



African Canadian Legal Clinic

Written Submissions to the Toronto Police Services Board

**Recommendations of Chair Alok Mukherjee on the Collection of
Demographic Statistics**

April 5, 2012

Introduction

The African Canadian Legal Clinic (“ACLC”) would like to begin by commending the *Toronto Star* for its role in placing race based statistics on the policy agenda of the Toronto Police Services Board (“TPSB”). The ACLC also commends Chair Alok Mukherjee for taking the initiative to examine the “pattern of contact between the police and ... young people from certain ethno racial backgrounds.” The Clinic has long held that the collection and publication of race-based statistics by police services is a necessary instrument in the fight against anti-Black racism in the provision of police services. We encourage the TPSB to collect and analyze race-based statistics in order to evaluate the effectiveness and utility of its many anti-discrimination policies and practices and thereby ensure transparency, accountability, and real progress.

While the ACLC welcomes the renewed attention to the issue of racial profiling in policing, contact cards, and race based statistics, the ACLC, like the Toronto Police Accountability Coalition, questions the recommendations advanced by Mr. Mukherjee for a number of reasons. Firstly, we question the need to collect further data on the issue. The recommendations propose a data collection and analysis project that will not conclude until December 2013. We can hardly rationalize the need for another lengthy study before the TPSB takes action to reduce the disproportionate number of African Canadians who come into contact with police. Secondly, we question whether the Auditor General is the right person to conduct a review and analysis of the data. Thirdly, Mr. Mukherjee’s brief fails to make any recommendations that specifically aim to curb the disproportionate impact that police stops and 208 cards have on the African Canadian Community.

The Correct Response to the Statistical Analysis Presented by the *Toronto Star* is NOT another Lengthy Data Collection Project

The ACLC is opposed to another lengthy data collection project on the issue of racially-biased policing. The recent statistics published in the *Toronto Star* news series, “Known to Police,” are drawn from data collected by the Toronto Police Service (“TPS”). The data and analysis do not appear to be flawed and provide the necessary “concrete quantitative database” called for in the recommendations. Unless the TPSB can point to some error in the collection or analysis of the data, any re-analysis would be a waste of time and public money.

Anti-Black racism in our criminal justice system is a widely-recognized and well-researched phenomenon. It has been documented at all levels of court. In *R. v Spence*, for example, the Supreme Court noted that “racial prejudice against visible minorities is notorious and indisputable... [it is] a social fact not capable of reasonable dispute.”¹ In *R. v Parks*, a landmark decision of the Ontario Court of Appeal, the court acknowledged that there is support for the view that “widespread anti-Black racism is a grim reality in Canada and in particular in Metropolitan Toronto.” The phenomenon has also been studied in numerous reports. The TPSB is surely aware of the plethora of legal and social science studies that

¹ *R. v Spence*, [2005] 3 S.C.R. 458 at para. 5.

over the past forty years have documented the strained relations between the police and the African Canadian community. The ACLC has identified at least 15 such reports that have been issued since the 1970s.

The Board's proposal of another study of racially biased policing in the TPS is very similar to the response of former Police Chief Julian Fantino and former TPSB Chair Norman Gardner to "Singled Out," the *Star* series on the same topic published in 2002. Ten years later, in 2012, the response of Toronto's African Canadian community is the same. We cannot afford to wait for yet another study. Our young men are being profiled, monitored, over-scrutinized, and (no matter how politely it is done) treated like criminals. Credible data on the issue is available. It has been studied and analyzed *ad nauseam*. Now is not the time for more analysis. Now is the time for action. Using the studies and the police stop data that is currently available, the TPSB is well-poised to adopt concrete measures, policies and guidelines to address this problem. The ACLC supports the submissions of the Toronto Police Accountability Coalition in this regard.

The Data Analysis Should Be Conducted By a Respected Social Scientist

If the Board determines that the *Toronto Star* data or analysis is in some way flawed and that the TPS data must be re-analyzed or analyzed anew, the ACLC submits that the City's Auditor General is not well-suited to the task.

First, the practice of racial profiling has created what has been described as a "toxic" relationship between the police and the African Canadian community. Heightened police scrutiny is a problem that is specific to the African Canadian community. As noted in "Known to Police," in all but one of the City's 72 police zones, African Canadians are more likely to be stopped than whites² – often 2 to 3 times more likely. Moreover, the likelihood that an African Canadian will be stopped increases in predominantly white neighbourhoods.³ In one predominantly white zone, for example, African Canadians are 17 times more likely to be stopped.⁴ The excessive monitoring of African Canadians in predominantly white neighbourhoods demonstrates that these statistics cannot be explained by pointing to the fact that African Canadians tend to make up a large segment of the population in some of Toronto's poorest and most crime ridden neighbourhoods. Rather, they suggest that regardless of where they live, if they have black skin, they will be viewed and treated as criminals. The toxicity and mistrust between these two groups must be reflected in the selection of an arm's length professional to conduct any additional analysis of this data. While the City's Auditor General is certainly more independent than someone within the TPS, the ACLC submits that, given the level of mistrust caused by the long-standing nature of this problem, the Auditor General is not independent enough.

² Hidy Ng, Jim Rankin, & Patty Winsa, "Police Patrol Zones Black and White: A Difference in Documentation" *Toronto Star* (undated) online: <http://www.thestar.com/staticcontent/760552>.

³ Jim Rankin & Patty Winsa, "Police board chair seeks race-based probe of stops" *Toronto Star*, (March 15, 2012), online: <http://www.thestar.com/news/insight/article/1147239--police-board-chair-seeks-race-based-probe-of-stops?bn=1>. [Patrol]

⁴ *Supra* note 2.

