter will examine and make recommendations on: procedural justice and civility in interactions with the public; the duty to inform individuals of certain things before attempting to collect identifying information; the timing of the rights notification; informing the individual about the use of the collected identifying information; why certain information is being requested; the duty to provide a receipt; the form and contents of the receipt; the duty to record the reason for collecting identifying information; other information that should be specifically recorded; and the duty to record information in non-regulated interactions.

Procedural Justice and Civility

3. The Regulation involves voluntary interactions with members of the public in circumstances where the individual is under no legal obligation to provide identifying information or even to speak to the police officer.

4. Public confidence in the police is promoted when the police are perceived to be acting legitimately. Acting in a procedurally fair manner promotes the perception of legitimacy. People are better

able to accept an intrusion into their lives when they know the reason why and that reason appears to make sense. People are even more able to accept the intrusion when the police officer treats them politely and with respect.

5. A person who is questioned should be thanked for stopping, particularly if the person volunteered personal information. If the person who is stopped has a question about the process, it should be answered by the police officer when possible. It should be borne in mind that no matter how respectful and polite a police officer may be in a regulated interaction, a good attitude will not justify an otherwise improper request for identifying information.

Public confidence in the police is promoted when the police are perceived to be acting legitimately.

6. In more than one jurisdiction, I heard from members of the public who had asked a police officer for the officer's name or badge number in a non-regulated interaction, and the officer refused to provide it. This occurred despite the fact that most police services in Ontario have internal regulations that require uniform officers to produce their identification when requested by a member of the public. If police officers are asking members of the public to voluntarily identify them-

selves, the officers should be willing to do the same thing themselves. Members of the public should also be made aware that most police uniforms display the officer's surname and badge number and where to locate that information on the uniform (e.g. hat, shoulder epaulettes).

7. Police legitimacy is enhanced when an encounter is conducted with procedural justice. Procedural justice is characterized by neutrality, voice, respectfulness, openness and dignity.²³⁹ Procedural justice has been described as including four core qualities or values: citizen participation; neutrality in decision making; dignity and respect; and trustworthy motives.²⁴⁰

8. In other words, if police officers question people for reasons that do not involve the person's physical appearance and calmly and respectfully explain the rationally supportable reasons for asking the questions, the person is more likely to view the officer's actions as being legitimate.

9. When people perceive that they have been treated fairly and with procedural justice, they are more likely to trust the police and to cooperate with them.²⁴¹

10. When the police are seen to be acting legitimately, people are generally more likely to follow police directives, actively cooperate by reporting crime, cooperate in investigations, provide witness evidence and even intervene in low-level deviance and incivility.²⁴² They defer to authority, comply with police commands during an encounter and self-regulate their behav-

iour. They follow the law not out of fear of punishment for breaking the law, but because their attitudes and behaviour have been shaped to do the right thing simply because they know that it is the right thing to do.

When people perceive that they have been treated fairly and with procedural justice, they are more likely to trust the police and to cooperate with them.

11. The qualities and values of procedural justice should apply to all police–public interactions, even those that do not qualify as regulated interactions. If a police officer asks an individual to provide information other than identifying information, the individual still should be treated with respect.²⁴³ Many police services in Ontario emphasize the importance of civility toward the public in their policies and directives. Some have adopted the “first contact” approach, which encourages polite and respectful interactions with the public on the part of police officers.

12. The respect that a police officer is expected to show to a person who is stopped may not always be reciprocated by the person being questioned, even when the officer calmly and rationally explains the situation. That is an unfortunate reality of such encounters. However police officers obtain their status as police officers

because they are expected to be of high character and we expect more from them, including the need to treat people with respect. I am certain that the vast majority of police officers engage in the execution of their duties with the utmost respect and professionalism. However, the public nature of policing results in negative perceptions even when a small number deviate from that standard.

Recommendation 7.1

Requests for information should be conducted in a professional and civil manner that respects the individual and inspires confidence in the police and their interactions with the public.

Duty to Inform

13. The first duty currently specified in the Regulation is the duty to inform individuals of certain things before an attempt is made to collect identifying information.

14. The Regulation states that police officers not attempt to collect identifying information unless they have informed individuals that they are not required to provide the identifying information and *why* the officer is attempting to collect the identifying information.²⁴⁴

15. These requirements help to ensure the voluntariness of the information provided. They also increase the legitimacy of

the request. Evidence from the United Kingdom suggests that the people most likely to be stopped and questioned by police were also the ones least likely to be provided with an explanation of the reason for the stop.²⁴⁵

16. A police officer is not required to inform individuals of their right not to provide the information or the reason for the request if doing so might compromise the safety of an individual, including the safety of the police officer requesting the information.²⁴⁶

17. A police officer is not required to inform the individual of the *reason* for the request for identifying information if the officer believes that informing the individual would likely: compromise an ongoing police investigation; allow a confidential informant to be identified; or disclose the identity of a person contrary to the law, including disclosing the identity of a young person contrary to the *Youth Criminal Justice Act* (Canada).²⁴⁷ In those circumstances, police officers still have to inform individuals of their right not to provide identifying information, just not the reason for making the request.

18. If an officer does not inform individuals of the right not to provide identifying information or the reason for the request, the officer must be able to articulate reasons for not doing so. The reasons must relate to the particular circumstances of the interaction.²⁴⁸

19. Some police services have noted that advising people that they do not have to

answer questions makes it difficult for police officers to interact with the public, and may prevent them from obtaining useful information.

20. The reality is that, in many interactions, people are not legally obliged to provide identifying information to police officers. It is important to note that, in the context of this Regulation, no lawful authorities were taken away from the police. The obligation of police to inform citizens that they do not have to provide identifying information promotes transparency and ensures that both the officer and the citizen understand the legalities of the situation.

21. As was noted earlier in this report, regulated interactions are very limited in frequency and scope. For inquiries, they are limited to situations involving activities that are objectively and credibly suspicious or where there is less than reasonable suspicion of an offence but more than mere suspicion. For the gathering of information for intelligence purposes, the interactions are limited to face-to-face encounters in which identifying information about the individual is requested.

22. Police often wish to obtain identifying information from gang members. Members of a gang may be well aware of their legal rights, particularly if they have had extensive experience in the criminal justice system. Advising these individuals that they do not have to answer an officer's questions is unlikely to have a negative impact on the level of crime in a particular area.

23. Often the police argue that criminal gang members are no longer fearful of the police and are acting in a brazen manner due to a perception that street checks have been curtailed. There is an important distinction to be made here. As I previously stated, at no point in time were any lawful authorities taken away from the police. Police attention had expanded beyond simply identifying people who are engaged in criminal activity. What appears to have ceased is the effort on the part of the police being focused on active criminals. Under the former (for lack of a better phrase) street check regime, large populations were captured with the same net. Proactive efforts targeting active criminals ought to remain within the confines of the law. Policing efforts should be focused on specific individuals – not the tracking of entire communities.

24. For the average person, who may not know their legal rights in these situations, the fact that there is no obligation to provide identifying information is useful information. The civilian survey under the Review indicates that almost half of people stopped as pedestrians felt that they would get into trouble with the police if they did not cooperate with a police officer, including by providing identifying information when requested. There appears to be a significant gap in the general public's knowledge of their basic legal rights during an interaction with police. The civilian survey confirmed what the Supreme Court of Canada has already stated:

Most citizens are not aware of the precise legal limits of police authority. Rather than risk the application of physical force or prosecution for wilful obstruction, the reasonable person is likely to err on the side of caution, assume lawful authority and comply with the demand.²⁴⁹

Policing efforts should be focused on specific individuals – not the tracking of entire communities.

25. With the benefit of the warning from the police officer, as required by the Regulation, the person can gauge the reasonableness of the officer's explanation for needing the identifying information against any concerns about possible misuse of the information. Particularly for marginalized or racialized communities, there is a perception that no good can come from providing identifying information to a police officer. That concern is well founded given the relatively haphazard way that some police services collected identifying information in the past and then misused that information in police record checks.

26. Only when both sides of an interaction clearly understand the rights, obligations and authorities at play can there be trust and transparency. Both sides of the interaction must understand the rules of engagement.

When to Advise as to the Individual's Rights

27. As discussed earlier, the police officer is under no obligation to advise a person that they do not have to provide identifying information at the start of the conversation but only at the point before identifying information is requested.

28. Some stakeholders asked that individuals be informed of the right not to provide identifying information at the start of the interaction rather than immediately prior to the request for identifying information.

29. In the example of the man with the crowbar in the alley discussed in Chapters 5 and 6, that would require a police officer to state something like: "You do not have to provide identifying information, but why are you carrying a crowbar in an alley at night because that seems odd?"

30. Requiring such a statement at that point is artificial and unnecessarily limits the ability of police officers to make simple inquiries.

31. Useful information can be obtained without requiring people to identify themselves. It is only at the point when the officer decides to ask the person to provide identifying information that the person should be advised they are not obliged to provide it. This allows for casual conversation or simple inquiries without triggering the operation of the Regulation.

32. An appropriate compromise is to require that the information be provided to individuals before any request is made for identifying information. In simple terms, a police officer's inquiry into suspicious activities should not proceed from "who" to "why", but rather start with "why" and, only if necessary, continue to "who".

Useful information can be obtained without requiring people to identify themselves.

Other Matters that Should be Stated to a Person who is Questioned

How the Collected Information will be Used

33. Some stakeholders recommended that individuals also be advised that the personal information they provide could be retained in a police records management system. This is congruent with a truly informed and voluntary consent to provide identifying information.

34. Under the provincial and municipal freedom of information legislation, where personal information is collected on behalf of an institution, the person from whom the information is collected is to be informed of: the legal authority for the collection; the principal purpose or purposes for which the personal information is intended to be used; and the title, business address and business telephone number of a public official who can an-

swer the individual's questions about the collection.²⁵⁰

35. While there is an exemption from those provisions of those Acts for law enforcement reasons, there remains a compelling reason to let people know the reason why the identifying information is being requested and how it will be used.²⁵¹

Why Some Information is Being Requested

36. The *Anti-Racism Act, 2017* and its associated regulation require the Minister of Community Safety and Correctional Services to collect information in certain matters by January 1, 2021, including information on the individual's Indigenous identity, race, religion and ethnic origin as provided by police services.²⁵²

37. The information is to be collected in order to conduct research and analysis for policy and program development, system planning and the evaluation of service delivery and outcomes in respect of policing and related matters.²⁵³

38. The Regulation currently requires information on an individual's race and ethnic background – but not their religion – to be recorded. The *Anti-Racism Act, 2017* and its regulation will require that information to be recorded. Presumably the concern is to ensure that the provision of government services, including police services, is not influenced by a person's religion.

39. In a regulated interaction, a person's religion may not be apparent to the police

officer. A person who is asked to identify their religion may well wonder why they are being asked. The person should be informed that some information is being requested to identify and monitor systemic racism and racial disparities for the purpose of eliminating systemic racism and advancing racial equity, as required by section 6 of the *Anti-Racism Act, 2017*.

Voluntary Participation and the Right to Walk Away

40. Many stakeholders, after viewing the initial draft Regulation, requested that individuals also be informed of their right to walk away from the interaction without providing any identifying information. The benefit of advising people about the right to walk away from such interactions has been noted several times in court decisions.²⁵⁴

41. Advising members of the public of the right to leave did not make it into the final Regulation and, in fact, was removed from the draft Regulation.²⁵⁵ Instead, it was replaced with the requirement to advise people of their right not to provide identifying information.

42. The London Police Services Board in its policy has included the following:

All C2I's [i.e. collection of identifying information] must be conducted in a professional and civil manner that respects the individual, adheres to the law (including Ontario Regulation 58/16 of the *Police Services Act*) and inspires confidence in the police and

its interactions with the public. For greater certainty, police shall advise individuals, at the beginning of the C2I of their right not to interact, including their right to walk away, not providing their identification, or not responding to questions. Should there be a language or accessibility or mental health barrier, police shall make all reasonable attempts to access the appropriate resources to ensure the individual understands their rights and purpose of the C2I.

43. The Regulation properly requires that police officers advise a person who is stopped that the person does not have to provide identifying information. However, if an individual is not informed that their participation is voluntary (as opposed to the right not to provide identifying information, in which there may be a mute detention), it can raise issues of arbitrary detention under section 9 of the *Charter*. This can happen even though the Regulation specifically attempts to prevent the street check from being arbitrary.

44. Furthermore, if an individual is not informed that their participation is voluntary it can trigger section 10 of the *Charter* which entitles a person who is detained to be informed promptly of the reason for the detention, as well as to obtain and instruct counsel and to be informed of that right.

45. If an individual is not informed that their participation is voluntary, the interaction could be considered a psychological detention that is subject to the *Charter*.

This is because police officers can create an intimidating presence. The possibility of psychological detention is realistic, even when people are told that they do not have to answer questions.

If the individual is properly and clearly informed that their participation is voluntary, then there not will be any concern that there was a detention.

46. Some police services have adopted a policy that, if an officer begins to suspect that the individual being questioned may feel psychologically detained, the officer should advise the individual that the interaction is voluntary and the individual may leave. This policy is subjective and allows for people to be psychologically detained without the officer knowing it. It is preferable to eliminate any possibility of psychological detention by informing the person that their participation is voluntary in all situations before requesting identifying information. Some police services have addressed this in their operational policies by requiring officers to inform individuals that they are free to go.

47. Rather than advising people that their participation is voluntary, they do not have to provide their identifying information and they can leave, it is simpler to clearly advise only that their participation is voluntary. Voluntary participation necessarily means that the person does not have to remain or answers questions.

Again, this only applies to the limited situations where the Regulation applies.

48. It also is not enough to simply inform people that their participation is voluntary if they are informed of that right in a way that suggests attendance and compliance is required. Sometimes the language used by a police officer, although phrased in the form of a request, may be reasonably construed as a direction or command.²⁵⁶ This could be done in many ways, such as the tone of the officer's voice or the officer blocking or surrounding the person being questioned, holding on to their possessions, resting one hand on their duty belt or gun while asking questions, and so on. There may be no negative intent on the part of the police officer, but awareness of the situation is crucial.

49. If the individual is properly and clearly informed that their participation is voluntary, then there not will be any concern that there was a detention. Any information provided would be given on a voluntary basis.

50. To further eliminate any potential claim that a person was involuntarily detained, even psychologically, the Regulation should also require that people be told that their participation is voluntary in a tone and manner consistent with that right. This should be done before any identifying information is requested, although it is not necessary to do so at the start of the interaction. Police officers should repeat or paraphrase the statement if they are concerned that the individual does not understand the information.

This is particularly important if there is a possible language, accessibility or mental health barrier, or if the individual is a young person.

Recommendation 7.2

Before identifying information is requested, individuals should be informed of the following:

- (a) the reason for the request to provide identifying information;
- (b) that, if the individual provides identifying information, the information may be recorded and stored in the police records management system as a record of this interaction;
- (c) that participation is voluntary; and
- (d) that, if they chose to provide information, some of the identifying information that may be requested, such as the person's religion, is being requested by law to help eliminate systemic racism.

Recommendation 7.3

Officers should be trained to inform individuals of the above-noted rights in a tone and manner that does not convey the message that compliance is required.

Supporting Documents

51. Sometimes police officers ask individuals to provide identifying documents such as a driver's licence to confirm their identity.

52. Some police services have adopted a policy that states police officers cannot request supporting documents in a regulated interaction. If such a document is requested, it should not be held for longer than is necessary.

Recommendation 7.4

If an individual is requested to produce an identification document in a regulated interaction and the individual voluntarily complies, the identifying document should be retained for no longer than is necessary to verify the information that had been provided, and should then be immediately returned to the individual.

Requests Made to Children

53. Some stakeholders recommended that minors – defined as anyone under the age of 18 – be advised of their right to contact a parent or guardian, and to have such a person present when being asked if they consent to provide identifying information. The Ombudsman for Ontario recommended that street checks be prohibited for minors entirely.²⁵⁷ The *Youth*

Criminal Justice Act recognizes that, in the criminal justice context, there should be enhanced procedural protections to ensure that young persons are treated fairly and their rights are protected.²⁵⁸

54. Under the new *Police Services Act, 2018* (as it is currently tabled), police services boards and the Minister will be required to prepare and adopt a strategic plan for policing that includes interactions with minors, members of racialized groups, First Nations, Inuit and Métis communities, and persons who appear to have a mental health condition.²⁵⁹

55. Allowing police officers to question minors may not promote public confidence. As I explored earlier and heard in my consultations, street checks can have a particularly negative impact on youth. This is especially the case if the minor is under the age of 12 and a parent or guardian is not present. The *Youth Criminal Justice Act* recognizes that only young persons aged 12 or older are held accountable in the criminal justice system.²⁶⁰ This is important because, as I have heard in my consultations, street checks have been experienced by children in Ontario as young as 10 or 11 years old.

56. It is not realistic to completely ban street checks for minors. Gang membership, for example, often starts when individuals are under age 18. I have heard that gangs will often utilize younger gang members knowing that those who are not legally considered to be adults have greater legal protection. The police must have the tools to address such issues,

which must include the ability to question young people. If a young person or child is truly acting suspiciously, there is a duty on a police officer to inquire. Regulated interactions should be very brief. If the interaction subsequently leads to an arrest or other sanction, the *Youth Criminal Justice Act* requires the police officer to notify a young person's parents.²⁶¹

57. However, the Regulation should ensure that police officers do not request identifying information from children under age 12 without a parent or guardian present. Further, identifying information should not be collected from children under age 12 purely for the purpose of intelligence gathering. Children of this age cannot be expected to fully understand the potential consequences of providing their personal identifying information to the police. At such a young age, being subject to a street check could be highly damaging – especially without a parent or guardian present – and the identifying information collected would likely be of little value.

The Regulation should ensure that police officers do not request identifying information from children under age 12 without a parent or guardian present.

58. In a regulated interaction, where it appears that a person who is stopped might be under age 12, an inquiry should be made as to their age. I note that police

should err on the side of caution in their estimation of age, given that I have heard of instances where young children appear to be much older than they are because of their size or physical maturity. If the person is under age 12, a parent or guardian should be present for the questioning.

59. Finally, if the purpose of the street check is to check on a child's well-being or identify a missing or runaway child, human trafficking victim or other victims of crime, it should not be necessary to have a parent or guardian present. As explained above, in such cases the Regulation would not apply in any event.

Recommendation 7.5

(a) Where it appears the individual stopped in a regulated interaction may be under the age of 12 years old, the individual should be asked their age before they are asked to provide other identifying information. If the individual is under 12 years old, a request should be made as to whether there is a readily available parent or guardian who can attend during the regulated interaction.

(b) If there is a readily available parent or guardian, the regulated interaction should take place in the presence of that person.

(c) If there is no parent or

guardian readily available, and the individual is under the age of 12, the police officer should not request any identifying information from the individual.

(d) Subsections (a) to (c) do not apply if the police officer is conducting a well-being check, confirming the identity of a missing or runaway child, human trafficking victim or other victims of crime, or in a situation of urgency.

Duty to Provide a Receipt

60. The Regulation requires that an individual who has been questioned by the police in a regulated interaction be given a document – often referred to as the “receipt” – that provides a record of the attempt to collect the information.²⁶²

61. The officer is required to *offer* the receipt to the individual and also *give* it to the individual if it is requested, whether or not any identifying information was actually collected.²⁶³

62. This section of the Regulation was intended to promote public confidence. Providing receipts to people who are stopped helps keep police officers accountable for their behaviour and their motives when requesting identifying information.

63. The information currently required to be included on the receipt is: the officer's name and officer identification number; the date, time and location of

the attempted collection; how to contact the Independent Police Review Director; and the individual's right to request access to information about themselves that is in the custody or under the control of a police service through a *Freedom of Information Act* request.²⁶⁴

64. The Regulation provides for the minimum amount of information that must be included on the receipt. No receipt template or sample receipt was provided to police services by the provincial government. Some police services have developed policies that include additional information. There is inconsistency among jurisdictions in terms of the information included on the receipt and what it looks like.

65. For example, some police services have the wording on the receipt set out in both English and French, whereas others are just in English. Some police services boards wanted the receipts to be numbered, but others did not. Some receipts list whether the individual was offered or accepted the receipt whereas others do not. Some refer to the Regulation and where the Regulation may be accessed, or list the three reasons allowed by the Regulation for collecting identifying information.

66. Some services simply provide the contact information for the Office of the Independent Police Review Director, whereas other police services state that "complaints" can be made to that Director.

67. The Regulation requires that the person who is stopped be informed, at least verbally, of the reason for the request for identifying information.²⁶⁵ The receipt that is provided to the person does not necessarily provide the reason. Some police services now require that the receipt also contain the reason for the regulated interaction.

When Receipts Need Not be Provided

68. Section 8 of the Regulation works in conjunction with sections 5, 6 and 7 by requiring officers to record their reasons for: making the request for identifying information; not advising an individual of their rights prior to requesting identifying information; or not offering or giving the receipt.

69. A police officer is not required to either offer or give a receipt if continuing to interact with the individual might compromise the safety of an individual or delay the officer from responding to another matter that should be responded to immediately.²⁶⁶

70. As a result, if police officers perceive that their own safety is compromised through continued interaction with an individual, then they do not have to offer or provide a copy of the receipt to the individual.

71. The police officer must be able to articulate the reasons for not offering or giving the receipt, including details relating to the particular circumstances.²⁶⁷ As

a result, the police officer should be able to state whose safety was compromised and why it appeared to be compromised, or the urgent matter the officer was called to attend.

72. The Regulation currently requires chiefs of police or their designate to randomly sample the data to ensure that there has been compliance with section 7.²⁶⁸ That review should involve more than simply ensuring there was a stated reason for not providing the receipt. It should also ensure that the stated reason was realistic and supportable under the circumstances.

Contents of the Receipt

73. Allowing different police services to include varying amounts of information on the receipt results in inconsistency in interactions between the police and the public. Given that a central feature of the Regulation is to promote consistency and standardization across Ontario, a standardized receipt should be used by all police services.

74. It is important to include a space on the receipt for the officer's reason for the regulated interaction. Providing the reason gives clarity to the individual who was asked for identifying information. It could also help weed out unnecessary complaints when it appears the stop was reasonable. This requirement is also not an onerous one given that, as required by section 8 of the Regulation and noted in subsequent sections of this chapter, officers must record the reason for the request

in any event. Including the reason on the receipt is a natural and minimal extension of the already articulated duties.

Allowing different police services to include varying amounts of information on the receipt results in inconsistency in interactions between the police and the public.

75. Many police stakeholders have suggested that including information on the receipt about how to make a complaint encourages frivolous complaints and is entirely negative in approach. Individuals might not have considered making a complaint about an interaction until they are presented with a card that tells them how to do it. Providing information on the complaint process suggests the police officer is doing something wrong.

76. Although the Office of the Independent Police Review Director has reported no complaints related to regulated interactions since January 1, 2017, police services across Ontario have reported that the inclusion of complaints information on the receipt has had a chilling effect on the willingness of police officers to engage with the public. Handing out a receipt with information on how to make a complaint makes police officers feel they are doing something wrong even during justified interactions. Police believe that people might be inclined to make a

complaint based on a misunderstanding of the Regulation or because they mistakenly believe the police officer has done something wrong. Officers want to avoid the complaints process altogether even if the complaint is ultimately dismissed.

77. There are circumstances when police officers should engage with the public or are under a duty to engage with members of the public. A police officer should investigate situations that objectively appear to be suspicious, even if there is no reasonable belief an offence actually has been committed. Creating a disincentive for police officers to do so by including very limited information on the receipt, with advice about how to make a complaint being part of that limited information, may act to prevent necessary and proper interactions. A better approach would be for the Ministry to provide information on the complaints process as part of its public education initiatives, which we explore in Chapter 9.

78. The Regulation's requirement that police officers provide a receipt was intended to balance the interests of accountability with that of community safety. Unfortunately, unintended consequences have flowed from that requirement.

79. First, many police officers have disengaged from interacting with the public because of concerns about public complaints. This disengagement has been exacerbated by confusion about exactly which interactions qualify as regulated interactions and which do not, as well as the possibility of being sanctioned for

failing to comply with the requirements of the Regulation during interactions that are deemed to be regulated.

80. Second, it appears that the confusion over the application of the Regulation is shared by people who are engaged in criminal activity. Police stakeholders have advised that information obtained from confidential informants or through the use of authorized wiretaps indicates a widespread belief among criminals that the police have been hamstrung by the Regulation. This belief has emboldened criminals to engage in activities such as carrying weapons out of a mistaken perception that the police cannot stop and question them or, at the very least, that the police are so concerned about the Regulation that they are unlikely to stop and question them.

81. As I noted earlier, there is little in the Regulation itself which would increase the rate of crime when the Regulation is properly understood and applied. However a mistaken belief or confusion about the operation of the Regulation, shared by both police and active criminals, could result in an increase in crime. In other words, perceptions about the Regulation rather than the Regulation itself may have resulted in an increase in certain types of crime.

82. To strike a proper balance, the receipt provided to an individual should indicate only: the name and identification number of the police officer; the date, time and location of the regulated interaction; and the reason for the regulated interaction.

Providing this information would still ensure accountability and allow for easy identification of the incident in question as well as the reason for the request, while reducing the disincentive for police officers to engage in proper interactions.

Recommendation 7.6

The information required to be on the receipt should be standardized across Ontario and set out in both official languages.

Recommendation 7.7

The receipt should contain only: the name and badge or identification number of the police officer; the date, time and location of the regulated interaction; and include an area for the officer to record the reason for the regulated interaction.

Recommendation 7.8

The receipt provided to the individual should be a numbered carbon copy or identical copy of what is retained by the police officer.

Duty to Record the Reason for Collecting Identifying Information

83. When a police officer attempts to collect identifying information, the officer must record certain information. The information that must be recorded, which is set out in section 8 of the Regulation, includes the reasons for the attempted collection and whether the proper procedures were followed.

84. Some of the benefits of creating these records include helping officers to refresh their memories if their reason for the stop is subsequently challenged and, where necessary, providing a means of holding police officers accountable if they misuse their powers. The requirement to record this information may also cause police officers to think carefully about whether they have adequate reasons to request identifying information before the request is made. It is important to stress – not only to those officers who work within the communities in uniform but to those in management who shape policies and procedures – that the value of an officer’s activities should be grounded in quality and not quantity.

85. Some police services have created forms in which the police officer records the reason for collecting identifying information by simply checking off one of three boxes. The three boxes are: to inquire into an offence; to inquire into a suspicious activity; or to gather information for intelligence purposes.

86. Some of the policies also set out that,

when the police officer is required to inform an individual of the reason for requesting identifying information, the officer should simply state that the request relates to one of those three situations. The same policies then require that specific reasons be recorded if a person is not informed about their rights or not provided with a receipt in a regulated interaction.

87. The information that is recorded and provided to the individual about the reason for the request for identifying information should be more specific to the situation, such as what offence was being inquired about or what about the individual's activity was considered suspicious.

88. Some police services have included in their computer program a section in which a narrative or synopsis of the event can be recorded, while others include a section to explain the details about the individual that caused the officer to believe identifying the individual would assist with an inquiry or gathering of information for intelligence purposes. All police services should require a better explanation for requesting identifying information other than the request falls within one of the three allowed situations.

Other Information that Should be Specifically Recorded

89. The Regulation requires the officer to record other information that the chief of police requires be recorded.²⁶⁹ Again, since chiefs of police can establish their own procedures as to what other information officers must record, there can be

variations among jurisdictions.

90. Some information is not currently expressly required to be recorded but must be recorded as a matter of practice for the enforcement mechanisms of the Regulation. This information includes: the date, time and location of the stop; and the age, gender and race of the person stopped.

91. The information contained on the section 7 receipt provided to the individual – such as the officer's name and identification number, and the date, time and location of the attempted collection – should also be recorded on the section 8 record. As it stands, if an individual does not request a receipt, the recording requirements do not specifically require that this information be listed.

92. To ensure consistency, all information that must be recorded in order to implement the Regulation should be expressly required to be recorded.

93. As already noted, the *Anti-Racism Act, 2017* requires the collection of information about an individual's religion for policing and related matters. Should an individual volunteer that information, it also should be recorded.

94. It is difficult to assess the efficacy of regulated interactions given the information currently required to be recorded. A regulated interaction is allowed because the officer reasonably suspects that obtaining the identifying information will assist in an inquiry into offences or suspicious activities or in efforts to gather information for intelligence purposes.

Whether the regulated interaction was successful in that regard is not something that is required to be recorded.

95. Was identifying information provided by the person who was stopped and, if that information was provided, did it assist with the police officer's inquiry? Because that information is not required to be recorded, one cannot determine from the data whether stops were made disproportionately but not whether they were effective.

96. If there was a positive encounter, it should be recorded. Similarly, if the encounter was not positive – for example, if the regulated interaction escalated to a more confrontational situation – that also should be noted.

97. Currently the recorded data can be analyzed only as to whether requests for identifying information were made disproportionately. Of equal or perhaps greater concern is what happens after a person is stopped. If some groups are frisked, searched or subjected to a use of force in a regulated interaction more than other groups, that information should be readily available from the recorded information.

Recommendation 7.9

A police officer in a regulated interaction should record the following:

(a) the officer's specific reason

for the stop or the attempt to collect identifying information;

(b) whether the individual refused to provide identifying information;

(c) any relevant suspect profile or intelligence report relied upon to make the request for information;

(d) the time, date and duration of the stop;

(e) the location of the stop;

(f) the name and religion of the person stopped, if it is voluntarily provided;

(g) the age group, gender, race and ethnic origin of the person stopped, as perceived by the police officer – if the person stopped voluntarily provides this information, it also should be recorded;

(h) whether the person was requested to provide a document confirming their identity, and if so, why the request was made;

(i) an indication if any frisk or search was conducted and, if so, the reason for the frisk or search and whether the person consented to the frisk or search;

(j) an indication as to whether any force was used and, if so, the reason why force was used;

(k) an indication if any person was injured or any property damaged or confiscated as a result of the regulated interaction and, if so, the reasons;

(l) any further action taken as a result of the regulated interaction, such as a warning or arrest;

(m) an indication as to whether there were any other people accompanying the person stopped and, if so, an indication as to the number of people, their perceived racial or ethnic background and an indication if they also were required to provide identifying information;

(n) an indication if the regulated interaction was successful in obtaining information needed to satisfy the purpose for conducting the regulated interaction;

(o) the officer's name, identification or badge number and unit;

(p) if the individual appears to be under 12 years old, whether the child was asked if a parent or guardian was available to attend and whether the regulated interaction was conducted with a parent or guardian;

(q) whether the individual was informed of the information as required by section 6 of the Regulation or, if informing the individual was not required, the reason why that was not required; and

(r) whether the individual was offered or given the receipt as required by section 7 of the Regulation or, if offering or giving the receipt was not required, the reason why that was not required.

Recommendation 7.10

For requests for identifying information made from passengers of motor vehicles, the following information should also be recorded:

(a) the traffic violation or other violation precipitating the stop;

(b) the reasons why the passenger was requested to provide identifying information; and

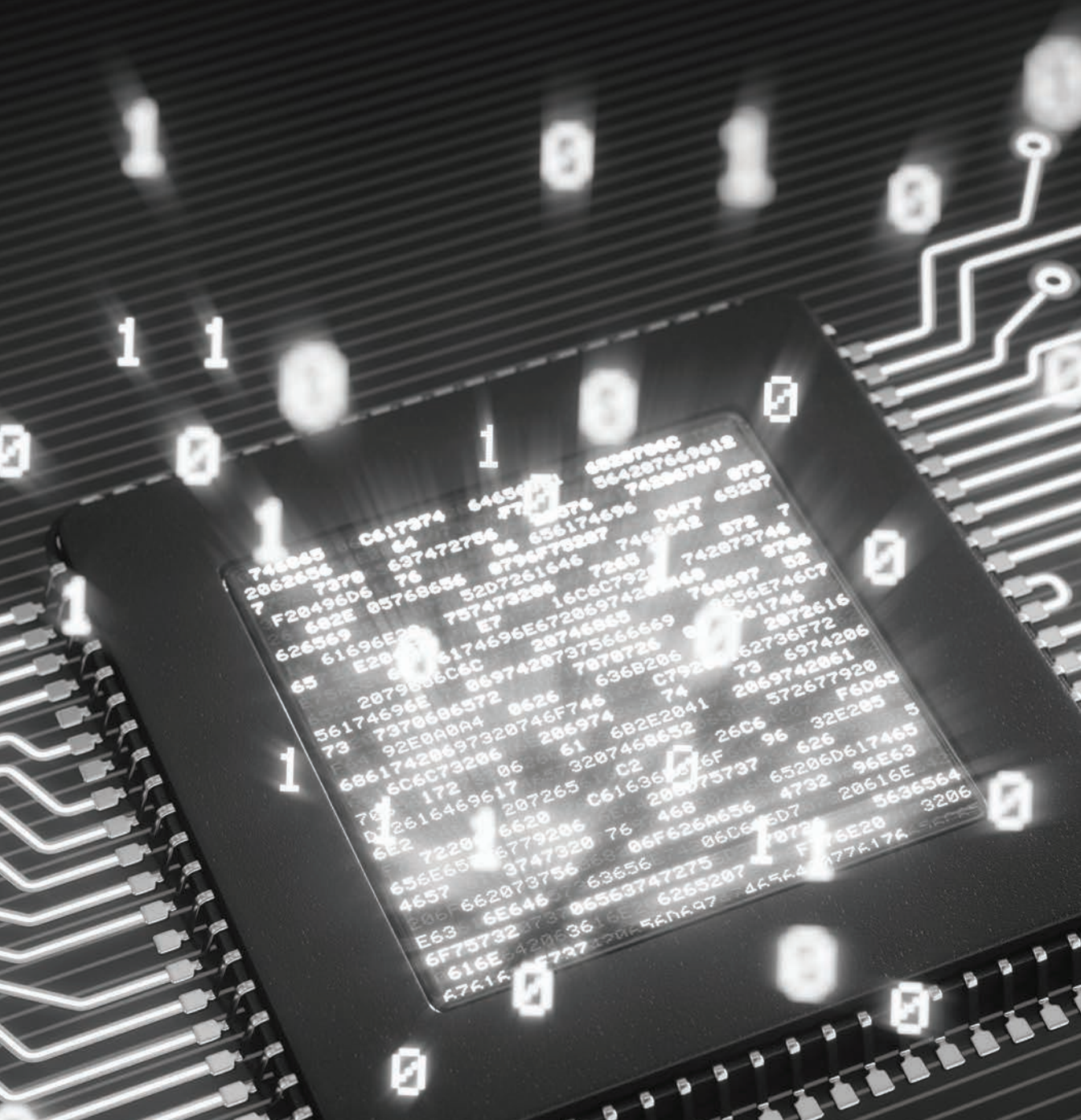
(c) an indication whether the passenger was required to leave the vehicle and, if so, the reason why.

