



CHANGES - THE AFFIDAVIT PROJECT

OUR REPORTED EXPERIENCES REQUESTS FOR CHANGE

Project Conducted during 2010-2011

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I. Introduction

This report captures the outcomes of *Changes – The Affidavit Project*. The project gave a forum for 25 young people in Toronto to speak out about their first-hand interactions with police officers, and to give recommendations requesting change.

Changes – The Affidavit Project was conducted during 2010-11 at a community centre in Toronto. The Street Youth Legal Services Lawyer at Justice for Children and Youth, a youth worker at the community centre, a peer leader, and student volunteers worked together to document the experiences youth had when interacting with the police. An anonymous affidavit format was used to protect the identity of the youth, many of whom were fearful of the police and of their identities being known. This report first shares the youths' experiences and requests for change. We then describe the legal remedies available to the youth, and review the barriers to obtaining remedies. Lastly, we provide you with our recommendations to the Toronto Police Service (“TPS”), Toronto Police Service Board (“TPSB”), and Minister of Community Safety and Correctional Services, summarized below:

A) Use Less Force

- 1) Strengthen TPS practice guidelines, TPSB policies, and *Police Service Act* Regulations on the use of force, including policy and rules about the use of de-escalation tactics.
- 2) Create a reporting requirement under the *Police Services Act*, TPS practice guidelines, and TPSB policy for any hits to the head or face.

B) Treat Us Equally

- 3) Create TPS practice guidelines and TPSB policies for when police interact with youth under age 24. Create a working definition of youth, including guidelines about youth requiring additional assistance and more opportunities for pre-charge diversions. Implement definitions and options for pre-charge diversions into TPS guidelines and TPSB policies.
- 4) Create and disseminate up-to-date police training about the cognitive and social functions of young people, including theories of proportional blameworthiness to maturity level.

- 5) Infuse the *Human Rights Code*, *Canadian Charter of Rights and Freedoms*, and *Youth Criminal Justice Act* principles into TPS practice guidelines, TPSB policy, and the *Police Services Act Code of Conduct*.

C) Respect Our Rights

- 6) Continue implementation of TPSB policy and TPS procedure requiring police officers to give individuals a carbon-copy ‘contact receipt’ when stopped by the police, documenting the reason(s) and nature of the interaction, contact information for officers involved in the stop, and information about lodging a complaint if dissatisfied with the interaction.
- 7) Amend the *Police Services Act Code of Conduct* to include unlawful stops of citizens as a violation of the *Police Services Act Code of Conduct*.
- 8) Ask the Office of the Independent Police Review Director to open an investigation into the systemic problem of unlawful detentions and force used by police against youth, including the use of integrity testing.

D) Be Accountable

- 9) Amend the *Police Services Act* so that police officers are mandated to directly provide an individual with information on how to make a complaint about the police service if that individual is dissatisfied with the service they receive.
- 10) Utilize the Toronto Police Service Youth Advisory Committee to assist in the creation, implementation, and evaluation of practice guidelines and board policies for when police interact with youth under age 24.



II. Experiences and Options for Redress

Each participating youth's affidavit explains their experience with the police. Twenty-six affidavits were collected, and twenty three were analyzed for this report. Three youth chose to keep all contents of their affidavits confidential. To protect the identity of the participants, all names have been changed from the original affidavits. All ages are from the time of the incident, not time of swearing the affidavit. See the **Appendix** for a summary and analysis of each participant's affidavit. Reviewing each affidavit, we identified shared negative experiences including use of excessive force, discrimination, breaches of constitutional rights and feelings that the police officers lacked accountability.

A) Use less force

Elroy, age 11: "he grabbed me by my neck and called me a 'little fuck.'"¹

Oscar, age 16: "at least ten uniformed police officers followed us into the store and slammed [me] onto the floor."²

Pasha, age 16: "the cop then snapped off my hat. He hit me with it."³

Rico, age 15: "I saw the cops get off their bikes and two of them grabbed the man and threw him to the ground. I saw two of them hit the guy with their fists and twist the guy's arm. It looked like it was breaking."⁴

Sasha, age 18: "[Officer 1] then punched me in the head and kicked me in my thigh a number of times."⁵

Tyrone, age 20: "Two officers did a level 3 strip search on me and hit me two more times in my stomach."⁶

Felix, age 17: "while the officer was beating me, I looked towards the other officer and he was backing away with his hands up. That officer's face looked like he did not want to be involved with what was happening."⁷

¹ ELROY Affidavit 5, line 6

² OSCAR Affidavit 15, lines 6, 9

³ PASHA Affidavit 16, line 13

⁴ RICO Affidavit 18, line 11

⁵ SASHA Affidavit 19, line 16

⁶ TYRONE Affidavit 20, line 22

⁷ FELIX Affidavit 6, line 9

Half of the youth expressed concern about the amount of physical force used by officers. Five youth experienced hits, punches or kicks to the head or face. Other youth described being tackled upon detention, hit in the stomach, or grabbed by the neck. Based on the participants' accounts, it is questionable whether the officers were acting within lawful authority when force was used.

When carrying out their duties, officers are authorized to use force against individuals. The force used by officers must be necessary for the purpose of doing what they are authorized to do. TPSB policy help define what necessary force means. When a police officer uses force resulting in injury requiring medical attention, an officer must file a report detailing the event.⁸ Using unnecessary force is considered officer misconduct under the *Police Services Act Code of Conduct*.⁹

Judges help define what is necessary and authorized force. For example, the courts have found that using handcuffs during an arrest or patting down an individual for safety reasons during a detention are both necessary and authorized uses of force. Sections 7 and 12 of the *Canadian Charter of Rights and Freedoms* ("Charter")¹⁰ provide constitutional limits to the amount of force police officers may use when carrying out their duties. The Supreme Court of Canada has commented on the seriousness of excessive force used by the police. In *R. v. Nasogaluak*, Justice LeBel stated:

The courts must guard against the illegitimate use of power by the police against members of our society, given its grave consequences.¹¹

Young people concerned about the level of force used against them may lodge a complaint about the officer's conduct. Any force beyond what is necessary may be considered an unlawful or unnecessary use of force and attract a finding of police misconduct. The officer using unnecessary force may also be criminally or civilly liable for assault and battery against

⁸ Toronto Police Service Board, Use of Force Policy, October 26, 2000.

⁹ *Police Services Act*, RSO 1990, c P.15 *General Regulation, O Reg. 268/10, Schedule*, section 2(1)(g)(ii).

¹⁰ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11.

¹¹ *R. v. Nasogaluak*, 2010 SCC 6, at para 32.

the young person. If the officer is found to be violating TPSB policy, this may bolster any criminal or civil liability. If the young person brings an application to the court, a judge may find a breach of their section 7 and 12 *Charter* rights. If a civil lawsuit is successful, the young person may receive damages. However, a finding of unnecessary or unauthorized force does not automatically prove a breach of *Charter* rights, a finding of assault, or a finding of misconduct under the *Police Service Act* (“PSA”).¹² The threshold of proofs and remedies for each finding will vary and will take different factors into consideration, including: evidence of damage or harm experienced, an evaluation of the seriousness of the *Charter* breach and evidence of malice or indecent actions on behalf of the officers.

B) Treat us equally

Luis, age 18: “I heard the male cop ask my friend, ‘where are you from?’ I heard my friend answer, ‘Toronto.’ I heard the male cop ask again, ‘no where are you from?’ [...] I heard the male cop say some else, to the extent like, ‘stop giving me a hard time.’ I heard my friend answer, ‘my parents are from Central America.’”¹³

Hideo, age 13: “I heard the male cop say that if he sees my brother in jail, he would get somebody to rape him.”¹⁴

Brison, age 17: “the officers started to mock me”¹⁵

Issac, age 16: “An officer told me that he was going to keep me in and out of jail until I turned eighteen and then find a way to keep me there for good.”¹⁶

Pasha, age 16: “another cop made fun of my scarf. He said, ‘it’s not the desert, you know.’”¹⁷

Half of the participants were concerned with the profane, abusive, or insulting language used by investigating officers. Almost one quarter of participants reported concerns about being discriminated against during their interaction with officers. Four youth spoke out about

¹² *Police Services Act*, RSO 1990, c P.15 (“PSA”).

¹³ LUIS Affidavit 12, lines 17-19

¹⁴ HIDEO Affidavit 8, line 11

¹⁵ BRISON Affidavit 1, line 15

¹⁶ ISSAC Affidavit 9, line 15

¹⁷ PASHA Affidavit 16, line 12



discrimination based on their age, and two youth experienced comments making fun of their clothing or facial features identifying their cultural background.

The *Ontario Human Rights Code*¹⁸ and the *PSA Code of Conduct* both condemn discriminatory conduct. Age is a protected ground of the *Human Rights Code*, and discrimination based on age is prohibited by the right to equality, at s. 15 of the *Charter*. Under the *PSA Code of Conduct*, any officer that fails to treat or protect a person equally without discrimination has committed discreditable conduct.¹⁹

The *PSA Code of Conduct* also prohibits the use of profane, abusive or insulting language or otherwise uncivil actions towards members of the public.²⁰ Police officers must also abide by the *Youth Criminal Justice Act* (“*YCJA*”)²¹ by considering the developmental needs and maturity level of the youth when they provide support and guidance in the prevention of crime.

