



Ministry of Community Safety & Correctional Services  
25 Grosvenor Street, 9th Floor,  
Toronto, Ontario,  
M7A 1Y6

Delivered via email: mcscsinput@ontario.ca

Re: Proposal number: 15-CSCS004  
Ontario Proposed Regulation for Street Checks Consultation

**Introduction:**

The Toronto Lawyers Association (“TLA”) welcomes the opportunity to comment on the Ministry of Community Safety and Correctional Services consultation regarding Ontario’s Proposed Regulation for Street Checks.

**Comments:**

The Ministry of Community Safety and Correctional Services (“MCSCS”) in their Consultation Discussion Document on street checks, also known as “carding”, define the practice as engaging and recording interactions with individuals whose activities and/or presence within their broader context (e.g., location, time, behavior, etc.) seem out of the ordinary. The discussion document states that these interactions would allow the officers to ask what the individual is doing, request identification, and enter that information into a police database. In regards to the context that would allow a police officer to perform a street check, the document describes that a police officer would be able to card an individual if they deem that person’s presence or activities to be out of the ordinary, such as “loitering, late at night, in an area that has been experiencing an increased number of break-ins.” Finally, the consultation document describes this interaction between the police officer and the “suspicious” individual to be voluntary.

In TLA’s view, this street checking practice is extremely problematic for the following reasons: the breadth and vagueness of the street check power, the inherent lack of voluntariness of the carding process, and the impact on the carded person’s privacy, including the unregulated collection and compilation of personal information for unspecified purposes. Together and separately, these concerns demonstrate that this practice involves a government incursion into the privacy rights of individuals who are not under investigation or accused of any offense, and that the proposed carding practice would result in a breach of citizens’ fundamental Charter rights including the fundamental freedoms of association and peaceful assembly, as well as ss. 7 – 9 legal rights and s. 15 equality rights.

## **1. Narrowing and Focusing Carding: Reducing Breadth and Discretion**

While the TLA is not suggesting that the practice of carding should be completely discontinued, the proposed scope of the carding definition in the MCSCS discussion document is far too broad and allows police officers unreasonable discretion to approach and collect information about an individual. The contextual model as described above allows an officer to infer information about an individual and act on those inferences without for the application of a reasonable grounds test. The lack a reasonable grounds balancing test gives too much discretion to an officer to approach an individual, collect information about them, and enter it into a police database.

The TLA agrees with the Ontario Human Rights Commission, the Law Union of Ontario, and the South Asian Bar Association of Toronto (“SABA”), that police officers should only be allowed to approach an individual in a non-arrest scenario to ask for and obtain information and record that information in a database under very limited circumstances. The TLA agrees that carding should only be allowed if the officer believes on reasonable grounds that approaching and requesting information is for the imminent and necessary purpose of investigating or preventing a specific offence, protecting the approached individual or another identified person, or securing a potential crime scene.

This narrowing and defining of street checks removes the potential for abuses of the practice such as acting on a hunch, approaching individuals about an unspecified investigation, and carding people merely based upon a subjective assessment that the person is “suspicious” or their presence is in a “high-crime neighbourhood” or “hot spot.” Worse still, an officer with racist biases (whether known or unknown) would be empowered by the broad, highly discretionary and subjective language, and could use the provisions improperly to street check minorities simply because he or she believes them to be “suspicious” based upon personally held racist or stereotyping preconceptions. By reducing the amount of discretion an officer has to approach an individual to situations that fairly fall within defined police investigation powers, it allows the police power to be used as it was intended, to collect information about investigations, as opposed to meeting a quota or raising awareness of police presence.

## **2. Clearly Communicating that Carding is Voluntary**

The MCSCS state that the street check program is a voluntary one, that when an individual is approached for the purpose of collecting and inputting their information into a database, that they have the ability to refuse and to walk away. Given the inherent coercive nature of police interactions with individuals, and the power imbalance, in order for these interactions to be truly considered voluntary, the police must clearly and effectively communicate to every individual who is approached for the purpose of a street check that they have the right to refuse.

At the start of each engagement, in order for this practice to be considered voluntary, the police must first inform the individual of the reason they are being spoken to, that they have a right to speak with a lawyer, they have the right to refuse to answer the officer’s questions, that their responses will be used as evidence, and that any personal information will be retained by the police intelligence database. Without that clear communication, this practice is not voluntary.

Similarly, if this practice is to be considered voluntary, no adverse inference can be made from refusing to comply with the street check. The current version of the proposed street check allows the officer to act if she or he believes the individual to be “suspicious” based on the context of the situation. For the street check to be voluntary, the individual’s refusal to take part in the carding cannot be used to substantiate suspicious behaviour or be used as a reason to detain.

In short, in order for street checks to be considered voluntary, changes must be made to regularize and address how the officer introduces himself or herself and begins the carding process and no adverse inference can be made from refusing to take part.

### **3. Privacy Concerns with the Street Check Process**

Any information that is collected by the street check program should be subject to stringent privacy regulations and this information should only be used for the purpose of a specific investigation of a specific offence, and not to build a general database of information regarding members of the public. Building a general database of information regarding the comings and goings of citizens smacks of the first steps towards a “Big Brother” police state. Like the provisions applicable to public institutions such as the *Access to Information Act*, *Privacy Act* and *Freedom of Information Act*, all information gathered by the police through carding should be subject to a thorough privacy impact assessment, especially if the information is shared across police departments and government ministries. The scope of the use of collected information needs to be stringently monitored to ensure that the data is not used for improper purposes.

#### **Conclusion:**

If the Ontario government proceeds with regulations intended to bring police street checks into practice, we hope that this submission is of assistance to you in reconsidering and redefining the street check policy that the MCSCS has suggested. The carding policy in its suggested form is too broad in that it is based upon on the subjective application of discretion as opposed to engaging objective reasonable grounds; is not clearly communicated as a voluntary practice; and the impact on the individual’s privacy is unclear. The TLA hopes that you take our comments into consideration in changing this policy before it is implemented.

Yours very truly,



Stephen Mullings, Vice-President  
Toronto Lawyers Association