Recommendation 7.11

There should be a standardized, province-wide form on which the street check data is recorded either physically or electronically.

Recommendation 7.12

The forms should include checkboxes, to record the reasons for making the stop and require commentary in free text to articulate those reasons.



Chapter 8

Inclusion of Collected Information in Databases

Introduction

1. The retention of data collected during requests for identifying information – before and after the Regulation came into force on January 1, 2017 – is a core component of the Regulation.
2. The Regulation sets limits on the identifying information that can be stored in a police database and who can access that information. Those issues are addressed in section 9 of the Regulation, which allows information to be stored in a police database on either a restricted or non-restricted basis. Chiefs of police are mandated to ensure compliance with the requirements of this section.²⁷⁰
3. This chapter will explore: non-restricted and restricted databases, authorized access to restricted databases, and the retention of data and the analysis of the information in the database. It will also make a series of recommendations related to these issues.
4. The Regulation applies only to attempts to collect information made on or after January 1, 2017. For the information collected prior to that date, the Regulation applies only as provided for in two subsections of the Regulation, which require police services boards and chiefs of police to develop policies and procedures regarding the retention of, access to and disclosure of identifying information collected before January 1, 2017 – also referred to as historical data – to which the Regulation would have applied.
5. This chapter concludes by exploring

the provisions of the Regulation related to historical data and making corresponding recommendations.

Non-restricted Database

6. Information that is not restricted may be accessed by all members of the police service.
7. Identifying information may be entered into the database on a non-restricted basis only if the chief of police or designate has either: confirmed that the way the information was collected complies with the Regulation; or not yet completed the required review to determine compliance.²⁷¹
8. If something remains to be done, the chief of police or designate shall conduct a review within 30 days after the information is first entered into the database. The review is to determine if there was compliance with the Regulation when the information was collected. If there was compliance, the indication that the chief's review has not yet been completed can be removed. If compliance cannot be confirmed within 30 days, the information must be moved to the restricted database.²⁷²

Restricted Database

9. Identifying information is presumptively retained in a restricted database unless the requirements for allowing the information to be stored in a non-restricted database are met.²⁷³
10. The Regulation is inconsistent. It re-

quires that access to identifying information be restricted unless it may be included in a database that is not restricted.²⁷⁴ Identifying information that was collected in compliance with the Regulation does not need to be stored in a restricted database.²⁷⁵ If the information was not collected in compliance with the Regulation, it is stored in a restricted database.²⁷⁶ However, identifying information that was obtained in a manner that did not comply with the Regulation can be stored in a non-restricted database for up to 30 days while the verification process is completed.²⁷⁷ In other words, improperly obtained information can be seen by anyone at the police service for up to 30 days.

11. That should not happen. The Regulation governs information that members of the public voluntarily provide to the police. The information should be verified as being properly obtained before it is inputted into any database or, at the very least, placed in a restricted database until it is verified as having been properly obtained.

12. One police service noted that once the identifying information is placed in the restricted database, the name of a person who provided information will not show up on a general database check. The information can be obtained only for the limited circumstances set out in the Regulation. This highlights the importance of having the information contained in a restricted database because, as long as it is not restricted, it is widely available.

13. During my consultations, I heard that some police services have adopted a policy that access to information obtained in violation of the Regulation shall be immediately restricted, even at the stage of the initial review.

14. Other police services have adopted procedures in which an appointed person, often referred to as a “verifier”, reviews the collected identifying information within five to seven days of receipt. The review is conducted to ensure that the information was collected in compliance with the Regulation. If the review indicates further information is required from the police officer who collected the information, then there is a follow up to make sure the information was properly collected. If it appears the information was not properly collected, it is moved to the restricted database.

15. Collected identifying information should automatically be stored in a restricted database unless there is confirmation that the information was properly collected, at which point it may be moved to the non-restricted database.

Recommendation 8.1

The Regulation should state that chiefs of police should ensure that every police officer on their police service who attempts to collect identifying information does so in compliance with this Regulation.

Recommendation 8.2

Identifying information should be included in a restricted database until it has been confirmed that it is in compliance with the Regulation and may be included in a non-restricted database.

Authorized Access

16. No person can access information contained in a restricted database without the permission of the chief of police or designate, and permission may be granted only when the chief or designate is satisfied that access is needed:

- i) for the purpose of an ongoing police investigation;
- ii) in connection with legal proceedings or anticipated legal proceedings;
- iii) for the purpose of dealing with a complaint under Part V of the *Police Services Act* or for the purpose of an investigation or inquiry under clause 25 (1) (a) of the *Police Services Act*;
- iv) in order to prepare the annual report described in subsection 14 (1) or the report required under section 15;
- v) for the purpose of complying with a legal requirement; or
- vi) for the purpose of evaluating a police officer's performance.²⁷⁸

17. Section 9 allows for identifying infor-

mation that was improperly obtained to be retained and used for specific purposes, as long as the information is kept in a restricted database.

18. If the identifying information is found to have been improperly obtained, there may be limited reasons for keeping it. For example, the stop encounter might be needed in a legal proceeding or result in a complaint against the police officer who obtained the information. A record needs to be available as to the circumstances surrounding the stop in order to respond to the complaint or the proceeding. Currently such information must be stored in a restricted database and may be used only for the limited purposes set out in subsection 9(10)(2) of the Regulation.

19. The Toronto Police Service has restricted the ability of a police officer to obtain restricted information "for the purpose of an ongoing police investigation". Its procedure states that a member may submit a request for access to a restricted record "for the purpose of an ongoing police investigation involving:

- the preservation of life and/or preventing bodily harm or death;
- homicides and attempts;
- sexual assaults and all attempts (for the purpose of this standard, is deemed to include sexual interference, sexual exploitation and invitation to sexual touching);
- occurrences involving abductions and attempts;
- missing person occurrences, where cir-

cumstances indicate a strong possibility of foul play;

- occurrences suspected to be homicide involving found human remains;
- criminal harassment cases in which the offender is not known to the victim;
- occurrences involving a firearm or discharge of a firearm, and/or gang related investigations”.

Collected identifying information should automatically be stored in a restricted database unless there is confirmation that the information was properly collected.

20. Those limitations prevent requests for access to restricted information for ongoing police investigations of mundane matters such as less serious *Highway Traffic Act* offences. In my view, access should also be allowed to enable an officer who is the subject of a complaint or who is the subject of other internal investigations to respond.

21. The Toronto Police Service also notes that the exception allowing access to restricted information for “legal proceedings or anticipated legal proceedings” includes instances where the Crown Attorney indicates the information is relevant to its disclosure obligations.

22. If a police officer accesses the information for the limited purposes allowed

by clause 9(10)(2) of the Regulation, then a record should be kept as to the identity of the person who viewed the information and the reason for viewing the information in order to ensure that those who have viewed the data have done so for an authorized reason.

Recommendation 8.3

There should be limited types of ongoing police investigations for which access to restricted information may be obtained.

Recommendation 8.4

Whenever a person views information in the restricted database, a record should be made of who viewed the information and the reason for viewing the information.

Recommendation 8.5

Information obtained during a regulated interaction should not be shared with any other government agency for any purpose other than as set out in subsection 9(10)(2) of the Regulation.

Retention of Data

23. Access to identifying information becomes automatically restricted after the fifth anniversary of the date on which the information was first entered into a police database.²⁷⁹ The information is not deleted at that time; it is just reclassified as restricted.

24. Police officers have noted that if they first record the identifying information into their memo books before inputting the information into the database, the information is kept indefinitely in any event because the memo books are not destroyed. However, memo books do not allow for the immediate and widespread access that is available when that information is included in computer databases.

25. Currently each police services board is developing its own records retention schedule and there is no consistency across the province.

26. There is no requirement for data to be automatically deleted at any point in time. Many stakeholders are in favour of set timelines for deleting data. In most cases, the data need not be stored indefinitely, although some police stakeholders note that retaining data for a longer period can be useful for investigations of long-term serial offenders or to solve cold cases.

27. In all regulated interactions, the information recorded after a stop encounter is voluntarily provided. Unless it is explained to the person at the time when the information is requested that the information will be kept forever, the in-

formation should not be kept indefinitely. However, to the extent that the information was provided voluntarily with knowledge of the consequences, it could be retained longer than might otherwise be the case.

Currently each police services board is developing its own records retention schedule and there is no consistency across the province.

28. The PACER report recommended that the identifying data be destroyed after seven years, while the Logical Outcomes report recommended that it be destroyed after two years.²⁸⁰ In Saskatchewan, as a matter of policy, such data is destroyed after five years. Some police services in Ontario, such as the London Police Service, also automatically delete the information after five years.

29. The data standards under the *Anti-Racism Act, 2017* require public sector organizations to retain de-identified data for at least one year after it was used by an organization or as otherwise prescribed.²⁸¹

30. It is recommended that there be a definite time limit for the retention of data, after which time it should be destroyed. Since any potential complaints, lawsuits or crimes should be known within five years, the data should be automatically destroyed no more than after five years – unless it is actually needed for a purpose

set out in clause 9(10)(2) of the Regulation, in which case it should be destroyed once it is no longer required for that purpose.

Recommendation 8.6

Identifying information should be destroyed no later than five years after it is first entered into a police database unless it is being used for a purpose set out in subsection 9(10)(2) of the Regulation, in which case it should be destroyed once it is no longer required for that purpose.

Recommendation 8.7

A police service may elect to destroy identifying information earlier than five years after it was collected.

Analysis of the Information in the Database

31. At least once a year, the chief of police or designate shall conduct a detailed review of an “appropriately sized random sample” of the entries of identifying information included in a non-restricted database. The purpose of the review is to provide an assessment that the information was not collected for a prohibited reason and that the officer’s duties to the individual were followed when the iden-

tifying information was collected.²⁸²

32. The Regulation does not specify the size of sample that would be considered “appropriate” or how to ensure the sample is random. As a result, methods could vary among police services.

Recommendation 8.8

Define and standardize an “appropriately sized random sample” needed for data analysis by chiefs of police/designates across the province.

33. If the chief of police’s review concludes that information was collected for a prohibited reason or that the officer’s duties to individuals were not followed when the identifying information was collected, then that identifying information shall be retained in the restricted database.²⁸³ Again, the improperly obtained information is not destroyed. The information is retained in the restricted database in accordance with the procedures developed by each chief of police.

34. The chief of police shall consider the results of the detailed review and take such actions as the chief of police considers appropriate.²⁸⁴ This requirement allows for variation in the appropriate response when information has been put into a database improperly.

35. An appropriate response is for the chief of police to ensure that data is collected in compliance with the Regulation.

This can be accomplished through a general requirement on chiefs of police to ensure compliance.

36. The chief of police's review of the identifying information contained in a non-restricted database is an internal review. Police chiefs must ensure that police officers are requesting identifying information in the proper situations and following the requirements.

37. Currently the collected data must be provided to the Minister of Community Safety and Correctional Services under the *Anti-Racism Act, 2017* where it can then be de-identified and disclosed for research purposes as part of the overall strategy to eliminate systemic racism and advance racial equity.²⁸⁵ The Minister should encourage interested parties, such as the Ontario Human Rights Commission, to review the data to determine if police officers are requesting identifying information correctly and only in the proper situations.

Recommendation 8.9

The collected and de-identified data should be made available to reputable independent organizations for research purposes.

Historical Data

38. As stated at the outset of this chapter, the Regulation applies only to attempts to collect information made on or after January 1, 2017.²⁸⁶ For information collected prior to that date, the Regulation applies only as provided for in two subsections of the Regulation.²⁸⁷

39. Those two subsections require police services boards to develop policies and chiefs of police to develop procedures for the retention of, access to and disclosure of identifying information collected before January 1, 2017, to which the Regulation would have applied.²⁸⁸ I will refer to this information as historical data.²⁸⁹

40. In other words, each police services board and each chief of police must examine all the identifying information collected before January 1, 2017, and determine those to which the Regulation would have applied.²⁹⁰

41. The fact that each board must develop its own policy and each chief of police their own procedures for managing historical data may result in variation among police services and different treatment of information collected before January 1, 2017.

42. One issue that has arisen is that identifying information collected by police services prior to January 1, 2017, often did not distinguish between the types of interactions. In the previous computer modules, "street checks" entries included both what are now considered regulated and non-regulated interactions.

43. Part of the reason for the significant decline in the number of “street checks” since the filing of the Regulation is that now only the number of regulated interactions is identified, as opposed to the prior category of “street checks” which included both regulated and non-regulated interactions.

It is recommended that there be a definite time limit for the retention of data, after which time it should be destroyed.

44. For the retention of historical data, only information previously collected under what would now be a regulated interaction is at issue. In other words, interactions such as an observation report made before January 1, 2017, is not an interaction that needs to be addressed in a policy or procedure.

45. The Regulation does not require historical data to be deleted after any specific period of time as some stakeholders have requested (e.g. within two years of collection).

46. There is no requirement for information collected in a manner contrary to the Regulation before January 1, 2017, to be automatically put into a restricted database or, as was recommended by the Ombudsman for Ontario, to be destroyed.

47. Many interest groups have requested that all of the historical data be destroyed,

on the basis that it was improperly collected in the first place.²⁹¹

48. Discussions with some police stakeholders confirm that historical data often was obtained in a manner that is contrary to the current requirements of the Regulation. Because there was no oversight of the collection of identifying information at the time, the information was often collected in a haphazard manner and might not always have been accurate. This occasionally led to people being misidentified as being “known to the police”, which affected their applications for employment to police services.

49. The Canadian Security Intelligence Service recently destroyed a large amount of its collected associated data or metadata, after a Federal Court decision found that the information being retained was linked to third parties, unrelated to a threat to the security of Canada and not strictly necessary to perform its mandate.²⁹² Some of the same concerns apply to historical street checks information.

50. Some police services boards agreed that the historical data should be destroyed given its limited usefulness, the infrequent requests to access that data and the negative effect of retaining the data on community-police relations. Those police services noted that the collected information is time sensitive and its value diminishes over time.

51. Most identifying information collected prior to January 1, 2017, would be considered a non-regulated interaction

today. Some police stakeholders report that it would be cost-prohibitive to go through all this data to try to distinguish what would be considered regulated and what would not. They also note that destroying all pre-January 1, 2017, data could eliminate information that had been used to obtain arrest warrants. Destroying information that supported the issuance of a warrant will raise issues related to the destruction of evidence.

The fact that each board must develop its own policy and each chief of police their own procedures for managing historical data may result in variation among police services.

52. Similarly, if there are potential lawsuits against a police service, the lawsuit might require access to historical data. One police stakeholder indicated that the data may also be useful to assist with missing persons files.

53. As a result of these concerns, one police service decided to: put all identifying information collected prior to January 1, 2017, into the restricted database – regardless of whether they would have been considered a regulated interaction; limit the use of that data by, for example, not allowing it to be used to identify a person as being known to the police; and restrict the use of the information to the pur-

poses set out in subsection 9(10)(2) of the Regulation.

54. Given the competing concerns over the possibility that information may have been collected without following the procedures in the current Regulation and the need to retain some of that evidence, a proper balance is to: restrict access to historical data, provide access only in accordance with the procedure outlined above and destroy the data within a set time frame – unless the evidence is needed for a reason otherwise contemplated by the Regulation.

55. Therefore, it is recommended that historical data also be automatically destroyed five years after it is collected – unless it is actually needed for a purpose set out in clause 9(10)(2) of the Regulation, in which case it should be destroyed once it is no longer required for that purpose.

Recommendation 8.10

Identifying information collected before January 1, 2017 to which this Regulation would have applied had the information been collected after January 1, 2017 (“historical data”) should be stored in a restricted database and only be used for a purpose set out in subsection 9(10)(2) of the Regulation.

Recommendation 8.11

The authorization required under subsection 9(10)(1) of the Regulation should apply to historical data.

Recommendation 8.12

Historical data should be automatically destroyed five years after it was collected unless it is being used for a purpose set out in subsection 9(10)(2) of the Regulation, in which case it should be destroyed once it is no longer being used for that purpose.

Recommendation 8.13

A police service may elect to destroy historical data earlier than five years after it was collected.

Part V
Operational, Policy
and Procedural
Challenges - Findings and
Recommendations



Chapter 9

Training of Police and Public Education

Introduction

1. A central piece of this Review relates to the training on the Regulation provided to police officers. I was specifically mandated to report on the curriculum and related training materials developed by the Ontario Police College, and to make recommendations related to the training's effectiveness.

Training is arguably the most important part of the Regulation.

2. Training is arguably the most important part of the Regulation. Requiring police officers to have objective and credible reasons to request identifying information and limiting the situations under which they can request identifying information addresses the symptoms of a problem, but not the underlying cause. It is the training that causes police officers to confront and respond to public concerns, and recognize and address the fact that police officers themselves are subject to the same human frailties and subconscious motivations as everyone else.

3. In this chapter, I will first address whether the training was delivered effectively and in compliance with section 11 of the Regulation. I will then discuss the issue of training on a go-forward basis, including making a series of recommendations. I will also explore the education of police officers more generally and the development of a Code of Practice for

police officers on the Regulation and its implementation in the field.

4. An equally important part of this chapter relates to public education and information on the Regulation. Members of the public have not been properly and fully informed about the Regulation and its operation to date, which has led to a lot of confusion and misinformation. I will survey the current landscape of public information on the Regulation before making a series of recommendations geared to informing the public about the Regulation's content and underlying objectives. I will also explore the importance of rights- and responsibilities-based education for youth and students, as well as the importance of all students receiving education on Black and Indigenous history.

The Training Requirements

5. Section 11 of Part IV of the Regulation considers the training that must be provided to police officers related to collecting identifying information.

6. Any police officer who attempts to collect identifying information must have the required training. The police chief's designate for the purpose of the Regulation also must have the required training. In both cases, the required training must be successfully completed within the previous 36 months.²⁹³

7. The training must be conducted by a trainer with the Ontario Police College, using a curriculum approved by the Dir-

ector of the Ontario Police College.²⁹⁴

8. The training must include the following topics, as set out in the Regulation:

- 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; and
- 6) This Regulation and its application.²⁹⁵

Does the Training Comply with the Regulation?

9. The training curriculum was developed by the Ontario Police College as was required by the Regulation. The Ministry of Community Safety and Correctional Services (MCSCS) convened an expert roundtable to provide input into the curriculum.

10. Given the number of officers who needed to receive the training over a very limited time period, the Ontario Police College devised a “master trainer” system. The training was first delivered to master trainers from the various police services who, in turn, delivered training to front-line trainers who then trained the front-line officers who would engage in regulated interactions. Some police services also provided the training to more senior officers and other staff.

11. The development of the training program involved a number of challenges. A central problem was the lack of time afforded to appropriately prepare the curriculum and deliver it to all frontline officers across the province. The speed with which the Regulation came into effect did not allow enough time to properly prepare.

12. When we couple the speed at which the training was prepared and delivered to frontline officers with some of the other problems I will identify below, one can understand why a misconception developed among police officers that an investigative tool was “taken away”.

13. Throughout the province, I consistently heard from police officers who voiced concerns with respect to the training they received and the resulting uncertainty about how the Regulation applied. In my view, this uncertainty explains, in part, why so many officers refrain from proactive police–civilian interactions post-Regulation. By this observation, I am not in any way blaming the police

trainers who worked extremely hard and diligently to prepare for and deliver the training within the stipulated deadlines for the implementation of the Regulation.

14. The Regulation required that all training be completed by January 1, 2017, before an officer could engage in a regulated interaction. The Ontario Police College was under significant pressure to prepare the training materials and complete the training on time. The process was delayed because the Ontario Police College was awaiting input from the expert roundtable. The experts met in May 2016 and subsequently reported to the Ontario Police College on what to include in the curriculum. The College effectively had three months to develop the curriculum.

15. The expert panel also felt rushed. Some members commented that they would have liked greater independence from the MCSCS in devising the proper scope of the training.

16. Given the time pressures, the training was designed and developed with very little input from practising criminal lawyers. The Ontario Police College acknowledged that it would have benefitted from this input.

17. The training curriculum ultimately devised by the Ontario Police College consisted of two mandatory components: (1) an e-learning component; and (2) a classroom component. The e-learning component was designed by the Canadian Police Knowledge Network (CPKN).

18. Both the classroom component and

the e-learning component featured the following five modules:

Module 1 – Introduction

Module 2 – Professionalism in Policing

Module 3 – Constructive Public Interaction

Module 4 – Collecting Identifying Information

Module 5 – Investigative and Psychological Detention

19. The e-learning component included a final assessment consisting of 40 random questions. An 80% grade was required to pass the assessment.

20. The classroom component included group discussions and activities, as well as some scenario training. Instructors were responsible for assessing each participant and were required to indicate whether their performance was satisfactory for each module. I was informed that there was not much of an accountability piece for the classroom training.

21. The rushed delivery of the training was also problematic. For example, officers were supposed to complete the e-learning component before the classroom component. The intent of the e-learning component was to introduce the officers to the subject matter, which would then be enhanced through the subsequent in-class sessions. Unfortunately, most police services were not able to follow this preferred order because of the time pressures. This rendered the overall training less ef-

fective.

22. In addition, a number of the police procedures were only finalized after the training sessions had been completed. Unless their police service later provided additional training to address that gap, police officers did not receive full training on their service's procedures, including how to fill out the receipt and other forms required as a result of the Regulation.

23. I have reviewed the curriculum and training materials. Despite the challenges, I am of the view that the content complies with the requirements of section 11 of the Regulation. However, there are areas where the training could be improved, which I will now address.

The Reason for the Regulation

24. The training focused on the “who”, “what”, “when” and “how” of the Regulation, but not so much on the “why”. As a result, the training often failed to get strong buy-in from police officers – particularly those who viewed the Regulation as being a result of a Toronto-area practice.

25. The Regulation was the subject of negative misconceptions and, from the perspective of rank and file officers, it was contentious. Some believed that the Regulation would negatively impact officer safety and prevent officers from interacting with the public.

26. For regulatory changes to be effective, it is critical to get police officers' support. Implementing new rules for police offi-

cers to follow has little value – and will not achieve the intended goal – if officers are not effectively and adequately trained on the reasons why the changes were necessary.

27. For police officers to properly understand the Regulation, the training should include the issues of unconscious bias and systemic discrimination as well as cultural competency and awareness.

28. Officers at all levels of a police service should learn how the widespread use of carding by some services and some officers has been abused in the past – not only in Canada but around the world. To highlight the relevance to the officers being trained, the examples used should be as current and as local as possible. Training should also highlight the perspectives of those who have been subject to the practice, and the negative effect it can have on community trust and cooperation.

The Legal Basis for Police Stops

29. Many police officers commented that the Regulation was confusing and the training on the specifics of the Regulation was unclear. This confusion and lack of clarity led many officers to completely disengage from interacting with members of the public.

30. Based on my review of the materials and the feedback received from both trainers and participants, it appears not enough time was spent on the Regulation itself to ensure that it was fully and properly understood by the officers. Of

the five training modules, only Module 4 addressed the actual content of the Regulation and the changes being brought to bear on police and public interactions.

The training focused on the “who”, “what”, “when” and “how” of the Regulation, but not so much on the “why”.

31. The success of the training and its proper implementation requires that officers have sufficient time to work through the Regulation until it is fully understood. After the training, there appeared to be serious misunderstanding and confusion about the changes and their practical application.

32. The confusion is understandable. The Regulation is complex. So too is the broader framework of police powers and authorities within which regulated interactions are situated. The legal line between a justifiable police stop and an improper police stop is often hard to determine. Furthermore, the legal line between an investigative detention and a justifiable regulated interaction can be difficult to determine. These nuances underscore how important quality training is in this context.

33. The articulable cause requirement of the Regulation merits special attention. Police officers must understand how to properly explain the reason for the regulated interaction. Simply saying that they

had a hunch will not suffice. Proper objective and credible reasons must exist. Once an officer learns how to adequately articulate those reasons, the chance of a complaint will be reduced and – if there is a complaint – the reasons for the interaction will be known and defensible. Police officers also should know that, in the face of any public complaint, they will receive the full support of their police service if they have proper, objectively credible reasons for a regulated interaction.

34. Given the infinite variety of situations in which police officers and individuals interact – as well as the fact that the courts have recognized the need to carefully balance competing interests in these circumstances – it is impossible to establish bright-line rules that can be readily applied in any given situation. The proper scope of police powers has consistently been driven by fact-specific concerns, and it would be problematic for it not to be so.

35. Integrating a legal component into the training is important. This component would especially serve to reinforce both police legal authorities as well as police officers’ need to be cognizant of individual rights.

36. Through a number of meetings with both frontline and more senior officers, it became apparent to me that many police officers are not confident in their knowledge and understanding of the lawful authorities granted to them or the proper scope of their police powers.

37. Given this knowledge gap, I am of

the view that the training should focus more on the legal–contextual framework surrounding police powers generally. A failure to understand what regulated interactions mean in the context of other police powers, duties and responsibilities is an obvious hindrance to a proper understanding of the purpose of the Regulation.

38. While section 11 of the Regulation alludes to some of the rights and powers engaged by regulated interactions, it did not specifically mandate that the new framework be placed in the broader context of police powers and lawful authorities. Module 5 of the current training program addresses investigative and psychological detentions, but officers also need to better understand whether and how the Regulation applies in the context of the exercise of other statutory authorities. For example, there was some confusion about how regulated interactions intersect with powers that are afforded to the police under the *Highway Traffic Act* and the *Trespass to Property Act*.

39. To help officers distinguish regulated interactions from other forms of police–citizen interactions and situate the former in relation to the latter, some police services made a key addition to the training. They integrated a module on police powers and lawful authorities within the training session.

40. To use the York Regional Police Service as an example, that police service requires officers to complete additional training on related procedures governing

interactions with members of the public, specifically:

- Processing the Offender (arrest, provincial offences and release)
- Search of Persons
- Stopping and Investigating Motor Vehicles
- Racial Profiling and Bias-Free Policing
- Investigative Detention

41. The Hamilton Police Service also puts great emphasis on the importance of officers articulating their grounds or lawful authority to act. That police service wanted officers to have a better grasp of their lawful authority to interact with individuals across the board. It also wanted officers to be more aware of their basis for stopping someone and asking them to identify themselves, and for applying other lawful authorities outside of the Regulation.

42. The training materials should strive to better explain the operation of the Regulation and the legal bases for police stops.

Supervisors and Verifiers

43. The Regulation requires that front-line police officers engaging in street checks and the chief of police's designate be trained on the Regulation; however, it does not require training for anyone else.

44. As a result, there was no specific training for police chiefs and deputy chiefs of police on the reporting requirements, the retention of data and the oversight responsibilities related to the Regulation.

Nor was there any training available for the police services boards to help them understand the Regulation, their role in developing policies and their associated governance and oversight functions.

The training materials should strive to better explain the operation of the Regulation and the legal bases for police stops.

45. Many police services have appointed “verifiers” who review the regulated information collected by police officers to verify that the identifying information was collected properly. Not all verifiers received the same training as the police officers or, in some cases, any training at all. Those who verify the information should have a thorough understanding of the Regulation.

46. While some senior managers participated in the general training, the Regulation did not require senior management training on the Regulation generally or even on those aspects of the Regulation for which they are accountable.

47. The fact that training focused solely on frontline officers was a gap identified by police services. Frontline officers are required to have the necessary training because they are the ones who attempt to collect identifying information. However, the people who supervise those frontline officers should also have the training so they can provide proper and informed

supervision. A person providing supervision should be expected to have knowledge that is at least as good as and preferably better than those who are being supervised.²⁹⁶

48. As it stands, some police services have indicated that middle management officers are not supportive of the Regulation. Their attitudes can trickle down to frontline officers. While certain police services and some police leadership support the Regulation, getting middle management buy-in has clearly been a significant issue – one that has resulted in less effective implementation of the Regulation.

49. Training must also be provided to supervising officers so that they can better understand and support the Regulation, and to verifiers to ensure that information is being collected properly.

The Selection of Supervisors and Trainers

50. Sergeants are the ones who have direct and ongoing contact with officers on the ground. I am told that they are the hardest to reach with the training, information and culture shift required to implement the new Regulation. The only way to shift policing culture is through robust hiring practices, ongoing training and reinforcement from management. I addressed some of these issues in my earlier *Report of the Independent Police Oversight Review*.

51. The Hamilton Police Service has addressed “change management” with its

officers by explaining how police services have typically overreacted to change in the past and how bias can transfer from senior officers to newer officers. The Hamilton Police Service encourages senior officers to be careful about engaging in stereotypes or promoting biases that may influence newer officers by, for example, transferring negative attitudes about certain neighbourhoods.

The only way to shift policing culture is through robust hiring practices, ongoing training and reinforcement from management.

52. When appointing middle management officers, police services should ensure that the candidates selected are open to change and will not undermine the operation of the service or the policy directions of police leadership.

53. The sensitivity of the training subject matter means that the way it is delivered is extremely important. On this point, I think it worthwhile to comment on the importance of choosing the right trainers.

54. For training to be effective, the trainers must be carefully selected for their leadership qualities, experience, positivity and, most importantly, their credibility with frontline officers.

55. The Ontario Police College encouraged police services to select officers who could deliver the material in a con-

vincing and supportive manner. To be a certified trainer, an individual had to have taken a facilitating adult education course through the Ontario Police College. The master training portion of the training also incorporated a discussion about how to train members.

56. I was informed that many of the master trainers and frontline trainers selected possessed the right qualifications. Instead of relying on the usual trainers from the police service's training section, some services brought in criminal intelligence investigators and senior counsel. This approach appeared to help build credibility and render the training more effective. In those instances, the police officers seem to have been more receptive to the training.

Recommendation 9.1

The training should be provided to those who supervise the police officers who attempt to collect identifying information as well as to those who verify the submitted regulated interactions and the collected identifying information for compliance with the Regulation.

Recommendation 9.2

Police services should ensure that supervising officers support the operation of not only the Regulation, but also the direction of police leadership.

Recommendation 9.3

Police services should select trainers who are supportive of the Regulation, and who are seen by police officers to be credible.

Anti-bias and Implicit Bias Training

57. Training on the Regulation provided to police officers has not been consistent among police services. Some police services report that the training provided was excellent. Many other police officers and officials were concerned that some of the training appeared to start from an assumption that all police officers are racists, and then move to the best ways to eliminate or control that racism. If the training program was premised on such a belief, it was wrong.

58. The Ontario Police College Virtual Academy now has a program that covers not only the operation of the Regulation but also how a police officer should conduct regulated interactions in a professional manner. Any concerns about the

training materials assuming that police officers are discriminatory are not evident in the current online program. However, the program does acknowledge the existence of implicit bias and how to try to avoid such bias.

59. Implicit bias is sometimes referred to as unconscious bias, hidden bias, unintentional bias or implicit social cognition.

60. Many studies have shown that the general population holds stereotypes. Most people may have an implicit bias against others of which they are unaware.²⁹⁷ The Supreme Court of Canada has recognized that a “significant segment of our community holds overtly racist views. A much larger segment subconsciously operates on the basis of negative racial stereotypes”.²⁹⁸

61. Police officers are a reflection of the society in which they live. We are all products of our environments and subject to collective and individual biases, whether they are consciously or unconsciously held. Our conscious biases are much easier for us to deal with because we can be made aware of what those biases are. Unconscious biases are much more difficult to deal with because individuals may not know they hold the biases and, therefore, cannot deal with them until they become aware of them.

62. Although people may hold an unconscious bias, it does not mean that they identify with or agree with the bias or that they should be defined by that unconscious bias. In fact, consciously, their

principles might be diametrically opposed to the unconscious bias they hold. As is the case with any large group of people, some police officers are also likely to be affected by unconscious, stereotypically held views of people who may be ethnically, racially or culturally different from themselves. These unconscious biases can exist despite police service efforts to cull individuals who hold such views during the recruitment and hiring process. Even the most open-minded police officers may harbour an unconscious bias of which they are unaware.

63. It is also quite likely that the people who police officers stop and ask for identifying information hold some conscious or unconscious biases of their own.

64. It would be unfair to single out police officers for attention when it comes to unconscious bias without also noting that the problem exists throughout the criminal justice system and society at large. The issue of unconscious bias must be recognized as a systemic issue and addressed not only by police officers, but also by the media, prosecutors, judges and all actors within the criminal justice system and society.

65. As noted by the Court of Appeal for Ontario:

[R]acism is manifested in three ways. There are those who expressly espouse racist views as part of a personal credo. There are others who subconsciously hold negative attitudes towards Black persons based on stereotypical assump-

tions concerning persons of colour. Finally, and perhaps most pervasively, racism exists within the interstices of our institutions. This systemic racism is a product of individual attitudes and beliefs concerning Blacks and it fosters and legitimizes those assumptions and stereotypes.²⁹⁹

66. As a result, random and arbitrary carding that has a disproportionate impact on Indigenous, Black and other racialized communities may be indicative of a larger systemic problem.³⁰⁰

67. Most people have an unconscious or implicit bias in one or more areas. Implicit bias is the most difficult area to address because it occurs subconsciously. The profession of policing requires quick decisions. Discretionary decisions, such as determining whether an individual or their behaviour seems suspicious, are often split-second decisions made subconsciously. Those quick decisions are the ones most likely to be affected by implicit bias, which is a concern when individuals are asked to provide identifying information based on a legal requirement that is slightly more than mere suspicion but less than reasonable suspicion.