C) **Respect our rights**

Hideo, age 13: “I asked to call my mom or a lawyer and the officers told me that I couldn’t.”²²

Brison, age 17: “At my front door the officers brought me into a corner. The officers started to pull my pants down.”²³

Youth, age 17: “the female officer searched me. She forced me to put my arms in the air and pulled at my bra in a forward position, exposing my breasts to the public.”²⁴

Eli, age 14: “I was brought to a cell with six other adults in it. I was in that cell for a few hours. Several times I asked the court officers walking by if I could be put in a young offenders cell since I was a minor.”²⁵

Issac, age 16: “The officers then grabbed me against my will and searched my pockets. The officers looked in my backpack.”²⁶

¹⁸ *Human Rights Code*, RSO 1990, c H.19.

¹⁹ *Supra* note 9 at s. 2 (1)(a)(i)

²⁰ *Ibid*, at s. 2 (1)(a)(i)(v)

²¹ *Youth Criminal Justice Act*, SC 2002, c 1.

²² HIDEO Affidavit 8, line 13

²³ BRISON Affidavit 1, line 8

²⁴ DENISE Affidavit 3, line 15

²⁵ ELI Affidavit 4, line 10-11

Mohammed, age 14: “we all told the cop that we did not have any weapons. The cop asked us to take our backpacks off. All of us took our backpacks off. The cop then looked inside all of our backpacks. He found no weapons.”²⁷

Luis, age 18: “I gave him two pieces of my identification, my health card and my student card. [...] I saw the officers get back into the cruiser and drive off. The male officer still had my student identification. [...] I went and picked up my student card at the police division [the next day]. When it was given to me, it was cut horizontally near the middle of the card.”²⁸

Over three quarters of the youth participating in *Changes – The Affidavit Project* reported concerns about their stop, search, or arrest. During their interactions, youth remember being ridiculed and harassed by officers with racist and other insults and provocations. Three quarters of the youth felt they were stopped, arrested, or imprisoned by police without cause, and almost a quarter of participants had concerns about how their property was managed. The youth identified how the mismanagement or destruction of their property shook their confidence in the police, creating feelings of mistrust and anger. The experiences shared by the participants indicate that illegal and unacceptable violations of their constitutional rights and fundamental freedoms may have been committed by police officers.

The *Criminal Code*²⁹, the *Charter*, the *PSA*, and several other federal, provincial, and municipal laws contain provisions providing the police with powers to detain, arrest and search individuals. The TPS and TPSB also have a number of practice guidelines and policies relating to the treatment of detained and arrested persons to help define the parameters of how arrests, detentions, and searches are carried out as authorized by law. The *Charter* gives everyone the right not to be arbitrarily detained or imprisoned. The *Charter* also provides everyone a right to be informed of the reason for their detention or arrest, and to be informed of their right to speak to counsel and provided an opportunity to do so. Under the *Charter*, our privacy is to be

²⁶ ISSAC Affidavit 9, line 8

²⁷ MOHAMMED Affidavit 13a, lines 10-11

²⁸ LUIS Affidavit 12, lines 13, 33-4, 38

²⁹ *Criminal Code*, RSC 1985, c C-46.



respected because everyone has the right to be secure against unreasonable search and seizures. Youth have additional rights under the *YCJA*.³⁰

III. Barriers to Redress

Though participating youth in the *Changes – The Affidavit Project* had some options for legal redress, both social and structural barriers act as strong deterrents from consideration of legal recourse. Nearly all of the participants were unwilling or unable to engage with the formal complaints system, expressing fear about speaking up and feelings of hopelessness that they would not be believed. Participants explained that fear, lack of trust, lack of monetary resources, and lack of social support were some reasons why they would be unable to engage in any formal complaint or legal process.

Even youth willing to engage in a legal process to seek redress would be met with challenges. The *Human Rights Code*, *PSA*, and our courts provide mechanisms for hearing grievances, but the collection and presentation of evidence and thresholds of proof are sometimes difficult to meet. Youth generally have little or no money to pay for legal counsel up front. If they are able to retain counsel, a small monetary award may be less than the legal fees required to bring the claim to court. In the complaints process, the youth may be dissatisfied with the disciplinary action taken against an officer that hurt them. In both complaints and court processes, a youth may also be re-victimized through the adversarial dispute resolution system opening them up to attacks on their credibility or recounting of events.

Because legal avenues for redress present overwhelming barriers to youth, negative interactions with police increased the participants' feelings of hopelessness, distrust and bitterness towards the police. Police services have the power and resources to improve relations and bolster credibility amongst youth. If the TPS take a proactive approach to address feelings of

³⁰ *Supra* note 21 at s. 25, 29, 30(3). For example, the *YCJA* mandates that youth be held separate from adults during detention when possible, that their parents be contacted and that they be able to exercise their right to instruct counsel at any time during proceedings against them. A youth who has been charged with an offence cannot be held in detention in place of another social measure or for the purpose of child protection

discrimination and vulnerability, it is likely that our youths' feelings of mistrust towards law enforcement officers will be reduced.

Changes – The Affidavit Project participants ask the TPS to strengthen the trust youth have in the police by providing more information about why a stop occurred, and better accountability measures to reduce unlawful stops and searches. Implementing Ontario *Human Rights Code* and *YCJA* standards of care to address violence, discrimination, and rights-violations is essential. Infusing standards into practice guidelines, policies and the *PSA Code of Conduct* may, in turn, improve youth and police interactions. The next section defines the participants' requests for change, and makes recommendations to more effectively prevent crime and violence in our City while reducing police violence, discrimination, and rights-violations.

IV. Requests for Change

A) Use less force

Grant, age 13: "I think that the police should treat young people less rough. Police should be less violent".³¹

Rico, age 15: "I wish the police were not so violent with young people."³²

Issac, age 16: "I think police officers need to change in how they interact with youth. I find they use their fists before their voices, and I think that is wrong."³³

The TPS should adopt more stringent standards aimed at reducing instances of violence. One suggestion is to strengthen the TPSB's existing policies so that any hits, kicks, or punches to the head are reported. Blows to the head and face have potential to cause permanent damage that is not always initially apparent. Young persons' brains continue to grow and develop into their

³¹ GRANT Affidavit 7, line 9 and in interview March 11, 2011

³² RICO Affidavit 18, line 15

³³ ISSAC Affidavit 9, line 20



adolescence and early adult years.³⁴ Young persons may be particularly vulnerable to complications from head injuries as their brains continue to grow.³⁵

We recommend that the TPS implement a practice guideline mandating violence de-escalation tactics to be used when police are interacting with youth. With training in violence de-escalation techniques, blows to the face and head can be avoided. Less violence would decrease fear and more readily open channels of communication when crime prevention or serious crime investigations are underway.

B) Treat us equally

Hideo, age 13: "I think that the way cops talk to people needs to change. It was really disgusting that they said they would get someone to rape my brother."³⁶

Mohammed, age 14: "I think that police need to talk more politely and treat people right."³⁷

Pasha, age 16: "I think that the way police treat teenagers needs to change. I think police make assumptions about the way young people look, and we end up getting harassed."³⁸

Kiesha, age 16: "I think the way that police stereotype the youth needs to change. I feel they always think youth are up to no good. Based on my experience, I believe they abuse their power when relating to youth."³⁹

Elroy, age 11: "I think that the way youth are treated by police needs to change. Youth need to be treated like youth, not adults."⁴⁰

Luis, age 18: "I think that police should get used to people that are mixed (race)."⁴¹

³⁴ C. Lebel, C. Beaulieu, "Longitudinal Development of Human Brain Wiring Continues from Childhood into Adulthood" (2011) 31(30) Journal of Neuroscience 10937 at 10943.

³⁵ For example, see: Tammy Balaban, Nellemarie Hyde & Angela Colantonio, "The Effects of Traumatic Brain Injury During Adolescence on Career Plans and Outcomes" (2009) 29(4) Physical and Occupational Therapy in Pediatrics 367-383.

³⁶ HIDEO Affidavit 8, line 17

³⁷ MOHAMMED Affidavit 13b, line 14

³⁸ PASHA Affidavit 16, line 19

³⁹ KIESHA Affidavit 11, line 11

⁴⁰ ELROY Affidavit 5, line 9

⁴¹ LUIS, in interview November 16, 2010



We suggest that the TPS implement a working definition of youth that includes youth up to age 24. Most youth services in the City of Toronto serve youth ages 16 to 24, and many government programs including city employment programs define youth up to age 29. Though the YCJA defines youth as under 18, research in cognitive science explains that the frontal lobe of the brain is often still growing into a young persons early to mid 20's.⁴² The frontal lobe is important to reasoning, problem solving and memory, especially during times of stress.⁴³ Policing practices and policies should tailor services to youth that accommodate their developmental stages, and align with other government youth services.

Changes - The Affidavit Project participants' requests for the police to be more polite and speak more respectfully may best be achieved by creating practice guidelines and policies that take into consideration the vulnerabilities and developmental needs of youth. These practice guidelines and policies should include:

- a robust definition of youth as persons up to age 24;
- recognition of age discrimination and the vulnerabilities of youth including the higher rates of victimization experienced by marginalized youth;⁴⁴
- techniques of de-escalation and problem solving when interacting with youth;
- more opportunities for pre-charge diversions⁴⁵ and;

⁴² *Supra* note 35.