Second, the TPSB must make clear the end to which it seeks to analyze or re-analyze police stop and contact data. As noted earlier, if it is merely to verify the accuracy of the analysis published by the *Star*, the Board must make absolutely clear why the *Star* analysis and conclusions are perceived to be deficient. The Board must also ensure that any study is concluded within a reasonable amount of time. The ACLC proposes that any study should be concluded no later than December 2012.

If, however, the purpose of the analysis is purpose-driven – that is, to analyze trends, theorize as to causes, and come up with real solutions to the problem – this project should be undertaken by someone that is capable of more than statistical valuation. Specifically, a qualified social scientist that can contextualize the data, is well versed on issues affecting the African Canadian community, and is capable of crafting a solution to this problem that is sensitive to the community’s concerns.

The Problem with 208 Cards and Current Police Stop Practices

Members of the TPS credit 208 cards with assisting police investigations.⁵ The TPS must acknowledge, however, that, regardless of their perceived utility, frequent police stops are an affront to the constitutionally protected freedoms of African Canadians.⁶ The Ontario Court of Justice has called the practice of stopping individuals and creating 208 cards “menacing” as it subjects innocent citizens to routine police scrutiny. In *R. v. Ferdinand*,⁷ the Ontario Court of Justice made the following pronouncement with respect to 208 cards,

Although I do not dispute that 208 cards might well be a useful and proper investigative tool for the police; in my view the manner in which the police currently use them makes them somewhat menacing. These cards are currently used by the police to track the movements – in some cases on a daily basis – of persons who must include innocent law-abiding residents.

One reasonable – although very unfortunate – impression that one could draw from the information sought on these 208 cards – along with the current manner in which they are being used – is that they could be a tool utilized for racial profiling.

... If the manner in which these 208 cards are currently being used continues, there will be serious consequences ahead. **They are but another means whereby subjective assessments based upon race – or some other**

⁵ Jim Rankin, “Race Matters: Blacks documented by police at high rate. Toronto Star” (February 06, 2010) online: <http://www.thestar.com/specialsections/raceandcrime/article/761343--race-matters-blacks-documented-by-police-at-high-rate>. In 2010, Mike McCormack police union president called the cards “invaluable... You’re recoding data setting up associations, knowing who’s involved (in gang activity). It puts people in certain locations.

⁶ Roger Rowe, “Allegations of Profiling: How Much disclosure of Investigative Records is Appropriate,” online: http://www.rogerrowelaw.com/document/pdf/Cases/Buckley_Trial_Paper_by_Roger_Allegations_of_Profiling.pdf.

⁷ *R. v. Ferdinand*, [2004] O.J. No. 3209 [*Ferdinand*] at paras.11-16.

irrelevant factor can be used to mask discriminatory conduct. If this is someday made out – this court for one will not tolerate it.⁸ [Emphasis added]

The Toronto Police Service cannot point to the effectiveness of 208 cards as a justification for their use. First, the practice is discriminatory and likely unconstitutional. 208 cards are being used to single out African Canadians, particularly our youth, for frequent and unnecessary stops. Second, it leads to strained community-police relations. Most persons that are stopped are not charged. David Tanovich, a law professor at the University of Windsor who is widely recognized for his expertise in racial profiling, has noted that documenting people in non-criminal encounters creates a “no walk list” for young men in poor neighbourhoods.⁹ This heightened form of surveillance is “exactly what the essence of racial profiling is all about” and can only lead to increased levels of mistrust and antagonism between the police and the African Canadian community.¹⁰ Third, and most important, there are other more collaborative and less demeaning ways of alleviating the crime rate. The TPS is encouraged to work with community groups that have lobbied for funding of after-school programs, worked to increase job opportunities, and generally worked to address the root causes of criminal involvement. The TPS must recognize the work of these community-based organizations and focus its efforts and resources on community-building and prevention (e.g. Youth in Policing Initiative) instead of increased policing and surveillance.

Recommendations

The ACLC makes the following recommendations for changes to police stop practices. These recommendations echo and add to the suggestions of the Toronto Police Accountability Coalition:

- 1) Stop and search data analysis and the creation of recommendations should be shaped by an anti-racist framework. To achieve this goal, the ACLC recommends that a social scientist or expert criminologist analyze the data. This should be completed no later than December 2012.
- 2) The TPSB should implement policies and guidelines that restrain an officer’s discretion to randomly stop individuals and create 208 cards. Such guidelines should include:
 - The Board should immediately state that it will not tolerate discriminatory stops by police officers.
 - The Chief should be required to report to the Board on a monthly basis regarding carding activities. This report should specifically comment on the rate at which African Canadians are stopped and carded.

⁸ *Ibid.*, at paras. 18-20.

⁹ *Supra* note 5 at page 5.

¹⁰ *Ibid.*

- Officers should be required to record the reason for stopping each individual.
 - The police must provide to everyone stopped a plain language information sheet indicating to those stopped their rights, particularly their right to refuse to provide personal information. The information sheet should be drafted in consultation with the African Canadian Legal Clinic and other equity seeking organizations.
 - The police must provide to everyone that is stopped a carbon copy of the card completed by the officer. This will ensure that individuals can document how many times they have been stopped and the reason for the stop.
- 3) The TPS and TPSB should consult and meet with members of the African Canadian community to ensure that the specific concerns of the community are addressed and reflected in whatever solution is adopted to address the problem of racial profiling.