68. Unconscious motivations can affect important decisions in unexpected ways. For example, studies have shown that police officers lower the speed on traffic tickets when the officer shares the same first name as the person being ticketed, judges issue shorter sentences when defendants are sentenced on their birthdays and the chance a refugee applicant may

be granted asylum can be affected if the prior applicant was granted asylum or even if it is simply hot outside.³⁰¹

69. As a result, anti-bias training should include the recognition of implicit bias. Such training is already being provided to some police services in Ontario.³⁰² In recognition of the fact that there is no such thing as bias-free policing, the York Regional Police Service has reoriented the “bias-free” training of the Ontario Police College to a “bias-aware” approach. No one can be completely bias-free; however, people can take steps to try to recognize their own biases, and not act on them.

70. Finally, the anti-bias training should not only be provided to frontline officers. Police services as a whole should develop a culture that promotes an atmosphere of equality and respect, perhaps through developing and maintaining mentoring programs in the communities they serve.

71. It is important to place the implicit bias training within the context of the Regulation and, in particular, the requirement for articulable cause. Police officers should focus on being able to express the reason why they are stopping people and asking them to provide identifying information. Is the reason rational and logical, or is it emotional? Implicit bias training can help ensure that the reason why people are stopped is objectively and credibly reasonable.

Police and Community Involvement in Training

72. Police stakeholders were also concerned that the training scenarios provided were not necessarily realistic and often involved a situation where a police officer held discriminatory views. They felt that involving experienced frontline police officers could help develop and deliver more realistic training in terms of the types of situations a police officer can expect to encounter.

Implicit bias training can help ensure that the reason why people are stopped is objectively and credibly reasonable.

73. Similarly, it is important for the training to also consider the perspectives of those who are stopped and asked to provide identifying information. Their perceptions and feelings are important considerations when officers decide whether to conduct a stop and how to request information. This type of training is useful not just for regulated interactions, but for any interactions in which a police officer stops and questions an individual. Members of racialized communities and Indigenous peoples should be involved in developing the training materials and, where possible, in delivering the live training scenarios.

Adolescent Development

74. Some limited training on adolescent development could be part of the training program. A child might not respond to police questioning in the same way as an adult. If an officer interacts with a child, particularly if there is no parent or guardian present, it is preferable for the officer to have some understanding as to what the child's potential responses might be.

75. For example, a child might run away from an encounter or act up during an encounter. This behaviour might reflect their stage of development as opposed to being a reflection on the police officer or the questions being asked.

Local Training

76. In addition to the general training, officers should receive some specific training related to the geographic area(s) they patrol.

77. Many master trainers across the province felt that the subject matter of the training was not adapted to the realities of their region.

78. Several police services are to be commended for the initiatives they took to supplement the training curriculum and adapt it to the reality of their own region.

79. All training should include the cultural makeup of the area and local community concerns so officers are better able to understand and address any local issues when interacting with the public.

80. This idea was recognized by the Toronto Police Services Board in its policy, which requires that the police chief ensure “that police officers who are re-assigned or temporarily assigned to a new neighbourhood or Division communicate and cooperate with community-based liaison officers and receive any other support, training and resources necessary to familiarize themselves with the new assignment and community”.³⁰³

Non-regulated Interactions

81. As was noted earlier, police officers can still rely on other Acts to obtain identifying information, such as the *Highway Traffic Act*, the *Liquor Licence Act*, or the *Trespass to Property Act*. If the person is legally required to provide their identifying information under those statutes, the Regulation does not apply. However, the concerns regarding arbitrary or discriminatory requests for identifying information remain.

Real-world Scenarios

82. Some topics included in the training videos are difficult to address in that format and would be more effectively addressed through in-person, stand-alone training sessions. These topics include racial and unconscious bias, discrimination, critical thinking, self-mastery and civility, and personal triggers.

83. To achieve a stronger level of comfort surrounding the regulatory changes, it is important for the training to spend a substantial amount of time applying

the Regulation to a number of real-world scenarios and provide numerous practical examples of its application and non-application.

84. Police officers commented that they would have benefitted from more scenarios to properly understand when the Regulation applies and how to implement it. They also felt that the scenarios provided involved very basic and scripted responses, which were overly formal and unrealistic.

85. Real-world scenarios allow the presenter to ensure participants are engaging with the material and do not feel attacked in their beliefs. More importantly, it is helpful to have conversations about difficult topics that encourage individual reflection and group discussion as ways to address any problematic assumptions head-on and determine ways forward.

Real-world scenario training should be incorporated into training on regulated interactions and investigative detentions.

86. It is my understanding that, in annual police training as well as new-recruit training, police officers are routinely faced with a variety of real-world scenarios, such as an active attacker, dealing with persons in mental health crisis, persons with concealed weapons and a shooting in progress. These types of real-world scenarios are designed to mimic the demanding

situations officers may find themselves in and prepare them for the split-second decisions they may be tasked with making.

87. Similarly, real-world scenario training should be incorporated into training on regulated interactions and investigative detentions. A series of scenarios where police officers are required to articulate, both orally and in writing, why they engaged in a particular course of action would allow for a better understanding of the Regulation and greater ability to implement that understanding in the real world.

Refresher Training

88. The Regulation requires officers engaging in regulated interactions to have completed training in the last 36 months, which means that retraining has to occur every three years.

89. The online program and in-class training is helpful but this information may fade from a police officer's memory over time. Therefore, there should be periodic refresher training. Preferably there should be some ongoing live training as opposed to simply continuing online training.

90. Communities evolve over time and the cultural makeup of a community can change. New case law can develop relevant to the issues related to street checks. Periodic training can help officers keep up with the law as well as their understanding of the communities they serve.

91. Individual police services have plans

in place to deliver training on an ongoing basis. In Hamilton, for example, some aspects of the Regulation have been incorporated into the service's regular block training. This approach is important for officers who were on leave or otherwise unavailable during the training period as well as for officers who transfer to Ontario from other jurisdictions.

92. While the Ontario Police College has incorporated the training required under the Regulation into the training for new recruits, it has not made provisions to ensure ongoing training of the trainers at the Ontario Police College level. The availability of Ontario Police College-certified trainers was only assured until December 2017. In my view, the Ontario Police College needs to have the capacity to continue to deliver the training to trainers as required and to continue improving it.

93. Officers – in particular senior command officers – have identified a need for more training on the Regulation, in light of some early errors in its application. It was made clear to me that regular, ongoing training would be the preferred course. Some commented that it may be better to provide 15 minutes of refresher training every month or two rather than four hours every three years.

94. While all police officers should be trained, given the limited resources available for training, it might also make sense to require more frequent refresher training for officers based on their unit rather than additional training for all officers.

95. Regular refresher training on the topic would be an effective way to address some of the shortcomings of the current training. Police services already use this staggered approach to training which allows officers to have practical experience on the job and receive the pertinent training at the right time in their careers.

96. Another option is to provide training on the Regulation during annual training for all officers, sometimes referred to as block training, recertification training, or reclassification training. In some services, reclassification training is where constables in the early years of their career come back every year for a specified period to receive training on fundamental issues in policing. This approach is effective because constables come back year after year with practical experience gained on the job that they can apply to the topics, issues and legal questions. The ability to bring their practical experience to the lessons being delivered makes the ongoing training more significant and effective.

Regular refresher training on the topic would be an effective way to address some of the shortcomings of the current training.

97. Some police services have already adopted the approach of integrating training on the Regulation into their reclassification training. In York Region,

for example, training on regulated interactions forms part of the reclassification training delivered to constables in the first four to five years of their careers.

98. The Toronto Police Service has decided to include training on the Regulation every year as part of the annual recertification training.

99. From my perspective, training needs to be reinforced to be effective. There should be more refresher training generally on topics such as arrests, search and seizure, lawful authorities and community interactions. Police training in general must happen on a regular, periodic basis. Rather than embark on a new and expensive training program to familiarize police officers with any recommendations accepted from this report, I recommend integrating those changes into annual or refresher training.

100. Throughout my consultations with various police services, it became apparent to me that police officers often seek and are granted employment with other police services throughout the province. Given the disparity in training and the differing communities served, I suggest that all police officers who transfer from one service to another be required to undergo training specific to the needs of the new communities in which they will be working.

101. Whether as part of annual training, reclassification training, or the triennial retraining mandated by the Regulation, future training on regulated

interactions should build on what has already been taught, rather than simply repeating the same lessons already delivered.

Funding for Training

102. Both the Ontario Police College and police services face increasing pressure to train officers in a variety of areas. Yet they are generally not afforded the resources and time to deliver all of this training. The lack of resources is particularly problematic for smaller police services with limited budgets. As a result, unless training is mandated by legislation, it may well end up not being delivered.

103. I recognize that there is a resourcing issue for many police services when it comes to providing additional training.

104. It is, therefore, critical for the MCSCS to fund the ongoing training related to the Regulation for all police services in Ontario, either by providing a cadre of trainers that travel from service to service to deliver the training or by providing funding to each service to pay for the expenses (including staff and time) associated with developing and delivering the refresher training.

Recommendation 9.4

The training should be standardized and include the following topics:

(a) The reason for the Regulation and the legal framework under which requests for information may be made, including the meaning of articulable cause, reasonable suspicion and investigative detention;

(b) How to take proper notes of the reasons for the interaction;

(c) Rights of individuals under the Canadian *Charter of Rights and Freedoms* and the Ontario *Human Rights Code*;

(d) The initiation of interactions with members of the public;

(e) 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;

(f) 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;

(g) Bias awareness, including recognizing and avoiding implicit bias, as well as how to avoid bias and discrimination;

(h) Promoting public trust and public confidence by recognizing the social cost of some historic police practices;

(i) Indicating how the use of respectful language, tone and demeanour during regulated interactions benefits the community, individuals, officers and police services;

(j) Strategic disengagement and conflict de-escalation techniques, as well as de-personalization techniques particularly when an individual is disrespectful during a regulated interaction;

(k) Training on the specific communities being served and their particular issues;

(l) Adolescent development as it may relate to a regulated interaction and the specific requirements and limitations related to collecting identifying information from children;

(m) The impact of technology such as mobile phones and body-worn cameras;

(n) The rights that individuals have to access information about themselves that is in the custody or under the control of a police service; and

(o) The Regulation and its application.

Recommendation 9.5

The training should consist of more than video presentations. The training should include realistic real-world scenarios and role playing.

Recommendation 9.6

The training should be prepared and delivered with the assistance of members of police services who understand the challenges of regulated interactions and the realistic scenarios police officers might encounter.

Recommendation 9.7

The training should be prepared and delivered with the assistance of racialized groups and Indigenous peoples who understand the effect of regulated interactions.

Recommendation 9.8

Anti-bias training should be provided to all police officers and not just those who are most likely to be involved in a regulated interaction.

Recommendation 9.9

The training should involve testing.

Recommendation 9.10

The training should have a special focus on the ability to articulate the reasons for a regulated interaction.

Recommendation 9.11

There should be annual refresher training on the Regulation for all police officers.

Recommendation 9.12

When a police officer transfers from one police service to another, they should be required to receive training about the specific communities being served and their particular issues.

Education of Police Officers

105. In my 2017 Report of the *Independent Police Oversight Review*, I recommended working with educational partners to develop a curriculum for a post-secondary, professional degree in policing that incorporates multidisciplinary education in areas including social and cultural competency, mental health, domestic abuse, serving vulnerable communities, and anti-bias and equity studies. I also urged the development and delivery of social and cultural competency programs for police officers in partnership with post-secondary institutions.

106. In the same report, I recommended establishing a College of Policing.³⁰⁴ To effect organizational change, training needs to be centralized and consistent. The core values of one police service may be weighted differently from that of another police service. A standardized set of norms and expectations developed by a College of Policing – based on research and shared knowledge – would place all police services on the same playing field.

107. I adopt those comments and recommendations again in this report.

108. Many scholars have pointed to the need for post-secondary education to develop the relevant skills to be an effective police officer. Some studies indicate post-secondary education can reduce the likelihood of police misconduct.³⁰⁵

109. It is virtually impossible to train police officers on everything that they need to know in the 12-week Ontario Po-

lice College program, even with the additional 12 weeks of training as required by some police services.³⁰⁶

110. The training that is currently provided to police cadets generally focuses on the physical side of policing, such as the use of force, shooting, the use of a baton and so on. While providing training to police officers on the physical aspects of the job is necessary (given that police officers are empowered to use lethal force) this training should not come at the expense of other required skills.

111. The Ontario Police College spends less time training officers in other important skills, such as community relations and completing important documentation and paperwork.

112. The majority of police work involves dealing with issues of social disorder rather than responding to actual crimes. Yet only two hours of Ontario Police College training is spent on community policing and two hours on interactive policing. In other words, as recounted by several police stakeholders, 90% of police training is for what police officers do only 10% of the time. Given that many issues of social disorder result from people who are suffering from mental health challenges, police training should include a component of mental health response.

113. Police training should not foster an “us and them” attitude but rather highlight the importance of police–community partnerships. Police recruiting and training practices can be geared toward

creating a police culture in which there is excessive loyalty to police services at the expense of liberal, democratic principles.

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114. Many public stakeholders noted that while they generally support police–public interactions, they recounted being treated rudely by police officers.

Police training should not foster an “us and them” attitude but rather highlight the importance of police–community partnerships.

115. For example, a police officer questions a person suspected of an offence. The officer reasonably suspects that the person is carrying stolen property. Because it is an investigation, the Regulation does not apply. After a quick investigation, the police officer determines that the person being questioned is not the one who stole the property.

116. At that point, even though the interaction was justified, good public relations would dictate that the officer apologize to the person for the inconvenience and explain why the investigation was necessary. All too often, it appears that this is not done. The police officer simply leaves without any explanation. The person is left feeling confused and humiliated. A better system of education would reinforce the need and methods for the police to foster community relations.

117. Police services should also seek to hire police officers who possess a wide variety of work or educational experience and have a real desire and interest to learn. While university training is no guarantee of competence, police services should seek police officers who have some post-secondary training. Many police services are already doing so. Such training may help identify those who have the ability and inclination to do investigative work. Post-secondary education may also expose people to a wider spectrum of society and allow for greater social and emotional development before officers enter into the life-long profession of policing.

118. Policing should be treated as the extremely demanding profession it is. Professionals should be completely and properly trained before they start their work, and not learn the majority of their functions on the job. An expanded educational requirement would equip police officers with both the hard and soft skills they will need each day to do their jobs.

Recommendation 9.13

Consideration should be given to establishing a College of Policing.

Recommendation 9.14

Working with post-secondary institutions, a task force or advisory group should be created to evaluate, modernize and renew police studies and law enforcement-related course offerings across post-secondary institutions. Consideration should be given to updating the Ontario Police College curriculum, including the creation of a post-secondary degree in policing.

Code of Practice: Instructions on the Implementation of the Regulation

119. As outlined in earlier sections of this report, the Regulation as it is drafted is somewhat confusing and convoluted to read. Throughout my consultations with both police and community members, I heard that the Regulation is too complicated and hard to follow.

120. Some of the services I consulted with used visual aids, such as diagrams or infographics that illustrate the spectrum of interactions between officers and the public. These visual aids helped officers gain a deeper understanding of the Regulation and where it fit into their daily work. An infographic such as the one provided in Appendix D could be a useful learning tool.

121. The United Kingdom has de-

veloped Codes of Practice that help police officers understand – using simple terms and practical examples – how to apply the law with regard to stops and searches.³⁰⁸

122. Police officers in Ontario should receive similar guidance on the application and interpretation of the Regulation. A Code of Practice should be developed that explains, in simple and easily understood language, the types of circumstances under which police officers should and should not ask people to provide identifying information, as well as the process under which such encounters should be conducted and documented. The Code of Practice should be made available online.

123. Such a Code of Practice would provide a readily available tool for police officers who need to refresh their memory on the operation of the Regulation. The Code of Practice could borrow from the CPKN online training program as well as training materials currently used by the Ontario Police College Virtual Training Academy.

124. More specifically, the Code of Practice should include the following areas among others:

- Definitions of key terms and concepts regarding the Regulation;
- Information on when or where the Regulation applies (i.e. the Regulation applies when a police officer requests identifying information in a regulated interaction, whether or not the police officer retains and records the identifying information) and when and

where the Regulation does not apply (e.g. *Trespass to Property Act*, Agents of Landlord);

- Information on key legal concepts including reasonable suspicion, reasonable and probable grounds, objective and credible reasons, investigative detention, psychological detention and physical detention;
- Under what circumstances and for what reasons police officers may inquire into suspicious activities and the legal standards associated with different levels of encounters;
- Protocols and procedures for police officers in interacting with members of the public; and
- Information on the importance of professionalism and civility in police–public interactions.

Recommendation 9.15

A Code of Practice similar to those used in the United Kingdom should be developed to explain how the Regulation operates and the circumstances under which it is to be applied.

Public Education

125. As I heard in my various consultations throughout the province, many members of the public are either unaware of the Regulation's existence or are confused about its operation.

126. While police officers received training on the Regulation, the public did not. Many stakeholders noted that the public knows little about the Regulation, the rights and responsibilities of an individual who is stopped by police or the scope of police authorities during the engagement of their duties.

Many members of the public are either unaware of the Regulation's existence or are confused about its operation.

127. This perception was confirmed by the results of the civilian survey, conducted under the Review. Only 45.1% of the respondents indicated that they were aware of the Regulation, which meant that over half (54.9%) were unaware of it. Of the respondents who were aware of the Regulation, 58.2% indicated that they did not know whether the new Regulation was a good idea or not.

128. Furthermore, the survey indicates that Indigenous respondents were most likely to be unaware of the Regulation: only 27.1% of Indigenous respondents reported that they were aware of it compared to almost 50% of respondents from other racial groups. This gap is of particular significance because Indigenous respondents were also the most likely to be stopped by police: 27.4% of Indigenous respondents reported a police stop, which was more than 30% higher than other

communities. Black and Middle Eastern individuals also reported a disproportionate number of stops. Given the disproportionate number of stops experienced by certain racialized groups, it is insufficient to undertake only general public education on the Regulation. There must also be targeted education on the Regulation and its application for Indigenous, Black and other racialized communities.³⁰⁹

129. During my consultations, I heard that some people believe that police officers are not allowed to talk to them or to ask them any questions regardless of the situation – even when the person is legally required to provide identification. This has led to uncomfortable situations where a person stopped for a traffic violation refuses to provide identifying information, believing that they are not required to do so. The unfortunate result is that the Regulation, which was intended to promote public confidence, creates the potential for confusion and confrontation.

130. Some consultation participants at the Review's public and group meetings incorrectly believed that police officers are required to give them a receipt documenting every police interaction, whether or not it qualifies as a regulated interaction. That misinformation may exacerbate an already tense interaction or lead to an unnecessary complaint being made against a police officer.

131. This confusion makes it difficult for police officers to do their job, particularly when a justified interaction may result in a complaint against the police offi-

cer made by a person who is uninformed about the content of the Regulation.

132. There needs to be greater public awareness of the Regulation, rights and responsibilities, the civilian complaints process and the reforms that have been made with regard to the number of street checks being conducted.

133. The MCSCS should work with community groups, youth advocacy groups, legal aid clinics and school boards to develop and launch public education materials, community training events and information campaigns to help get the message on the Regulation out to members of the community. The current materials on the Government of Ontario website, which consist of a website and a one-page handout, are insufficient to ensure meaningful public understanding of the Regulation.

A public that is better informed about the Regulation, its specific rules and its operation in practice may result in fewer contentious interactions and complaints.

134. During my consultations, stakeholders also shared that having a full, cross-platform advertising and social media strategy, including videos, infographics, posters and social media content would greatly assist in educating the public about the Regulation and their

rights more generally.

135. The Ministry should develop and implement an advertising and social media strategy to inform the public about the Regulation. The CPKN training materials would be a good source of information for these materials. The materials created under this advertising and social media strategy should be shared with police services and community organizations across the province for maximum reach and impact.

Recommendation 9.16

The Province of Ontario should make efforts to raise public awareness about the content of the Regulation, and the circumstances under which people are and are not required to provide identifying information to the police. These efforts should involve collaboration with community groups, youth advocacy groups, legal aid clinics and school boards.

Recommendation 9.17

The MCSCS should launch a full, cross-platform advertising and social media campaign to inform the public about the Regulation and its operation.

136. Making the Code of Practice developed for police officers (described in an earlier section), available online, which explains regulated and non-regulated interactions and how these interactions are properly conducted, would help to educate the public. Anyone who is subject to a regulated interaction could easily access all the information necessary on the Regulation and its application.

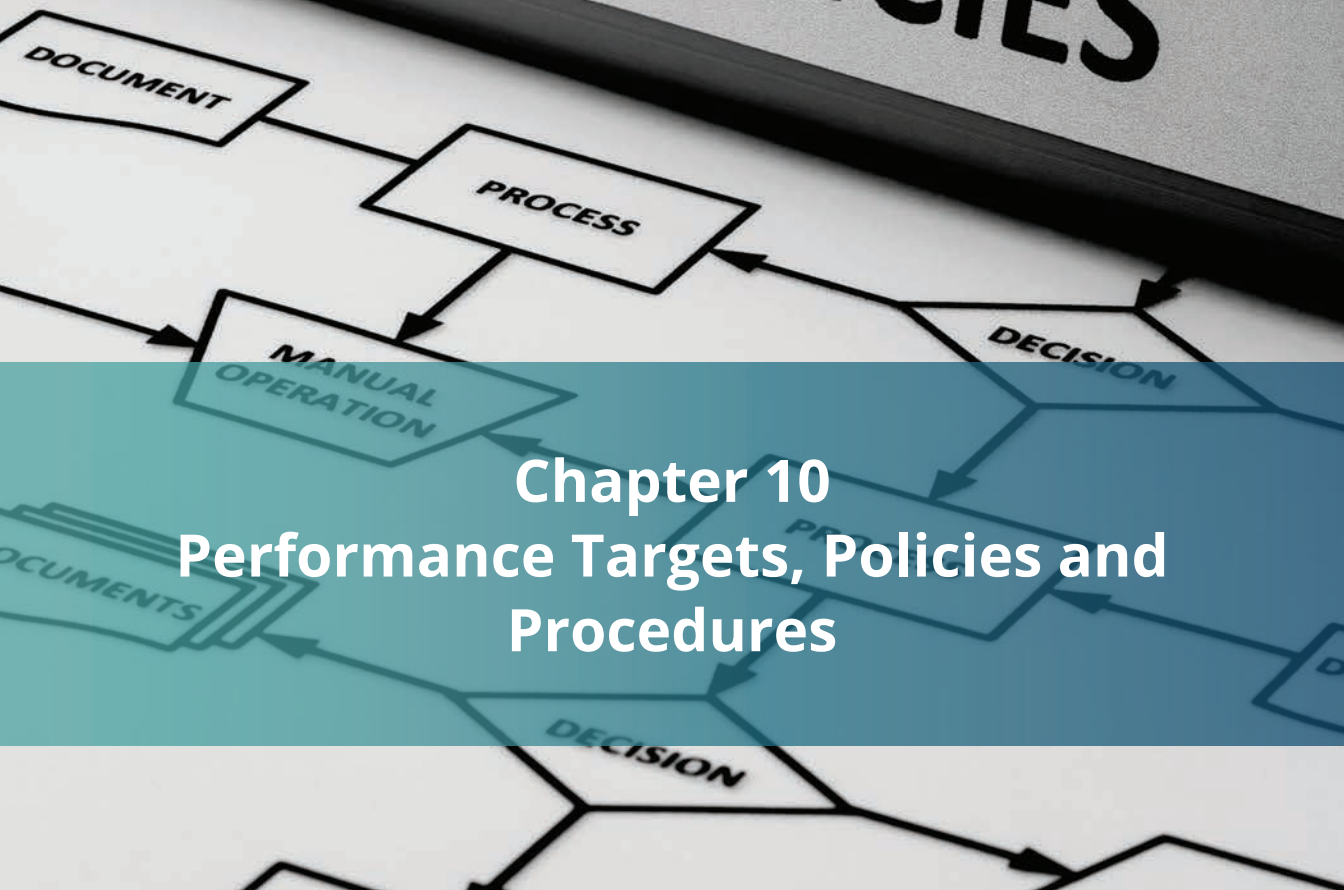
137. A public that is better informed about the Regulation, its specific rules and its operation in practice may result in fewer contentious interactions and complaints.

Recommendation 9.18

The Code of Practice should be made publicly available on the internet and in print, in all accessible formats.

PROCEDURE

POLICIES



Chapter 10 Performance Targets, Policies and Procedures

Introduction

1. Prior to the Regulation, police officers in some services had annual performance targets for the collection of identifying information. The Regulation expressly removes those performance targets. In addition, it requires police services boards to develop policies that give tangible meaning and definition to the Regulation's requirements and chiefs of police to develop procedures to implement those policies.

2. In this chapter, I review the current requirements under the Regulation related to the police services board policies and the chiefs of police procedures, and make recommendations to ensure consistency and coherence between the policies and procedures, and among the various police services across the province.

Restriction on Performance Targets

3. The Regulation prohibits performance targets for police officers related to the collection of identifying information, either with regard to the number of attempts made to collect information or the number of individuals approached.³¹⁰

4. That prohibition is consistent with the change in focus of street checks to increase the quality rather than the quantity of information received. This requirement helps ensure that street checks are conducted for a proper purpose and not as a result of real or implied quotas and utilized as a performance measure. The fact that a police officer's performance is not based on numbers of street checks helps

ensure that street checks are conducted appropriately. Without a required quota, police officers are not mandated to stop and question people unnecessarily.

5. Many police services had already implemented this change prior to the filing of the Regulation. The remaining police services have now adopted the requirement as well.

Policies and Procedures

6. Police services boards and the Minister of Community Safety and Correctional Services are required to develop policies regarding certain matters in the Regulation.³¹¹ The policies developed by police services boards and the Minister must be consistent with the Regulation.³¹² The duties on the Minister of Community Safety and Correctional Services apply in relation to the Ontario Provincial Police.³¹³

Police Services Board Policies

7. The current Review looked at the policies developed by the police services boards, but not those developed by the Minister of Community Safety and Correctional Services, who acts in place of a police services board for the Ontario Provincial Police.

8. The rationale for requiring each police services board to develop its own policy in these areas has not been stated. I recognize that each police services board is comprised of representatives of the communities in which the police service is located. In theory, each board should

be aware of the particular needs, concerns and wishes of their individual communities and, thus, be better positioned to frame the policies for community interactions with the police. However, as most police services boards vary in terms of experience, competence and expertise, there is a real concern and potential for inconsistent policies throughout the province.

Without a required quota, police officers are not mandated to stop and question people unnecessarily.

9. Each police services board and the Minister must develop a policy regarding:

- 1) The form of the receipt provided to individuals;
- 2) The contents of the chief's and Commissioner's annual report required under section 14 of the Regulation;
- 3) The contents of the chief's annual report regarding the annual review of the database;
- 4) The retention of, access to and disclosure of identifying information collected on or *after* January 1, 2017, including the retention of information collected contrary to the Regulation; and
- 5) The retention of, access to and disclosure of identifying informa-

tion collected *before* January 1, 2017, with respect to which the Regulation would have applied had the collection taken place on January 1, 2017.³¹⁴

Different Police Services Board Policies

10. The policies that police services boards are required to develop are limited to the specified areas. However, many police services boards have developed policies that considerably expand on these areas and relate to all aspects of regulated interactions.

11. For example, the London Police Services Board policy goes far beyond what was required to be developed under subsection 12(1) of the Regulation, but the increased requirements are well thought out and are harmonious with the Regulation.

12. These increased requirements include, among others: an increased rights notification where the individual is informed at the beginning of the interaction of their right to walk away and to not respond to questions; and the removal of the option to request identifying information for general intelligence gathering.

13. The policies that police services boards are required to develop relate to some important areas of the Regulation, including the contents of the receipt provided to the citizen(s) following the regulated interaction (which is the only document an individual receives as a record of and to explain the interaction) and the contents

of the chief's annual report as stipulated by the Regulation. The policies must also include the retention of, access to and disclosure of identifying information collected before and after the Regulation.

14. In other words, aside from the prescribed requirements of the Regulation, each police services board gets to decide how long to retain identifying information, who gets access to it and to whom the information may be disclosed. Identifying information that was improperly obtained shall not be retained longer than each police services board considers reasonably necessary for the limited purposes allowed by the Regulation.³¹⁵

15. While the Ontario Association of Chiefs of Police provided a draft model policy to police services boards, each service adapted that policy, which led to a certain degree of inconsistency. As a result, a police officer who changes employment from one jurisdiction to another may be faced with a different policy when applying the same Regulation.

16. For example, the Toronto Police Services Board in its policy noted that the police chief shall establish policies which “emphasize that both the individual’s right to disengage from a regulated interaction and that an officer’s disengagement from a regulated interaction is an acceptable, valued and sometimes necessary policing practice”.

17. That is a commendable policy, but might not be one that is shared in the policies developed in other jurisdictions.

18. The Toronto Police Services Board’s policy also noted that the police service should not use data obtained in a regulated interaction as a basis for classifying a person as being “known to police” and nor should the data result in an entry on an individual’s clearance letter, police reference check, vulnerable sector check or any police record check required by the *Police Record Check Reform Act*.³¹⁶

A police officer who changes employment from one jurisdiction to another may be faced with a different policy when applying the same Regulation.

19. Without such a policy, other jurisdictions could use the information in that manner.

20. A further concern is that incorrect information might be put into the database when, for example, a person is stopped and provides someone else’s name and address. If the person does not have any identification with them to verify their identity, the incorrect information could be recorded and stored. If the person who was incorrectly identified determines that their identity was recorded, there should be a mechanism to correct the information in the database.

21. Some police services boards have also developed policies which expressly state that information should be collected in accordance with the Regulation and that regulated interactions should not be based

on racial profiling or done in an arbitrary way.³¹⁷ Those policies also make references to prohibited grounds or stereotypes relating to prohibited grounds.

22. The prohibited grounds are defined as the grounds set out in the *Human Rights Code*: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status and disability. As a result, the policies attempt to prevent profiling generally.

23. While such policies expand on the requirements of the Regulation to include prohibited grounds other than racial background, they are still too restrictive. Profiling occurs when *any part* of the reason to link a person to an unlawful incident or incidents and/or relating to public safety concerns is based on a prohibited ground. The Regulation specifically precludes any part of the reason for a regulated interaction being the individual's racial background, absent the specified exceptions (e.g. the person's racial background was part of a suspect description).

24. The Regulation contemplates some degree of inconsistency. The mandate of this Review requires me to consider whether the Regulation appropriately reflects the government's goal of ensuring that police–public interactions are consistent. Allowing each police services board to develop its own policy in important areas does not achieve consistency.

Recommendation 10.1

There should be a minimum, consistent, province-wide policy to implement the Regulation that is binding on police services boards, similar to the policing standards provided for other policing activities.

Recommendation 10.2

If it is determined that the information contained in the street checks database is incorrect, then that information should be restricted and eventually purged.

Recommendation 10.3

The policies should seek to eliminate regulated interactions that are based, even in part, on a prohibited ground of discrimination under the Ontario *Human Rights Code*, absent a reason such as is currently allowed by the Regulation for an individual's racialized background.

Recommendation 10.4

Police services boards may develop further policies that expand on the content of the Regulation for the purpose of protecting human rights and preventing discrimination.

Form of the Receipt

25. The Regulation allows for police services boards to develop their own policies related to the form of receipt that police officers provide to individuals after a regulated interaction. This allowed for inconsistency among jurisdictions. The recommendations made in Chapter 7 address those problems.

Historical Data

26. The Regulation allows for further inconsistency by allowing police services boards to develop different policies regarding identifying information obtained before January 1, 2017. The recommendations made in Chapter 8 address those problems.

Improperly Obtained Data

27. For identifying information improperly obtained after January 1, 2017, the police services board policy shall require that the information not be retained longer than is reasonably necessary to ensure that the information is available in the circumstances contemplated by subsection 9(10)(2) of the Regulation.³¹⁸

28. While the Regulation does not have any set date to delete improperly obtained data, there are guidelines that the data should be deleted when retention is no longer reasonably necessary.

29. What one police services board considers a “reasonably necessary” length of time to retain improperly collected information may be quite different from that of another board. This was discussed in Chapter 8, where I recommended that there be a set time period for the deletion of all identifying information.

Concerns Over the Use of the Information Collected

30. Once people have been stopped and their identifying information entered into a police database – especially a non-restricted database – they are now on the police radar. Many people are concerned that, after being stopped and documented, they might fall into the “usual suspects” or “known to the police” categories and be more likely to be subjected to further stops or negatively affected in terms of their future employment prospects or ability to travel.³¹⁹

31. During my consultations, both members of police services as well as members of the public informed me that, in some cases, information obtained in street checks is not necessarily reliable, particularly if no documentation supporting identity is produced at the time the identifying information is collected. I heard about several real cases from a few different police recruitment officers. For ex-

ample, a person stopped in a street check could provide someone else's name and address to a police officer. That other person's identity is now contained in a police database. Sometimes information is incorrectly recorded so a person with a similar name or date of birth becomes associated with a street check report. Unreliably obtained information should not be used to determine critical decisions such as a person's career.

32. A standard policy should address such concerns. Many of these concerns have already been addressed through the passage of the *Police Record Check Reform Act, 2015*, and would be a good point of reference.³²⁰

Recommendation 10.5

No information collected in a regulated interaction, including identifying information obtained prior to January 1, 2017, to which this Regulation would have applied had the information been collected after January 1, 2017, should be used as a basis to classify a person as being "known to the police" or result in an entry on an individual's clearance letter, police reference check, vulnerable sector check or any police record check required by the *Police Record Check Reform Act*.