⁴³ Heather M. Conklin et al., "Working Memory Performance in Typically Developing Children and Adolescents: Behavioral Evidence of Protracted Frontal Lobe Development" (2007) 31(1) *Developmental Neuropsychology* 103-128; Maria Roca et al., "The Role of Area 10 (BA10) in Human Multi-tasking and in Social Cognition: A Lesion Study" (2011) 49(13) *Neuropsychologia* 3525-3531.

⁴⁴ See: Stephen Gaetz, Bill O'Grady & Kristy Buccieri, "Surviving Crime and Violence: Street Youth and Victimization in Toronto" (2010) Homeless Hub. A similar recommendation was made by the Youth Alliance of the Metropolitan Action Committee on Violence Against Women's (METRAC). The Youth Alliance conducted research that identified strengths, challenges and gaps in police policies and procedures and made recommendations for improvement. Their report asked for police services to incorporate a unique definition of youth into policies and practices, so to breed consistency in practices geared towards youth. The report asked to define youth not just by age but also by recognizing the increased victimization that young people who experience marginalization face, including youth women, youth living or working on the street, racialized youth, youth living in poverty, youth with disabilities and youth who identify as lesbian, gay, bisexual, trans, queer, intersex and two-spirited. See: Youth Alliance, "Improving the System: Police Policy and Practice on Sexual Assault Against Young Women" (2011) METRAC.

⁴⁵ The YCJA lays the blueprint for encouraging diversions out of the criminal justice system. Many steps can be taken by police services to reduce laying charges against youth. For example, s. 6 of the *Act* requires a police officer to consider the use of a warning, caution or referral before starting judicial proceedings or taking any other measures

- stronger penalties for the use of profane and abusive language with youth.

C) Respect our rights

Brison, age 17: “I think that the police should not be able to just ask our names anytime and force us to give us our names, and then start to search all my body. Just a few days ago, the police did this to me. I feel like this violates my rights as a person.”⁴⁶

C.J., age 14: “I want the police to stop stopping me on the street and searching me.”⁴⁷

Luis, age 18: “I believe the police should only pull me over if I am doing something wrong.”⁴⁸

Denise, age 17: “I think that the officers should have investigated a lot more before they busted through our doors, hurt us, broke, and lost our belongings. I think that when people are being cooperative, like we were being, that the officers should have respected our belongings more and been more humane to us.”⁴⁹

Mohammed, age 14: “I think police should stop disrespecting people and inform people of their rights.”⁵⁰

Analyzing the participants’ experiences identified some gaps in accountability related to police stops. For example, the *PSA Code of Conduct* includes misconduct for unlawful arrests or unnecessary force,⁵¹ but makes no mention of unlawful or arbitrary detentions, nor any reference to misconduct for *Charter* breaches. Protection against arbitrary detention is a fundamental right in the *Charter*. Infusing this protected right into the *PSA Code of Conduct* is necessary to address complaints related to this violation, and to help prevent unlawful and harmful interactions leading from unlawful or arbitrary stops.

under the *YCJA*. This legal requirement should be adopted into Toronto Police Service guidelines and TPSB policy, including in guidelines and policy about interactions with youth.

⁴⁶ BRISON Affidavit 1, line 24

⁴⁷ C.J Affidavit 2, line 12

⁴⁸ LUIS Affidavit 12, line 42

⁴⁹ DENISE Affidavit 3, line 32

⁵⁰ MOHAMMED, in interview November 16, 2010

⁵¹ *PSA Code of Conduct*, *supra* note 9 at s. 2(1)(g)(i)

The prevalence of participants concerned about their stops and searches by police warns us that the issue may be widespread, warranting a larger scale investigation by the Office of the Independent Police Review Director ("OIPRD"). Review of police practices by the OIPRD or TPSB that include integrity testing⁵² may assist to impartially survey procedures, leading to an effective review and increased accountability of the police.

D) Be accountable

Eli, age 14: "I think the police should question their orders if they are against the law. They need to follow the law, not orders. They kept saying, 'I'm just following orders.'"⁵³

Felix, age 17: "I think that the law should be changed so that it is easier for the police to get in trouble or be charged for the wrong things that they do."⁵⁴

C.J., age 14: "I want the police to stop having so many patrols because the officers scare me. They have weapons and ask a lot of questions."⁵⁵

Eli, age 14: "I think that there needs to be more qualified police officers to do their job."⁵⁶

The current status of policing oversight does not give youth much confidence. The OIPRD published a 2010-11 report outlining the process and outcomes of public complaints. In total, 4,083 complaints were received from January 2009 to March 2011. Between April 2010 and March 2011, only 10 less serious conduct violations and 26 serious conduct violations were referred to a disciplinary hearing.⁵⁷ The TPS 2011 Statistical Report holds similarly low findings of any misconduct among police members. In 2010, the TPS received 1,147 complaints, and investigated 740 of them. 131 investigations are not concluded. The report cites a mere 30

⁵² Integrity testing was suggested by another affidavit-based review of police interactions in Vancouver, Canada. See: PIVOT Legal Society, "*To Serve and Protect: A Report on Policing in Vancouver's Downtown Eastside*" (2005) PIVOT Legal Society.

⁵³ ELI, in interview November 9, 2010

⁵⁴ FELIX Affidavit 6, line 13

⁵⁵ C.J Affidavit 2, line 11

⁵⁶ ELI Affidavit 4, line 18

⁵⁷ Office of the Independent Police Review Director, *Making Connections 2010-11 Annual Report* (Toronto, Ontario) at 27.

findings of misconduct identified, representing 5% of those investigated.⁵⁸ The low probability of a young person's complaint leading to discipline decreases their motivation to enter into the formal complaints system through the OIPRD or the police service.

One method of encouraging feedback and engagement with the complaints process is to require officers to provide an individual, at the point of contact, with information on how to make a complaint about the police service. Open sharing of information could be modified for some police activities such as undercover operations and emergencies. As an enhancement to the community policing model, an open and transparent understanding of the officer's role and the individual's ability to complain about poor service would be helpful to both the police and community members. Youth will benefit from accessibility to the complaints process, and police will benefit by bolstering trust with youth by providing transparent and accountable policing of the community.

V. Conclusion

“Society must feel safe in that the police are being held accountable at least to the same standards as individual community members.”
Community youth worker, 2011

Changes – The Affidavit Project participants expressed feelings of anger, sadness, mistrust and fear of future contact with the police resulting from their previous experiences with police. Experiences of injustice and hurt took the form of excessive force, discrimination, unlawful treatment upon detention, and damage to personal property. Through their experiences, the youth asked for four things to change:

- A) Use Less Force
- B) Treat Us Equally
- C) Respect our Rights
- D) Be Accountable

⁵⁸ Toronto Police Service, *2011 Annual Statistical Report* (Toronto, Ontario) at 11.



The long-term goal of *Changes – The Affidavit Project* is to effect change in how youth and police interact. We thank the participants who gave their time and energy to share their personal experiences and thoughtfully brainstormed ideas on ‘what needs to change.’ The recommendations outlined in this report can be used as frameworks for action plans addressing what needs to change. Action plans may involve civic participation through deputations to the Toronto Police Service Board, lobbying the government for law reforms, public relations with other communities and the media, and programs with the Toronto Police Service. Addressing use of force, discrimination, rights-violations, and police accountability will take steps towards repairing harms and enhance trust between youth and police, so that we may work together to improve health, safety and security within our communities.

VI. Glossary and Appendix

Glossary

OIPRD	Office of the Independent Police Review Director
PSA	Police Services Act
TPS	Toronto Police Service
TPSB	Toronto Police Service Board
YCJA	Youth Criminal Justice Act

Appendix

SUMMARIES OF PARTICIPANT AFFIDAVITS AND ANALYSIS

AMIR

Amir was at his friend's house when he heard people breaking into the house. He ran upstairs and looked out the window, seeing a lot of police officers outside. He heard his name being yelled and saw two men coming towards him.

Amir recalls: “the two men forced me to the floor. One tackled me and the other one punched me.”⁵⁹ He was put in handcuffs and remembers being told by a police Detective that the officers were going to “break down the house if I didn’t tell them where the guns were”, and “if you don’t show me where things are in the house, then we’re going to beat you up.”⁶⁰ The Detective then asked Amir to take off his clothing except his undershirt and underwear. Amir recalls: “I saw the Detective pick up my pants and go through my pockets. I saw him find the bank envelope that I had \$900 in, and I saw him take the money and put it in his pocket.”⁶¹ The Detective touched Amir under his underwear, telling him they were looking for the gun. Amir heard another officer come into the room he was in. He heard the Detective laugh and then say ‘there’s nothing here, let’s leave.’ The Detective came towards Amir and grabbed his neck, telling him, “show me another place where there are firearms or I’m going to find you.” Amir told him, “I don’t know,” and asked for his money back. The Detective uncuffed him and did not answer.

