

# Ontario asks judge to review rules around 'carding'



Appeal Court Justice Michael Tulloch is vowing to conduct the carding review with "objectivity and judicial fairness." (RENE JOHNSTON / TORONTO STAR FILE PHOTO)

By [WENDY GILLIS](#) News reporter  
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Justice Michael Tulloch will examine whether new rules are being implemented 'without bias or discrimination'

Fresh off an ambitious provincial review of civilian police oversight, Ontario Court of Appeal Justice Michael Tulloch has been tapped to take on another contentious policing issue: carding.

The Ministry of Community Safety and Correctional Services announced Wednesday that Tulloch, the first Black judge on the province's top court, will conduct an independent review of [Ontario's](#)

[carding regulations](#) — new rules that were implemented by police services across the province earlier this year.

The announcement comes two months after Tulloch released a broad-ranging report on police oversight bodies, a review that [immediately prompted](#) the government to require greater transparency from police watchdogs as well as the collection of race-based statistics on police interactions probed by the civilian agencies.

In this latest review, Tulloch has been tasked with examining whether Ontario's new carding rules are being implemented "without bias or discrimination" and identifying any challenges encountered in applying the regulation, according to a ministry statement.

Tulloch has also been asked to probe whether street checks are necessary in modern policing.

Anthony Morgan, a community advocate and lawyer, said Tulloch's review should indeed be open to the possibility that the practice should be eliminated.

"A fair, open, honest review that is genuinely interested in maintaining the public confidence in the review and policing more generally has to explore whether or not carding should continue," Morgan said in an interview Wednesday.

New rules governing carding, also known as street checks, are intended to set strict limitations on the controversial police practice where officers stop, question and document people not suspected of a crime.

A [series of Toronto Star investigations](#) revealed that carding disproportionately impacts young Black and brown men. Criticized as racial profiling by another name, the practice has been used by police in Toronto for years, and has come under fire in other cities across Ontario, including Brampton, London, Mississauga and Hamilton.

Under the provincial regulations, police must inform any citizens they stop for the purposes of carding that they do not have to provide any

information, must provide citizens with a reason they are requesting identifying information, and must provide anyone they subject to a street check with a receipt stating the officer's name and badge number.

Officers are prohibited from carding someone based on race or for being in a "high crime" area.

"Arbitrary and race-based stops to collect and store personal information based on nothing more than the colour of one's skin are illegitimate, disrespectful and have no place in our society," Yasir Naqvi, who was then community safety minister, said when unveiling the regulations last year.

But the regulations have come under fire from critics who say there are far too many exemptions to truly eliminate discriminatory stops.

The regulations don't apply when an officer is talking to a driver during a traffic stop or when police are investigating a specific crime. The latter exemption means, for instance, that police can stop, question and document anyone in a housing complex immediately after a shooting — without having to abide by the protections built into the provincial regulations.

Morgan said he hopes Tulloch takes a critical look at the exemptions, as well as what he says are problems with the requirement to notify citizens about their rights.

The current regulation, for example, does not explicitly state that the officers must inform citizens — at the outset of the interaction — that they are not required to provide any information.

Morgan also predicts there could be legal issues around how officers provide the mandatory rights notification. He recommends the province standardize language around carding rights, similar to the well-known Miranda rights in the United States, informing those under arrest that they have the right to remain silent.

Tulloch will also likely examine significant concerns about the retention of historic data collected through carding — a complex issue left to individual police boards to determine for their own services.

Late last year, the Toronto police board established a system whereby historic information will be retained, but access would be highly restricted. Approval to access the data would have to come from the chief, and only be granted when there is a significant public interest or to comply with a legal requirement.

Critics maintain that the setup still allows police to benefit from information obtained through damaging or possibly unconstitutional police stops, and [that the data should be deleted](#).

The Toronto police board is expected to discuss the data retention issue at their meeting next week.

As part of the carding review, Tulloch has also been mandated to work with Ontario's Anti-Racism Directorate to examine whether carding and the province's regulations align with Liberal government's goal to eliminate systemic racism, the ministry said.

Tulloch's report on the carding regulations, including his recommendations, will be released Jan. 1, 2019.

"The issues involved are important to all Ontarians, and I commit to approach this new task with the same level of objectivity and judicial fairness with which I bring to all my judicial duties," Tulloch said in a statement Wednesday.

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