Chiefs of Police Procedures

33. To implement the *policies* developed by police services boards, chiefs of police must develop *procedures* consistent with the Regulation, namely:

- 1) The form of the receipt provided to individuals;
- 2) The contents of the chief's and Commissioner's annual report required under section 14 of the Regulation;
- 3) The contents of the chief's annual report regarding the annual review of the database;
- 4) The retention of, access to and disclosure of identifying information collected on or *after* January 1, 2017, including the retention of information collected contrary to the Regulation; and
- 5) The retention of, access to and disclosure of identifying information collected *before* January 1, 2017, with respect to which the Regulation would have applied had the collection taken place on January 1, 2017.³²¹

34. Again, the Regulation contemplates a degree of inconsistency in the procedures adopted by chiefs of police to implement the policies developed under section 12 of the Regulation.

35. Furthermore, section 13 requires that procedures be developed related to the limited matters set out in subsection 12(1) of the Regulation, such as the form

of the receipt, the contents of annual reports and the retention of data. The procedures developed by chiefs of police shall be consistent with the policies that police services boards developed under section 12.

Profiling occurs when any part of the reason to link a person to an unlawful incident or incidents and/or relating to public safety concerns is based on a prohibited ground.

36. As a result, when a police services board adopts policies that go beyond the limited areas set out in section 12, the Regulation does not require the police chief to develop consistent procedures.

37. For example, as was discussed above, the London Police Services Board developed a policy that a police officer shall advise individuals at the beginning of a regulated interaction of their right not to interact, including their right to walk away, not provide their identification or not respond to questions.

38. The procedure adopted by the London Chief of Police was “[B]efore attempting to collect identifying information from an individual, the officer shall inform the individual that they are not required to provide identifying information to the officer”. That procedure is consistent with the Regulation but is not completely consistent with the London Police Services Board policy. However,

that part of the London Police Services Board policy is not one of the areas where a policy was required to be developed under the Regulation and, therefore, the procedure developed by the chief of police is not required to follow it.

39. What appears to have occurred is that, in some jurisdictions, the model procedures and policies developed by the Ontario Association of Chiefs of Police were adopted by the chief of police and by the police services board respectively. In those cases, there was consistency between the policy and the procedure. In some jurisdictions, the chief of police adopted the model procedures but the police services boards developed policies that went beyond the model policy. Given the complexity of the Regulation and the short time frame to develop the procedures and policies, it appears that, in some cases, the procedures were not modified to incorporate the additional requirements of a board’s policy.

Unreliably obtained information should not be used to determine critical decisions such as a person’s career.

40. While some chiefs of police have developed procedures that also go beyond the limited requirements of section 12, under the Regulation those procedures have to be consistent with the Board policies only as they relate to section 12. This can allow for a discrepancy between the

way that a police services board wants the Regulation to be applied and the way that the Regulation is applied by the chief of police, at least for those matters not covered by subsection 12(1). There should be consistency between the board's intention and the chief's actions, after the board has consulted with the chief of police.³²²

41. Not all procedures developed by chiefs of police need to be consistent, as long as the procedure that is adopted accomplishes the objectives of the Regulation. For example, chiefs of police may develop different ways of verifying that identifying information is collected in accordance with the Regulation. Not every police service is the same. Some larger police services may be able to appoint a person whose sole job function is to verify the collected information, whereas smaller police services may designate that responsibility as one of several job functions of an employee. As long as there is compliance with the Regulation, the procedures can vary.

Recommendation 10.6

Chiefs of police should review the procedures they developed in order to ensure that the procedures are consistent with the policies developed by the local police services boards, including any requirements that go beyond the Regulation.

Recommendation 10.7

The procedures should seek to eliminate regulated interactions that are based, even in part, on a prohibited ground of discrimination under the *Ontario Human Rights Code*, absent a reason that is allowed by the Regulation.

Recommendation 10.8

Chiefs of police may develop procedures that expand on the content of this Regulation for the purpose of protecting human rights and preventing discrimination.

Recommendation 10.9

The procedures should be binding on chiefs of police.



Chapter 11

Reports and Compliance

Introduction

1. The Regulation requires that annual reports be prepared and reviewed to ensure compliance with the Regulation.
2. In this chapter, I will examine the Regulation's requirements for annual reports and the contents of these reports. I make recommendations related to the inclusion of the number of complaints and requests for information made with regard to regulated interactions. Several recommendations strive to ensure that there is standardization and consistency across the province when it comes to reporting the age and racialized groups of individuals from whom identifying information was collected or attempted to be collected under the Regulation. This standardization is key to ensure that data collected and reported across services is easy to analyze and is comparable from service to service.
3. I also make recommendations related to the term "disproportionate" and the determination of whether there were disproportionate collections of information from certain groups. In subsequent sections, I explore the role of chiefs of police in reviewing their annual reports for compliance and disproportionate impact, and conducting ongoing analysis for compliance, including making critical recommendations in this area. Finally, I explore the notion of disciplinary measures for non-compliance with the Regulation, including implications for officers and chiefs of police.

The Annual Reports

4. Section 14 of the Regulation relates to the annual reports 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 *Police Services Act*,³²³ and the annual report provided by the Commissioner under subsection 17 (4) of the *Police Services Act*.³²⁴ For the purpose of the Review, I am to consider the annual reports prepared by chiefs of police, although the Commissioner prepares a similar report for the Minister of Community Safety and Correctional Services.

Contents of the Annual Reports

5. Chiefs of police are required to establish age groups and racialized groups for the purposes of preparing annual reports.³²⁵
6. A chief of police shall ensure that their annual report includes the following information in relation to attempted collections of identifying information:³²⁶
 - 1) The number of attempted collections and the number of attempted collections in which identifying information was collected;
 - 2) The number of individuals from whom identifying information was collected;
 - 3) The number of times officers relied on sections of the Regulation to not do something that would otherwise

be required under the Regulation prior to requesting identifying information;

4) The number of times an individual was not given a receipt because the individual indicated that they did not want it;

5) The number of times an officer relied on sections of the Regulation to not offer or provide a receipt;

6) The number of attempted collections from individuals who are perceived by a police officer to be males or females;

7) For each age group established by the chief of police, the number of attempted collections from individuals who are perceived by a police officer to be within that age group;

8) For each racialized group established by the chief of police, the number of attempted collections from individuals who are perceived by a police officer to be within that racialized group;

9) 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;

10) The neighbourhoods or areas where collections were attempted and the number of attempted collections in each neighbourhood or area;

11) The number of determinations found in the 30-day review that the information was obtained in a way that did not comply with the Regulation;

12) The number of determinations found in the random sample conducted as part of the annual review that the information was obtained in a way that did not comply with the Regulation; and

13) The number of times members of the police service were permitted to access restricted information.

7. The recording of racial data allows for analysis of potential racial bias. This is a step in the right direction, because the prior absence of such data has been identified as an issue.³²⁷

8. As noted earlier in this report, the annual reports require an analysis of data that is not explicitly required to be recorded by a police officer at the time of the stop. For example, the chief of police is required to annually review factors such as the ages or perceived ethnicity of the people stopped, but officers are not currently required to record that information. The recording requirements I recommend in Chapter 7 should address this issue.

9. The chief's reports received to date have ranged from a paragraph in an annual report to a 20-page independent report. The reports have different age ranges and different racial categories. They also differ in the way they track and record the number of compliant and non-compliant requests for identifying information. Such variations make inter-jurisdictional comparisons difficult.

The recording of racial data allows for analysis of potential racial bias. This is a step in the right direction.

10. It would be useful if there was a template report for all jurisdictions or instructions given to services on these issues to make data comparisons easier and more meaningful.

Recommendation 11.1

The MCSCS, in consultation with the Ontario Association of Chiefs of Police, should develop a template annual report.

Timeliness of Annual Reports

11. The timeliness of annual reports is a concern. As of the time of writing, only 13 police services had made their reports publicly available. Currently, the Regulation does not include a timeline for sub-

mission of annual reports. In my view, it is reasonable for police services to provide the required information within the first six months of the following calendar year.

Recommendation 11.2

Annual reports should be made publicly available within the first six months of the following calendar year.

Complaints and Requests for Information

12. In addition to the information that the Regulation requires to be included in the annual report, some police services report on the number of complaints and requests for information made by members of the public related to regulated interactions. That is useful information to know.

13. The complaints might be unjustified in that they may be about the collection of identifying information related to an investigation and not a regulated interaction.

14. To better understand the social cost of regulated interactions, it is preferable to know the number of complaints made. Those results can then be compared to the positive hit rate for the collection of identifying information to inform a cost/benefit analysis of the practice.

Recommendation 11.3

The annual report should list the number of complaints and requests for information related to regulated interactions.

Age Groups

15. A chief of police shall establish age groups for the purpose of recording the number of attempted collections from individuals who are perceived by a police officer to be within that age group.³²⁸

16. Allowing each chief of police to establish their own age groups leads to inconsistency. One police chief's age groups could differ from another. Currently some police services use the age groups 12-17, 18-29, 30-49, 50+. Most other police services use 0-19, 20-29, 30-39, 40-49, 50-59, 60-69, 70-79, 80+.

It would be useful if there was a template report for all jurisdictions.

17. As a result, only some jurisdictions can determine whether the person who was stopped is a child. The data should be obtained in a consistent manner that allows for inter-jurisdictional comparison. It is recommended that the standardized age groups allow for a determination as to whether the person stopped is an adult or child.

Recommendation 11.4

The potential age groups of those requested to provide identifying information should be standardized.

Recommendation 11.5

The age groups should distinguish between children and adults.

Recommendation 11.6

The recommended age groups are:

0-11
12-17
18-29
30-39
40-49
50-59
60-69
70-79
80 and over

Racialized Groups

18. A chief of police shall establish racialized groups for the purpose of recording the number of attempted collections from individuals who are perceived by a police officer to be within that racialized group.³²⁹ When establishing the racialized groups, the groups should be comparable to the data released by the Government of Canada related to visible minorities and Aboriginal peoples.

19. There is considerable overlap between the perceived racial groups set out by the various police services. Some police services request officers to identify individuals as “Aboriginal” whereas others break that down further to First Nations, Inuit and Métis. Some, but not all, police services have a category for mixed race.

20. Allowing each chief of police to establish their own racialized groups results in inconsistency. It is recommended that standardized racial groups proposed by the Ontario Human Rights Commission and endorsed by a number of stakeholders, including the Ontario Association of Chiefs of Police and the Ontario Association of Police Services Boards, be adopted.³³⁰

Recommendation 11.7

The potential racial or ethnic groups of those requested to provide identifying information should be standardized.

Recommendation 11.8

The recommended racial or ethnic groups are:

- **Indigenous including: First Nations (North American Indian), Inuit, Métis**
- **White**
- **Black**
- **Latin American including: Central American, South American, Mexican, Cuban, Puerto Rican, etc.**
- **East Asian, Southeast Asian including: Chinese, Japanese, Filipino, Korean, Southeast Asian, Vietnamese, Cambodian, Malaysian, Laotian, etc.**
- **South Asian including: East Indian, Pakistani, Sri Lankan, etc.**
- **Middle Easterner including: Arab, Iranian, Afghan, etc.**
- **Other including: Visible minorities not included elsewhere and multi-racialized individuals**

Disproportionate Collection

21. The data must be analyzed to determine if identifying information is being collected from people “disproportionately”.³³¹ What does that mean? Determining that answer is not an easy task. As it

stands, each police service could have a different interpretation of what is “disproportionate”.

22. For example, imagine that, in a northern town, Black people make up 1% of the population, whereas 10% of Ontario’s population as a whole is Black. In the northern town, the street checks of Black people made up 10% of the total street checks. Was the collection disproportionate? The answer is “yes” if compared to the population of the northern town, but “no” if compared to Ontario as a whole.

23. Now imagine that there are two police officers who each collect data from racial groups and age groups in equal percentages. One officer’s collection of data is not disproportionate to the other. However both of them could be collecting data disproportionately from the general population.

24. Imagine now that the population of a neighbourhood is a 50/50 mixture of Black people and white people. However, at any time, the people walking around outside are 75% Black. The collected data from the street checks indicates that 75% of the people who were stopped were Black. Was the collection disproportionate? The answer is “yes” if compared to the local census data, but “no” if compared to the people available to be stopped on the street.

25. Whether data is collected disproportionately is a difficult concept. In one study, Black people made up 6% of the population but were subject to 15% of the

stops. That is a disproportionate number. The result is less of a concern when it factored in the fact that Black people made up 17% of the people out on the street. So, of the population available for street checks, Black people were actually checked slightly less than the average.³³²

26. So what should the collected data be compared to? Should it be compared to the general population of the area or to the people in the area who are available to be stopped?

27. The “availability” issue is complicated. Racialized communities tend to be younger than the general population, have lower incomes and be more concentrated in urban areas, all of which can affect the population available for a street check.³³³

28. A disproportionate number of stops could be affected by other variables that affect the availability to be stopped, such as being under 25 years of age, being male, patterns of socializing, use of public spaces such as parks, going out regularly after dark, school exclusion, not owning a car and unemployment or part-time employment.³³⁴

29. Disproportionality in the number of street checks is not necessarily a direct index of police discrimination, but it may point to the possibility of discrimination.³³⁵

30. The 2018 report prepared for the Edmonton Police Commission concluded that, while visible minority and Indigenous persons were street checked more often than white persons, in the absence

of an ability to assess the context within which the street checks occurred, including the location, circumstances and available population, it was not possible to determine if this was the result of racial profiling and biased policing.³³⁶

Each police service could have a different interpretation of what is “disproportionate”.

31. Two British studies, which looked at the available population where and when police stops are conducted, concluded that people from Black and minority ethnic groups are more available in those areas and that such availability goes a long way to explaining the disproportionate collection.³³⁷ In fact, two studies found that white people were more likely to be searched relative to the available population.³³⁸ However, despite all of this, another study indicated that there remained a significant disparity in stops on the basis of race.³³⁹

32. This still leaves the concern that the police decide where and when searches will be conducted: decisions that could affect the available population. When stops and searches are conducted in neighbourhoods with large minority ethnic populations, members of those groups are bound to be more available. Discrimination at an individual level is simply replaced by discrimination at a neighbourhood level.

33. Police services note that not all communities are the same. Police respond to calls from the public and those calls may be from neighbourhoods that have a larger ethnic population. However, some studies indicate that the calls for service can explain only some of the level of disparity.³⁴⁰

34. Further, the *nature* of the calls for police assistance can affect the proportion of street checks. For example, if there are many calls to report assaults where the suspect is of a particular racial group, then that demographic will be subject to a greater degree of street checks. Assaults result in a greater number of cases where the victim can provide a description of the suspect, as opposed to other crimes such as burglary where the physical appearance of the suspect may not be known. As a result, these investigations may involve more street checks than others.

35. There was also evidence from the United Kingdom that the rate of stops that resulted in searches – as opposed to simply “stop and account” – of Black or ethnic people was double the rate for whites.³⁴¹ Both types of stops require reasonable suspicion to initiate the interaction. Once the interaction was initiated, some groups were searched more often than others. The disparity in search rate could not be explained away on the basis of availability.

36. Similar results from the United States indicate that, once stopped, Black and Hispanic people are more likely than white people to be frisked or searched.³⁴²

All of this highlights the need for police officers to also record whether a regulated interaction resulted in further action being taken by the police officer.

37. Despite the issue of how best to determine whether there has been a disproportionate collection of data, such analysis is not possible without collecting the data in the first place. Recording that data is an essential component of the Regulation.

38. To determine whether there has been a disproportionate collection of information, the collected data must be compared to something else, which is often referred to as a “benchmark”.

39. Some jurisdictions such as Victoria, Australia, recommend that the data be benchmarked against local census data.

40. In the landmark *Floyd v. New York* decision, the court accepted the benchmark of available population over the benchmark of local crime data statistics.³⁴³ The reason was that the local crime statistics were caused, in part, by a prior disproportionate number of stops and searches that skewed the crime data against racialized groups.

41. Without setting out the benchmark to be used, it is difficult to compare jurisdictions. One police service could determine whether there had been a disproportionate collection of information by benchmarking against the local census data, while another police service benchmarks against the population on the street available to be stopped.

42. To allow for a standardized analysis, it is recommended that the collected data be benchmarked against the local census data to determine if there has been a disproportionate collection of information. Such a comparison is a blunt instrument because there may be several reasons why there are disproportionate numbers, but it provides easy and inexpensive feedback about potential areas of concern.

43. The analysis might indicate a disproportionate level of collection that is explained by, for example, the fact that the population available on the street to be questioned is itself disproportionate to the local census data. That reason could then be stated when the chief of police reports on the results of their findings that there was a disproportionate collection of identifying information.³⁴⁴

44. The Regulation requires that the annual report of the chief of police indicate the number of regulated interactions within each neighbourhood or area.³⁴⁵ The Regulation also requires that a determination be made as to whether there has been a disproportionate collection of information in the entire region. The Regulation does not require a determination as to whether there was a disproportionate collection of information in each area of the region. As a result, a disproportionate collection of information against one group might be offset by a disproportionate collection of data against another group in a different area, and the overall result would show no disproportionate collection of information.

45. The York Regional Police Service reports as to whether there is a disproportionate collection in each area. For each district, York Regional Police correlates the percentage of regulated interactions for each racialized group to the census data for the proportion of that racialized group in that district. Such a breakdown helps to show if there are any intra-jurisdictional concerns over the disproportionate collection of information.

46. Because of the very low numbers of regulated interactions reported by various police services, it is difficult to determine any statistically significant differences in collection. With annual numbers of only two or three dozen regulated interactions or fewer across an entire region and with only a few regulated interactions in each area of the region out of thousands of calls for service, it is difficult to draw any conclusions.

47. For example, in one jurisdiction, of the thousands of interactions with individuals, 30 white people and five Black people were questioned in regulated interactions in 2017. White people comprised 83.3% of the community and 75% of the regulated interactions. Black people comprised 1.8% of the community and 12.5% of the regulated interactions. It would appear that the five Black people who were questioned were overrepresented. However, with such small numbers, the results are easily skewed. One event might result in two people being asked for information at the same time, or the numbers could be influenced by other variables. As

noted earlier, police officers have stopped engaging in street checks almost entirely, even when there may be good reasons to conduct a street check. This concern over interpreting low numbers might be alleviated if the levels of reported street checks increase as a result of the recommendations made in this report.

Because of the very low numbers of regulated interactions reported by various police services, it is difficult to determine any statistically significant differences in collection.

48. Despite the low numbers of interactions, leaving the collection and analysis of the data solely in the hands of police services does not promote public confidence. The annual report of the chief of police indicating the annual data on regulated interactions is provided to the police services board, not to the public.³⁴⁶ Only if the chief of police concludes that there has been a disproportionate collection of data is the chief required to prepare a report addressing the concerns, which is provided to the police services board and then made publicly available.³⁴⁷ The public does not necessarily see the data that leads to the police chief's conclusion as to whether there was or was not a disproportionate collection of identifying information. The chief of police is required to make the information available to the

Minister of Community Safety and Correctional Services.³⁴⁸

49. The data should be publicly available to ensure that the conclusion as to whether or not there was a disproportionate collection of information was correct. When the evidence indicates that there was not a disproportionate collection of identifying information, that information should also be made known to the public. Privacy concerns prevent the sharing of the actual identity of the people who are stopped, but the de-identified data should be made available to ensure that the Regulation is being adhered to properly.

Recommendation 11.9

The term “disproportionately” as contained in section 14(2) (9) of the Regulation should be defined so as to be applied consistently.

Recommendation 11.10

When determining whether there was a disproportionate number of street checks, the collected data should be compared to the local census data to determine if there is a statistically significant difference.

Recommendation 11.11

The number of regulated interactions in each neighbourhood or area should also indicate the age, race and gender of the person stopped compared to the census data for that area.

Recommendation 11.12

The collected, de-identified data provided by a chief of police to a police services board under section 14 of the Regulation should be made publicly available.

Review and Report by Chiefs of Police

50. Chiefs of police must review their annual reports to determine if identifying information was attempted to be collected disproportionately from individuals perceived to be in a group or combination of groups.³⁴⁹

51. If the review indicates that there has been a disproportionate collection of information, the chief of police must review the practices of their police service and prepare a report setting out the results of the review as well as their proposals, if any, to address the disproportionate attempted collection of information.³⁵⁰ The

chief then provides a copy of that report to the police services board.

52. The board must then publish the chief's report on the internet and make it available to the public, free of charge, in any manner the board considers appropriate.³⁵¹ The board must consider the report and the recommendations, if any, and decide whether to give directions under subsection 31(1)(e) of the *Police Services Act*.³⁵²

53. The Regulation does not require the chief to make any recommendations to solve the issue of disproportionate collection of information. As noted earlier, the disproportionate collection might be affected by other factors, such as the availability of people on the street, which are not matters in need of correction.

54. Given the fact that the information is published and the police services board could intervene, the chief of police will be under considerable pressure to ensure a justifiable collection of data. As such, no further recommendation is made.

Ongoing Analysis

55. The collected identifying information should be inspected for compliance more than once annually.

56. As the information is received, it should be reviewed daily within the police services to ensure it was properly obtained. This review involves more than simply ensuring that boxes have been checked off. The written reasons that police officers are providing for the stop

encounters should be reviewed daily to ensure they comply with the Regulation.

The data should be publicly available to ensure that the conclusion as to whether or not there was a disproportionate collection of information was correct.

57. A daily review of the information received provides some level of assurance that police officers are acting properly.

58. There should also be some form of an early warning indicator to flag potential concerns. For example, a police officer might submit information that consistently shows there are objective and credible reasons for conducting stops. However, for that particular officer, all of the stops involve people of one race. Such a result would require an explanation, particularly if other police officers doing the same job in the same area do not have the same results.

59. Flagging concerns at an early stage benefits both the public and the police. An officer might innocently misinterpret the legislation. Before the officer is sanctioned, the issue should be flagged and addressed. Further training might be required or a warning might be necessary.

60. In the event that the officer persists in violating the Regulation despite a warning or retraining, a system should be put

in place to ensure that disciplinary action is taken. It is not sufficient for the Code of Conduct to be amended to incorporate violations of the Regulation if such violations do not have consequences.

Recommendation 11.13

The identifying information received should be monitored as it is received to ensure compliance with the Regulation.

Recommendation 11.14

There should be an early indication system to identify, correct and warn officers who unintentionally collect identifying information contrary to the Regulation.

Recommendation 11.15

If it is determined that identifying information was unintentionally collected contrary to the Regulation, the officer who collected the information must be notified as soon as possible of the reason why the collection was found not to have been obtained in compliance with the Regulation.

Recommendation 11.16

In appropriate circumstances, an officer who collects identifying information in breach of the Regulation should receive additional training. If necessary, the officer should not conduct regulated interactions until the retraining has been completed.

Recommendation 11.17

An officer who persists in collecting identifying information in breach of the Regulation without reasonable excuse should be subject to discipline.

Disciplinary Charges

61. The new subsection 2(1)(g)(iii) of the Code of Conduct states:

2(1) Any chief of police or other police officer commits misconduct if he or she engages in,

(g) UNLAWFUL OR UNNECESSARY EXERCISE OF AUTHORITY, in that he or she,

(i.1) without good and sufficient cause makes an unlawful or unnecessary physical or psychological detention,

* * *

(iii) collects or attempts to collect identifying information about an indi-

vidual from the individual in the circumstances to which Ontario Regulation 58/16 (Collection of Identifying Information in Certain Circumstances – Prohibition and Duties) made under the Act applies, other than as permitted by that regulation.³⁵³

62. The Regulation allows for identifying information that was improperly obtained to be used for limited purposes such as an ongoing police investigation.³⁵⁴

63. Given that it is police officers and not the chiefs of police who are most likely to be out on the street obtaining the identifying information, police officers could be sanctioned for improperly *obtaining* the information while chiefs of police would not be sanctioned for *using* the improperly obtained information, as long as the use of that information is allowed under the Regulation. In other words, chiefs of police are allowed to enjoy the fruit of the poisonous tree.

64. The disciplinary measures should extend not only to those who actually attempt to collect the identifying information other than as permitted but also to those who authorize or allow such a practice, including supervisors or chiefs of police.

65. As I noted in Chapter 7, another troubling concern raised by some members of the public is that there are police officers who refuse to provide their name or badge number when requested to do so. The circumstances in which this occurs may fall outside of regulated inter-

actions. Refusing to provide a name or badge number makes it extremely difficult for members of the public to follow up on the interaction.

66. In fact, as mentioned above, most police services in Ontario do have internal regulations requiring uniform officers to produce their identification, including their badge and warrant card, when requested by a member of the public. These regulations usually also require plain-clothes officers (except undercover officers) to produce their identification automatically when identifying themselves as police officers.

Flagging concerns at an early stage benefits both the public and the police.

67. All police officers who engage with the public, other than those in covert operations, should be required to wear a name tag and to provide their name and badge number if requested.

Recommendation 11.18

The Code of Conduct should be amended to state

2(1) Any chief of police or other police officer commits misconduct if he or she engages in,

(g) UNLAWFUL OR UNNECESSARY EXERCISE OF AUTHORITY, in that he or she,

(i.1) without good and sufficient cause *authorizes, condones or* makes an unlawful or unnecessary physical or psychological detention,

(iii) collects or attempts to collect identifying information about an individual from the individual or *authorizes or condones such activity* in the circumstances to which Ontario Regulation 58/16 (Collection of Identifying Information in Certain Circumstances – Prohibition and Duties) made under the Act applies, other than as permitted by that regulation.

Recommendation 11.19

It should be considered misconduct for police officers who are not engaged in covert operations to refuse to provide their name and badge number if requested.

Availability of Records

68. Finally, chiefs of police are required to make certain information available to the Minister of Community Safety and Correctional Services.

69. Under section 16 of the Regulation, the MCSCS may request a chief of police to provide relevant information, when the MCSCS is carrying out a duty or exercising a power under clauses 3(2)(b),(d), (e) or (h) of the *Police Services Act*.³⁵⁵ As such, the MCSCS acts as a secondary level of review to ensure that the Regulation is being followed properly. I have no recommendations to make regarding this section.



Chapter 12

Other Policy and Procedural Recommendations to Improve the Implementation of the Regulation

Introduction

1. Demands on police officers have consistently increased over the years and continue to grow year by year. Police officers are no longer simply defenders of public order. They are undertaking tasks traditionally associated with social workers, paramedics, mediators, matrimonial counsellors, mental health workers and youth workers. Their responsibilities are numerous and constantly evolving.

2. One of the issues I was asked to consider in the terms of reference relates to overarching amendments, policy and/or procedural changes to improve the implementation of the Regulation.

3. The Review is not authorized by its mandate to include a detailed examination of ways to reform policing in Ontario but, in light of the ever-expanding role of police officers, there are some ways that the issues involved with street checks intersect with police practice generally. As such, I feel it is worthwhile to make some general recommendations related to community policing, partnerships with Indigenous communities, locally-based policing, youth education, and diversity and inclusion in police services.

Community Policing

4. Several police services have already adopted neighbourhood policing initiatives: police officers interact and engage with members of the community through the development and co-delivery of programming. Such initiatives should be encouraged and continued. These programs

are a vital part of policing in Ontario and go a long way in establishing and maintaining strong police–community relations which, in turn, are essential to improving public trust and confidence in policing. Public safety is assured only when there is strong, widespread public trust and confidence in policing.

5. One example of successful community involvement is the Toronto Police Service’s Youth in Policing Initiative (YIPI), which was launched in 2006. YIPI employs youth who are: 15-18 years old and enrolled in a secondary or post-secondary institution, permanent residents of a neighbourhood improvement area, and successful through all employment security clearance processes, to work with police officers.³⁵⁶ Having young people work with police officers helps to bridge the gap in community policing while improving public trust and breaking down barriers.

Demands on police officers have consistently increased over the years and continue to grow year by year.

6. The program was so successful that, in 2012, it expanded into a year-round program. Participants work alongside uniform officers and civilians in a variety of capacities including administrative work, crime prevention and community engagement. The participants receive over 40 hours of professional and per-

sonal development training, which allows them to enhance their leadership skills as well as their confidence. The program creates, through mentorship, an avenue for young people to develop meaningful relationships with the police. It gives police officers an opportunity to learn more about the youth, their goals and their neighbourhoods. YIPI also improves overarching police–community relations by strengthening connections with the family members and friends of program participants, who then consequently also have an improved outlook on police.

Having young people work with police officers helps to bridge the gap in community policing while improving public trust and breaking down barriers.

7. The initiative is so popular that each year it receives roughly 2,000 applications for the 279 available spots. Throughout its history, YIPI has employed over 2,500 students from marginalized neighbourhoods and produced at least 6 police officers and a handful of civilian members. It should be noted that, due to the program’s success in Toronto, over 20 large and small police services in Ontario, including police services in York Region, Peel Region, Ottawa, Windsor, London, Hamilton, Kingston, Thunder Bay and Sault Ste. Marie, have opted to start a program of their own.

8. While this is just one example of a successful community initiative (and I have seen many valuable community policing initiatives during my consultations in Ontario, including the Community Safety Village in York Region and the Neighbourhood Resource Centre in Sault Ste. Marie), it highlights how funding can be better directed to forging more positive relationships between police and communities.

9. Police officers should not be expected to spend their day running from call to call or to spend the entire day sitting in their cruisers. They should be allowed sufficient time to spend an hour or two each day to get out and informally meet with members of the community. In doing so, they can learn information that might be of future assistance while also creating new, positive relationships.

10. Having police officers available to spend some time in the community might involve some overall increase in labour costs. Such a cost increase may well be offset by the cost reduction of having members of the public willing to assist police to solve crimes and improve overall public trust and confidence in policing. In any event, police services should be provided with adequate funding to perform their duties effectively.

11. One model that police services in Ontario should consider exploring is the New York Police Department’s 2014 “Precision Policing” model, which blends law enforcement with neighbourhood policing. Under the neighbourhood poli-

cing branch, certain dedicated officers are responsible for becoming more familiar with the neighbourhoods they patrol instead of responding to calls for service. They do this by attending community events and building strategic relationships with local residents, community leaders, city agencies, non-profits, faith-based groups, activists and community leaders.³⁵⁷

Recommendation 12.1

Police services should be provided with adequate funding to allow for greater community involvement and to support other models of community policing that enable police officers to spend some time each day in the community.

Partnerships with Indigenous Communities

12. It has been well-documented by many reports and commissions that Indigenous peoples in Canada are over-represented in the criminal justice system as both victims and offenders – despite the fact that the reporting rate to authorities for Indigenous peoples who are victims of crime is much lower than for other Canadians. For this reason, building respectful and meaningful partnerships between police and Indigenous communities is of particular importance to help police do their jobs and keep people safe.

13. Unfortunately, as discussed in Chapter 2, the relationship between police and many Indigenous peoples throughout Ontario is a complex one.

14. During my meetings with police services across the province, I was often told about their efforts to build awareness about Indigenous issues among their uniform and civilian members, including certain community outreach initiatives and various courses on these issues. Some courses involved members from the local Indigenous community and some did not. These awareness courses varied across the province in both content and time dedicated to these issues. It is my hope that, going forward, these courses and outreach programs will continue and grow, and will all include advice and participation from members of Indigenous communities.

15. Respectful relationships with Indigenous peoples take time and commitment from both sides. In 2007, the Ipperwash Inquiry provided a detailed report that outlined a framework for respectful relationships and urged all governments to work towards reconciliation with Indigenous peoples. This report also described the historical relationship between police and Indigenous communities and provided valuable recommendations on how to improve these relationships. Certain recommendations outline how police can establish and maintain respectful relationships with Indigenous communities by: highlighting the importance of maintaining active, ongoing monitoring strategies for police–Indigenous relations;

and establishing a public accountability process for culturally insensitive conduct by officers.³⁵⁸ Other recommendations require the provincial government to: develop a provincial police–Indigenous relations strategy; commit sufficient resources to support police–Indigenous relations initiatives; and issue a directive to all police services in Ontario requiring officers to report all incidents of racism or other culturally insensitive behaviour by other officers.³⁵⁹

Respectful relationships with Indigenous peoples take time and commitment from both sides.

16. Although these recommendations were created in the context of the events at Ipperwash and were specifically directed at the Ontario Provincial Police and the MCSCS, they are valuable and relevant to all police services when they are seeking to build and improve partnerships with Indigenous communities.

Recommendation 12.2

Police services should increase outreach to and establish meaningful and equitable partnerships with Indigenous communities.

Locally-Based Policing

17. During my consultations throughout the province, some stakeholders reported to me their concern that many police officers serving a community often did not live within that community. Instead the officers commuted to work from a different city and then mainly remained in their police cruisers while on duty. As a result, those police officers were perceived as being less knowledgeable about the dynamics of the community they served, and not representative of the community itself.

18. Given the trend toward community policing, it is preferable to have police officers hired from the community where they live in order for them to truly reflect and represent their community. Many police stakeholders from smaller communities noted that they never had to engage in carding because they already knew who the people were in their community. With community policing, a small community that is part of a larger city can give locally-based officers the same opportunity to get to know local residents and reduce the need for intrusive requests for information.

19. Some police officers understandably do not wish to live in the cities, regions and communities where they work. Some officers could feel torn between their duties as police officers and their allegiance to their community. Others do not wish to have to arrest or sanction people they may see every day or who may live on their street. While those concerns are

understandable, they should not overwhelm the benefit of having locally-based policing. While police officers cannot be compelled to remain living within a jurisdiction, if they are hired from within a community, it is conceivable that, having already established roots there, they will be more likely to remain within that community.

20. To develop lasting community relationships, the same police officers should remain engaged in the local community for an extended period of time rather than being transferred between different neighbourhoods. Individuals and businesses based in a particular community should be able to form relationships with local police officers when possible.

Recommendation 12.3

Efforts should be made by police services to hire police officers who live within the city or region they will serve.

Recommendation 12.4

Community police officers should serve in community neighbourhoods for a sufficient period of time to form meaningful local relationships.

Education for Youth: Rights, Responsibilities and Marginalized Communities

21. In my consultations with police services and community groups across Ontario, I was impressed by the range of innovative work being done to teach young people about their rights, including the development of “know your rights” cards for youth and apps on important legal and human rights topics. Particular attention should be paid to developing materials and modules for schools to teach students from a young age about the Regulation as well as their rights and responsibilities more generally.