Areas and concern

Use of Force
Treatment Upon Detention, Arrest, Search and Seizures
Damage/loss of personal property
Other – uttering threats

It is unclear whether the police had authorization to detain Amir, or if his forceful detention was arbitrary. Regardless of this finding, it appears that the officers did not sufficiently inform Amir why he was being detained

⁵⁹ AMIR Affidavit 21, line 8

⁶⁰ AMIR Affidavit 21, line 13, 15

⁶¹ AMIR Affidavit 21, line 17

forcefully in handcuffs, and Amir's experience exemplifies excessive force, including punches, intimidating verbal threats, and a throat grab.

The officer's strip search of Amir also appears to have breached Amir's s. 8 *Charter* right to be free from unreasonable searches. Officers must have had reasonable and probably grounds to conclude that a strip search was necessary in some urgency to search for weapons or objects that could be used to threaten the safety of persons. It is questionable whether there was urgency and necessity to touch Amir under his underwear to uncover suspected weapons.

Amir witnessed officers take \$900.00 from him, without being given any information about what would happen with that money. From Amir's account, it appears that the officers may not have followed Toronto Police Services procedures set out regarding the gathering or preservation of evidence, and may have violated the *PSA Code of Conduct* for the mismanagement of his property. The officers may also have violated the *PSA Code of Conduct* for failing to account for or make prompt, true return of money or property received in an official capacity. This action, under the *Code*, is defined as a corrupt practice attracting a finding of misconduct. If unjustified, taking the money from Amir could also be considered a theft.

Amir spoke about the threatening language that was used against him. Though there is no direct provision of the *PSA Code of Conduct* relating to threats, uttering threats could fall under discreditable conduct as acting in a manner likely to bring discredit to the police force.

Amir could make a complaint against the officers, or make a civil claim against the officers for assault, battery, and loss of money.

BRISON

Brison, age 17, was playing basketball at the park when he was approached by two police officers. The officers asked Brison for his name and then arrested him, putting him in handcuffs. Brison remembers: "The officers then told me I was under arrest for an incident that happened a couple of days earlier."⁶² Officers pulled Brison's pants down, taking his phone from the pocket of his jeans. Brison watched the officers remove his phone's SIM card and put the card into their phone. Brison asked the officer what they were doing and Brison remembers the officers telling him to "shut up."

Brison was still in handcuffs when the officers rang the doorbell to his home. Brison remembers: "When my mom answered they told her that I was being arrested, she became upset." Officers then took Brison to a neighbouring park. His family followed. Brison recalls: "I heard my sister ask the officers why I was getting arrested, and I heard them tell her to shut up or she would get arrested with me. The officers then told my sister, mom, and father to leave, but they stayed a little longer. The officers started to mock me by saying, 'haha, look at your mom cry.'"⁶³

Brison was put in the back of a police cruiser and taken to the station. He was strip-searched, and during the search, one of the officers pointed to something on the floor and said, 'what is this?' It was marijuana wrapped in gold foil. Brison remembers the officer telling him 'if you tell me this is yours right now, then I won't charge you'. I said I would not say it was mine, because it wasn't. Brison believes the officers tried to plant the marijuana on him.

Areas of Concern

Profane, Abusive, or Insulting Language
Treatment Upon Detention, Arrest, Search and Seizures
Damage/loss of personal property
Other concerns – planting evidence

⁶² BRISON Affidavit 1, line 6

⁶³ BRISON Affidavit 1, line 13-15

Brison's account indicates that the officers spoke to him and his family in a profane, insulting, and abusive language, especially when mocking him and his family. These actions may violate the *PSA Code of Conduct*.

According to Brison, he was not informed of the reason for his arrest, only told that he was under arrest, "for an incident that happened a couple of days earlier." This notification falls short of fulfilling Brison's s. 10(a) *Charter* right to be informed of the reason of his arrest. If there was no valid reason for officers to arrest Brison, the arrest may be found unnecessary, violating the *PSA Code of Conduct*, and opening officers up to civil liability for unlawful arrest.

Brison also recalls that the officers pulled down his pants, engaging in a partial strip search in public. Public strip-searches are rarely, if ever, considered reasonable, and it is likely that Brison's s. 8 *Charter* right was breached. He may be able to sue the officers for assault and battery linked to the search.

Brison witnessed the police take him SIM card from his phone. It is questionable whether the officers followed procedures for obtaining property in this incident, and it is possible that they breached the *PSA Code of Conduct* by engaging in corrupt practice for failing to account for or make a prompt true return of property.

Lastly, Brison alleged that the officers planted evidence when they brought him into the station. This action could be considered deceit and misconduct under part 2(1)(d)(ii) of the *PSA Code of Conduct*, as well as attract civil or criminal liability.

C.J.

C.J. is a 14 year old male with dark skin tones and an accent. He recounts: "I've been stopped and asked questions by the police about 10 times. Half of the times, I've also been searched. Most times, the police stop me and ask me where I'm going. When the police do that, I feel like it is none of their business, but I feel like I have to answer them."⁶⁴ C.J. has never been charged for anything, but when the police have searched him, he remembers that, "they tell me that they are suspicious of me having a weapon."⁶⁵ C.J. wonders why the police stop and search him, because he says that he isn't a bad person.

Areas of Concern

Discrimination

Treatment Upon Detention, Arrest, Search and Seizures

C.J.'s experiences indicate that he may be both unlawfully detained and assaulted through his search by police officers, and that the officers could be held liable for their actions. C.J.'s detentions and searches may also be violations of his *Charter* rights to be free from unreasonable searches and arbitrary stops. C.J.'s young age and repeated stops by police are aggravating factors to any claim of damages attached to his claim for suffering.

If there is a lack of legitimate reasons for C.J.'s stops, C.J.'s experience indicates a potential human rights complaint, whereby his age or race may have played a factor in officers' stops and searches.

Gaps in Accountability

There is a *PSA Code of Conduct* finding of misconduct for unnecessary arrests, but not for detentions. An amendment to the *Code of Conduct* may be important to provide accountability for a number of questionably arbitrary stops experienced by young persons like C.J.

⁶⁴ C.J. Affidavit 2, line 3, 4, 6

⁶⁵ C.J. Affidavit 2, line 8

DENISE

Denise, age 17, was at her home with friends when a number of police officers burst through the front door. She heard them yell, ‘we have a warrant!’ and then saw something thrown into the house that exploded and caused smoke in the air. Denise was in shock, and ran to the basement to hide. She didn’t know who had entered the house, and removed all of her jewelry and rent money that was in her pocket in case it was a robber.

Coming back upstairs, Denise was told by one officer to ‘not move’ and then two officers escorted her outside. In fear, she began to cry. Denise remembers: “the female officer searched me. She forced me to put my arms in the air and pulled at my bra in a forward position, exposing my breasts to the public.”⁶⁶ Denise was then escorted back into the house, where she saw her friends in handcuffs and heard them being yelled at by the officers. She heard one officer say, ‘we’re going to find it...!’ One friend was on his knees facing the corner of a room. Denise saw: “at one point, my friend turned his head and I saw one officer kick him in the face.”⁶⁷ Her boyfriend was in the bedroom and Denise could “hear a slapping noise and then my boyfriend making a grunting noise. I also heard the wall banging and items on the wall falling down. This lasted about ten to fifteen minutes.”⁶⁸

Denise remembers hearing a male officer say to another officer, ‘this is not what we are looking for’ and the officer replying, ‘no, I know there is something here.’ Denise remembers that when the police first arrived, they said that they would have to telephone their parents. Denise asked them a number of times to call her parents. The officer replied that they had tried, but were not getting an answer. The officers were in the house for approximately an hour.

When leaving, an officer left a piece of paper on the counter of the main floor. The officer said, ‘this is the warrant.’ After the officers left, Denise went to retrieve her jewellery and rent money from the basement but it was gone. After the police left, Denise observed extensive damage to her house. Some examples of damage include: broken front door lock, ripped appliance wires, cracked mirrors and picture frames, curtains torn down and air mattresses cut open.

Areas of Concern

Use of Force

Treatment Upon Detention, Arrest, Search and Seizures

Damage to property

Denise expressed that her and her friends experienced unnecessary and excessive force used against them. From Denise’s account, her friend did not resist when being kicked in the face while they were handcuffed. If her detention and search were found to be unlawful, then the force used against her when being searched may also be considered an assault.

While the officers had a warrant, they likely did not follow correct procedures when carrying out the warrant, potentially unlawfully and unreasonably searching the dwelling. Denise’s section 8 *Charter* rights to not be searched without reason may have also been breached when her breasts were exposed in the public during a partial strip search outside of her home. Denise and her friends were also not informed why they were being detained in handcuffs, likely a breach of their section 10 *Charter* rights. Denise continued to request a telephone call to her guardian. The officers did not comply with her request for over an hour. These actions could amount to a violation of the notice to parents provision of the *Youth Criminal Justice Act*.⁶⁹

⁶⁶ DENISE Affidavit 3, line 15

⁶⁷ DENISE Affidavit 3, line 19

⁶⁸ DENISE Affidavit 3, line 22

⁶⁹S. 26 YCJA

Denise was most traumatized with the excessive damage that officers caused to the house and property within it. While property damage does not have a specific provision in the *PSA Code of Conduct*, s. 2(1)(f)(ii) may attract discipline for an officer who fails to account for or to make a prompt true return of property received in an official capacity. The officers could also be deemed to have been acting disorderly, in a manner likely to bring discredit upon the reputation of the police force, at s. 2(1)(a)(xi) of the *PSA Code of Conduct*. Officers may be held civilly liable if the damage caused was proven excessive.

