RACIAL PROFILING: THE UNINTENDED OUTCOME OF STREET CHECKS

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This paper argues that, from the perspective of members of the Association of Black Law Enforcers, "Street Checks" as a form of voluntary engagement with the public by police officers to stop and question people to gather information (i.e. intelligence) do not conform to the principles of validity and reliability as a fair and just means to gather intelligence.

Members of the Association of Black Law Enforcers (A.B.L.E.) acknowledge that the vast majority of police officers in our cities, provinces and indeed across Canada perform their sworn duties in an honourable, ethical and professional manner. We believe this to be true because we work with these officers and have witnessed exemplary practices amongst most officers. However, as Black Law Enforcers, we live and work in two worlds that have allowed us to develop unique perspectives. We work in a world that from a power perspective is predominantly non-racialized while, we interact, live and work in the Black community and as such understand the socio-political and justice related issues that can emerge when the issue of racial profiling is tabled.

The definition of racial profiling A.B.L.E. adopts is:

> "Investigative or enforcement activity initiated by an individual officer based on his or her subjective stereotypical, prejudicial or racist perceptions of who is likely to be involved in wrong doing or criminal activity. This type of police misconduct can be unintentional, but can also be systemically facilitated when there are ineffective policy, training, monitoring and control mechanisms in a system." (A.B.L.E. October, 2002)

"Street Checks" as a form of voluntary engagement conducted without limits can often be viewed as racial profiling. In Toronto, this police practice referred to as "carding", involves stopping people on the streets and recording their personal information to input into a police database. In police parlance, carding allows police officers to stop and question people to gather information (i.e. intelligence) that is then stored indefinitely in a secure database. The practice of "Street Checks" is supported by many police services and based on three common themes or narratives. "Street Checks" are regarded as an approach to gather intelligence to prevent crime; protect the public, and to

enter the information into a comparative database with other information that can be used to prevent future crimes from being committed.

There is broad-based support for this police approach to crime prevention which is best illustrated in the May 2015 *CBC News* interview with Toronto Police Chief Mark Saunders who defended the current practice of carding (i.e. Street Checks) by stating that police rely on this practice to keep problems like gang violence in check in the city. According to Hamilton Police Services, they rely on these contacts and conversations, which they claim "…are not done randomly (but used) to proactively lead them to answers on crimes nearby" (Bennett, K. 2015). Currently, there are many other regional police services that have similar "Street Check" policies and practices including Hamilton and Peel region Police Services. The City of Hamilton Police Services report conducting 10 — 15 street checks daily. In terms of effectiveness, police services across the Province have routinely and consistently reported "Street Checks" are an effective information tool that is integral to their ability to maintain public safety and solve crimes.

Critics, particularly members from Toronto's Black Community, believe the practice of carding unfairly targets racial minorities and often, the practice can be considered a contravention of law. Police critics have for some time voiced serious concerns with this technique calling it another form of racial profiling. The stopping of a citizen by police with no articulated reason can also constitute arbitrary detention.

The working hypothesis of police practitioners in justifying the use of Street Checks as a means to prevent crime and solve crime has yet to be proven (OHRC, 2015). To date, our research has not been able to identify any statistical data specifically demonstrating how Street Checks are effective in helping to prevent or solve crimes (OHRC, 2013. A.B.L.E does not support the manner in which police currently pursue the indicated public safety objectives. More specifically, A.B.L.E and other advocates are concerned by the impact of individual officer subjectivity (OHRC, 2013) as it relates to the method in which police make decisions to determine "who" in the community poses a threat or risk, and the rationale provided by police on how these subjects are selected for "voluntary engagement-detention". Although it can be argued that Street Checks is a preventative approach to crime reduction in communities, the fundamental flaw in this argument is that an officer's subjective beliefs and ideas are used to determine if a person on the street potentially has information about crime in general or specific crimes. This subjectivity has led to the racialization of crime based on suspect descriptions.

There is increasing police data which demonstrates "Black youth" are disproportionately engaged and documented (OHRC, 2015) by Toronto and Peel Police at a much higher rate than in any other jurisdiction or population grouping. In the absence of other reasonable and reliable explanations for this racial disparity, it can be argued the process of Street Checks has unintentionally reinforced racial profiling. This position is further supported by studies and analysis conducted by the *Toronto Star* indicating social factors such as "race, age, gender and where you live" are salient dynamics in determining who gets stopped and engaged (The Leadership Conference, 2011). The Star, in their analysis determined when looking at Black and White subjects of all ages, Blacks are three times more likely to be stopped. Black males aged 15-24 are stopped and documented 2.5 times more than White males the same age (Rankin, 2010; 2015). This police approach and activity is consistent with racial profiling. Studies showing disproportionate representation of young Black citizens in Street Check statistics supports A.B.L.E.'s view that Street Checks are a proxy for racial profiling. One MPP has been successful in convincing other provincial legislators to end this practice given the disproportionate representation of personal information in police databases that belong to a large number of Black youth who were neither subject to criminal investigation nor arrest.

The result of media scrutiny and public demands for police accountability in relation to Street Checks indicates claims this practice stops future crime has little to no validity or reliability. It is reasonable therefore to conclude that the absence of randomization in determining which citizens are approached by police, render Street Checks incompatible with the principle of validity and fairness as evidenced in the number of stops conducted and recorded by police involving Black youth.

In response to public outcry, the number of "Street Checks" were reduced and statistics indicate in July 2013, carding in Toronto dropped by (75%) compared to the previous year. This plunge in the number of contact cards documented by police coincided with the introduction of a carding receipt system that required officers to provide a copy of the contact card to each citizen stopped. Carding continued to stay very low in the following months (Rankin, 2014). Of particular interest to A.B.L.E. is that there was no appreciable increase in crime during the same time period despite the reduced number of Street Checks, thus undermining the stated police rationale that Street Checks are effective in catching criminals and preventing future crime!

A.B.L.E takes the position that if Street Checks are to be used as a means to collect private information from citizens, any instrument used to collect such data must be empirically tested and found to be valid, reliable, and legal under the law. In addition the Street Checks must be randomly and justly applied to all citizens in order to prevent any potential infringement of citizen's legal rights guaranteed by the Canadian Charter of Rights and Freedoms (1982). After careful consideration of the information presented in this submission it is clear "Street Checks" do not conform to the principles of validity, reliability, or empirical methods used to argue and or support a position. These principles are essential elements required to reasonably increase public confidence in the

manner police engage citizens in non-investigative or arrest circumstances and to guard against the erosion of public trust toward their police services. The question for the provincial government to consider was whether there is credible evidence to support the continuation of the police practice of "Street Checks." This question is posed in the context of weighing the risks and rewards offered by this troubling and ineffective practice according to the preponderance of evidence available. Police discretion and its treatment of citizen's dates back to the concept of the "social contract" which is the implicit agreement between a government and its citizens, developed by philosophers Thomas Hobbes (1588–1679) and John Locke (1632–1704). Racial profiling in the form of Street Checks is not compatible with our vision of police services being administered in a fair, equitable and human rights compliant manner. As an internationally recognized organization, members of A.B.L.E. share a broad base of practical experience that can support the development and maintenance of meaningful.

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