Individuals and businesses based in a particular community should be able to form relationships with local police officers when possible.

22. Saskatchewan provides an interesting model on rights and responsibilities education for students in schools that is worth considering in Ontario. In Saskatchewan, the Centurus Citizenship Education Foundation Inc., a partnership between a range of government agencies including the Saskatchewan Human Rights Commission, Ministry of Education and the Ministry of Justice of the Government of Saskatchewan and educators, developed a robust K–12 civic education program in schools focused on

the rights and responsibilities of citizens. The program has been recognized internationally as innovative and cutting-edge, and Concentus is working to ensure that every province and school board across Canada implements this program in its curriculum.³⁶⁰

23. In addition to education on rights and responsibilities, the Ontario school curriculum should ensure that all students receive some exposure to Black and Indigenous history in Canada, taught by people from those communities.

24. It is no accident that the two groups most marginalized by society are the same two groups that have faced – and continue to face – systemic discrimination. The Truth and Reconciliation Commission of Canada has identified and is trying to address issues of systemic discrimination for Indigenous peoples. Similarly, a range of studies have looked at the specific historic and current issues faced by Black communities.

25. Students should not graduate from high school ignorant of the historical and current challenges that have been faced by these two groups. Students cannot gather their information on these communities from television programs or films. The depiction of Black people on television and film in the 1950s and 1960s showed them in the roles of servants or criminals. The depiction of Indigenous peoples was often limited to Western movies in the stereotypical “cowboys and Indians” films. While the depiction of these groups in television and film has improved and

expanded in many ways, Black and Indigenous people are still often portrayed as people to be feared and subject to broad stereotypes.

26. Throughout my consultations, Black and Indigenous people – particularly youth – consistently related to me a sense of alienation and disaffection from mainstream society and a real, tangible feeling that others viewed them with mistrust. Our versions of reality are based on what we have lived. If society expects that Black youth are likely to become gang members, then a disproportionate number of Black youth will be more likely to become gang members. That reality can change when people are provided with alternate perspectives. It is critical that the Ontario school curriculum make a concerted effort to eradicate stereotypes and engender a deep understanding of Black and Indigenous history and current realities.

27. This history and the need to teach it to our young people are critically important. It is too simplistic to state that carding is a problem that was created by the police alone. In fact, it was a practice that was implemented and expanded for decades with the implicit approval of our society as a whole.

28. There is no quick fix to the problem of systemic discrimination. As noted earlier, implicit bias training may help people to recognize but not eliminate deep rooted beliefs. We need an integrated approach throughout all government ministries and organizations. Justice, education and

mental health are not separate issues, and they should not operate in silos. Encouraging in youth a deep, robust understanding of the history and current realities of Black and Indigenous peoples will ensure that this history is understood and that its manifestation in modern institutions and approaches is recognized. Specifically, for the youth who graduate and choose careers in policing, they will do so equipped with a broader understanding of the society in which they live.

Recommendation 12.5

Efforts should be made to ensure that youth are taught about their rights and responsibilities, as well as Black and Indigenous history, as part of the school curriculum. Information on the Regulation and its operation should be included in the curriculum.

Diversity, Inclusion and Police Culture

29. Part of the perception of discrimination in street checks may result from the fact that the police officer conducting the street check often comes from a different racial background than the person being asked for identifying information. I believe that a diverse, inclusive police service at all ranks will help address that concern and make an overall meaningful difference. In fact, the *Police Services Act*

specifically mandates the “need to ensure that police forces are representative of the communities they serve”.³⁶¹

30. Diversity in policing will help dispel myths and stereotypes about people from marginalized communities. Diversity and inclusion in policing brings new perspectives, cultural sensitivity and a deeper understanding of the communities that police serve. The recruitment of officers from minority or racialized backgrounds may also benefit racially, culturally or linguistically diverse communities.³⁶²

31. Having a diverse police service creates avenues for minority officers to build bridges between police services and various communities.³⁶³ Indeed, the lack of diversity has placed undue burdens on existing diverse officers, by putting them and their work under more public and organizational scrutiny, and creating feelings of isolation and disconnection from other officers.³⁶⁴ Some diverse police officers have reported that they themselves have been the subjects of carding. It is certainly relevant that they can share their experience with other officers.

32. Statistics tell the story of the lack of diversity in policing. Recruitment in police services over the last 15 years shows a demonstrated lack of representation despite persistent messaging from police services of a commitment to diversity initiatives.³⁶⁵ For instance, based on a July 2016 *CBC News* report, 57% of Peel Region is diverse but its police force only has 19% non-white officers. In York Region, 44% of the population but only 17% of

the police force is diverse. Over 50% of Toronto's population but only 25% of the police service is non-white.³⁶⁶

Diversity in policing will help dispel myths and stereotypes about people from marginalized communities.

33. Canadian data indicate that police organizations are hiring older applicants with higher education, and improving efforts to hire female and racialized recruits, but this is not enough. There continues to be a demonstrated record of under-representation of diverse communities in the profession.³⁶⁷

34. Everyone wants to feel safe and protected in their community. Meaningful relationships and partnerships need to be built with communities, especially the Indigenous, Black and other racialized communities. This includes, for example: municipal and provincial appointments on police services boards; hiring, retention and promotion of new recruits and civilian staff; and more community involvement in police training and public safety initiatives.

35. I believe most Indigenous, Black and other racialized communities are hopeful about the potential for their future relationship with the police. This hope is particularly prevalent among young people, some of whom aspire to become police officers.

36. Police services, like other institutions, should reflect at all ranks – from front-line officers to senior command – the communities they serve. This is essential if we are to build trust and confidence in these services. It is important to add that the representation of Indigenous, Black and other racialized communities in police services across this province must go beyond mere tokenism. Representation from these groups must form a critical mass across entire services and within the different service units and sections. This will not only diversify the representation of different groups within services but also diversify the skills and experiences within services. This diversity is important if we are going to bridge understanding between police services and Indigenous, Black and other racialized communities.

37. It is important to note, however, that simply having a diverse police service does not necessarily result in improved police-community relationships or engender a rights-based approach to policing. Police culture is very strong and, regardless of an officer's racial identity, sexual orientation, gender or Indigeneity, it can lead to the officer adopting the prevailing norms and approaches of the organization – which are determined by the majority group within the profession – thereby limiting the impact of diversity in the service.³⁶⁸ At its core, police culture is rooted in the established notion that police work is hierarchical and mission-driven, and that anything done in furtherance of the mission is considered to be serving a greater good.³⁶⁹

38. In my many meetings with community groups, members of the public and Indigenous, Black and other racialized communities throughout the province, I heard instances of Indigenous, Black and other racialized officers being especially harsh in their interactions with members of these communities. This approach could be explained by the prevailing norms of police culture and its mission-driven approach. It may also reflect a concern among Indigenous, Black and other racialized officers about not being seen as favouring any particular group.

Police services, like other institutions, should reflect at all ranks – from frontline officers to senior command – the communities they serve.

39. Police culture is a palpable, powerful force that can cause racialized, Indigenous, LGBTQ2 and female officers to assimilate, because they are immersed in the same culture and this culture, rooted in a hierarchical structure founded on compliance and adherence to strict norms, shapes how officers act and think.³⁷⁰ According to the former Deputy Chief of the Toronto Police Service, Peter Sloly, the biggest issue facing policing that requires attention is a change to police culture. He states:

We need officers who see themselves as servers who can become protectors when needed rather than as law-en-

forcers. We need the institution of policing to evolve from a thin blue line that separates police from community to a thin blue thread that is interwoven within the fabric of society. It's a change that must happen quickly to have any hope of keeping pace with near-constant social change and digital disruptions.³⁷¹

40. The culture of policing must adapt to the ever-changing demographics of Canadian society and Canada's stated commitment to equality, diversity and inclusion. Police services must take concrete actions to inspire and expedite this cultural shift.

Recommendation 12.6

The MCSCS should work in conjunction with police services and the Ontario Association of Chiefs of Police to design and launch public surveys to seek input from Indigenous, Black and other racialized communities on policing in Ontario.

Recommendation 12.7

The Ontario Association of Chiefs of Police should survey the experiences and views of diverse members in police services throughout the province.

Recommendation 12.8

Police services should hold regular consultations with the public and members of diverse communities to obtain feedback on police diversity initiatives and to improve police-public relations.

Recommendation 12.11

Each police service in Ontario should have a diversity officer (or, for smaller police services, an officer whose duties include diversity) or a diversity bureau dedicated to establishing a constructive link between the police and diverse communities.

Recommendation 12.9

Police services should develop local strategies to improve diversity and inclusion at all levels of the service. The MCSCS should work on the development of a model strategy on diversity and inclusion for adoption, adaptation (to local concerns and realities) and implementation by services throughout Ontario.

Recommendation 12.12

The Ontario Police College should review its curriculum, teaching methods and evaluation techniques to identify and eliminate barriers to success for recruits from diverse and marginalized communities.

Recommendation 12.10

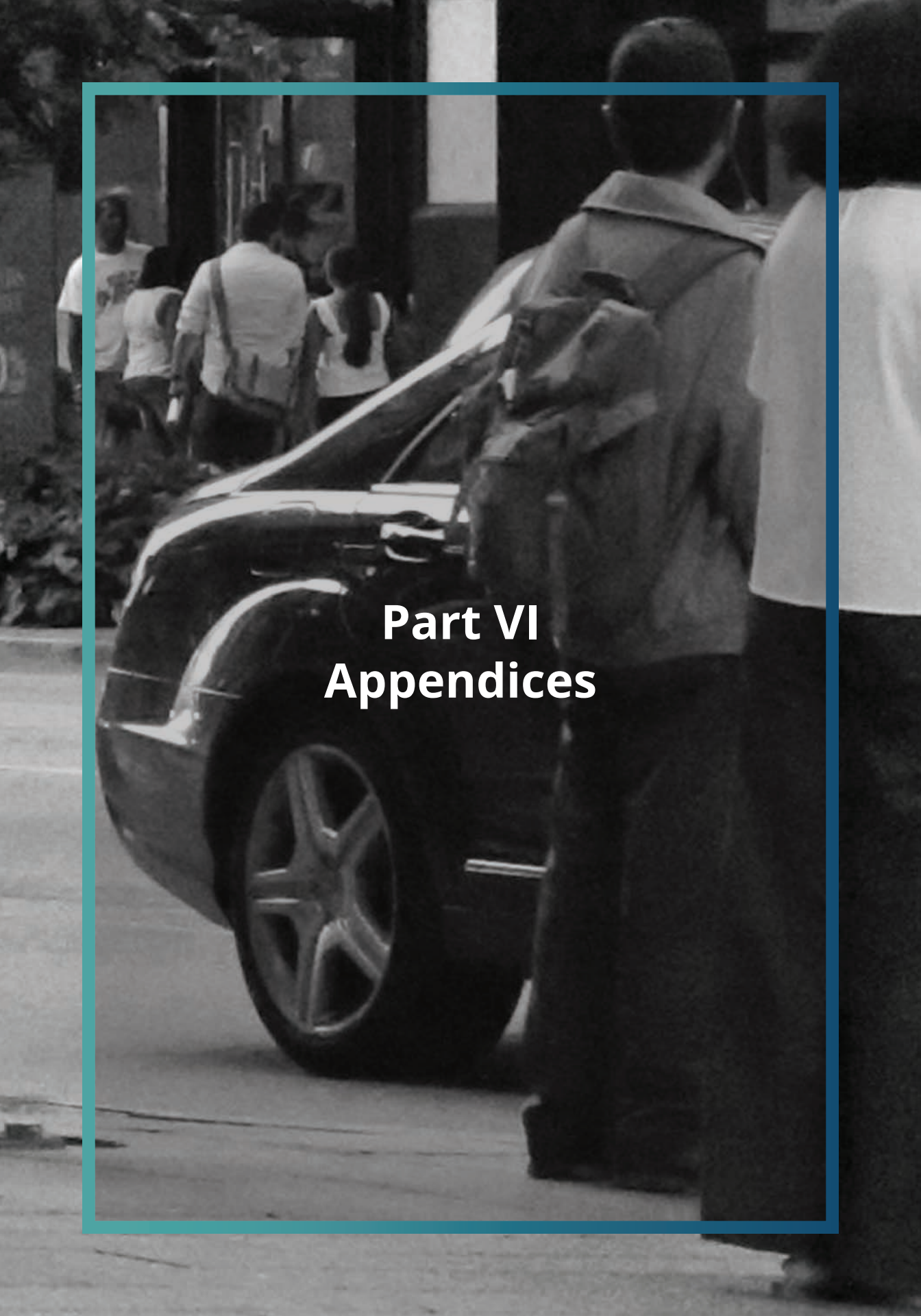
Police services should undertake a systemic review of their recruitment and promotional processes, including a focus on examinations, interviews and assessment tools to ensure that they are inclusive and bias-free.

Recommendation 12.13

The MCSCS should establish selection criteria for police services board appointees with a specific focus on recruiting applicants who reflect the diversity of the communities they serve.

Recommendation 12.14

Police services boards should be responsible for developing relevant board policies on diversity within the police service, overseeing efforts of the police service to recruit and promote diverse members, and reviewing and approving the service's diversity plan.

A black and white photograph of a busy street scene. In the foreground, a person with a large backpack is walking away from the camera. To their left, a dark-colored car is parked or moving slowly. In the background, several other people are walking on the sidewalk. The entire image is framed by a teal border.

Part VI

Appendices



Appendix A

Recommendations

Chapter 2

Recommendation 2.1

The Government of Ontario should immediately proceed with amending the Regulation in accordance with the recommendations made in this report. All amendments must take into account the time and resources necessary for police services to ensure effective, proper training and implementation of the revised Regulation. The government should allocate additional resources to police services specifically for this purpose.

Chapter 5

Recommendation 5.1

The Regulation should expressly state that no police officer should arbitrarily or randomly stop individuals to request their identifying information.

Recommendation 5.2

Officers should be instructed that the requirements of the Regulation apply when a police officer requests identifying information in a regulated interaction, whether or not the officer retains and records the identifying information.

Recommendation 5.3

The term “identifying information” should be defined in the Regulation in a way that is similar to the definition adopted by the Toronto Police Service, such as:

“Identifying information” means any information which, alone or in combination with other information, can be used to identify an individual. Identifying information includes information about an individual’s race, age, sex, sexual orientation, gender identity, marital or family status, socioeconomic circumstances, and education, medical, psychiatric, psychological, criminal or employment history.

Recommendation 5.4

The definition of identifying information should not include video surveillance or the incidental photographing or recording of an individual during a regulated interaction, such as could occur when an officer wears a body-worn camera.

Recommendation 5.5

The Province of Ontario should consider revising other Acts empowering police to obtain identifying information to contain similar protections as those contained in this Regulation.

Recommendation 5.6

The Regulation should apply to vehicle stops that are not otherwise exempt from the Regulation.

Recommendation 5.7

The Regulation should specifically apply when identifying information is requested from passengers of vehicles during vehicle stops when the passenger is not in violation of the *Highway Traffic Act*, the *Criminal Code*, or any other Act of Parliament or Legislature.

Recommendation 5.8

The Regulation should state expressly that it does not apply to attempts to confirm the identity of an individual who matches the description of a missing person, human trafficking victim or other victim of crime.

Recommendation 5.9

The Regulation should state expressly that it does not apply to interactions that have a community-building purpose, meaning on-duty police contact with members of the community meant to foster positive relationships and/or assist members of the public without gathering identifying information for an investigative or intelligence purpose.

Recommendation 5.10

The procedures developed by chiefs of police should ensure that identifying information requested by police officers in social situations or for the purpose of fostering community relations or assisting members of the public is not recorded and stored in any regulated interactions police database.

Recommendation 5.11

The Regulation should specify that a regulated interaction should take no longer than is reasonably necessary to satisfy the purpose of the interaction, and that police officers should not prolong a regulated interaction in the hope of acquiring reasonable suspicion to detain.

Recommendation 5.12

Remove subsection 1(2) of the Regulation and replace with:

Despite subsection (1), this Regulation does not apply with respect to an attempted collection made by a police officer for the purpose of investigating an offence the officer

reasonably suspects has been, is being or will be committed, and the person from whom the identifying information is requested appears to have some connection to the offence whether as a suspect or as someone who has helpful information about the offence.

Recommendation 5.13

“Suspicious activity” should be defined in the Regulation to mean an activity where, under all of the circumstances, there are objective, credible grounds to request identifying information.

Recommendation 5.14

Police officers should be directed and trained that when there is a suspicious activity and it is feasible to do so, a police officer should first make inquiries of an individual to confirm or dispel the officer’s suspicion without requesting identifying information.

Recommendation 5.15

No police service should randomly stop people in order to collect and record identifying information and create a database for general intelligence purposes.

Chapter 6

Recommendation 6.1

Remove subsections 5(1), (2) and (3) of the Regulation, and replace with:

5 (1) A police officer shall not attempt to collect identifying information from an individual if:

(a) any part of the reason for the attempted collection is a prohibited ground of discrimination under section 1 of the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19, or is due to the individual’s socioeconomic status, or

(b) the attempted collection is done in an arbitrary way.

(2) A police officer may consider if an individual is part of a group protected by a prohibited ground of discrimination under section 1 of the Ontario *Human Rights Code* or the individual’s socioeconomic status (“protected group”) if:

(a) the officer is seeking a particular individual;

(b) being within a protected group(s) forms part of a credible, reasonably specific description relating to the individual or is evident from a visual representation of the individual; and

(c) the description consists of more than the individual’s membership in a protected group(s).

Recommendation 6.2

The wording of clause 5(4)(1) should be changed to “details about the individual and/or the circumstances” that cause the officer to reasonably suspect that identifying the individual may contribute to or assist in an inquiry.

Recommendation 6.3

Officers should be trained and informed that they should have articulable reasons for initial inquiries and gathering of information. No part of the reasons for the initial inquiry or gathering of information may be a ground prohibited by the Regulation.

Chapter 7**Recommendation 7.1**

Requests for information should be conducted in a professional and civil manner that respects the individual and inspires confidence in the police and their interactions with the public.

Recommendation 7.2

Before identifying information is requested, individuals should be informed of the following:

- (a) the reason for the request to provide identifying information;
- (b) that, if the individual provides identifying information, the information may be recorded and stored in the police records management system as a record of this interaction;
- (c) that participation is voluntary; and
- (d) that, if they chose to provide information, some of the identifying information that may be requested, such as the person’s religion, is being requested by law to help eliminate systemic racism.

Recommendation 7.3

Officers should be trained to inform individuals of the above-noted rights in a tone and manner that does not convey the message that compliance is required.

Recommendation 7.4

If an individual is requested to produce an identification document in a regulated interaction and the individual voluntarily complies, the identifying document should be retained for no longer than is necessary to verify the information that had been provided, and should then be immediately returned to the individual.

Recommendation 7.5

- (a) Where it appears the individual stopped in a regulated interaction may be under the age of 12 years old, the individual should be asked their age before they are asked to

provide other identifying information. If the individual is under 12 years old, a request should be made as to whether there is a readily available parent or guardian who can attend during the regulated interaction.

(b) If there is a readily available parent or guardian, the regulated interaction should take place in the presence of that person.

(c) If there is no parent or guardian readily available, and the individual is under the age of 12, the police officer should not request any identifying information from the individual.

(d) Subsections (a) to (c) do not apply if the police officer is conducting a well-being check, confirming the identity of a missing or runaway child, human trafficking victim or other victims of crime, or in a situation of urgency.

Recommendation 7.6

The information required to be on the receipt should be standardized across Ontario and set out in both official languages.

Recommendation 7.7

The receipt should contain only: the name and badge or identification number of the police officer; the date, time and location of the regulated interaction; and include an area for the officer to record the reason for the regulated interaction.

Recommendation 7.8

The receipt provided to the individual should be a numbered carbon copy or identical copy of what is retained by the police officer.

Recommendation 7.9

A police officer in a regulated interaction should record the following:

- (a) the officer's specific reason for the stop or the attempt to collect identifying information;
- (b) whether the individual refused to provide identifying information;
- (c) any relevant suspect profile or intelligence report relied upon to make the request for information;
- (d) the time, date and duration of the stop;
- (e) the location of the stop;
- (f) the name and religion of the person stopped, if it is voluntarily provided;
- (g) the age group, gender, race and ethnic origin of the person stopped, as perceived by the police officer – if the person stopped voluntarily provides this information, it also should be recorded;

- (h) whether the person was requested to provide a document confirming their identity, and if so, why the request was made;
- (i) an indication if any frisk or search was conducted and, if so, the reason for the frisk or search and whether the person consented to the frisk or search;
- (j) an indication as to whether any force was used and, if so, the reason why force was used;
- (k) an indication if any person was injured or any property damaged or confiscated as a result of the regulated interaction and, if so, the reasons;
- (l) any further action taken as a result of the regulated interaction, such as a warning or arrest;
- (m) an indication as to whether there were any other people accompanying the person stopped and, if so, an indication as to the number of people, their perceived racial or ethnic background and an indication if they also were required to provide identifying information;
- (n) an indication if the regulated interaction was successful in obtaining information needed to satisfy the purpose for conducting the regulated interaction;
- (o) the officer's name, identification or badge number and unit;
- (p) if the individual appears to be under 12 years old, whether the child was asked if a parent or guardian was available to attend and whether the regulated interaction was conducted with a parent or guardian;
- (q) whether the individual was informed of the information as required by section 6 of the Regulation or, if informing the individual was not required, the reason why that was not required; and
- (r) whether the individual was offered or given the receipt as required by section 7 of the Regulation or, if offering or giving the receipt was not required, the reason why that was not required.

Recommendation 7.10

For requests for identifying information made from passengers of motor vehicles, the following information should also be recorded:

- (a) the traffic violation or other violation precipitating the stop;
- (b) the reasons why the passenger was requested to provide identifying information; and

(c) an indication whether the passenger was required to leave the vehicle and, if so, the reason why.

Recommendation 7.11

There should be a standardized, province-wide form on which the street check data is recorded either physically or electronically.

Recommendation 7.12

The forms should include checkboxes, to record the reasons for making the stop and require commentary in free text to articulate those reasons.

Chapter 8

Recommendation 8.1

The Regulation should state that chiefs of police should ensure that every police officer on their police service who attempts to collect identifying information does so in compliance with this Regulation.

Recommendation 8.2

Identifying information should be included in a restricted database until it has been confirmed that it is in compliance with the Regulation and may be included in a non-restricted database.

Recommendation 8.3

There should be limited types of ongoing police investigations for which access to restricted information may be obtained.

Recommendation 8.4

Whenever a person views information in the restricted database, a record should be made of who viewed the information and the reason for viewing the information.

Recommendation 8.5

Information obtained during a regulated interaction should not be shared with any other government agency for any purpose other than as set out in subsection 9(10)(2) of the Regulation.

Recommendation 8.6

Identifying information should be destroyed no later than five years after it is first entered into a police database unless it is being used for a purpose set out in subsection 9(10)(2) of the Regulation, in which case it should be destroyed once it is no longer required for that purpose.

Recommendation 8.7

A police service may elect to destroy identifying information earlier than five years after it was collected.

Recommendation 8.8

Define and standardize an “appropriately sized random sample” needed for data analysis by chiefs of police/designates across the province.

Recommendation 8.9

The collected and de-identified data should be made available to reputable independent organizations for research purposes.

Recommendation 8.10

Identifying information collected before January 1, 2017 to which this Regulation would have applied had the information been collected after January 1, 2017 (“historical data”) should be stored in a restricted database and only be used for a purpose set out in subsection 9(10)(2) of the Regulation.

Recommendation 8.11

The authorization required under subsection 9(10)(1) of the Regulation should apply to historical data.

Recommendation 8.12

Historical data should be automatically destroyed five years after it was collected unless it is being used for a purpose set out in subsection 9(10)(2) of the Regulation, in which case it should be destroyed once it is no longer being used for that purpose.

Recommendation 8.13

A police service may elect to destroy historical data earlier than five years after it was collected.

Chapter 9

Recommendation 9.1

The training should be provided to those who supervise the police officers who attempt to collect identifying information as well as to those who verify the submitted regulated interactions and the collected identifying information for compliance with the Regulation.

Recommendation 9.2

Police services should ensure that supervising officers support the operation of not only the Regulation, but also the direction of police leadership.

Recommendation 9.3

Police services should select trainers who are supportive of the Regulation, and who are seen by police officers to be credible.

Recommendation 9.4

The training should be standardized and include the following topics:

- (a) The reason for the Regulation and the legal framework under which requests for information may be made, including the meaning of articulable cause, reasonable suspicion and investigative detention;
- (b) How to take proper notes of the reasons for the interaction;
- (c) Rights of individuals under the Canadian *Charter of Rights and Freedoms* and the Ontario *Human Rights Code*;
- (d) The initiation of interactions with members of the public;
- (e) 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;
- (f) 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;
- (g) Bias awareness, including recognizing and avoiding implicit bias, as well as how to avoid bias and discrimination;
- (h) Promoting public trust and public confidence by recognizing the social cost of some historic police practices;
- (i) Indicating how the use of respectful language, tone and demeanour during regulated interactions benefits the community, individuals, officers and police services;
- (j) Strategic disengagement and conflict de-escalation techniques, as well as de-personalization techniques particularly when an individual is disrespectful during a regulated interaction;
- (k) Training on the specific communities being served and their particular issues;
- (l) Adolescent development as it may relate to a regulated interaction and the specific requirements and limitations related to collecting identifying information from children;
- (m) The impact of technology such as mobile phones and body-worn cameras;
- (n) The rights that individuals have to access information about themselves that is in the custody or under the control of a police service; and
- (o) The Regulation and its application.

Recommendation 9.5

The training should consist of more than video presentations. The training should include realistic real-world scenarios and role playing.

Recommendation 9.6

The training should be prepared and delivered with the assistance of members of police services who understand the challenges of regulated interactions and the realistic scenarios police officers might encounter.

Recommendation 9.7

The training should be prepared and delivered with the assistance of racialized groups and Indigenous peoples who understand the effect of regulated interactions.

Recommendation 9.8

Anti-bias training should be provided to all police officers and not just those who are most likely to be involved in a regulated interaction.

Recommendation 9.9

The training should involve testing.

Recommendation 9.10

The training should have a special focus on the ability to articulate the reasons for a regulated interaction.

Recommendation 9.11

There should be annual refresher training on the Regulation for all police officers.

Recommendation 9.12

When a police officer transfers from one police service to another, they should be required to receive training about the specific communities being served and their particular issues.

Recommendation 9.13

Consideration should be given to establishing a College of Policing.

Recommendation 9.14

Working with post-secondary institutions, a task force or advisory group should be created to evaluate, modernize and renew police studies and law enforcement-related course offerings across post-secondary institutions. Consideration should be given to updating the Ontario Police College curriculum, including the creation of a post-secondary degree in policing.

Recommendation 9.15

A Code of Practice similar to those used in the United Kingdom should be developed to explain how the Regulation operates and the circumstances under which it is to be applied.

Recommendation 9.16

The Province of Ontario should make efforts to raise public awareness about the content of the Regulation, and the circumstances under which people are and are not required to provide identifying information to the police. These efforts should involve collaboration with community groups, youth advocacy groups, legal aid clinics and school boards.

Recommendation 9.17

The MCSCS should launch a full, cross-platform advertising and social media campaign to inform the public about the Regulation and its operation.

Recommendation 9.18

The Code of Practice should be made publicly available on the internet and in print, in all accessible formats.

Chapter 10**Recommendation 10.1**

There should be a minimum, consistent, province-wide policy to implement the Regulation that is binding on police services boards, similar to the policing standards provided for other policing activities.

Recommendation 10.2

If it is determined that the information contained in the street checks database is incorrect, then that information should be restricted and eventually purged.

Recommendation 10.3

The policies should seek to eliminate regulated interactions that are based, even in part, on a prohibited ground of discrimination under the Ontario *Human Rights Code*, absent a reason such as is currently allowed by the Regulation for an individual's racialized background.

Recommendation 10.4

Police services boards may develop further policies that expand on the content of the Regulation for the purpose of protecting human rights and preventing discrimination.

Recommendation 10.5

No information collected in a regulated interaction, including identifying information obtained prior to January 1, 2017, to which this Regulation would have applied had the information been collected after January 1, 2017, should be used as a basis to classify a person as being "known to the police" or result in an entry on an individual's clearance letter, police reference check, vulnerable sector check or any police record check required by the *Police Record Check Reform Act*.

Recommendation 10.6

Chiefs of police should review the procedures they developed in order to ensure that the procedures are consistent with the policies developed by the local police services boards, including any requirements that go beyond the Regulation.

Recommendation 10.7

The procedures should seek to eliminate regulated interactions that are based, even in part, on a prohibited ground of discrimination under the Ontario *Human Rights Code*, absent a reason that is allowed by the Regulation.

Recommendation 10.8

Chiefs of police may develop procedures that expand on the content of this Regulation for the purpose of protecting human rights and preventing discrimination.

Recommendation 10.9

The procedures should be binding on chiefs of police.

Chapter 11

Recommendation 11.1

The MCSCS, in consultation with the Ontario Association of Chiefs of Police, should develop a template annual report.

Recommendation 11.2

Annual reports should be made publicly available within the first six months of the following calendar year.

Recommendation 11.3

The annual report should list the number of complaints and requests for information related to regulated interactions.

Recommendation 11.4

The potential age groups of those requested to provide identifying information should be standardized.

Recommendation 11.5

The age groups should distinguish between children and adults.

Recommendation 11.6

The recommended age groups are:

0-11

12-17

18-29

30-39
 40-49
 50-59
 60-69
 70-79
 80 and over

Recommendation 11.7

The potential racial or ethnic groups of those requested to provide identifying information should be standardized.

Recommendation 11.8

The recommended racial or ethnic groups are:

Indigenous including: First Nations (North American Indian), Inuit, Métis

- White
- Black
- Latin American including: Central American, South American, Mexican, Cuban, Puerto Rican, etc.
- East Asian, Southeast Asian including: Chinese, Japanese, Filipino, Korean, Southeast Asian, Vietnamese, Cambodian, Malaysian, Laotian, etc.
- South Asian including: East Indian, Pakistani, Sri Lankan, etc.
- Middle Easterner including: Arab, Iranian, Afghan, etc.
- Other including: Visible minorities not included elsewhere and multi-racialized individuals

Recommendation 11.9

The term “disproportionately” as contained in section 14(2)(9) of the Regulation should be defined so as to be applied consistently.

Recommendation 11.10

When determining whether there was a disproportionate number of street checks, the collected data should be compared to the local census data to determine if there is a statistically significant difference.

Recommendation 11.11

The number of regulated interactions in each neighbourhood or area should also indicate the age, race and gender of the person stopped compared to the census data for that area.

Recommendation 11.12

The collected, de-identified data provided by a chief of police to a police services board under section 14 of the Regulation should be made publicly available.

Recommendation 11.13

The identifying information received should be monitored as it is received to ensure compliance with the Regulation.

Recommendation 11.14

There should be an early indication system to identify, correct and warn officers who unintentionally collect identifying information contrary to the Regulation.

Recommendation 11.15

If it is determined that identifying information was unintentionally collected contrary to the Regulation, the officer who collected the information must be notified as soon as possible of the reason why the collection was found not to have been obtained in compliance with the Regulation.

Recommendation 11.16

In appropriate circumstances, an officer who collects identifying information in breach of the Regulation should receive additional training. If necessary, the officer should not conduct regulated interactions until the retraining has been completed.

Recommendation 11.17

An officer who persists in collecting identifying information in breach of the Regulation without reasonable excuse should be subject to discipline.

Recommendation 11.18

The Code of Conduct should be amended to state

2(1) Any chief of police or other police officer commits misconduct if he or she engages in,

(g) UNLAWFUL OR UNNECESSARY EXERCISE OF AUTHORITY, in that he or she,

(i.1) without good and sufficient cause *authorizes, condones or* makes an unlawful or unnecessary physical or psychological detention,

* * *

(iii) collects or attempts to collect identifying information about an individual from the individual *or authorizes or condones such activity* in the circumstances to which Ontario Regulation 58/16 (Collection of Identifying Information in Certain Circumstances – Prohibition and Duties) made under the Act applies, other than as permitted by that regulation.

Recommendation 11.19

It should be considered misconduct for police officers who are not engaged in covert operations to refuse to provide their name and badge number if requested.

Chapter 12**Recommendation 12.1**

Police services should be provided with adequate funding to allow for greater community involvement and to support other models of community policing that enable police officers to spend some time each day in the community.

Recommendation 12.2

Police services should increase outreach to and establish meaningful and equitable partnerships with Indigenous communities.

Recommendation 12.3

Efforts should be made by police services to hire police officers who live within the city or region they will serve.

Recommendation 12.4

Community police officers should serve in community neighbourhoods for a sufficient period of time to form meaningful local relationships.

Recommendation 12.5

Efforts should be made to ensure that youth are taught about their rights and responsibilities, as well as Black and Indigenous history, as part of the school curriculum. Information on the Regulation and its operation should be included in the curriculum.

Recommendation 12.6

The MCSCS should work in conjunction with police services and the Ontario Association of Chiefs of Police to design and launch public surveys to seek input from Indigenous, Black and other racialized communities on policing in Ontario.

Recommendation 12.7

The Ontario Association of Chiefs of Police should survey the experiences and views of diverse members in police services throughout the province.

Recommendation 12.8

Police services should hold regular consultations with the public and members of diverse communities to obtain feedback on police diversity initiatives and to improve police–public relations.

Recommendation 12.9

Police services should develop local strategies to improve diversity and inclusion at all levels of the service. The MCSCS should work on the development of a model strategy on diversity and inclusion for adoption, adaptation (to local concerns and realities) and implementation by services throughout Ontario.

Recommendation 12.10

Police services should undertake a systemic review of their recruitment and promotional processes, including a focus on examinations, interviews and assessment tools to ensure that they are inclusive and bias-free.

Recommendation 12.11

Each police service in Ontario should have a diversity officer (or, for smaller police services, an officer whose duties include diversity) or a diversity bureau dedicated to establishing a constructive link between the police and diverse communities.