ELI

Eli, age 14, was walking down the street with a friend during the G20 protest. He was not participating in protests, but was walking beside a large group of people that were protesting. Suddenly, Eli saw officers dressed in riot gear. The officers were pushing in towards the protestors from both sides of the street, and Eli was pushed into the middle of the road. An officer asked Eli for his dad's name and telephone number. Eli remembers: "I gave the officer all of my information, and I was arrested for obstructing police."⁷⁰ Eli was taken to the detention facility. He was held in zip ties for 19 hours, and held in custody for a total for over 26 hours without being charged.

Eli was held in adult cells. He remembers: "I was brought to a cell with six other adults in it. I was in that cell for a few hours. Several times I asked the court officers walking by if I could be put in a young offenders cell since I was a minor."⁷¹

Throughout his detention, Eli kept requesting to telephone his father. He was informed that an officer had called his father, but when his father went to the detention facility, the guards would not let him in. Eventually, Eli's father was telephoned again and he was released, over 26 hours after his arrest.

Areas of Concern

Profane, Abusive, or Insulting Language Treatment Upon Detention, Arrest, Search and Seizures

Eli's account indicates that he was wrongfully arrested and imprisoned by the police. The officers may be liable in a civil claim for false imprisonment. Eli's arrest and detention may be also a violation of his right to be free from arbitrary detention, at s. 9 of the *Charter*. As suspected for many other persons detained during the G20 Summit, the officers likely detained Eli arbitrarily, breaching his section 9 *Charter* right. His continued detention, for over 24 hours with periods of time in zip ties was an extreme limit to his liberty, and increases the severity of the violations against him. Eli's right to speak to counsel was also violated, contrary to s.10(b) of the *Charter* and s. 25(2) of the *YCJA*. Eli was held with adults in a cell, and his father was not given adequate notice of his arrest. These actions could amount to violations of the *YCJA* at s. 30(3) and 84 (adult cells) and s. 26 (notice to parents).

Eli and his father experienced inconvenience and stress as a result of the officer's failure to communicate with Eli and his father. The officer's failure to diligently perform their duty of permitting a detained youth to contact a family member could be considered neglect of duty under s. 2 (c)(i) of the *PSA Code of Conduct*. These facts would act as aggravating factors to any civil liability the officer faces relating to unlawful arrest and imprisonment.

ELROY

Elroy, age 11, was walking with a friend when his friend threw a hackey-sack ball at a taxi cab that was driving by. His friend got onto a streetcar, and Elroy began to walk home. Suddenly, two police cruisers cornered him. An officer got out of one cruiser and came towards Elroy. Elroy remembers: "he grabbed me by my neck and called me

⁷⁰ELI Affidavit 4, line 7

⁷¹ ELI Affidavit 4, line 10-11



a ‘little fuck.’’⁷² Elroy felt threatened, and told the officer that he hadn’t thrown the hackey-sack. The officers gave Elroy a warning and let him go.

Areas of Concern

Use of Force

Profane, Abusive, or Insulting Language

Elroy experienced unnecessary force when the officer grabbed his neck. Elroy’s young age, his fear, and lack of resistance with the officer are exacerbating factors to the unnecessary force he experienced. Elroy could also launch a civil suit and the officer may be liable civilly for the assault against him.

The officer could also be found, under the *PSA Code of Conduct*, to have acted with incivility towards Elroy when calling him a “little fuck.” This statement may be an aggravating factor to any civil liability the officer faces relating to unnecessary force.

FELIX

Felix, age 17, was at home when his doorbell rang. He looked outside and saw the police. He was scared that the officers wanted him for something, and he didn’t want to go to jail. He ran to the balcony of the house, jumped outside, and started running away. The officers chased Felix down an alley, grabbed his arms, and put him in handcuffs. Felix then remembers: “that officer started hitting me with his fist into my face, and he held his knee on my chest. The officer punched me at least 20 times. I had bruises on my face from the officer hitting me.”⁷³ He also remembers: “while the officer was beating me, I looked towards the other officer and he was backing away with his hands up. That officer’s face looked like he did not want to be involved with what was happening.”⁷⁴ Over a year later, Felix was arrested and taken to the police station. At the station, he saw one of the officers who had hit him in the alley. Felix remembers the officer saying to him, “I thought I beat the badness out of you.”

Areas of Concern

Use of Force

Profane, Abusive, or Insulting Language

Treatment Upon Detention, Arrest, Search and Seizures

Options for redress and potential officer liabilities

Felix experienced a high level of violence during his arrest. If the police officers had reasonable grounds to arrest Felix, it may have been reasonable to pursue or chase him. However, repeated punches to the face, especially once Felix was in handcuffs, cannot be considered necessary force to make the arrest. This level of force could be deemed as misconduct under the *PSA Code of Conduct*. The second officer witnessing the violence may also be included as complicit in the unnecessary force because they did nothing to reduce the level of violence. Felix could also launch a civil suit and the officers may be liable civilly for the assault against him.

It seems as though the police were looking for Felix, and may have had grounds to arrest him. However, upon arrest, Felix does not explain that the officers provided a reason for his arrest before or after he was in handcuffs, indicating that his s.10 *Charter* right to be informed upon detention was breached, and he could seek a remedy for the breach of his right.

⁷² ELROY Affidavit 5, line 6

⁷³ FELIX Affidavit 6, lines 8, 10

⁷⁴ FELIX Affidavit 6, line 9

Felix also experienced incivility when the officer told him, ‘he thought he beat the badness out of him.’ Communication like this could constitute incivility at s. 2(1)(a)(v) of the *PSA Code Conduct*.

GRANT

Grant, age 13, was walking home from school when he saw about six or seven officers standing in a group several meters ahead. Grant turned a corner and saw the officers split up. Suddenly, he was surrounded by the group of officers. He remembers: “I felt one officer grab one of my shoulders and another officer grab my other shoulder. One officer asked me where I was going. They kept holding on tight and it felt uncomfortable. I didn’t tell them where I was going. One officer kept asking me for my identification but I didn’t want to tell them. I was standing there for half an hour and the officers were yelling at me. I finally gave the officers my information. I heard one of the officers radio my information into the station. Then, they said I was a bad kid and told me to go home.”⁷⁵

Areas of Concern

Profane, Abusive, or Insulting Language
Treatment Upon Detention, Arrest, Search and Seizures

Options for redress and potential officer liabilities

Grant does not identify any reason why the officers stopped him and asked him for his identification. If his detention was arbitrary, then the search of his name on the police database may be an unreasonable search. The officers could be liable for a remedy and civil damages linked to his unlawful imprisonment, and a breach of his *Charter* rights.

The officers yelled at Grant in an abusive fashion and used insulting language when they told him he was a bad kid. Communication like this, especially made to a 13 year old child, could constitute incivility at s. 2(1)(a)(v) of the *PSA Code Conduct*.

HIDEO

Hideo, age 13, was biking downtown when he saw a police cruiser’s sirens flash. He stopped biking, and the cruiser stopped. One officer came out of the cruiser and approached Hideo. He then flipped Hideo’s bike over, looking at the pin code under the bike. The officer told Hideo that if the bike was stolen, then he would take Hideo to the police station. The officer in the cruiser asked Hideo his name, and he told her. Hideo saw her enter his name into a computer. He then recalls: “she told me that there was information about my brother and that he had been charged. The other cop then said that if he saw my brother in jail, that he would get somebody to rape him.”⁷⁶ Hideo thought that it was really disgusting that he would say they would get someone to rape his brother.⁷⁷ Hideo remembers that he “asked both officers for their badge numbers and they would not tell me.”⁷⁸ He also remembers that he “asked to call my mom or a lawyer and the officers told me that I couldn’t.”⁷⁹

Areas of Concern

Profane, Abusive, or Insulting Language

⁷⁵ GRANT Affidavit 7, line 5-8

⁷⁶ HIDEO Affidavit 8, line 9-11

⁷⁷ HIDEO Affidavit 8, line 17

⁷⁸ HIDEO Affidavit 8, line 12

⁷⁹ HIDEO Affidavit 8, line 13



Treatment Upon Detention, Arrest, Search and Seizures
Other concerns – failure to disclose badge number

Options for redress and potential officer liabilities

Hideo's experience does not identify any reasonable explanation for the officer to stop him. The detention led to an unreasonable search of his bicycle, denial of his right to know the reason for his detention, and denial of his requested right to speak to counsel. The officers could be liable for a remedy and civil damages linked to Hideo's unlawful imprisonment, and a breach of his *Charter* rights.

The officers also used profane language with Hideo. Using profane language, especially considering Hideo's young age, could constitute incivility at s. 2(1)(a)(v) of the *PSA Code Conduct*. Hideo's unanswered requests to speak to his mother also indicate a lack of sensitivity that could be considered incivility towards young Hideo.

The officers would not disclose their badge information when Hideo asked. This is a violation of Toronto Police Service Procedures, and could attract disciplinary action if Hideo made a complaint.

ISSAC

During the weekend of the G20, Issac, age 16, was walking downtown with friends. Issac noticed officers on bicycles following them, and when they went into a restaurant to use the washroom, a group of seven officers rushed in after them and asked, ‘Why are you wearing a black hoodie? Are you a G20 Summit protestor, or involved in crimes?’ Issac told the officers he was wearing a hoodie because it was raining outside, and the officers then accused him of lying.

Issac remembers: “the officers then grabbed me against my will and searched my pockets. The officers looked in my backpack and saw another pair of clothes in it.”⁸⁰ The officers questioned Issac about why he was not wearing the other clothes, accused him of being in disguise, and being involved in G20 Summit rioting. Then, Issac recalls: “a female officer went into my pants and took a small quantity of marijuana from my genital area. The other officers then hand-cuffed me and said I was under arrest for possession for the purpose of trafficking.”⁸¹

Officers arrested Issac and brought him to the police station. There, officers strip searched Issac and pushed him up against the wall while asking him questions. After he was put in cells, two officers punched Issac in the ribs and on the head. Issac remembers: “One of the officers told me that he was going to keep me in and out of jail until I turned eighteen and then find a way to keep me there for good, in adult jail.”⁸² Issac was further interrogated by officers, being accused of gang activities. When he talked back to the officers, he was punched again. Issac remembers staying in an adult cell overnight.

Areas of Concern

Use of Force

Profane, Abusive, or Insulting Language

Treatment Upon Detention, Arrest, Search and Seizures

Other concerns – adult cell overnight

Options for redress and potential officer liabilities

⁸⁰ ISSAC Affidavit 9, line 8

⁸¹ ISSAC Affidavit 9, line 10-11

⁸² ISSAC Affidavit 9, line 15

Issac experienced a high level of violence during his arrest and detention in jail. This level of force could be deemed unnecessary, as misconduct under the *PSA Code of Conduct*. Issac could also launch a civil suit and the officers may be liable civilly for the assault or could be charged with assault against Issac.

From Issac's account, there does not appear to be a reasonable explanation for his original stop and search. Wearing a black hoodie is not sufficient to establish reasonable grounds to detain someone. The detention led to an egregiously unlawful search, a partial strip search in public. Even if the officers were able to prove that they had reasonable grounds to detain Issac, the reasonableness of the public strip search could be challenged. The arrest stemming from the unlawful detention and search could also then be challenged. The officers could be liable for a remedy and civil damages linked to his unlawful imprisonment, unlawful arrest, and a breach of his *Charter* rights.

Beyond the obvious physical assaults against Issac, the threats the officer gave to Issac, and particularly the statement, 'finding a way to keep him in jail until he was 18 and then for good' could constitute incivility, amounting to a violation of s. 2(1)(a)(v) of the Code.

Issac was kept in an adult cell overnight. The officers authorizing this arrangement violated s. 30(3) of the *YCJA* that requires a young person to be held separate and apart from any adult. The officers could be charged with an offence for this violation, guilty of an offence punishable on summary conviction.

JULES

Jules, age 23, was in a park in his neighbourhood that is known for the sale of marijuana. Two people came up to Jules and asked him if they could buy weed from him. He did not sell weed, but referred them to someone he knew that did.

He then remembers: "two officers on bikes rode up to me, and without saying anything, tackled me to the ground. Once I was on the ground, they put me in handcuffs. They told me in my ear, 'you know why you're down here'."⁸³ The officers told him that he was caught selling marijuana, and he was then transported to 14 Division.

Areas of Concern

Use of Force

Options for redress and potential officer liabilities

Unnecessary force is considered misconduct under section 2(1)(g)(ii) of the *PSA Code of Conduct*. Here, the police officer tackled Jules to the ground. This is force unnecessary to make an arrest, particularly when there is no indication that Jules was fleeing or resisting arrest. This behaviour would likely constitute a violation of the *PSA Code of Conduct*. Jules could also launch a civil suit and the officers may be liable civilly for the assault.

KIESHA

Kiesha, age 16, was sitting with friends in a park beside a youth shelter.⁸⁴ Two police officers on bicycles approached and asked what they were doing.⁸⁵ The police officers then stated they were "sick of seeing [them]

⁸³ JULES Affidavit 10, line 6-8.

⁸⁴ KIESHA Affidavit 11, line 4

⁸⁵ KIESHA Affidavit 11, line 5

around here” and appeared annoyed.⁸⁶ Kiesha watched the officers perform a pat-down search on her friend and asked her friend to open his bag.⁸⁷

Areas of Concern

Profane, Abusive, or Insulting Language
Treatment Upon Detention, Arrest, Search and Seizures

Options for redress and potential officer liabilities

Kiesha and her friends experienced officer incivility when they said they were ‘sick of seeing them around here’. This type of behaviour, using profane, abusive, or insulting language or is otherwise uncivil to a member of the public, could be considered misconduct at sections 2(1)(a)(v) *PSA Code of Conduct*.

Kiesha’s friend also likely experienced an unlawful detention and search. Kiesha’s account of the incident does not indicate any reason for their stop and search. If the officers are unable to prove that there were reasonable grounds to stop and search her friend, then the officers could be liable for a remedy and damages linked to her friend’s unlawful imprisonment and a breach of *Charter* rights.

LUIS

Luis, age 18, was walking with several friends when he saw a police cruiser drive slowly past them.⁸⁸ Luis and his friends stopped at a convenience store, and the police cruiser drove by them again, slowing down and parking the car. The officers came out of the cruiser and one police officer yelled at Luis to come over.⁸⁹ Another officer asked Luis who he was and if he had any identification. Luis gave the female officer his health card and student card.⁹⁰

As the officer was studying his identification, Luis overheard the interaction between another officer and his friend. He heard them male cop ask his friend: ‘where are you from?’ His friend answered: ‘Toronto.’ The male cop asked again, ‘no where are you from?’ and ‘stop giving me a hard time.’ Luis heard his friend answer, ‘my parents are from Central America.’⁹¹

Luis also remembers: “the female officer also asked me, ‘where are you from?’ I said, ‘I’m Guatemalan and Scottish’. She also asked if I had any tattoos and I didn’t want to answer the question because it is personal.”⁹²

The female officer gave Luis his health card back, but not the student identification.⁹³ Luis recalls, “I saw both officers get back into the cruiser and drive off. They still had my student identification. [...] I went and picked up my identification at the police division [the next day]. When it was given to me, it was cut horizontally near the middle of the card.”⁹⁴

Areas of Concern

⁸⁶ KIESHA Affidavit 11, line 6

⁸⁷ KIESHA Affidavit 11, line 7

⁸⁸ LUIS Affidavit 12, lines 6-7.

⁸⁹ LUIS Affidavit 12, line 11

⁹⁰ LUIS Affidavit 12, lines 12-13

⁹¹ LUIS Affidavit 12, lines 17-19

⁹² LUIS Affidavit 12, lines 22-25

⁹³ LUIS Affidavit 12, lines 29, 34

⁹⁴ LUIS Affidavit 12, lines 13, 33, 38

Profane, Abusive, or Insulting Language
Treatment Upon Detention, Arrest, Search and Seizures
Damage to property

Options for redress and potential officer liabilities

Luis's identification was taken from him and destroyed. Under s. 2(1)(f)(ii) of the *PSA Code of Conduct*, failing to make a prompt or true return of property taken is a violation. Here, the police officer violated the *Code* by taking and keeping Luis's identification, and returned it cut in half.

Luis and his friends also likely experienced unlawful detentions and searches. Luis's account of the incident does not indicate any reason for their stop and search. Luis was detained by the officers when they had his identification in their possession. Suspicion based solely upon the ethnicity or race of the young people is not reasonable and cannot be the basis for detention. If the officers are unable to prove that there were reasonable grounds to hold him, then the officers could be liable for a remedy and damages linked to his unlawful imprisonment and a breach of his *Charter* rights.

If the detention is arbitrary, the manner and language the officers used while interacting with Luis and his friends indicate that their race or ethnicity was a factor in the stop, and could constitute as evidence towards a claim of discrimination under the *Ontario Human Rights Code*.

MOHAMMED

One evening, Mohammed, age 14, and three of his friends met in front of his house and starting to walk down the street together. Mohammed remembers, “a cop car with two cops in it drove by and stopped in front of us. I heard one of the cops tell us, ‘where the fuck are you going, you pieces of shit?’”⁹⁵ Mohammed then remembers the officers asking for their names, phone numbers, addresses, and heights.⁹⁶ One officer then asked the group if they were carrying weapons, and Mohammed recalls: “we all told the cop that we did not have any weapons. The cop [then] asked us to take off our backpacks. All of us took our backpacks off. The cop then looked inside all of our backpacks. He found no weapons.”⁹⁷

Mohammed remembers the officer tell one of his friends that he has a huge forehead. Mohammed believed that the officer was making fun of him because he is Somalian, stating, ‘I know that Somalian people get made fun of because of their foreheads.’ Mohammed also remembers one officer tell his other friend that he had bushy eyebrows, and saw the other officer in the cruiser laughing. One officer called Mohammed ‘an asshole.’ Mohammed observed that none of the officers made comments or said anything to his one friend, who has light-colored skin. Mohammed remembers one of his friends being confused, asking him why the officers would make fun of them.”⁹⁸

On another occasion, Mohammed was walking home from school. He remembers: “I saw a cop across the street in a cop car. He said to me, ‘get the fuck over here.’”⁹⁹ The officer then asked Mohammed what was written on his hat, and Mohammed told the officer that they were the names of his friends that had died. The officer told Mohammed to throw away or burn the hat, because wearing it could get him shot.¹⁰⁰ Mohammed protested, saying he didn’t

⁹⁵ MOHAMMED Affidavit 13a, lines 4-5

⁹⁶ MOHAMMED Affidavit 13a, line 7. The request for contact information, i.e. names, telephone numbers, address, and heights, is standard.