Recommendation 12.12

The Ontario Police College should review its curriculum, teaching methods and evaluation techniques to identify and eliminate barriers to success for recruits from diverse and marginalized communities.

Recommendation 12.13

The MCSCS should establish selection criteria for police services board appointees with a specific focus on recruiting applicants who reflect the diversity of the communities they serve.

Recommendation 12.14

Police services boards should be responsible for developing relevant board policies on diversity within the police service, overseeing efforts of the police service to recruit and promote diverse members, and reviewing and approving the service's diversity plan.

Appendix B

Order in Council and Terms of Reference



Executive Council of Ontario Order in Council

On the recommendation of the undersigned, the Lieutenant Governor of Ontario, by and with the advice and concurrence of the Executive Council of Ontario, orders that:

Conseil exécutif de l'Ontario Décret

Sur la recommandation de la personne soussignée, la lieutenant-gouverneure de l'Ontario, sur l'avis et avec le consentement du Conseil exécutif de l'Ontario, décrète ce qui suit:

WHEREAS by Order in Council numbered O.C. 1994/2016, dated December 14, 2016, the position of Independent Reviewer of Ontario Regulation 58/16 was established to conduct an independent review of Ontario Regulation 58/16 (Collection of Identifying Information in Certain Circumstances – Prohibition and Duties) made under the *Police Services Act*;

THEREFORE PURSUANT TO the prerogative of Her Majesty the Queen in Right of Ontario to appoint persons to serve Her Majesty's Government of Ontario in the discharge of its executive obligations and responsibilities, the Honourable Michael Tulloch, a Justice of the Ontario Court of Appeal, is hereby appointed as the Independent Reviewer of Ontario Regulation 58/16, to conduct an independent review of Ontario Regulation 58/16 in accordance with the Terms of Reference determined by the Minister of Community Safety and Correctional Services from time to time, to serve at the pleasure of the Lieutenant Governor in Council for a period effective from the date this Order in Council is made and ending on March 31, 2019.

ATTENDU QUE le poste d'examineur indépendant du Règlement de l'Ontario 58/16 a, en vertu du décret numéro 1994/2016, daté du 14 décembre 2016, été créé pour que soit effectué un examen indépendant du Règlement de l'Ontario 58/16 (Collecte de renseignements identificatoires dans certaines circonstances – Interdiction et obligations) pris en application de la *Loi sur les services policiers*;

PAR CONSÉQUENT, EN VERTU de la prérogative de Sa Majesté la Reine du chef de l'Ontario de nommer des personnes pour servir le gouvernement de l'Ontario de Sa Majesté dans le cadre de ses obligations et responsabilités de direction, Monsieur le juge Michael Tulloch de la Cour d'appel de l'Ontario, est par les présentes nommé au poste d'examineur indépendant du Règlement de l'Ontario 58/16 afin de procéder à un examen indépendant du Règlement de l'Ontario 58/16 conformément au mandat confié de temps à autre par la ministre de la Sécurité communautaire et des Services correctionnels. Il occupera son poste à titre amovible, pour une période commençant le jour de la prise du présent décret et se terminant le 31 mars 2019.



Recommended: Minister of Community Safety and Correctional Services

Recommandé par: Ministre de la Sécurité communautaire et des Services correctionnels



Concurred: Chair of Cabinet

Appuyé par: Le président/la présidente du Conseil des ministres,

Approved and Ordered:

Approuvé et décrété le:

MAY 18 2017



Administrator of the Government

L'administrateur du gouvernement

Terms of Reference

Independent Review on O.Reg 58/16

On March 21, 2016, the province filed a new regulation, O. Reg. 58/16: Collection of Identifying Information in Certain Circumstances – Prohibition and Duties (the ‘regulation’), under the *Police Services Act* (PSA).

Section 17 of O. Reg 58/16 requires the Minister of Community Safety and Correctional Services (‘minister’) to ensure a review of the regulation is conducted, and that a report on the findings of the review is published, no later than January 1, 2019.

The regulation also requires that the individual conducting the review:

- Is not a public servant within the meaning of the *Public Services of Ontario Act, 2006*, and is not employed in the Office of the Premier or in the office of a minister, and
- Consults with the Minister Responsible for Anti-Racism.

1. Mandate

1.1 The Review

The Independent Reviewer shall review O. Reg. 58/16 and report to the minister on:

Content of the regulation

- a. Whether the regulation appropriately reflects the government’s goal of ensuring that police-public interactions should be
 - consistent,
 - conducted without bias or discrimination, and
 - done in a manner that promotes public confidence and keeps our communities safe;
- b. Whether the regulation appropriately reflects the following key principles stated by the government:
 - Ontario takes the protection of human rights very seriously and has zero tolerance for racism or any form of discrimination based on the prohibited grounds set out in the *Human Rights Code*, R.S.O. 1990, c. H. 19, s. 1,
 - Ontario stands opposed to arbitrary, random stops that do not have a clear policing purpose, and which are done solely for the purpose of collecting identifying information;
- c. Any recommendations in light of (a) and (b) above.

Implementation of the regulation

- d. Whether police officers and chiefs of police are in compliance with the regulation, including but not limited to:
 - Limitations on the collection of certain information pursuant to section 5,
 - Duties relating to the collection of information pursuant to sections 6-8,
 - Data retention and management requirements pursuant to section 9,
 - The elimination of performance targets pursuant to section 10,
 - The delivery of training pursuant to section 11,
 - The development of procedures pursuant to sections 13, and
 - The provision of reports pursuant to sections 14 and 15
- e. Whether police services boards have developed policies in compliance with section 12
- f. The curriculum and related training materials developed by the Ontario Police College to ensure compliance with section 11, and make recommendations regarding the effectiveness of the training
- g. The approaches police services have adopted and any relevant recommendations on whether consistency is required regarding the:
 - Document to be provided pursuant to section 7,
 - Retention of information to which the O.Reg. 58/16 applies, and
 - Establishment of age groups and racialized groups for the purpose of section 14
- h. Whether there are any challenges, operational or otherwise, in applying the regulation and, if so, any recommendations regarding how they could be addressed
- i. Whether the accountability and oversight mechanisms in O.Reg. 58/16 are appropriate to ensure compliance with the regulation and, if not, recommend how they could be improved, and
- j. Any potential regulatory amendments, policy and/or procedural changes recommended to improve the implementation of the regulation.

1.2 Consultation and Review Process

In conducting the review, the Independent Reviewer

- a. will determine the method, content and extent of consultations required to fulfill his mandate

- b. may request any person to provide information or records to him
- c. shall seek input from the Minister Responsible for Anti-Racism
- d. shall seek input from the Independent Police Review Director regarding complaints related to O. Reg 58/16
- e. shall conduct, or cause to be conducted, an independent survey of civilians and corresponding data collection and data analysis, in order to inform his review of whether police officers and chiefs of police are in compliance with the limitations on the collection of certain information pursuant to section 5 and the duties relating to the collection of information pursuant to sections 6-8
- f. shall review relevant human rights law, including anti-discrimination law, and law on arbitrary detention
- g. may undertake such further inquiries as the Independent Reviewer, in his discretion, deems appropriate

1.3 Interim Reporting

The Independent Reviewer may provide any interim reports to the Minister outlining:

- a. The status of the review
- b. Work that is completed, in progress and outstanding
- c. Risks or issues that are anticipated to or will impact the completion of the review or
- d. Any findings that he or she recommends be acted on before the end of the review

1.4 Final Report and Recommendations

The Independent Reviewer shall deliver a final report to the Minister on matters identified in section 1.1 of this Terms of Reference.

The Independent Reviewer's report shall take into account engagement with community groups, police services and other stakeholders as well as input received from the Minister Responsible for Anti-Racism.

The Independent Reviewer shall deliver the report and recommendations to the Minister of Community Safety and Correctional Services by November 30, 2018, so that the Minister may publish the findings of the review by January 1, 2019 as required by the regulation.

1.5 Other

The Independent Reviewer shall perform his or her duties without expressing any conclusion or recommendation regarding potential disciplinary matters involving any person or the civil or criminal liability of any person or organization, and without interfering in any ongoing criminal, civil or other legal proceeding.

2. Publication

The Independent Reviewer shall ensure that the reports and recommendations referred to in section 1 are in a form appropriate for public release, consistent with the requirements of the *Freedom of Information and Protection of Privacy Act* and other applicable legislation. The Independent Reviewer shall also ensure that the reports are delivered to the minister in English and French at the same time, in electronic and printed forms. Compliance with these requirements will be supported by the ministry, at the discretion of the Independent Reviewer.

3. Property Rights and Confidentiality

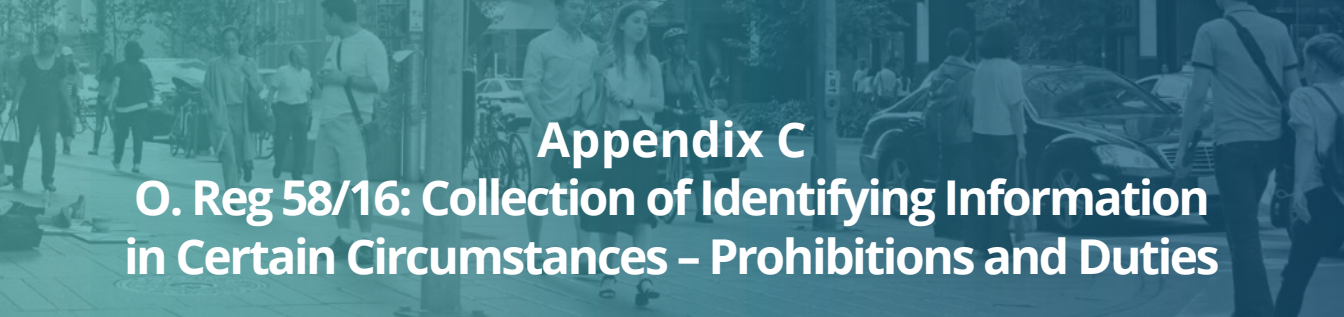
The ministry shall be the sole owner of the reports and recommendations developed in accordance with section 1. The Independent Reviewer shall ensure that all reports and recommendations include a copyright notice in the following form: “© Queen’s Printer for Ontario,” followed by the year of publication.

Any notes, records, recollections, statements made to, and documents produced by the Independent Reviewer or provided to him in the course of the review, will be confidential. The disclosure of such information to Ontario or any other person shall be within the sole and exclusive discretion of the Independent Reviewer.

4. Resources

- a. Within a budget approved by the ministry, the Independent Reviewer may retain such counsel, staff, or expertise he considers necessary in the performance of his duties at reasonable remuneration approved by the ministry, including any experts on data collection and analysis
- b. The Independent Reviewer and his staff shall be reimbursed for reasonable expenses incurred in connection with their duties in accordance with Management Board of Cabinet Directives and Guidelines
- c. The Independent Reviewer shall follow Management Board of Cabinet Directives and Guidelines and other applicable government policies in obtaining other services and goods he considers necessary in the performance of his duties unless, in his view, it is not possible to follow them

- d. The ministry shall, in consultation with the Independent Reviewer, set a budget for the fulfillment of his mandate
- e. All ministries and all agencies, boards and commissions of the Government of Ontario shall, subject to any privilege or other legal restrictions, assist the Independent Reviewer to the fullest extent possible so that the Independent Reviewer may carry out his duties and they shall respect the independence of the review
- f. All police forces, members of a police force, police officers, and municipal police services boards in Ontario should, subject to any privilege or other legal restrictions, assist the Independent Review to the fullest extent possible so that the Independent Reviewer may carry out his duties and they shall respect the independence of the review.



Appendix C

O. Reg 58/16: Collection of Identifying Information in Certain Circumstances – Prohibitions and Duties

Police Services Act ONTARIO REGULATION 58/16 COLLECTION OF IDENTIFYING INFORMATION IN CERTAIN CIRCUMSTANCES - PROHIBITION AND DUTIES

No amendments.

This is the English version of a bilingual regulation.

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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 for the purpose of,

- (a) inquiring into offences that have been or might be committed;
- (b) inquiring into suspicious activities to detect offences; or
- (c) gathering information for intelligence purposes.

(2) Despite subsection (1), this Regulation does not apply with respect to an attempted collection made by a police officer for the purpose of investigating an offence the officer reasonably suspects has been or will be committed.

(3) Despite subsection (1), 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 executing a warrant, acting pursuant to a court order or performing related duties; or
- (e) 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 January 1, 2017 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 January 1, 2017 only as provided under paragraph 5 of subsection 12 (1) and under sub-

section 13 (1) in relation to that paragraph.

Non-application — person appointed under the *Interprovincial Policing Act, 2009*

3. This Regulation does not apply with respect to attempts to collect information by a person appointed as a police officer under the *Interprovincial Policing Act, 2009* or with respect to information collected by such a person.

Interpretation — attempt to collect identifying information

4. For the purposes of this Regulation,

“attempt to collect identifying information about an individual from the individual” means 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.

PART II PROHIBITION — CERTAIN COLLECTIONS OF INFORMATION

Limitations on collection of certain information

5. (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,
- (ii) being within the racialized group forms part of a description of the particular individual or is evident from a visual representation of the particular individual, and
- (iii) the officer has additional information, in addition to information about the particular individual being in a racialized group, that may help to identify the individual or narrow the description of the individual; or

(b) the attempted collection is done in an arbitrary way.

(2) Without limiting what might constitute the additional information required under subclause (1) (a) (iii), such information may consist of information about,

- (a) the appearance of the individual, including information about the individual’s clothing, height, weight, eye colour, hair colour or hair style;
- (b) the location where the individual might be found;
- (c) the type of vehicle the individual might be found in;
- (d) the associates the individual might be found with; or
- (e) the behaviour of the individual.

(3) The additional information required under subclause (1) (a) (iii) may not consist

only of the sex of the individual, the approximate age of the individual or both.

(4) 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 reasonably suspect that identifying the individual may contribute to or assist in an inquiry described in clause 1 (1) (a) or (b) or the gathering of information described in clause 1 (1) (c).
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 location.

PART III DUTIES RELATING TO COLLECTIONS OF INFORMATION

OFFICER DUTIES

Duties to inform before attempting to collect information

6. (1) A police officer shall not attempt to collect identifying information about an individual from the individual unless the police officer, in accordance with the procedures developed under section 13,

- (a) has informed the individual that he or she is not required to provide identifying information to the officer; and
- (b) has informed the individual why the police officer is attempting to collect identifying information about the individual.

(2) A police officer is not required to inform the individual under clause (1) (a) or (b) if the officer has a reason to believe that informing the individual under that clause might compromise the safety of an individual.

(3) A police officer is not required to inform the individual under clause (1) (b) if the officer has a reason to believe that informing the individual under that clause,

- (a) would likely compromise an ongoing police investigation;
- (b) might allow a confidential informant to be identified; or
- (c) might disclose the identity of a person contrary to the law, including disclose the identity of a young person contrary to the *Youth Criminal Justice Act* (Canada).

(4) A reason required under subsection (2) or (3) must be a reason the police officer can articulate and must include details relating to the particular circumstances.

Document for individual

7. (1) A police officer who attempts to collect identifying information about an individual from the individual shall,

- (a) offer to give the individual a document that provides a record of the attempt; and
- (b) give the individual such a document if the individual indicates that he or she wants it.

(2) A police officer is not required to comply with subsection (1) if the officer has a reason to believe that continuing to interact with the individual,

- (a) might compromise the safety of an individual; or
- (b) might delay the officer from responding to another matter that should be responded to immediately.

(3) A reason required under subsection (2) must be a reason the police officer can articulate and must include details relating to the particular circumstances.

(4) The document required under subsection (1) shall contain 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

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

- 1. The officer's reason for the attempted collection, including the details referred to in paragraph 1 of subsection 5 (4).
- 2. Whether the individual was informed as required under clauses 6 (1) (a) and (b) or, if informing the individual under one of those clauses was not required under subsection 6

(2) or (3), the reason why that was not required.

3. Whether the individual was offered the document as required under clause 7 (1) (a) or, if offering the document was not required under subsection 7 (2), the reason why that was not required.

4. Whether the individual was given the document offered under clause 7 (1) (a) or, if giving the document was not required under clause 7 (1) (b) or subsection 7 (2), the reason why that was not required.

5. 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

9. (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 (10) unless the information may be included in a database, 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) the police officer who collected the information,
 - (i) has indicated that the attempted collection complied with section 5,
 - (ii) has indicated that the individual was informed as required under clauses 6 (1) (a) and (b) or, if informing the individual under one of those clauses was not required under subsection 6 (2) or (3), has indicated the reason why that was not required,
 - (iii) has indicated that the individual was offered the document as required under clause 7 (1) (a) or, if offering the document was not required under subsection 7 (2), has indicated the reason why that was not required, and
 - (iv) has indicated that the individual was given the document offered under clause 7 (1) (a) or, if giving the document was not required under clause 7 (1) (b) or subsection 7 (2), has indicated the reason why that was not required; and
- (b) either,
 - (i) the chief of police or a person designated by the chief of police has determined, after considering the officer's reasons for the attempted collection, including the details referred to in paragraph 1 of subsection 5 (4), that it appears that section 5 was complied with and has ensured that clause (a) has been complied with, or

(ii) the database indicates that what is required under subclause (i) has not yet been done.

(5) The following apply if what is required under subclause (4) (b) (i) was not done when the identifying information was included in the database:

1. The chief of police or a person designated by the chief of police shall conduct a review, within 30 days after the information was first entered into a database under the control of the police force, to determine, after considering the officer's reasons for the attempted collection, including the details referred to in paragraph 1 of subsection 5 (4), whether it appears that section 5 was complied with and whether clause (4) (a) has been complied with.

2. If it is determined that it appears that section 5 was complied with and that clause (4) (a) has been complied with, the indication required under subclause (4) (b) (ii) may be removed.

3. If it is not determined, before the end of the 30-day period described in paragraph 1, that it appears that section 5 was complied with and that clause (4) (a) has been complied with, the identifying information shall be retained, subject to the procedures developed under section 13 in relation to paragraph 4 of subsection 12 (1), in a database under the control of the police force but access to such retained information shall be restricted in accordance with subsection (10).

(6) At least once a year, the chief of police or a person designated by the chief of police shall conduct detailed reviews of an appropriately sized random sample of the entries of identifying information included in a database under subsection (4) to estimate, within a margin of error of plus or minus 5 per cent, at a 95 per cent confidence level, whether it appears that sections 5, 6 and 7 were complied with.

(7) If, as a result of a detailed review under subsection (6), it is determined, with respect to identifying information included in a database under subsection (4), that section 5, 6 or 7 was not complied with, the identifying information shall be retained, subject to the procedures developed under section 13 in relation to paragraph 4 of subsection 12 (1), in a database under the control of the police force but access to such retained information shall be restricted in accordance with subsection (10).

(8) The chief of police shall consider the results of the detailed reviews under subsection (6) and take such actions as the chief of police considers appropriate.

(9) Access to identifying information shall be restricted in accordance with subsection (10) after the fifth anniversary of the date on which the information was first entered into a database under the control of the police force.

(10) 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 or a person designated by the chief of police.

2. A member of the police force may be permitted to access the information only if the chief of police or a person designated by the chief of police is satisfied that access is needed,

- i. for the purpose of an ongoing police investigation,
- ii. in connection with legal proceedings or anticipated legal proceedings,
- iii. for the purpose of dealing with a complaint under Part V of the Act or for the purpose of an investigation or inquiry under clause 25 (1) (a) of the Act,
- iv. in order to prepare the annual report described in subsection 14 (1) or the report required under section 15,
- v. for the purpose of complying with a legal requirement, or
- vi. for the purpose of evaluating a police officer's performance.

RESTRICTIONS ON PERFORMANCE TARGETS

Performance targets not to be used in evaluating work performance

10. 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

11. (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, or who acts as the designate of the chief of police under section 9, has successfully completed the training required under this section within the previous 36 months.

(2) The training referred to in subsection (1) shall include 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.

6. This Regulation and its application.

(3) The training referred to in subsection (1) shall be provided at the Ontario Police College or by a trainer who has been trained, at the Ontario Police College, to provide the training referred to in subsection (1).

(4) The training referred to in subsection (1) shall be based on a curriculum approved by the Director of the Ontario Police College.

POLICIES AND PROCEDURES

Boards and Minister must develop policies

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

1. The document to be given to individuals under section 7.

2. The contents, in relation to matters to which this Regulation applies, of the annual report described in subsection 14 (1).

3. The report required under section 15.

4. The retention of, access to, and disclosure of identifying information collected on or after January 1, 2017, including the retention of identifying information collected contrary to this Regulation.

5. The retention of, access to, and disclosure of identifying information collected before January 1, 2017 with respect to which this Regulation would have applied had the collection taken place on January 1, 2017.

(2) The policy developed under paragraph 4 of subsection (1) shall provide that identifying information collected contrary to this Regulation shall not be retained longer than is reasonably necessary to ensure the information is available in the circumstances in which access may be permitted under paragraph 2 of subsection 9 (10).

(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

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

(2) The procedures developed under subsection (1) shall be consistent with this Regulation and the relevant policies developed under section 12.

REPORTS, REVIEWS AND COMPLIANCE

Annual report

14. (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 and the number of attempted collections in which identifying information was collected.

2. The number of individuals from whom identifying information was collected.

3. The number of times each of the following provisions was relied upon to not do something that would otherwise be required under subsection 6 (1):

i. subsection 6 (2),

ii. clause 6 (3) (a),

iii. clause 6 (3) (b), and

iv. clause 6 (3) (c).

4. The number of times an individual was not given a document under clause 7 (1) (b) because the individual did not indicate that they wanted it.

5. The number of times each of the following clauses was relied upon to not do something that would otherwise be required under subsection 7 (1):

i. clause 7 (2) (a), and

ii. clause 7 (2) (b).

6. 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.

7. 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.

8. 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.

9. 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.

10. The neighbourhoods or areas where collections were attempted and the number of attempted collections in each neighbourhood or area.

11. The number of determinations, referred to in subsection 9 (5), that section 5 or clause 9 (4) (a) was not complied with.

12. The number of determinations, referred to in subsections 9 (6) and (7), that section 5, 6 or 7 was not complied with.

13. The number of times members of the police force were permitted under subsection 9 (10) to access identifying information to which access must be restricted.

(3) A chief of police shall establish age groups for the purpose of paragraph 7 of subsection (2).

(4) A chief of police shall establish racialized groups for the purpose of paragraph 8 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 January 1, 2017.

Chiefs of police must review practices and report

15. (1) If an annual report referred to in section 14 reveals that identifying information was attempted to be collected disproportionately from individuals perceived to be within a group or combination of groups, 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 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; and

(b) shall consider the report and the proposals, if any, set out in the report and consider, in the case of a board, whether to give directions under clause 31 (1) (e) of the Act or, in the case of the Minister, whether to give directions to which the Commissioner would be subject under subsection 17 (2) of the Act.

Chiefs of police must make records available

16. (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, in relation to matters to which this Regulation applies, the Minister of Community Safety and Correctional Services may request a chief of police to provide any relevant information that 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) and shall do so in the manner specified by the Minister.

Review of Regulation

17. (1) The Minister of Community Safety and Correctional Services shall ensure that a review of this Regulation is conducted and that a report on the findings of the review is published no later than January 1, 2019.

Review not by a government employee

(2) The Minister shall ensure that the person who conducts the review is not a public servant within the meaning of the *Public Service of Ontario Act, 2006* and is not employed in the Office of the Premier or in the office of a minister.

Consultation with Minister Responsible for Anti-Racism

(3) The Minister shall ensure that the person who conducts the review consults with the Minister Responsible for Anti-Racism.

PART V (OMITTED)

18. Omitted (provides for coming into force of provisions of this Regulation).

Appendix D Infographic

REGULATION APPLIES

Currently



Inquiries

No reasonable suspicion but objectively suspicious conduct or potential offence

Police can request ID information

Regulation applies if request for ID information

No obligation to provide ID information

Individual is free to go

Intelligence Gathering

No reasonable suspicion or suspicious conduct or potential offence required

Police can randomly request ID information

Regulation applies if request for ID information

No obligation to provide ID information

Individual is free to go

Proposed



Focused Inquiries and Intelligence Gathering

No reasonable suspicion but objectively suspicious conduct or potential offence or focused intelligence gathering

Police can request ID information but not randomly

Regulation applies if request for ID information

No obligation to provide ID information

Individual is free to go

REGULATION DOES NOT APPLY

(Currently or Proposed)

Community Interactions



No suspicion

Police can request ID information

No obligation to provide ID information

Individual is free to go

Investigations Generally



Reasonable suspicion that offence committed or will be committed

Police can request ID information from potential witnesses and suspects

No obligation to provide ID information

Individual is free to go

Investigative Detention



Reasonable suspicion that a particular individual committed an offence

Police can request ID information

No obligation to speak to police

Individual is detained and not free to go

Arrest (or Other Lawful Authorities to Request ID Information)

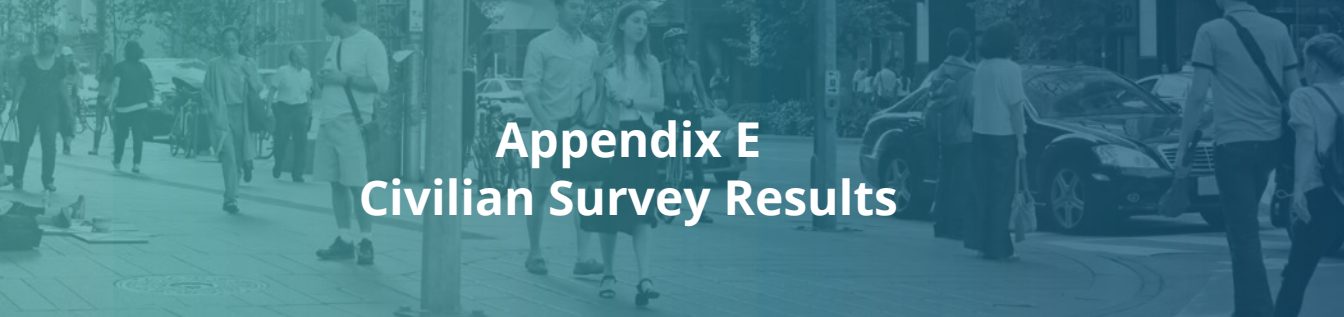


Reasonable and probable grounds (or pre-conditions for the lawful authority)

Police can request ID information

Obligation to provide ID information

Individual is not free to go



Appendix E

Civilian Survey Results

1. Under the terms of reference, a survey of civilians was required as part of this Review. The survey was concluded on August 13, 2018. The following is a summary of the survey results.
2. Data was collected using two different methods: an online survey and a telephone survey. The online survey was an abbreviated version of the longer telephone interview. Between March 19 and May 28, 2018, an online survey portal on the Independent Street Checks Review website was used to collect responses.
3. A total of 387 respondents completed the online survey. Of those, almost one-third were 18 to 34 years of age (32.3%), almost one-half were 35 to 54 years of age (47%) and about one-fifth were age fifty-five or older (21.5%). In terms of race, the vast majority of respondents reported being either white (57%) or Black (24%).
4. For the telephone survey, the Institute for Social Research (ISR) of York University was responsible for data collection. All the surveys were conducted at ISR's Computer Assisted Telephone Interviewing (CATI) Lab during April, May and June 2018. ISR uses CATI software developed at the University of California (Berkeley).
5. In the telephone survey, 50% (887/1789) of respondents reported being white only, 11% (200/1789) reported being Black, 11% (208/1789) reported being Middle Eastern, 11% (200/1789) reported being South Asian, 11% (201/1789) reported being Indigenous and 3% (61/1789) identified as East Asian or other. Approximately 2% refused to identify their race.
6. The telephone survey divided respondents into two sample groups: general population and special populations. The general population was composed of the adult population of Ontario, which was defined as people 18 years of age or older who speak English and reside in private homes. The special telephone population had four sub-components: Indigenous Peoples, Blacks, those from the Middle East and South Asians.
7. About 31% of respondents fell into the general population sample and 49% fell into the special populations sample. Given the same interviewers called both samples, the difference suggests that special population groups had a greater interest in the survey topic than the general population.

8. Calls were made to approximately 15,000 households, with 1789 people agreeing to be interviewed by phone.

Opinions about the Police³⁷²

9. The survey results revealed that most respondents have a positive opinion about their local police service.

10. For example, over 90% of telephone respondents either somewhat or strongly agreed that they “have a lot of respect for the police”. That figure dropped to about 60% among those who completed the online survey.

11. The reason for the differences between the online survey and the phone interview responses is not known. Perhaps people who were motivated enough to go to the Independent Street Checks Review website to complete the online survey were less of a random sample than those who consented to participate in the phone interview. It also appears that the people who agreed to participate in the telephone survey were somewhat skewed to higher age and income levels, which could affect the results.

12. Approximately 90% of all telephone respondents and 60% of online respondents agreed that they trust the police (88.6% and 57.8% respectively), and 92.2 % of telephone respondents and 61.8% of online respondents have confidence that the police are serving the public.

13. An additional 91.9% of telephone respondents and 69.4% of online respondents either somewhat or strongly agreed that they would go to the police for help if they had a problem.

14. Further analysis, however, revealed that respondents are not completely positive in their perceptions of the police.

15. For example, approximately half of the respondents – 49.6% of telephone respondents and 41.6% of online respondents – either somewhat or strongly agreed that the police “often abuse their power”.

16. Similarly, approximately 60% of respondents – 60.9% of telephone respondents and 57% of online respondents – either somewhat or strongly agreed that the police treat people from some racial groups worse than people from other racial groups.

17. Overall, the results suggest that, while the majority of respondents from each racial group expressed positive attitudes towards the police, Black and Indigenous respondents were significantly less positive than their counterparts from other ethno-racial groups.

18. For example, over 60% of white, South Asian and Middle-Eastern telephone re-

spondents strongly agreed with the statement “I trust the police”. This figure, however, dropped to only 33.5% among Black and 38.3% among Indigenous telephone respondents and 29.7% among Black and 44.8% among Indigenous online survey respondents.

19. Black and Indigenous respondents were also less likely to “strongly agree” that they have confidence in the police, have a lot of respect for the police and would go to the police for help if they have a problem.

20. The results further suggest that, compared to white, Middle-Eastern and South Asian respondents, Black and Indigenous respondents were more likely to believe that the police often abuse their power and treat some racial groups worse than others.

21. For example, 67.5% of Black and 64.2% of Indigenous telephone respondents agreed that the police often abuse their powers, compared to only 40.7% of white respondents. Among online respondents, 61.3% of Black, 45.9% of other minority respondents and 31.7% of white respondents agreed that the police often abuse their powers.

22. In summary, while most people trust and have confidence in the police, Black and Indigenous communities should be the primary focus of efforts to repair police–community relationships.

Perceptions of Profiling

23. Among telephone survey respondents, 81.5% of Black and 65.7% of Indigenous respondents agreed that the police treat people from some racial groups worse than people from other racial groups, compared to only 55.7% of white respondents. Among online respondents, 82.0% of Black, 73.7% of other minority and 41.1% of white respondents agreed with that statement. These racial differences are statistically significant.

24. Overall, only 12.3% of telephone respondents either somewhat or strongly agreed with the statement: “I have been the victim of racial profiling”. By contrast, 77.7% of respondents strongly disagreed with this statement. For online respondents, 20.9% somewhat or strongly agreed, with 51.9% strongly disagreeing.

25. However, direct experiences with police profiling vary significantly by race. For example, a third of Indigenous telephone respondents (32.8%) reported that they have been the victim of racial profiling, compared to 22.5% of Black respondents, 19.5% of South Asian respondents, 14.4% of Middle-Eastern respondents and only 4.0% of other racialized respondents not captured in the aforementioned groups. Among online survey respondents, the figures were 52.3% of Black respondents, 28.8% of other minority respondents and only 5.4% of white respondents.

26. Vicarious experiences with racial profiling were more prevalent than direct experien-

ces. Overall, 22.3% of telephone respondents either somewhat or strongly agreed with the statement: “My family members and friends have been the victims of racial profiling”. By contrast, 64.3% strongly disagreed with this statement. For online respondents, the results were 39.5% who somewhat or strongly agreed with the statement, with 51.9% strongly disagreeing.

27. As with direct experiences, vicarious experiences with racial profiling vary significantly by race. Almost half of Indigenous (49.7%) and Black telephone respondents (47.0%) agreed that their family members and friends have been victims of racial profiling by the police, compared to 25.5% of South Asian respondents, 23.1% of Middle-Eastern respondents and only 10.9% of all other racialized respondents not captured in the aforementioned groups. For online survey respondents, the figures were 73.8% of Black respondents, 56.0% of other minority respondents and only 19.7% of white respondents.

28. Most of the respondents who had been stopped by the police in the last five years, other than Black respondents, were unaware of the Regulation. Even among Black respondents, 47.2% were unaware of the Regulation. Black and Middle Eastern individuals reported a disproportionate number of stops. It is not surprising to find that 58.2% of all respondents were either not sure or did not know if the Regulation was a good thing.

29. Furthermore, only 27.1% of Indigenous respondents reported that they were aware of the Regulation, compared to close to 50% of respondents from other racial groups.

30. It should be noted that these reports extended to a time prior to the filing of the Regulation, when carding was a more widespread practice, and are therefore somewhat outdated.

31. The Regulation came into effect on January 1, 2017, and it is the stops that were conducted after that time that will be commented on here.

Police Stops

32. With regard to the issue of whether police officers have been stopping people in disproportionate numbers, the following chart indicates the percentage of people stopped according to their racial background. Survey participants who were contacted by phone and those who participated online are listed separately.

Percentage of Respondents who Reported a Police Stop Since January 1, 2017, by Ethno-racial Background					
	White	Black	Middle-Eastern	South Asian	Indigenous
Phone	20.3%	18.5%	16.8%	16%	27.4%
Online	46.9%	46.2%			

33. These findings indicate that participants who completed the online survey had been stopped more often than those who were called on the telephone. This could help to explain the different responses between the two groups for certain questions.