⁹⁷ MOHAMMED Affidavit 13a, lines 10-11

⁹⁸ MOHAMMED Affidavit 13a, lines 13, 18

⁹⁹ MOHAMMED Affidavit 13b, lines 4-5

¹⁰⁰ MOHAMMED Affidavit 13b, lines 7-9



understand, and the officer told him not to back-talk him.¹⁰¹ From that day on, Mohammed says: “I took a different route to school because I did not want the cop to know where I went to school.”¹⁰²

Areas of Concern

Discrimination

Treatment Upon Detention, Arrest, Search and Seizures

Options for redress and potential officer liabilities

Officers interacting with Mohammed and his friends likely breached sections 2(1)(a)(ii) and (v) of the *PSA Code of Conduct* by swearing at and using profane language linked to their race and ancestry. The *Code* find misconduct where the officer “uses profane, abusive or insulting language that relates to a person’s race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability,” and “uses profane, abusive or insulting language or is otherwise uncivil to a member of the public.”

In addition, the manner and language the officers interacting with Mohammed and his friends used could constitute a claim of discrimination under the *Ontario Human Rights Code*.

Mohammed and his friends also likely experienced unlawful detentions and searches. Mohammed’s account of the incident does not indicate any reason for their stop and search. Suspicion based solely upon the ethnicity or race of the young people is not reasonable and cannot be the basis for a warrantless search.

NEILA

Neila, age 14, believes that she was falsely arrested for seven robberies. One day, she was skipping school with two friends. Neila was told by her friends that there was a robbery in the area that day. Two days later, police officers came to Neila’s home and charged her with seven robberies reported in the area. Neila remembers: “the police took me to [the] division overnight.... I did not receive an opportunity to make any phone calls, even to a lawyer. I also did not get any food or water.”¹⁰³ The following day, she was given bail in the amount of \$1500 and house arrest. Six months later, Neila went to trial and the charges were dropped.

Areas of Concern

Treatment Upon Detention, Arrest, Search and Seizures

Options for redress and potential officer liabilities

Section 10(b) of the *Charter* states that everyone has the right, upon arrest or detention, to retain and instruct counsel without delay and to be informed of that right. Neila was not permitted to make any contact with counsel, violating her *Charter* right.

Neila’s experience also gives rise to a potential claim in unlawful arrest and unlawful imprisonment, as well as claims that her s. 7 *Charter* right to life and liberty and s. 9 *Charter* right not to be arbitrarily detained were violated. Neila suffered physically and psychologically as a result of the six month house arrest condition imposed on her. If Neila could prove that there were no grounds to arrest and detain her on the charges, she may be able to obtain damages for the unlawfulness of her arrest and detention.

¹⁰¹ MOHAMMED Affidavit 13b, lines 10-11

¹⁰² MOHAMMED Affidavit 13b, line 12

¹⁰³ NEILA Affidavit 14, line 8

OSCAR

Oscar, age 16, was walking with a friend to the corner store and noticed a police cruiser following them.¹⁰⁴ When Oscar entered the store, police officers followed him in. He remembers them suddenly slamming him and his friend onto the floor. He remembers the police officers were stepping on him and his friend, squishing his ankles, and calling him a drug dealer.”¹⁰⁵ The officers then took him to a police station where he was strip-searched.¹⁰⁶

When Oscar asked the officer why he was at the police station, particularly when nothing was found subsequent the search, the officer told him he was being charged with trafficking cocaine and to “shut the fuck up.”¹⁰⁷ The officers then transported Oscar to another police station, where detectives questioned him about his neighbourhood.¹⁰⁸ When the Detectives allowed Oscar to telephone his mother, he remembers: “one of the detectives asked to speak to my mom. I heard him tell her that I am a known drug dealer.”¹⁰⁹ The officers took several pictures of Oscar and left him the cells until approximately 4am.¹¹⁰ Oscar was then taken to court, where his mother failed to appear because she believed the officers report that he was a drug dealer.¹¹¹ Oscar was held in jail for four days until he could sign up for the bail program.¹¹²

Areas of Concern

Use of Force

Profane, Abusive, or Insulting Language

Treatment Upon Detention, Arrest, Search and Seizures

Options for redress and potential officer liabilities

Unnecessary force is considered misconduct under section 2(1)(g)(ii) of the *PSA Code of Conduct*. Here, the police officer threw Oscar to the ground and then stepped on his ankles. This is force unnecessary to make an arrest, particularly where there is no indication that Oscar was fleeing or resisting arrest, and where there are multiple officers present at the scene. This behaviour may constitute a violation of the *Police Services Code of Conduct*. Oscar could also launch a civil suit and the officers may be liable civilly for the assaults or could be charged with assault against Oscar.

Section 2(1)(a)(v) of the *PSA Code of Conduct* finds misconduct where the officer “uses profane, abusive or insulting language or is otherwise uncivil to a member of the public.” Here, an officer used profane language towards the Oscar when the officer swore at him.

It is also unclear whether the arrest was made pursuant to an arrest warrant. If it was not, it would be considered a warrantless arrest and would therefore require reasonable and probable grounds. If a warrantless arrest, there do not seem to be reasonable and probable grounds for a detention or arrest. If officers were unable to prove that there were grounds to arrest and detain Oscar on the charges, he may be able to obtain damages for the unlawfulness of her arrest and detention.

¹⁰⁴ OSCAR Affidavit 15, lines 4-5

¹⁰⁵ OSCAR Affidavit 15, lines 6-9

¹⁰⁶ OSCAR Affidavit 15, line 10

¹⁰⁷ OSCAR Affidavit 15, line 11

¹⁰⁸ OSCAR Affidavit 15, lines 13-14

¹⁰⁹ OSCAR Affidavit 15, line 16

¹¹⁰ OSCAR Affidavit 15, lines 17-18

¹¹¹ OSCAR Affidavit 15, line 19

¹¹² OSCAR Affidavit 15, line 19

PASHA

Pasha, age 16, was on bail and had a condition to stay in her house at all times except while at school or when accompanied by her mother. She drove to the 7-11 store with her mother, and her mother waited in the parking while she went into the store. When leaving the store, Pasha saw some friends and began speaking with them. She saw a van and a police cruiser pull up and eight police officers came out and over to the group. They requested identification, and Pasha and her friends gave them their identifications.

Pasha remembers the officers looked suspicious at them because her and her friend had the same name. She then remembers an officer searching her: “one cop dug into my pockets. He searched me up and dropped some change out of my pockets.”¹¹³ One officer checked her name on the police computer in the cruiser, seeing that she was on bail conditions. She remembers: “they grabbed my arm and pulled me to the nearby police cruiser...one cop then grabbed my hat and hit me with it, and another cop made fun of my scarf. He said, ‘it’s not the desert, you know.’”¹¹⁴ The scarf symbolizes Pasha’s Middle Eastern roots – it is checkered black and white made of a light material.

Pasha remembers that it all happened so quickly that she was unable to get her mother to come over to help, and was only able to call her mum when she got to the station. Pasha was in custody for three days before being released.

Areas of Concern

Use of Force

Discrimination

Treatment Upon Detention, Arrest, Search and Seizures

Options for redress and potential officer liabilities

Unnecessary force is considered misconduct under section 2(1)(g)(ii) of the *PSA Code of Conduct*. Here, police officers hit Pasha with a hat. This is force unnecessary to make an arrest, particularly where the facts do not indicate that Pasha was fleeing or resisting arrest, and where there are multiple officers present at the scene. These actions would constitute a violation of the *PSA Code of Conduct*. Pasha could also launch a civil suit and the officer may be liable civilly for the assault.

The officer made a disparaging joke about Pasha’s scarf. Sections 2(1)(a)(ii) of the *PSA Code of Conduct* finds misconduct when an officer “uses profane, abusive or insulting language that relates to a person’s race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability.” The officer’s comment also constitutes discrimination against Pasha under the *Ontario Human Rights Code*.

Pasha’s experience indicates that she and her friends were arbitrarily detained and searched by the officers, contrary to s. 8 and 9 of the *Charter*. There is no indication of grounds why the officers detained and questioned Pasha and her friends. Suspicion based solely upon the age, ethnicity or race of the group of youth is not reasonable and does not constitute grounds to detain or search. If officers were unable to prove that there were grounds to detain Pasha, she may be able to obtain damages for the unlawfulness of her detention, search, and arrest.