34. The telephone survey indicated no significant differences in frequency of police stops between racial communities except for the Indigenous community: 27.4% of Indigenous respondents reported a police stop, which was more than 30% higher than other communities.

35. The survey also broke down the types of police stops into pedestrian, driver and passenger, by ethno-racial category.

Types of Police Stops Since January 1, 2017					
	Pedestrian				
	White	Black	Middle-Eastern	South Asian	Indigenous
Phone	2.3%	2%	3.4%	1.5%	7%
Online	22.9%	25.6%			
	Driver				
	White	Black	Middle-Eastern	South Asian	Indigenous
Phone	16.2%	14.5%	11.5%	11%	14.9%
Online	60.4%	58.1%			
	Passenger				
	White	Black	Middle-Eastern	South Asian	Indigenous
Phone	3.9%	4.5%	4.8%	4%	8.5%
Online	16.7%	16.3%			

36. The results for pedestrians indicate no significant disparity except for Indigenous and Middle-Eastern people, who are stopped more often.

37. For drivers and passengers, the results are roughly equivalent but with Indigenous people, again, subject to more passenger stops.

38. The results indicate that, since the filing of the Regulation, people generally are not being stopped disproportionately, although Indigenous peoples are subject to a greater number of pedestrian and passenger stops. The reason for that is subject to interpretation.

Compliance

39. It is difficult to determine if police officers have complied with the requirements of the Regulation because regulated interactions must be distinguished from non-regulated interactions. Survey participants would not know which group they fell into.

40. If a survey participant was stopped and questioned, but without being asked to provide identifying information, it is not a regulated interaction and the participant did not have to be provided with a reason or a receipt, or be told they do not have to provide identifying information. Similarly, if a participant was stopped as part of an investigation where the officer reasonably suspects the possibility of an offence, the requirements of the Regulation do not apply. It should be noted that our civilian survey indicated that almost half of those stopped as pedestrians felt that they would get in trouble for not cooperating with the police officer.

41. The survey results indicated the following as to whether the survey participants were provided with a reason for their stops.

Percent Reporting a Reason was Provided for the Police Stops Since January 1, 2017			
	Pedestrian	Passenger	Driver
Phone	58.6%	92.9%	92.5%
Online	65.9%	88.9%	90.5%

42. The results are similar for phone respondents and online respondents, with reasons being provided much less often for pedestrian stops. Note that the Regulation did not apply for stops of drivers if it was a proper traffic stop because the driver is legally required to provide identifying information.

43. Survey participants were also asked if they felt the police stop was justified.

Percent Who Feel the Police Stop was Justified Since January 1, 2017			
	Pedestrian	Passenger	Driver
Phone	39.7%	70.2%	74.1%
Online	39.7%	77.3%	75.3%

44. Again the results are similar for phone respondents and online respondents, with pedestrians much less likely to feel the stop was justified.

45. The following charts provide the reasons survey respondents were given for police stops, broken down by pedestrian, passenger and driver.

Reasons Provided for the Police Stop by Stop Type Since January 1, 2017			
Pedestrian		Phone	Online
	Random/routine	8.3%	19.5%
	Fit description of a suspect	8.3%	17%
	Witness to a crime	5.6%	4.9%
	Acting suspicious	8.3%	2.4%
	Drug/alcohol use	5.6%	2.4%
	Speeding		
	Other traffic violation		
Passenger		Phone	Online
	Random/routine	7.7%	22.2%
	Fit description of a suspect	2.6%	
	Witness to a crime		
	Acting suspicious	1.3%	3.7%
	Drug/alcohol use	3.8%	
	Speeding	39.2%	37%
	Other traffic violation	7.6%	11.1%
Driver		Phone	Online
	Random/routine	5.7%	4.8%
	Fit description of a suspect		
	Witness to a crime		
	Acting suspicious	0.4%	
	Drug/alcohol use	4.1%	9.5%
	Speeding	46.7%	40.9%
	Other traffic violation	13%	20%

46. For most categories the reasons provided, if they were objectively and credibly supported at the time, would justify a police stop. However the category of “random or routine” is not a proper explanation of a police stop, unless it was for something like a R.I.D.E. program.

47. It should be noted that online participants subject to a pedestrian or passenger stop were told it was a random or routine stop about two to three times more often than phone participants.

48. The survey asked participants if the police officer requested their identification.

Asked for Identification by Type of Stop Since January 1, 2017			
	Pedestrian	Passenger	Driver
Phone	17.5%	23%	88%
Online	34%	45%	94.3%

49. This question is relevant to whether the Regulation applied to the stop. Most respondents other than drivers were not asked for identification, meaning that most of the stops would not have been regulated interactions. Even if the participants were asked for their identification, it could have been part of an investigation and, again, the Regulation would not have applied. For drivers, the Regulation would not have applied in most situations.

50. Survey participants were also asked if they were provided with a receipt after they were stopped.

Issued Receipt by Type of Stop Since January 1, 2017			
	Pedestrian	Passenger	Driver
Phone	5.2% ³⁷³	16.7% ³⁷⁴	17% ³⁷⁵
Online	12%	11%	11.4%

51. A low percentage of respondents were given receipts. This could be due to the fact that most of the reported stops were not regulated interactions.

52. The next question that was asked was whether people were told that they did not have to answer the police officer’s questions.

Told not required to Answer Questions Since January 1, 2017			
	Pedestrian	Passenger	Driver
Phone	8.6%	16.7%	3.8%
Online	22.6%	10.5%	4.5%

53. The Regulation requires that people only be told that they do not have to provide identifying information, as opposed to being told they do not have to answer questions. In any event, a low percentage of people were told they did not have to answer questions.

54. The survey participants were asked if they were questioned during police stops.

Questioned During Police Stops Since January 1, 2017			
	Pedestrian	Passenger	Driver
Phone	96.6%	25%	100%

55. The following charts indicate the types of questions that survey participants were asked during the police stops, again broken down by pedestrian, passenger and driver.

Types of Questions Asked During Police Stops, since January 1, 2017		
Pedestrian	Phone	Online
Asked for ID	19.3%	
Asked for phone number	1.8%	9.8%
Asked how you knew others	3.5%	17%
Asked where going or doing	38.6%	46.3%
Asked where you live	12.3%	51.2%
Where you came from	15.8%	26.8%
Citizenship/immigration status		4.9%
Asked age	1.8%	9.6%
Passenger	Phone	Online
Asked for ID	16.7%	

Types of Questions Asked During Police Stops, since January 1, 2017		
Asked for phone number	1.3%	
Asked how you knew others	2.5%	14.8%
Asked where going or doing	21.3%	18.5%
Asked where you live	8.8%	3.7%
Where you came from	10%	7.4%
Citizenship/immigration status		
Asked age	2.5%	3.7%
Driver	Phone	Online
Asked for ID	88%	
Asked for phone number	4.9%	0.9%
Asked how you knew others	0.9%	8.6%
Asked where going or doing	24.6%	48.5%
Asked where you live	4%	30.5%
Where you came from	7.2%	24.7%
Citizenship/immigration status	0.4%	
Asked age		3.8%

56. The types of questions that survey participants were asked indicates the problem determining whether the Regulation would apply. Clearly asking a person their identification, address or phone number constitutes asking a person for their identifying information. Asking a person how they know others or where they are coming from or going falls into a grey area. Asking what a person is doing – which is the most frequent category for pedestrian stops – is not something that would be covered by the Regulation.

57. The following figures list the number of people who reported that they were subjected to a more intrusive procedure in a police stop, again broken down by category.

Frequency of Police Actions During Police Stops Since January 1, 2017		
Pedestrian	Phone	Online
Searched or patted down	9	5
Empty pockets or searched bag	13	6
No force used	46	26
Held down	6	2
Handcuffed	4	2
Hit me	2	1
Threatened force	3	3
Searched vehicle		
Passenger	Phone	Online
Searched or patted down	9	1
Empty pockets or searched bag		
No force used	82	21
Held down	2	
Handcuffed	2	
Hit me	1	
Threatened force	2	
Searched vehicle	11	
Driver	Phone	Online
Searched or patted down		1
Empty pockets or searched bag		
No force used	166	84
Held down		
Handcuffed		1
Hit me		
Tasered		
Threatened force		1
Searched vehicle	9	2

58. These figures indicate the number of people who reported these activities. It is possible that the same person was threatened with force, searched, held down and then handcuffed.

59. The following charts indicate the outcomes of the police stops.

Outcomes of Stops Since January 1, 2017		
Pedestrian	Phone	Online
Ticket	1.9%	10%
Warning	15.7%	10%
Arrest	1.9%	3.3%
Nothing Happened	80.4%	76.7%
Passenger	Phone	Online
Ticket	42.1%	10%
Warning	31.6%	10%
Arrest		3.3%
Nothing Happened	26.3%	76.2%
Driver	Phone	Online
Ticket	44.8%	30%
Warning	26.4%	46.7%
Arrest	1.2%	1.1%
Nothing Happened	27.6%	22.2%

60. The fact that some of the people stopped were arrested indicates that the stop may have been justified. Similarly, most of the drivers stopped were either ticketed or given a warning, indicating that there was some traffic infraction involved.

61. Among people stopped when driving, 72.4% of phone respondents and 77.8% of online respondents were given a ticket, warning or were arrested. This roughly correlates to the survey results regarding the perception that the stop was justified, with 74.1% (phone) and 75.3% (online) of the drivers reporting the stop as justified.

62. In summary, while most people trust and have confidence in the police, the figures are much lower for Black and Indigenous communities. It appears that since the Regulation came into effect, police officers have been stopping people without discrimination – with the potential exception of members of the Indigenous community who, in some cases, were stopped 30% more often than members of other communities. Police officers have been advising some people why they were stopped and that they do not have to answer questions, and then providing the person with a receipt. Without being able to know if the interaction was a regulated interaction, it is impossible to tell if police officers are fully complying with the Regulation. Given the lack of awareness on the part of survey respondents about the Regulation, it is important to create and deliver targeted education programs for Indigenous, Black and other racialized communities on the Regulation and its application.



Notes

1. Brian A. Garner, ed, *Black's Law Dictionary*, 8th ed (St. Paul, Minnesota: Thomson West, 2004) sub verbo “arbitrary”.
2. *Ibid* sub verbo “investigative detention”.
3. “Random”, online: *Merriam-Webster Dictionary* <https://www.merriam-webster.com/dictionary/random?utm_campaign=sd&utm_medium=serp&utm_source=jsonld>.
4. *R v Roberts*, 2015 ONSC 7974 at para 9.
5. *R v Guindon*, 2015 ONSC 4028 at para 5 citing *R v Brown*, 2008 SCC 18, [2008] 1 SCR 456 [*Brown* SCC].
6. *R v Chaudhry*, 2016 ONCJ 56 at para 31.
7. “Unconscious Bias” online: *University of California, San Francisco, Diversity and Outreach* <<https://diversity.ucsf.edu/resources/unconscious-bias>>.
8. Michael Shiner and Rebekah Delsol, “The Politics of Powers” in Rebekah Delsol and Michael Shiner, eds, *Stop and Search: The Anatomy of a Police Power* (London, UK: Palgrave MacMillan, 2015) 31 at 52.
9. Sir Robert Peel, *Sir Robert Peel's Principles of Law Enforcement* (1829) online: <https://www.durham.police.uk/About-Us/Documents/Peels_Principles_Of_Law_Enforcement.pdf>.
10. “The little-told history of Canadians as slave owners, not just slave rescuers”, *CBC Radio* (8 December 2017), online: <<http://www.cbc.ca/radio/thesundayedition/the-sunday-edition-december-10-2017-1.4439351/the-little-told-history-of-canadians-as-slave-owners-not-just-slave-rescuers-1.4439365>>.
11. The Royal Commission on Aboriginal Peoples, “Highlights of the Report of the Royal Commission on Aboriginal Peoples” (1996) online: <<https://www.aadnc-aandc.gc.ca/eng/1100100014597/1100100014637>>; Stephanie Cram “Dark history of Canada’s First Nations pass system uncovered in documentary” *CBC News* (19 February 2016), online: <<http://www.cbc.ca/news/aboriginal/dark-history-canada-s-pass-system-1.3454022>>.
12. *Ibid*.
13. Gregory S. Kealey, *Spying on Canadians: The Royal Canadian Mounted Police Security Service and the Origins of the Long Cold War* (Toronto, ON: University of Toronto Press, 2017) at 169.
14. *Ibid*.
15. *Ibid*.
16. *Ibid*.
17. Toronto Police Service, “Brief History of the Toronto Police Service” (last visited 5 September 2018), online: <<http://www.torontopolice.on.ca/careers/history.php>>.
18. Lila MacLellan, “Toronto Police controversy: What is ‘carding’ and is it legal?” *Daily Brew* (6 May 2015), online: <<https://ca.news.yahoo.com/blogs/dailybrew/toronto-police-controversy--what-is--carding--and-is-it-legal-192840113.html>>.
19. Paul Socka, “Police Carding: Highly Unlikely to Satisfy Charter Standards for Consent Searches” in Don Stuart, ed, *Criminal Reports*, 7th ed (Canada: Thomson Reuters, 2017) at para 4.

20. Jim Rankin, “How the cards have played out since 1957” *Toronto Star* (26 May 2015), online: <<https://www.thestar.com/news/gta/2015/05/26/how-the-cards-have-played-out-since-1957.html>>.
21. Chris Herhalt, “Carding ‘a valuable tool’ if done right, new chief says” (21 May 2015), *CP24* online: <<https://www.cp24.com/news/carding-a-valuable-tool-if-done-right-new-chief-says-1.2384556>>.
22. Roger Rowe, *Allegations of profiling: how much disclosure of investigative records is appropriate?* (delivered at The Canadian Institute’s 2nd Annual Conference on the Law of Policing: Navigating the Changing Landscape of Oversight, Discipline & Civil Liability, 2011) [unpublished] at 1.
23. “TAVIS formed in response to Summer of the Gun”, *City Centre Mirror* (29 August 2012) online: <<https://www.toronto.com/news-story/1309426-tavis-formed-in-response-to-summer-of-the-gun/>>; Christie Blatchford, “Mother of shot boy: ‘You have to thank God he’s alive’”, *The Globe and Mail* (22 April 2018) online: <<https://www.theglobeandmail.com/news/national/mother-of-shot-boy-you-have-to-thank-god-hes-alive/article22506001/>>; Joe Friesen “Slaying victim locked herself out of car, mother recalls” *The Globe and Mail* (22 April 2018) online: <<https://www.theglobeandmail.com/news/national/slaying-victim-locked-herself-out-of-car-mother-recalls/article18221862/>>.
24. Peel, *supra* note 9.
25. In *Brown v Durham Regional Police Force* (1998), 131 CCC (3d) 1 (ONCA) at paras 67 and 79 [*Brown v Durham*], leave to appeal granted (1999), 252 NR 198 (note), 133 OAC 200 (note) (SCC), Doherty J.A. noted:
- Proactive policing is in many ways more efficient and effective than reactive policing. Where proactive steps do not collide with individual rights, that increased efficiency and effectiveness comes at no constitutional cost. Even where there is interference with individual rights, the societal gains are sometimes worth the interference. This is most often the case where the proactive measures are taken in the context of a regulatory scheme such as the *Highway Traffic Act*. The justification under s. 1 of the *Charter* for the arbitrary detention allowed by s. 216(1) of the *HTA* is premised on the realization that preventative steps taken by the police, including ones which interfere with individual liberties, are essential to the maintenance of an acceptable level of safety on public thoroughfares. It must be stressed, however, that the individual rights which are interfered with when the police act proactively in a regulated area are qualified rights (e.g. the “right” to drive). It is easier to justify state interference with a qualified right than it is to justify interference with conduct which is not subject to government regulation. The respondent’s claim that the detentions were authorized under the common law ancillary doctrine in no way depends on the appellants’ status as motorists at the time of the detention. On this argument, the appellants could have been stopped if they were merely walking down the road.
- ...
- The balance struck between common law police powers and individual liberties puts a premium on individual freedom and makes crime prevention and peacekeeping more difficult for the police. In some situations, the requirement that there must be a real risk of imminent harm before the police can interfere with individual rights will leave the police powerless to prevent crime. The efficacy of laws controlling the relationship between the police and the individual is not, however, measured only from the perspective of crime control and public safety. We want to be safe, but we need to be free.
26. Rebekah Delsol, “Effectiveness” in Delsol and Shiner, *supra* note 8, 79 at 83; Michael D White and Henry F Fradella, *Stop and Frisk, The Use and Abuse of a Controversial Policing Tactic* (New York, NY: New York University Press, 2016) at 169.
27. White and Fradella, *supra* note 26 at 2-3, 81-82, 85, 92-93, 96-99, 182-183 and 188.
28. The police stops are simply one aspect of a greater strategy of focused deterrence or “pulling levers”

programs of policing where specific known and generally dangerous offenders are informed that they will be subject to greater scrutiny.

29. Douglas Murray “In London, Homicides Spike, and Politicians Do a U-Turn on Stop-and-Search”, *National Review* (9 April 2018) online: <<https://www.nationalreview.com/2018/04/in-london-homicides-spike-and-politicians-do-a-u-turn-on-stop-and-search/>>.

30. Ben Bradford, *Stop and Search and Police Legitimacy* (Milton Park, Abingdon, Oxon: Routledge, 2016) at 60 [Bradford, *Police Legitimacy*].

31. Christie Blatchford, “Controversial ‘carding’ practice is an invaluable source of intelligence for police, if done right”, *National Post* (5 June 2015) online: <<http://nationalpost.com/opinion/christie-blatchford-controversial-carding-practice-is-an-invaluable-source-of-intelligence-for-police-if-done-right>>.

32. Elizabeth Comack, *Racialized Policing: Aboriginal People’s Encounters with the Police* (Winnipeg, MN: Fernwood Publishing Company Limited, 2012) at 63 as cited in Christina Abbott, *Street Checks and Canadian Youth: A Critical Legal Analysis* (Master of Laws, University of Saskatchewan, 2017) [unpublished] at 18 online: <<https://ecommons.usask.ca/handle/10388/8098>>.

33. Bradford, *Police Legitimacy*, *supra* note 30 at 24.

34. Abigail Sewell & Kevin A. Jefferson, “Collateral Damage: The Health Effects of Invasive Police Encounters in New York City” (2016) 93 Suppl 1 J Urban Health 42-67 online: <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4824697/>>. See also Kwame McKenzie, “Carding amplifies racism, decreases health” (10 June 2015), online (blog): Wellesley Institute <<http://www.wellesleyinstitute.com/healthy-communities/carding-amplifies-racism/>>.

35. Minutes of the meeting of the Toronto Police Services Board (15 December 2005) at 149 online: <<http://www.tpsb.ca/component/jdownloads/send/18-2005/295-05dec15pmm>>.

36. Selena Ross, “Somali-Canadian woman sues federal government over loss of security clearance at Pearson Airport” *The Globe and Mail* (8 January 2016, updated 16 May 2016) online: <<https://www.theglobeandmail.com/news/toronto/somali-canadian-woman-sues-federal-government-over-loss-of-security-clearance-at-pearson-airport/article28094332/>>.

37. Alyshah Hasham, “Judge slams Transport Canada for revoking airline worker’s security clearance” *Toronto Star* (16 August 2016) online: <<https://www.thestar.com/news/crime/2016/08/16/judge-slams-transport-canada-for-revoking-airline-workers-security-clearance.html>>.

38. Jim Rankin “Award-winning law student denied cop ride-along – despite no criminal record” *Toronto Star* (28 June 2016) online: <<https://www.thestar.com/news/gta/2016/06/28/lawyer-activist-denied-cop-ride-along-launches-dual-complaints.html>>.

39. Patty Winsa, “Toronto resident Knia Singh launches Charter challenge to police carding” *Toronto Star* (10 June 2015) online: <<http://www.thestar.com/news/gta/2015/06/10/toronto-resident-knia-singh-launches-charter-challenge-to-police-carding.html>>; Jim Rankin “Excuse me officer, why are you stopping me?” *Toronto Star* (27 September 2013) online: <https://www.thestar.com/news/gta/known-topolice2013/2013/09/27/excuse_me_officer_why_are_you_stopping_me.html>; and *idid*.

40. *SM v Toronto Police Services Board*, 2008 ONCJ 579 at 15-16.

41. *R v Ferdinand*, 2004 CarswellOnt 3150 (SCJ) [*Ferdinand*]; *R v Fountain*, 2015 ONCA 354 [*Fountain*]; *Elmardy v Toronto Police Services Board*, 2017 ONSC 2074, 136 OR (3d) 483 (Div Ct).

42. *R v S (RD)*, [1997] 3 SCR 484 [*S (RD)*]; see also *R v Spence*, [2005] 3 SCR 458 [*Spence*], at para 32.

43. See eg The Honourable Roy McMurtry and Alvin Curling, *Review of the Roots of Youth Violence*, vol 1 (Toronto, ON: Queen’s Printer for Ontario, 2008) at ch 4, online: <http://www.children.gov.on.ca/htdocs/English/professionals/oyap/roots/volume1/chapter04_rootsrisk.aspx> (those groups reported

aggressive police tactics including stops and questioning which were perceived to be initiated on the basis of race, and which interactions were considered to be a contributor to youth violence).

44. Patty Winsa, “Likelihood of being stopped if you’re Black increases halfway through 2013” *Toronto Star* (25 July 2014) online: <https://www.thestar.com/news/insight/2014/07/25/likelihood_of_being_stopped_higher_if_youre_Black.html>.

45. Scot Wortley and Lysandra Marshall, *Bias Free Policing: The Kingston Police Stop Data Collection Pilot Project Final Results* (Kingston, ON: Kingston Police Services Board, 2005) online: <<http://hdl.handle.net/1974/8655>>.

46. Ottawa Police Service, “Traffic Stop Race Data Collection Project (TSRDCP)”, online: *Ottawa Police Service* <<https://www.ottawapolice.ca/en/news-and-community/Traffic-Stop-Race-Data-Collection-ProjectTSRDCP.asp>>. See also Ontario Human Rights Commission, “OHRC Response to the Race Data and Traffic Stops in Ottawa Report” (28 November 2016) at Ch. 5, online: *Ontario Human Rights Commission* <<http://www.ohrc.on.ca/en/ohrc-response-race-data-and-traffic-stops-ottawa-report/5-context-report-findings>> [OHRC, “Traffic Stops in Ottawa”] (it should be noted that both Ottawa Police Service and Kingston Police Service implemented measures to promote bias-free policing following these studies).

47. San Grewal, “Blacks three times more likely to be carded by Peel police than whites” *Toronto Star* (24 September 2015) online: <<https://www.thestar.com/news/gta/2015/09/24/blacks-three-times-more-likely-to-be-carded-by-peel-police-than-whites.html>>.

48. Shaamini Yogaretnam, “Street checks data about racialized men concerning to civil liberties advocates” *Ottawa Citizen* (26 July 2015) online: <<http://ottawacitizen.com/news/local-news/street-checks-data-about-racialized-men-concerning-to-civil-liberties-advocates>>.

49. *The Black Experience Project in the GTA: Overview Report*, (Toronto: July 2017) at 47, online (pdf): <<http://s3.documentcloud.org/documents/3897161/Black-Experience-Project.pdf>>.

50. See eg OHRC, “Traffic Stops in Ottawa”, *supra* note 46.

51. *R v Grant*, 2009 SCC 32, [2009] 2 SCR 353 [*Grant*] at para 39.

52. Bradford, *Police Legitimacy*, *supra* note 30 at 46.

53. Race Relations and Policing Task Force, *The Report of the Race Relations and Policing Task Force* (Toronto, ON: 1989) at 23.

54. Scot Wortley and Akwasi Owusu-Bempah, “The usual suspects: police stop and search practices in Canada” in Leanne Weber and Ben Bowling, eds, *Stop and Search: Police Power in Global Context* (Oxford, UK: Routledge, 2013) 43 at 51 [Wortley and Owusu-Bempah, “The usual suspects”]. Also see Toronto Police Service, *The Police and Community Engagement Review (The PACER Report)* (Toronto, ON: Toronto Police Service, 2013) online: <<http://www.torontopolice.on.ca/publications/files/reports/2013pacerreport.pdf>> [PACER]; Neil Price “*This Issue has been With Us for Ages: A Community-Based Assessment of Police Contact Carding in 31 Division, Final Report*”, (Toronto, ON: Logical Outcomes, 2014) online: <<https://www.publicsafety.gc.ca/lbrr/archives/cnmcs-plcng/cn000043559042-eng.pdf>> [Logical Outcomes Report].

55. Ben Bradford, “Unintended Consequences” in Delsol and Shiner, *supra* note 8, 102 at 112 [Bradford, “Unintended Consequences”]; White and Fradella, *supra* note 26 at 158.

56. Ontario Human Rights Commission, *Paying The Price: The Human Cost of Racial Profiling* (Toronto, ON: 2003) at 29, online (pdf): <http://www.ohrc.on.ca/sites/default/files/attachments/Paying_the_price%3A_The_human_cost_of_racial_profiling.pdf>; see also Abbott, *supra* note 32 at 25.

57. Bradford, “Unintended Consequences”, *supra* note 55 at 117; Bradford, *Police Legitimacy*, *supra* note 30 at 176; Wortley and Owusu-Bempah, “The usual suspects” *supra* note 54 at 51; Ben Bowling and

Leanne Webber, “Stop and search in global context: an overview” in Weber and Bowling, *supra* note 54, 128 at 133.

58. Scot Wortley and Akwasi Owusu-Bempah, “Criminal Justice and the Experience of Blacks in Canada” in Barbara Perry, eds, *Diversity, Crime, and Justice in Canada* (New York: Oxford University Press, 2011) Ch8-1, online: <http://www.academia.edu/535442/Crime_and_Justice_The_Experience_of_Black_Canadians>.

59. Scot Wortley and Julian Tanner, “Respect, Friendship, and Racial Injustice: Justifying Gang Membership in a Canadian City” in Frank van Gemert, Dana Peterson, and Inger-Lise Lien, eds, *Street Gangs, Migration and Ethnicity* (London, UK: William Publishing, 2008) 192-208.

60. McMurtry and Curling, *supra* note 43 at ch 4.

61. *PACER*, *supra* note 54.

62. *Logical Outcomes Report*, *supra* note 54.

63. *Collection of Identifying Information in Certain Circumstances – Prohibition and Duties*, O Reg 58/16 [Regulation 58/16], under the *Police Services Act*, RSO 1990, c P-15.

64. As noted above, one problem in this area has been the lack of definition of key terms such as “street check”. Some police services now refer to street checks as being synonymous with regulated interactions. Other police services refer to street checks as being either regulated street checks (ie a regulated interaction) or non-regulated street checks (eg a request is made for identifying information in circumstances under which the Regulation does not apply).

65. *General*, O Reg 268/10, Schedule, Code of Conduct, ss 2(g)(i.1) and (iii) [Regulation 268/10].

66. See the draft at “Ontario’s Regulatory Registry” (October 28, 2015), online: *Service Ontario* <<http://www.ontariocanada.com/registry/view.do?postingId=20202>>.

67. Regulation 58/16, *supra* note 63, s 17.

68. On January 1, 2020, the Office of the Independent Police Review Director will be renamed the Ontario Policing Complaints Agency, headed by the Ontario Policing Complaints Director, if the *Policing Oversight Act, 2018*, SO 2018, Schedule 2, s 42 is proclaimed in force.

69. *R v Mann*, 2004 SCC 52, [2004] 3 SCR 59 [*Mann*] at para 15.

70. *Figueiras v Toronto (Police Services Board)*, 2015 ONCA 208 [*Figueiras*] at para 66.

71. *Mann*, *supra* note 69 at para 1.

72. *Ferdinand*, *supra* note 41 at para 54.

73. *R v Grafe* (1987), 36 CCC (3d) 267 (ONCA) [*Grafe*].

74. *R v Esposito* (1985), 24 CCC (3d) 88 (ONCA) [*Esposito*] at para 15; *R v Dedman*, [1985] 2 SCR 2 [*Dedman*] at para 13, citing Martin JA in the decision below, (1981), 32 OR (2d) 641 (ONCA) at 653.

75. Respectively, these require reasonable grounds to *believe* and reasonable grounds to *suspect* the individual has committed a criminal offence.

76. *Grant*, *supra* note 51 at para 20; *R v Gonzales*, 2017 ONCA 543 [*Gonzales*] at para 51.

77. *Grant*, *supra* note 51 at para 20.

78. *Canadian Charter of Rights and Freedoms*, s 10, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*]. Section 10 reads as follows:

Everyone has the right on arrest or detention

(a) to be informed promptly of the reasons therefor;

(b) to retain and instruct counsel without delay and to be informed of that right; and

(c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

79. *R v Hebert*, [1990] 2 SCR 151; *R v Singh*, 2007 SCC 48, [2007] 3 SCR 405. The *Charter*, *supra* note 78 at s 7 provides that “everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice”.

80. *Mann*, *supra* note 69 at para 20; *R v Clayton*, 2007 SCC 32, [2007] 2 SCR 725 [*Clayton*] at paras 20 and 21; *Gonzales*, *supra* note 76 at para 52.

81. *R v Hufsky*, [1988] 1 SCR 621 [*Hufsky*] at para 13.

82. *R v Simpson* (1993), 12 OR (3d) 182 (CA) [*Simpson*] at para 15.

83. *R v Sieben*, 1989 ABCA 258, 51 CCC (3d) 343; *R v Cayer* (1988), 66 CR (3d) 30 (ONCA), as cited in *R v Griffiths*, 2003 CarswellOnt 1378 (CJ) [*Griffiths*] at para 18.

84. *Charter*, *supra* note 78, s 15 reads as follows:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

85. *Human Rights Code*, RSO 1990, c H19, s 1 provides:

Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

86. The *Police Services Act, 2018*, SO 2018, c 3, Schedule 1 is scheduled to be proclaimed in force on January 1, 2020. Section 10 requires police services boards and the O.P.P. Commissioner, and subsection 12(1) requires the policing provider, to provide adequate and effective policing, which is defined in section 11 to include complying with the requirements of the *Charter*, *supra* note 78 and the *Human Rights Code*, *supra* note 85.

87. *Phipps v Toronto Police Services Board*, 2010 ONSC 3884 at para 91, aff’d 2012 ONCA 155 at para 42.

88. SO 2017, c 15 [*Anti-Racism Act*]. The Preamble states:

Everyone deserves to be treated with fairness, respect and dignity, and the Government of Ontario is committed to eliminating systemic racism and advancing racial equity.

Systemic racism is a persistent reality in Ontario, preventing many from fully participating in society and denying them equal rights, freedoms, respect and dignity.

Systemic racism is often caused by policies, practices and procedures that appear neutral but have the effect of disadvantaging racialized groups. It can be perpetuated by a failure to identify and monitor racial disparities and inequities and to take remedial action.

Systemic racism is experienced in different ways by different racialized groups. For example, anti-Indigenous racism, anti-Black racism, antisemitism and Islamophobia reflect histories of systemic exclusion, displacement and marginalization.

Eliminating systemic racism and advancing racial equity supports the social, economic and cultural development of society as a whole, and everyone benefits when individuals and communities are no longer marginalized.

89. *Anti-Racism Act*, *supra* note 88, s 2.

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90. *Mann*, *supra* note 69 at para 15; *Gonzales*, *supra* note 76 at para 51.
91. *Supra* note 63.
92. Subsections 42(1) and (3) of the *Police Services Act*, *supra* note 63, provide:
42. (1) The duties of a police officer include,
 - (a) preserving the peace;
 - (b) preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention;
 - (c) assisting victims of crime;
 - (d) apprehending criminals and other offenders and others who may lawfully be taken into custody;
 - (e) laying charges and participating in prosecutions;
 - (f) executing warrants that are to be executed by police officers and performing related duties;
 - (g) performing the lawful duties that the chief of police assigns;
 - (h) in the case of a municipal police force and in the case of an agreement under section 10 (agreement for provision of police services by O.P.P.), enforcing municipal by-laws;
 - (i) completing the prescribed training.
 - (3) A police officer has the powers and duties ascribed to a constable at common law.
- These duties will be expanded on January 1, 2020, if section 110 of the *Police Services Act, 2018*, *supra* note 86, is proclaimed in force.
93. *Police Services Act*, *supra* note 63, s 1: Declaration of Principles
1. Police services shall be provided throughout Ontario in accordance with the following principles:
 1. The need to ensure the safety and security of all persons and property in Ontario.
 2. The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.
 3. The need for co-operation between the providers of police services and the communities they serve.
 4. The importance of respect for victims of crime and understanding of their needs.
 5. The need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society.
 6. The need to ensure that police forces are representative of the communities they serve.
- These principles will be expanded on January 1, 2020, if section 1 of the *Police Services Act, 2018*, *supra* note 86, is proclaimed in force.
94. *Dedman*, *supra* note 74 at para 69.
95. *Brown SCC*, *supra* note 5 at para 52 citing the test in *R v Waterfield*, [1963] 3 All ER 659 (CA) [*Waterfield*].
96. *Mann*, *supra* note 69 at para 35; see also *Clayton*, *supra* note 80.
97. *Mann*, *supra* note 69 at para 35.
98. *Simpson*, *supra* note 82 at 194.
99. *Ibid* at 194.