QUINTON

¹¹³ PASHA Affidavit 16, line 10

¹¹⁴ PASHA Affidavit 16, line 12



Quinton, age 19, and a bunch of other youth were outside on the street watching police officers arrest a youth they knew. Quinton saw another 10-20 officers come to the location.¹¹⁵ Quinton removed his cell phone and began recording the arrest.¹¹⁶ Quinton then recalls: ‘a male police officer snatched my phone from my hand. He told me that ‘filming a police investigation was against the law, and if I wanted it back I could get it from his police division’ I pleaded for my phone back from the officer. He told me that he would return my phone if I deleted what I had recorded. I told the officer I would delete the recording. While the phone was still in the officer’s hand, I deleted the recording, and the officer handed me back my phone.’¹¹⁷

Quinton remembers hearing an officer say towards another few officers something like, ‘is there anything we can get on these guys?’¹¹⁸ A female officer then asked Quinton his name, and he told it to her. He then remembers her, ‘asking another police officer if she ‘could get [me] for anything.’¹¹⁹ Quinton also recalls several other officers making threats towards the group of young people, telling them, ‘you guys better watch out.’¹²⁰

Areas of Concern

Use of Force

Profane, Abusive, or Insulting Language

Treatment Upon Detention, Arrest, Search and Seizures

Damage to property

Other concerns

Options for redress and potential officer liabilities

There is no provision in the *PSA Code of Conduct* specifically relating to treatment of personal property in regards to the forced erasure of photos or videotaping. The section it would be most likely to fall under is 2(1)(f)(ii) of the *PSA Code of Conduct*, which finds misconduct where the officer fails to make a prompt returning of property received in an official capacity. Here, the officer returned the property, but only after forcing Quinton to erase an image the officer did not like.

There is also no provision in the code for threatening to arrest, though it is stated that the officers may not make an unlawful or unnecessary arrest. Such a provision should be added, as this practice of threatening to arrest breeds mistrust of the police.

If it was established that Quinton and the other young persons felt compelled to stay in the officers’ presence and were detained by the officers, the reasonableness of their detention could be questioned as arbitrary and contrary to s. 9 of the *Charter*. From Quinton’s account, it appears that the officer were searching Quinton’s and other youth’s names on a police computer database. The lawfulness of this search could also be challenged, stemming from the apparent lack of grounds for detaining the youth.

RICO

Rico, age 15, was playing basketball when he saw a young black guy that he knew run past as police officers approached.¹²¹ The police officers asked Rico where the guy went, and stated that he had a gun, before chasing the

¹¹⁵ QUINTON Affidavit 17, lines 5-7

¹¹⁶ QUINTON Affidavit 17, line 9

¹¹⁷ QUINTON Affidavit 17, lines 10, 13, 14

¹¹⁸ QUINTON Affidavit 17, line 8

¹¹⁹ QUINTON Affidavit 17, line 12

¹²⁰ QUINTON Affidavit 17, line 15

¹²¹ RICO Affidavit 18, lines 5-6

male.¹²² Rico recounts: “I saw the cops get then get off their bikes and two of them grabbed the man and threw him to the ground. I saw two of them hit the guy with their fists. I saw the cops twist the guy’s arm and it looked like it was breaking.”¹²³ The police then placed handcuffs on the male and placed him in a police cruiser. Rico did not believe that the guy had a gun. He says: “he’s a nice guy and I know he’s not violent.”¹²⁴

Areas of Concern

Use of Force

Options for redress and potential officer liabilities

Unnecessary force is considered misconduct under section 2(1)(g)(ii) of the *PSA Code of Conduct*. Here, the police officers hit the male repeatedly with their fists and twisted his arm until it appeared to be breaking. This is force unnecessary to make an arrest, particularly where there are multiple officers present at the scene. This behaviour would constitute a violation of the *PSA Code of Conduct*, and Rico could make a complaint about witnessing this conduct.

SASHA

Sasha, age 18, was known to deal marijuana to some other youth in the neighbourhood. One day, while at a park with a friend, Sasha was approached by five plain clothed police officers. The officers arrested both Sasha and her friend, read them their rights and searched them. The officer found 3g of marijuana in Sasha’s pocket, and said “they now have enough evidence to search her home.” She was then transported to the police station. Sasha recounts: “at the division, I asked one of the officers if I could speak to a lawyer. The officer responded, ‘we don’t have to let you talk to a lawyer as long as there is an ongoing active investigation.’”¹²⁵

Sasha was put into a cell and when two detectives entered the cell and began questioning her, Sasha again requested counsel, and was told that, they could hold her for 24 hours without a lawyer. One detective threatened to arrest Sasha’s mother if she did not provide information requested, and when one detective left the room, “the other one punched me in the head and kicked me in my thigh a number of times.”¹²⁶

The other detective returned, and showed Sasha a search warrant before resuming questioning. When Sasha remained silent, the detectives left to execute the search warrant. The detectives later returned and informed Sasha that they had found drugs and money in her home. Sasha was held overnight, and brought to court the following morning. In the court cells, Sasha saw her arrested mother brought past her cell. Upon her return home after receiving bail Sasha saw “that the house was completely upside down. The contents of the house were in piles in the middle of each room and there were holes ripped in the walls.”¹²⁷

Areas of Concern

Use of Force

Profane, Abusive, or Insulting Language

Treatment Upon Detention, Arrest, Search and Seizures

¹²² RICO Affidavit 18, lines 7-10

¹²³ RICO Affidavit 18, line 11

¹²⁴ RICO Affidavit 18, line 13

¹²⁵ SASHA Affidavit 19, line 11. The young person had previously been arrested, per lines 7-9

¹²⁶ SASHA Affidavit 19, line 16

¹²⁷ SASHA Affidavit 19, line 24

Damage to property
Other concerns – threatening accused

Options for redress and potential officer liabilities

Unnecessary force is considered misconduct under section 2(1)(g)(ii) of the *PSA Code of Conduct*. Here, the police officers punched Sasha and kicked her in the thigh. At the time of the hits, Sasha was already under arrest and contained within a cell, with no indication of resistance or force against the detectives. Even if there was resistance, punches to the head are rarely, if ever, necessary to control an arrestee. This behaviour would constitute a violation of the *PSA Code of Conduct*. Sasha could also launch a civil suit and the officers may be liable civilly for the assaults or could be charged with assault against Sasha.

Sasha was also denied her right to speak to counsel. Section 10(b) of the *Charter* states that everyone has the right, upon arrest or detention, to retain and instruct counsel without delay and to be informed of that right. Sasha was not permitted to make any contact with counsel without any reasonable explanation why she was denied. Sasha's right to speak to a lawyer were violated by the officers that detained and arrested her.

There is no provision in the *PSA Code of Conduct* specifically relating to treatment of personal property in regards to damage of the home. The section that property damage would most likely fall under is 2(1)(f)(ii) of the *PSA Code of Conduct*, which finds misconduct where the officer fails to make a prompt returning of property received in an official capacity. Here, Sasha explains that the officers damaged her home by ripping holes in the walls and piling items throughout the home. Damaging items may be considered to be misconduct under section 2(1)(a)(v) of the *PSA Code of Conduct*, finding misconduct where the officer(s) or are uncivil towards Sasha by damaging her home. The officers may also be liable in civil law for causing unnecessary damage while conducting their duties.

TYRONE

Tyrone, age 20, was on bail with a condition requiring him to be at home by a certain hour or with an approved adult with written consent from his surety. Tyrone had written permission from his surety to stop at a friend's home while on his way home. Tyrone was heading home from his friend's place when he saw five police officers ride bicycles up the street.

Upon seeing the police, Tyrone went home and locked the door. Tyrone was afraid of being seen by the police because he was aware of prior experiences of his friends with police officers who had their surety notes destroyed by the police. While Tyrone was in his home, his mother opened the door.

The police entered his home. Tyrone recounts what happened next: "I was cuffed by one of the officers. I was punched twice in the stomach by the other officer."¹²⁸ Tyrone was arrested for breaching bail and obstructing a police officer. Tyrone was then brought to the police station, where he remembered: "Two officers strip-searched me and hit me two more times in my stomach. Later, one officer asked me how I was doing. I said that I had been assaulted. The officer then spoke loudly. I believe the officer was trying to talk over me so the camera wouldn't pick up what I said."¹²⁹

Areas of Concern

Use of Force
Treatment Upon Detention, Arrest, Search and Seizures

¹²⁸ TYRONE Affidavit 20, line 19

¹²⁹ TYRONE Affidavit 20, line 22 and 25

Options for redress and potential officer liabilities

Here, Tyrone explains that police officers punched him in the stomach several times on two separate occasions. On the first occasion, Tyrone was already under arrest and handcuffed, and was not resisting the officers. On the second occasion, Tyrone was at the police station, had just been strip-searched, and surrounded by officers. At both times, there was no indication of resistance or force used by Tyrone. The officers' behaviour, as explained by Tyrone, gives evidence of unnecessary force and a violation of the *PSA Code of Conduct*. Tyrone could establish a civil suit and the officers may be liable civilly for the assaults or could be charged with assault against Tyrone.

Tyrone's experience also gives rise to a potential claim in unlawful arrest and unlawful imprisonment, as well as claims that his s. 7 *Charter* right to life and liberty and s. 9 *Charter* right not to be arbitrarily detained were violated. If officers were unable to prove that there were grounds to arrest and detain Tyrone on the charges, he may be able to obtain damages for the unlawfulness of her arrest and detention.