100. *Mann*, *supra* note 69 at para 35.
101. *Clayton*, *supra* note 80 at para 68.
102. *Mann*, *supra* note 69 at para 1.
103. *Criminal Code*, RSC 1985, c C-46, ss 495(1)(a) and (b).
104. *Controlled Drugs and Substances Act*, SC 1996, c 19.
105. *Criminal Code*, *supra* note 103, s 487.01 and 487.05.
106. *Police Services Act*, *supra* note 63; *Aeronautics Act*, RSC 1985, c A-2, and associated regulations.
107. *Figueiras*, *supra* note 70 at para 58.
108. RSO 1990, c T21 [*Trespass to Property Act*].
109. *Ibid*, s 9.
110. *Ibid*, ss 2.1(a)(i) and (ii).
111. *Ibid*, s 10.
112. *R v Davidson*, 2010 ONSC 1508 [*Davidson*] at paras 3 and 76.
113. *Dedman*, *supra* note 74 at para 35.
114. *Figueiras*, *supra* note 70 at para 79; *Brown v Durham*, *supra* note 25 at para 77.
115. RSO 1990, c H8, ss 216(1) [*Highway Traffic Act*]. See also *Brown v Durham*, *supra* note 25 at para 21; *R v Ladouceur*, [1990] 1 SCR 1257 [*Ladouceur*] at para 60; *Simpson*, *supra* note 82 at para 30; *Hufsky*, *supra* note 81 at para 16.
116. *Brown v Durham*, *supra* note 25 at para 24; *Gonzales*, *supra* note 76 at paras 55-56; *Ladouceur*, *supra* note 115 at para 60; *R v Mellenthin*, [1992] 3 SCR 615 [*Mellenthin*] at para 32.
117. *Brown v Durham*, *supra* note 25 at paras 31, 34, 37-39, 45; *Gonzales*, *supra* note 76 at para 58.
118. *Gonzales*, *supra* note 76 at paras 69-71.
119. *Simpson*, *supra* note 82 at paras 31 and 32; *Gonzales*, *supra* note 76 at para 60.
120. *Brown v Durham*, *supra* note 25 at paras 31 and 33; *Gonzales*, *supra* note 76 at para 59.
121. *Ladouceur*, *supra* note 115 at 1287.
122. *Mellenthin*, *supra* note 116 at para 20.
123. *Charter*, *supra* note 78, s 10.
124. *R v Turcotte*, 2005 SCC 50, [2005] 2 SCR 519 at para 41.
125. These circumstances include the extent to which the interference with individual liberty is necessary to the performance of the officer's duty, to the liberty interfered with, and to the nature and extent of the interference: *Mann*, *supra* note 69 at para 34
126. *Ibid* at para 17.
127. *Ibid* at para 34.
128. *Ibid* at para 16.
129. *Brown v Durham*, *supra* note 25 at para 65.
130. *R v Granston*, 134 OAC 87, 146 CCC (3d) 411 (CA) [*Granston*] at para 36.
131. *Simpson*, *supra* note 82 at 200. See also *R v Jacques*, [1996] 3 SCR 312. Although the preferred term in Canada is "reasonable grounds to detain": *Mann*, *supra* note 69 at para 33.

132. *Simpson*, *supra* note 82 at para 61.
133. *Mann*, *supra* note 69 at para 27.
134. *R v Mahmood*, 2011 ONCA 693 at para 114, citing *Brown* SCC, *supra* note 5 at para 75 and *Simpson*, *supra* note 82 at 202.
135. See eg *R v Cox* (1999), 132 CCC (3d) 256 (NBCA) at para 12; *Mann*, *supra* note 69 at para 35.
136. *Simpson*, *supra* note 82 at para 61.
137. *R v Byfield* (2005), 74 OR (3d) 206 (CA) at paras 18-20.
138. *Charter*, *supra* note 78, s 10(a). See also *Mann*, *supra* note 69 at para 21; *R v Suberu*, 2009 SCC 33, [2009] 2 SCR 460 [*Suberu*] at para 41. However, compliance with a person's right to counsel under section 10(b) of the *Charter* cannot excuse prolonging, unduly and artificially, the person's detention.
139. *Suberu*, *supra* note 138 at para 23.
140. *Ibid* at para 24.
141. *Mann*, *supra* note 69 at para 19; *ibid* at paras 3 and 23.
142. *Grafe*, *supra* note 73 at para 9; *R v Hall* (1995), 22 OR (3d) 289 (CA) at para 26; *R v Bullock*, 2000 CarswellOnt 736 (SCJ) at para 9.
143. *Mann*, *supra* note 69 at paras 19 and 20; *Davidson*, *supra* note 112 at paras 51 to 53.
144. *Mann*, *supra* note 69 at para 19; *Suberu*, *supra* note 138 at paras 3 and 5.
145. *Grant*, *supra* note 51 at paras 30 and 44; *Suberu*, *supra* note 138 at paras 25 and 34.
146. *Grant*, *supra* note 51 at para 44.
147. *Ibid* at para 32.
148. *Ibid* at para 31.
149. *R v Moran* (1987), 36 CCC (3d) 225 (ONCA) [*Moran*] at para 80.
150. *Grant*, *supra* note 51 at para 41.
151. *Suberu*, *supra* note 138 at para 29.
152. *Moran*, *supra* note 149 at para 82.
153. *Griffiths*, *supra* note 83 at paras 9 and 15; *R v Pinto*, 2003 CarswellOnt 5097 (SCJ) at para 46.
154. *Grant*, *supra* note 51 at para 169.
155. See eg *R v Parks* (1993), 15 OR (3d) 324 (CA) [*Parks*]; *R v Hamilton*, 172 CCC (3d) 114 (ON SCJ); *Griffiths*, *supra* note 83; *R v Lam*, 2014 ONSC 3538.
156. *Grant*, *supra* note 51 at para 32.
157. *Davidson*, *supra* note 112 at para 53, citing *Suberu*, *supra* note 138 at para 23.
158. *Brown v Durham*, *supra* note 25 at para 62.
159. *Waterfield*, *supra* note 95.
160. *Ibid* at 661-662.
161. *Waterfield*, *supra* note 95.
162. As summarized in *Figueiras*, *supra* note 70 at paras 85-86. See also *Simpson*, *supra* note 82 at para 55; *R v MacDonald*, 2014 SCC 3, [2014] 1 SCR 37 at paras 37 and 39; *Dedman*, *supra* note 74 at para 73; *Mann*, *supra* note 69 at para 26.

163. *Brown* SCC, *supra* note 5 at para 6.
164. *Brown v Durham*, *supra* note 25 at 249.
165. *Figueiras*, *supra* note 70 at para 45; also see *Brown v Durham*, *supra* note 25.
166. *Davidson*, *supra* note 112 at para 52, citing *Brown v Durham*, *supra* note 25 at para 67.
167. *Brown v Durham*, *supra* note 25 at para 78.
168. *Grafe*, *supra* note 73.
169. See eg *Esposito*, *supra* note 74 at para 15.
170. *Ibid* at para 15; *Dedman*, *supra* note 74 at para 11.
171. *Suberu*, *supra* note 138 at para 45. “Section 9 of the Charter does not dictate that police abstain from interacting with members of the public until they have specific grounds to connect the individual to the commission of a crime. Likewise, not every police encounter, even with a suspect, will trigger an individual’s right to counsel under s. 10(b)” (*ibid* at para 3).
172. *Mann*, *supra* note 69 at para 18.
173. *Ibid* at para 45: “In this connection, I note that the investigative detention should be brief in duration and does not impose an obligation on the detained individual to answer questions posed by the police.” See also *R v Greaves*, 2004 BCCA 484 at paras 48–51 and 60.
174. *Police Services Act*, *supra* note 63, s 2, states that “police officer” means a “chief of police or any other police officer, including a person who is appointed as a police officer under the *Interprovincial Policing Act*, 2009, but does not include a special constable, a First Nations Constable, a municipal law enforcement officer or an auxiliary member of a police force”.
175. The term First Nations Constable will be replaced with First Nations Officer on January 1, 2020, if the *Police Services Act*, 2018, *supra* note 86, is proclaimed in force.
176. Regulation 58/16, *supra* note 63, s 3.
177. *Ibid*, s 4.
178. *Ibid*, ss 1(1).
179. *Ibid*, s 4 [emphasis added].
180. *Ibid*, ss 1(3).
181. See *Highway Traffic Act*, *supra* note 115; *Liquor Licence Act*, RSO 1990, c L 19; *Trespass to Property Act*, *supra* note 108; *Criminal Code*, *supra* note 103.
182. *Peart v Peel (Regional Municipality) Police Services Board* (2006), 217 OAC 269 (CA) [*Peart v Peel*] at para 91.
183. *R v Smith*, 2015 ONSC 3548; *R v Khan* (2004), 189 CCC (3d) 49, 244 DLR (4th) 443 (SCJ); *R v Brown* (2003), 64 OR (3d) 161 (CA) [*Brown* ONCA].
184. See eg *R v Humphrey*, 2011 ONSC 3024 at paras 79–81.
185. The seriousness of the issue of missing persons will be recognized in the *Missing Persons Act*, 2018, SO 2018, c 3, Schedule 7, which is yet to be proclaimed in force.
186. Bradford, *Police Legitimacy*, *supra* note 30 at 78.
187. Paul Quinton, “The formation of suspicions: police stop and search practices in England and Wales” in Weber and Bowling, *supra* note 54, 5 at 9.
188. *R v K (A)*, 2014 ONCJ 374.

189. *Granston*, *supra* note 130 at para 36.
190. Regulation 58/16, *supra* note 63, ss 1(1)(c).
191. *Brown v Durham*, *supra* note 25 at para 31.
192. Jillian Boyce, “Police Reported Crime Statistics in Canada – 2014” (2015), online: *Statistics Canada* <<https://www.statcan.gc.ca/pub/85-002-x/2015001/article/14211-eng.htm>>.
193. “Handgun seizure up 65%”, *CityNews* (15 June 2018) online: <<http://toronto.citynews.ca/2018/06/15/handgun-seizure-surge/>>.
194. Claire Wilmot “Analysis of Toronto gun shooting stats will surprise you”, *Toronto Star* (30 July 2018) online: <<https://www.thestar.com/opinion/contributors/2018/07/30/analysis-of-toronto-gun-shooting-states-will-surprise-you.html>>.
195. *Ibid.*
196. “Homicide in Canada, 2017” (November 21, 2018), at 3 online (pdf): *Statistics Canada* <<https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2018001/article/54980-eng.pdf?st=fAOQqI61>>.
197. *Ibid* at 20 and 21.
198. *Ibid*, at 3.
199. *Québec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 at para 33, [2015] 2 SCR 789 [footnotes omitted] [emphasis removed].
200. *R v Richards*, 1999 CarswellOnt 1196 at para 24.
201. *R v Chehil*, 2013 SCC 49, [2013] 3 SCR 220 at para 40.
202. Anthony N Doob and Rosemary Gartner, *Understanding the Impact of Police Stops* (Toronto, ON: University of Toronto’s Centre for Criminology & Sociolegal Studies, 2017) A22, online (pdf): <<http://criminology.utoronto.ca/wp-content/uploads/2017/03/DoobGartnerPoliceStopsReport-17Jan2017r.pdf>>.
203. *Ibid.*
204. Delsol, *supra* note 26 at 80.
205. Bradford, “Unintended Consequences”, *supra* note 55 at 110.
206. Ben Bowling and Estelle Marks, “Towards a Transitional and Comparative Approach” in Delsol and Shiner, *supra* note 8, 170 at 184-185.
207. Bradford, “Unintended Consequences”, *supra* note 55 at 119; Bowling and Marks, *supra* note 206 at 179-180; Delsol, *supra* note 26 at 79; Balázs M. Tóth and András Kádár, “Ethnic profiling in ID checks by the Hungarian police” in Weber and Bowling, *supra* note 54, 31 at 38; Bowling and Weber, *supra* note 57 at 131-132.
208. Delsol, *supra* note 26 at 85.
209. “Stop and Frisk Data: Annual Stop and Frisk Numbers” (2 April 2018), online: *New York Civil Liberties Union* <<https://www.nyclu.org/en/stop-and-frisk-data>>; Zolan Kanno-Youngs, Scott Calvert and Mara Gay “New York City Major Crimes Fall to Lowest Record Level”, *Wall Street Journal* (4 January 2017) online: <<https://www.wsj.com/articles/new-york-city-crime-rate-falls-to-lowest-recorded-level-1483543802>>; “Historical New York City Crime Data” online: *NYPD* <<https://www1.nyc.gov/site/nypd/stats/crime-statistics/historical.page>>.
210. Shiner and Delsol, *supra* note 8 at 41.
211. Paul Quinton, Matteo Tiratelli and Ben Bradford, *Does more stop and search mean less crime?* (College

of Policing Limited, 2017) online (pdf): <<http://www.college.police.uk/News/College-news/Documents/Stop%20and%20search%20-%20Less%20crime%20-%20Report.pdf>>.

212. *Ibid* at 3 and 4.

213. *Ibid* at 3.

214. *Ibid* at 4.

215. *Ibid*.

216. Bradford, “Unintended Consequences” *supra* note 55 at 119.

217. Delsol, *supra* note 26 at 98.

218. McMurtry and Curling, *supra* note 43 at Executive Summary and vol 1, ch 4.

219. Molly Hayes and Jeff Gray “Toronto Mayor pleads for help from Ontario, Ottawa after 10 shot in five days”, *The Globe and Mail* (4 July 2018) online: <<https://www.theglobeandmail.com/canada/toronto/article-toronto-mayor-pleads-for-help-from-ontario-ottawa-after-10-shot-in/>>; Antonella Artuso, “‘Grave concern’ over gang-related violence: Tory”, *Toronto Sun* (July 3, 2018) online: <<https://torontosun.com/news/local-news/grave-concern-over-gang-related-violence-tory>>; The Canadian Press, “75 per cent of shootings in Toronto are gang-related, Tory says”, *Toronto Star* (July 3, 2018) online: <<https://www.thestar.com/news/gta/2018/07/03/75-per-cent-of-shootings-in-toronto-are-gang-related-tory-says.html>>.

220. Wortley and Tanner, *supra* note 59 at 192-208.

221. McMurtry and Curling, *supra* note 43 at ch 4.

222. See eg Jamie Brown and Jason Newberry, *An Evaluation of the Connectivity Situation Tables in Waterloo Region: Addressing Risk Through System Collaboration* (Guelph, ON: Taylor Newberry Consulting, 2015) online (pdf): <https://www.usask.ca/cfbsjs/research/pdf/research_reports/AnEvaluationoftheConnectivitySituationTablesinWaterlooRegion.pdf>.

223. *Ibid* at 8-10.

224. Thomas Mackintosh “Can Scottish police help stop violent deaths in London?” *BBC News* (24 January 2018) online: <<http://www.bbc.com/news/uk-england-london-42690960>>.

225. Drazen Manojlovic, “Vancouver Police Department: Report to Vancouver Police Board re: Proposed Addition of Policy, Procedure and Guidelines for Street Checks PR&A File # 2015-074” (Report date: 11 January 2016, meeting date: 26 January 2016), online (pdf): *Vancouver Police Department* <<http://vancouver.ca/police/policeboard/agenda/2017/0126/1701R01-Response-to-OPCC-Street-Checks.pdf>>.

226. Sunny Dhillon “New standards for B.C. police expected to address carding practices”, *The Globe and Mail* (6 June 2018) online: <<https://www.theglobeandmail.com/canada/british-columbia/article-new-standards-for-bc-police-expected-to-address-carding-practices/>>.

227. Manojlovic, *supra* note 225 at Appendix B, p 3 [emphasis in original].

228. *Ibid* at Appendix A, p 1.

229. Regulation 58/16, *supra* note 63, ss 5(1).

230. *Ibid*, ss 5(1)(a).

231. *Ibid*, ss 5(2).

232. *Ibid*, ss 5(3).

233. *Ibid*, ss 5(1)(b).

234. *Ibid*, ss 5(4).

235. *Ibid.*
236. *Ibid.*, ss 5(4)(1).
237. *Ibid.*, ss 6(1)(b).
238. *Ibid.*, ss 6(1).
239. Bradford, *Police Legitimacy*, *supra* note 25 at 146.
240. Lorraine Mazerolle et al, *Legitimacy in Policing* (Queensland, Australia: The Campbell Collaboration, 2012) at 75, online (pdf): <http://cebc.org/wp-content/lpr/Mazerolle_Legitimacy-in-Policing.pdf>.
241. Bradford, *Police Legitimacy*, *supra* note 30 at 166 and chapter 3.
242. Jonathan Price & Ben Bradford, “What is Trust and Confidence in the Police?” (2010) 4:3 Policing: J Policy & Practice 241; Andy Myhill and Paul Quinton, *It’s a Fair Cop? Police Legitimacy, Public Cooperation, and Crime Reduction* (London: National Policing Improvement Agency, 2011) online (pdf): <http://whatworks.college.police.uk/Research/Documents/Fair_cop_Full_Report.pdf>; Lorraine Mazerolle et al, “Shaping Citizen Perceptions of Police Legitimacy: A Randomized Field Trial of Procedural Justice” (2013) 51:1 Criminology 33, online (pdf): <<http://www.slcdocs.com/ODHR/Website/Right%20to%20Safety/Literature/ShapingCitizensPerceptionsOfPoliceLegitimacy.pdf>>.
243. The state of Washington employs an innovative training program called “LEED”: Listen and Explain with Equity and Dignity. With the LEED model police officers are trained to take the time to listen to people, explain what is going to happen and how the process works, explain why that decision was made and leave people with their dignity intact. For more information, see Public Affairs, “WA State Justice Based Policing Initiative” (25 April 2011), online: *Seattle Police Department* <<http://spdblotter.seattle.gov/2011/04/25/wa-state-justice-based-policing-initiative/>>.
244. Regulation 58/16, *supra* note 63, ss 6(1).
245. Bradford, *Police Legitimacy*, *supra* note 30 at 147.
246. Regulation 58/16, *supra* note 63, ss 6(2).
247. *Ibid.*, ss 6(3).
248. *Ibid.*, ss 6(4).
249. *R v Therens*, [1985] 1 SCR 613 at para 57.
250. *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F31, ss 39(2) [*FIPPA*]; *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M56, ss 29(2) [*MFIPPA*].
251. *FIPPA*, *supra* note 250, ss 39(3); *MFIPPA*, *supra* note 250, ss 29(3).
252. *Supra* note 88, and O Reg 267/18, s 2, item 7 [Regulation 267/18]. The individual’s name does not need to be collected.
253. Regulation 267/18, *supra* note 252, s 2 item 7. This item of the Anti-Racism regulation applies where a member of a police force is legally required to prepare a report if the police force is legally required to provide that information to the ministry. Chiefs of police are legally required to prepare reports under sections 14 and 15 of Regulation 58/16, *supra* note 63. Section 16 of Regulation 58/16, *supra* note 63, requires any relevant information to be provided by a chief of police to the ministry for reasons including: developing programs to enhance police practices, standards and training; to ensure compliance with prescribed standards of service; and maintaining records to conduct research studies in respect of police services.

254. *Grant*, *supra* note 51 at para 32; *Ferdinand*, *supra* note 41 at para 14; *Fountain*, *supra* note 41 at para 20.

255. *Draft Regulation*, *supra* note 66, ss 5(1)(a). The draft Regulation provided that the officer shall “inform the individual that he or she is not required to remain in the presence of the officer”.

256. *Grant*, *supra* note 51 at paras 41 to 44.

257. André Marin, “Street Checks and Balances – Submission in response to the Ministry of Community Safety and Correctional Services’ consultation on proposed Ontario regulation for street checks” (August 31, 2015) at 16 Recommendation 12, online (pdf): *Ombudsman Ontario* <<https://ombudsman.on.ca/Files/sitemedia/Documents/OntarioOmbudsman-StreetChecks-EN.pdf>>.

258. SC 2002, c 1, ss 3(1)(b)(iii) [YCJA].

259. *Police Services Act, 2018*, *supra* note 86, ss 39(1) and 61(1), scheduled to be proclaimed into force on January 1, 2020.

260. YCJA, *supra* note 258, ss 3(1)(b)(iii).

261. *Ibid*, s 11 and 26.

262. Regulation 58/16, *supra* note 63, s 7. The document that is required to be provided to the individual has been variously titled in the policies and procedures adopted under the Regulation as a “receipt”, “street check receipt/document”, “Collection of Identifying Information Receipt”, “Record of Interaction Form”, “Contact Card”, “Document of Interaction”, or simply “document”.

263. Regulation 58/16, *supra* note 63, ss 7(1).

264. *Ibid*, ss 7(4). On January 1, 2020, the Office of the Independent Police Review Director will be renamed the Ontario Policing Complaints Agency, headed by the Ontario Policing Complaints Director, if the *Policing Oversight Act, 2018*, *supra* note 67, s 42 is proclaimed in force.

265. Regulation 58/16, *supra* note 63, ss 6(1)(b).

266. *Ibid*, ss 7(2).

267. *Ibid*, ss 7(3).

268. *Ibid*, ss 9(6).

269. *Ibid*, ss 8(5).

270. *Ibid*, ss 9(2).

271. *Ibid*, ss 9(4)(b).

272. *Ibid*, ss 9(5).

273. *Ibid*, ss 9(3).

274. *Ibid*.

275. *Ibid*, ss 9(4).

276. *Ibid*, ss 9(5)(3).

277. *Ibid*, ss 9(5).

278. *Ibid*, ss 9(10).

279. *Ibid*, ss 9(9).

280. PACER, *supra* note 54 at 17; *Logical Outcomes Report*, *supra* note 54 at 64. For more information on these reports, also see chapter 2.

281. *Anti-Racism Act*, *supra* note 88, ss 7(10).
282. Regulation 58/16, *supra* note 63, ss 9(6).
283. *Ibid*, ss 9(7).
284. *Ibid*, ss 9(8).
285. *Anti-Racism Act*, *supra* note 88, s 2, 6 and 8.
286. Regulation 58/16, *supra* note 63, ss 2(1).
287. *Ibid*, ss 2(2) states that the Regulation applies to historical information only as provided under paragraph 5 of subsection 12 (1), and subsection 13(1).
288. *Ibid*, ss 12(1)(5) and 13(1).
289. Historical data is sometimes referred to by police services as “legacy data”.
290. While the Regulation refers to “chief of police”, such references include the Commissioner of the OPP, because the Commissioner is included within the definition of “chief of police” under section 2 of the *Police Services Act*, *supra* note 63.
291. An application challenging the constitutionality of the retention of information collected prior to the passage of the Regulation was dismissed for delay: see *Singh v Toronto Police Services Board*, 2016 ONSC 6291 (Div Ct).
292. “Globe editorial: CSIS needs to improve its data-collecting practices”, *The Globe and Mail* (25 June 2018) online: <<https://www.theglobeandmail.com/opinion/editorials/article-globe-editorial-csis-needs-to-improve-its-data-collecting-practices/>>; *X, Re*, 2016 FC 1105 at paras 6, 33, 34 and Judgment.
293. Regulation 58/16, *supra* note 63, ss 11(1).
294. *Ibid*, ss 11(3) and (4).
295. *Ibid*, ss 11(2).
296. Under subsection 35(2) of the *Police Services Act, 2018*, *supra* note 86, yet to be proclaimed into force, members of a police services board will be required to receive training on human rights and systemic racism, as well as training that promotes recognition of and respect for the diverse, multiracial and multicultural character of Ontario society and the rights and cultures of First Nation, Inuit and Métis Peoples.
297. Shiner and Delsol, *supra* note 8 at 52.
298. *S (RD)*, *supra* note 42.
299. *Parks*, *supra* note 155.
300. Heston Tobias and Ameil Joseph, “Sustaining Systemic Racism Through Psychological Gaslighting: Denials of Racial Profiling and Justifications of Carding by Police Utilizing Local News Media” (2018) *Race and Justice*, 1-32, at 27.
301. Anupam B Jena, Cass R Sunstein and Tanner R Hicks, “The Benefit of Having the Same Name as a Police Officer” *The New York Times* (4 August 2018) online: <<https://www.nytimes.com/2018/08/04/opinion/sunday/police-bias-research-names.html>>.
302. See “Fair & Impartial Policing”, online: *Fair & Impartial Policing* <<https://fipolicing.com>>.
303. Toronto Police Services Board, “Regulated Interaction with the Community and the Collection of Identifying Information”, (Approved 24 April 2014, reviewed and/or amended 17 November 2016, 16 April 2015, and 18 June 2016), online (pdf): *Toronto Police Services Board* <<http://www.tpsb.ca/policies-by-laws/board-policies/send/5-board-policies/543-regulated-interaction-with-the-community-and-the-collection-of-identifying-information>>.

304. The Honourable Michael H Tulloch, *Report of the Independent Police Oversight Review* (Toronto, ON: Queen's Printer for Ontario, 2017), Recommendations 12.3 and 12.4, online: <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/police_oversight_review/>.
305. White and Fradella, *supra* note 26 at 121.
306. Section 111 of the *Police Services Act, 2018*, *supra* note 86, yet to be proclaimed into force, will require police officers to have a college or university degree or diploma or equivalent, or a secondary school diploma and any additional criteria as may be prescribed.
307. D C McDonald, *Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police: Second Report – Volume 2, Freedom and Security under the Law* (Ottawa, ON: Minister of Supply and Services Canada 1981, 1981) 708-715, online (pdf): <http://publications.gc.ca/collections/collection_2014/bcp-pco/CP32-37-1981-2-2-1-eng.pdf>.
308. Home Office, *Code A: Revised Code of Practice for the exercise by: Police Officers of Statutory Powers of stop and search, Police Officers and Police Staff of requirements to record public encounters* (Norwich, UK: The Stationary Office, 2014) online (pdf): <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/414195/2015_Code_A_web-19-03-15.pdf>; *Police & Criminal Evidence (Northern Ireland) Order 1989: Code A: Code of Practice for the exercise by police officers of statutory powers of stop and search* (Northern Ireland: Department of Justice, 2015) online (pdf): <<https://www.justice-ni.gov.uk/sites/default/files/publications/doj/pace-code-a-2015.pdf>>.
309. Civilian Survey Results, Appendix E.
310. Regulation 58/16, *supra* note 63, s 10.
311. *Ibid*, s 12.
312. *Ibid*, s 12(4).
313. *Ibid*, s 12(3).
314. *Ibid*, ss 12(1) and 12(3).
315. *Ibid*, s 12(2).
316. SO 2015, c 30.
317. Some chiefs of police have adopted corresponding procedures.
318. Regulation 58/16, *supra* note 63, s 12(2).
319. *PACER*, *supra* note 54 at 42.
320. *Supra* note 316.
321. Regulation 58/16, *supra* note 63, s 13.
322. Subsection 31(1)(b) of the *Police Services Act*, *supra* note 63, provides:
- 31(1) A board is responsible for the provision of adequate and effective police services in a municipality and shall,
- (b) generally determine, after consultation with the chief of police, objectives and priorities with respect to police services in the municipality.
323. *Adequacy and Effectiveness of Police Services*, O Reg 3/99, s 31 provides:
31. Every chief of police shall prepare an annual report for the board relating to the activities of the police force during the previous fiscal year, including information on,
- (a) its performance objectives, indicators and results;

- (b) public complaints; and
- (c) the actual cost of police services.

324. Subsection 17(4) of the *Police Services Act*, *supra* note 63, provides:

Annual report

(4) After the end of each calendar year, the Commissioner shall file with the Solicitor General an annual report on the affairs of the Ontario Provincial Police.

325. Regulation 58/16, *supra* note 63, ss 14(3) and (4).

326. *Ibid*, ss 14(2).

327. Wortley and Owusu-Bempah, “The usual suspects”, *supra* note 54, 43 at 43-44.

328. Regulation 58/16, *supra* note 63, ss 14(3).

329. *Ibid*, ss 14(4).

330. The following groups also endorsed the use of these categories:

- Aboriginal Legal Services of Toronto
- ARCH Disability Law Centre
- Black Action Defense Committee
- Canadian Association of Muslim Women in Law
- Canadian Friends Service Committee
- Chinese and Southeast Asian Legal Clinic
- Colour of Poverty Colour of Change
- Human Rights Legal Support Centre
- Legal Aid Ontario
- Ontario Federation of Indigenous Friendship Centres
- South Asian Legal Clinic of Ontario

331. Regulation 58/16, *supra* note 63, ss 14(2)(9).

332. PAJ Waddington, Kevin Stenson and David Don, “In Proportion: Race, and Police Stop and Search” (2004) 44:6 *Brit J Crim* 889 at 898.

333. Bradford, *Police Legitimacy*, *supra* note 30 at 69.

334. Shiner and Delsol, *supra* note 8 at 47; Paul Quinton, “Race Disproportionality and Officer Decision-Making” in Delsol and Shiner, *supra* note 8, 57 at 61 [Quinton, “Race Disproportionality”]; Bradford, *Police Legitimacy*, *supra* note 30 at 76-77 and 99.

335. Quinton, “Race Disproportionality” *supra* note 334 at 57.

336. Curt Taylor Griffiths, Ruth Montgomery, and Joshua J Murphy, *City of Edmonton Street Checks Policy and Practice Review* (Edmonton, Alberta: 2018) at 83, online (pdf): <<https://www.edmontonpolicecommission.com/wp-content/uploads/2018/06/EPS-Street-Check-Study-Final-REDACTED.pdf>>.

337. Shiner and Delsol, *supra* note 8 at 53.

338. Quinton, “Race Disproportionality” *supra* note 334 at 60.

339. UK, Home Office Research, Development and Statistics Directorate, *Crime, Policing and Justice: The Experience of Ethnic Minorities – Results of the 2000 British Crime Survey* by Anna Clancy, Mike Hough,

Rebecca Aust, and Chris Kershaw (London: Home Office UK, 2001), online: <<https://www.lemosand-crane.co.uk/dev/resources/HO%20-%20Crime,%20policing%20and%20justice.pdf>>.

340. Quinton, “Race Disproportionality”, *supra* note 334 at 67.

341. Shiner and Delsol, *supra* note 8 at 54.

342. Bradford, *Police Legitimacy*, *supra* note 30 at 81.

343. *Floyd v City of New York*, 959 F Supp (2d) 540 (SD NY 2013).

344. Regulation 58/16, *supra* note 63, s 15.

345. *Ibid*, ss 14(2)(10).

346. *Ibid*, ss 14(1)(a).

347. *Ibid*, s 15.

348. *Ibid*, s 16.

349. *Ibid*, s 15.

350. *Ibid*, ss 15(1).

351. *Ibid*, ss 15(3).

352. Subsection 31(1)(e) of the *Police Services Act*, *supra* note 63, states:

Responsibilities of boards

31. (1) A board is responsible for the provision of adequate and effective police services in the municipality and shall,

(e) direct the chief of police and monitor his or her performance.

353. Regulation 268/10, *supra* note 65, ss 2(1)(g)(iii).

354. Regulation 58/16, *supra* note 63, ss 9(10).

355. Subsections 3(2)(b),(d), (e) and (h) of the *Police Services Act*, *supra* note 63, provide:

3(2) The Solicitor General shall,

...

(b) monitor boards and police forces to ensure that they comply with prescribed standards of service or standards established under the *Police Record Checks Reform Act, 2015*;

...

(d) develop and promote programs to enhance professional police practices, standards and training;

(e) conduct a system of inspection and review of police forces across Ontario;

...

(h) develop, maintain and manage programs and statistical records and conduct research studies in respect of police services and related matters.

356. “Youth in Policing Initiative” (last modified 2018), online: *Toronto Police Service* <<http://www.torontopolice.on.ca/yipi/>>.

357. William J Bratton and Jon Murad, “Precision Policing: Data, discretion, and community outreach can ensure a new era of public safety”, *City Journal* (Summer 2018), online: <<https://www.city-journal.org/html/precision-policing-16033.html>>.

358. Commissioner Sidney B Linden, *The Report of the Ipperwash Inquiry: Final Report, Volume 4 – Recommendations: Volume 2: Policy Analysis* (Forest, ON: 2007) at 109-111, Recommendations 64 and 70, online (pdf): <https://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/report/vol_4/pdf/E_Vol_4_B_Policy.pdf>.
359. *Ibid* at 109-111, Recommendations 65, 66 and 69.
360. “Concentus Citizenship Education Foundation” (2018), online: *Concentus* <<http://concentus.ca/>>.
361. *Police Services Act*, *supra* note 63, s 1.
362. G Ben-Porat, “Policing Multicultural States: Lessons from the Canadian Model” (2008) 18:4 Policing and Society 411, at 418-420.
363. Justin K Szeto, *Policing Diversity with Diversity: Exploring Organizational Rhetoric, Myth, and Minority Police Officers’ Perceptions and Experiences* (MA Thesis, Wilfred Laurier University, 2014) [unpublished] at 72, online: <<https://scholars.wlu.ca/cgi/viewcontent.cgi?article=2762&context=etd>>.
364. *Ibid* at 73-77.
365. *Ibid* at 81.
366. Jacques Marcoux et al, “Police diversity fails to keep pace with Canadian populations”, *CBC News* (14 July 2016), <<http://www.cbc.ca/news/canada/police-diversity-canada-1.3677952>>. One reason offered for the lack of diversity is that while diverse communities have been growing in size, police services have not been able to keep pace with changing demographics, given that police careers often see people join and remain for 30 to 35 years or longer. This longevity does not allow for the recruitment of diverse candidates because there are simply no vacancies available.
367. Szeto, *supra* note 363 at 44.
368. Ben-Porat, *supra* note 362 at 416.
369. Robert G Hall, “A Brief Discussion of Police Culture and How It Affects Police Responses to Internal Investigations and Civilian Oversight” (19 September 2002), online (pdf): *Canadian Association for Civilian Oversight of Law Enforcement*, <<http://www.cacole.ca/resource%20library/conferences/2002%20Conference/2002%20Presentations/Hall,%20R.%202002.pdf>> citing Robert Reiner, *The Politics of the Police*, 4th ed (2010), (Oxford: Oxford University Press, 2010).
370. Dr. Owusu-Bempah as referenced in Jacques Marcoux et al, *supra* note 366.
371. Peter Sloly, “There is a problem with our policing”, *The Globe and Mail* (23 July 2016), online: <<https://www.theglobeandmail.com/news/toronto/todays-policing-model-fails-to-serve-and-protect-public-and-officers/article31090245/>>.
372. It is important to point out that the survey results did not specify whether the participant is referring to a First Nations Police Service. This is particularly significant when considering the statistics relating to Indigenous participants.
373. All pedestrians issued a receipt were asked for ID, but only 30% of those asked for ID were issued a receipt.
374. All passengers issued a receipt were asked for ID, but only 43% of those asked for ID were issued a receipt.
375. All drivers issued a receipt were asked for ID.

