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Street Checks

Terms of Reference

Independent Review on O.Reg 58/18

On March 21, 2016, the province filed a new regulation, O. Reg. 58/16: Collection of Identifying Information in Certain Circumstances – Prohibition and Duties (the 'regulation'), under the *Police Services Act* (PSA).

Section 17 of O. Reg 58/16 requires the Minister of Community Safety and Correctional Services ('minister') to ensure a review of the regulation is conducted, and that a report on the findings of the review is published, no later than January 1, 2019.

The regulation also requires that the individual conducting the review:

- Is not a public servant within the meaning of the *Public Services of Ontario Act, 2006*, and is not employed in the Office of the Premier or in the office of a minister, and
- Consults with the Minister Responsible for Anti-Racism.

1. Mandate

1.1 The Review

The Independent Reviewer shall review O. Reg. 58/16 and report to the minister on:

Content of the regulation

- a. Whether the regulation appropriately reflects the government's goal of ensuring that police-public interactions should be
 - consistent,
 - conducted without bias or discrimination, and
 - done in a manner that promotes public confidence and keeps our communities safe;
- b. Whether the regulation appropriately reflects the following key principles stated by the government:
 - Ontario takes the protection of human rights very seriously and has zero tolerance for racism or any form of discrimination based on the prohibited grounds set out in the *Human Rights Code*, R.S.O. 1990, c. H. 19, s. 1,
 - Ontario stands opposed to arbitrary, random stops that do not have a clear policing purpose, and which are done solely for the purpose of collecting identifying information;
- c. Any recommendations in light of (a) and (b) above.

Implementation of the regulation

- d. Whether police officers and chiefs of police are in compliance with the regulation, including but not limited to:
 - Limitations on the collection of certain information pursuant to section 5,
 - Duties relating to the collection of information pursuant to sections 6-8,
 - Data retention and management requirements pursuant to section 9,
 - The elimination of performance targets pursuant to section 10,
 - The delivery of training pursuant to section 11,
 - The development of procedures pursuant to sections 13, and

- The provision of reports pursuant to sections 14 and 15
- e. Whether police services boards have developed policies in compliance with section 12
- f. The curriculum and related training materials developed by the Ontario Police College to ensure compliance with section 11, and make recommendations regarding the effectiveness of the training
- g. The approaches police services have adopted and any relevant recommendations on whether consistency is required regarding the:
 - Document to be provided pursuant to section 7,
 - Retention of information to which the O.Reg. 58/16 applies, and
 - Establishment of age groups and racialized groups for the purpose of section 14
- h. Whether there are any challenges, operational or otherwise, in applying the regulation and, if so, any recommendations regarding how they could be addressed
- i. Whether the accountability and oversight mechanisms in O.Reg. 58/16 are appropriate to ensure compliance with the regulation and, if not, recommend how they could be improved, and
- j. Any potential regulatory amendments, policy and/or procedural changes recommended to improve the implementation of the regulation.

1.2 Consultation and Review Process

In conducting the review, the Independent Reviewer

- a. will determine the method, content and extent of consultations required to fulfill his mandate
- b. may request any person to provide information or records to him
- c. shall seek input from the Minister Responsible for Anti-Racism
- d. shall seek input from the Independent Police Review Director regarding complaints related to O. Reg 58/16
- e. shall conduct, or cause to be conducted, an independent survey of civilians and corresponding data collection and data analysis, in order to inform his review of whether police officers and chiefs of police are in compliance with the limitations on the collection of certain information pursuant to section 5 and the duties relating to the collection of information pursuant to sections 6-8
- f. shall review relevant human rights law, including anti-discrimination law, and law on arbitrary detention
- g. may undertake such further inquiries as the Independent Reviewer, in his discretion, deems appropriate

1.3 Interim Reporting

The Independent Reviewer may provide any interim reports to the Minister outlining:

- a. The status of the review
- b. Work that is completed, in progress and outstanding
- c. Risks or issues that are anticipated to or will impact the completion of the review or
- d. Any findings that he or she recommends be acted on before the end of the review

1.4 Final Report and Recommendations

The Independent Reviewer shall deliver a final report to the Minister on matters identified in section 1.1 of this Terms of Reference.

The Independent Reviewer's report shall take into account engagement with community groups, police services and other stakeholders as well as input received from the Minister Responsible for Anti-Racism.

The Independent Reviewer shall deliver the report and recommendations to the Minister of Community Safety and Correctional Services by November 30, 2018, so that the Minister may publish the findings of the review by January 1, 2019 as required by the regulation.

1.4 Other

The Independent Reviewer shall perform his or her duties without expressing any conclusion or recommendation regarding potential disciplinary matters involving any person or the civil or criminal liability of any person or organization, and without interfering in any ongoing criminal, civil or other legal proceeding.

2. Publication

The Independent Reviewer shall ensure that the reports and recommendations referred to in section 1 are in a form appropriate for public release, consistent with the requirements of the *Freedom of Information and Protection of Privacy Act* and other applicable legislation. The Independent Reviewer shall also ensure that the reports are delivered to the minister in English and French at the same time, in electronic and printed forms. Compliance with these requirements will be supported by the ministry, at the discretion of the Independent Reviewer.

3. Property Rights and Confidentiality

The ministry shall be the sole owner of the reports and recommendations developed in accordance with section 1. The Independent Reviewer shall ensure that all reports and recommendations include a copyright notice in the following form: "© Queen's Printer for Ontario," followed by the year of publication.

Any notes, records, recollections, statements made to, and documents produced by the Independent Reviewer or provided to him in the course of the review, will be confidential. The disclosure of such information to Ontario or any other person shall be within the sole and exclusive discretion of the Independent Reviewer.

4. Resources

- a. Within a budget approved by the ministry, the Independent Reviewer may retain such counsel, staff, or expertise he considers necessary in the performance of his duties at reasonable remuneration approved by the ministry, including any experts on data collection and analysis
- b. The Independent Reviewer and his staff shall be reimbursed for reasonable expenses incurred in connection with their duties in accordance with Management Board of Cabinet Directives and Guidelines
- c. The Independent Reviewer shall follow Management Board of Cabinet Directives and Guidelines and other applicable government policies in obtaining other services and goods he considers necessary in the performance of his duties unless, in his view, it is not possible to follow them
- d. The ministry shall, in consultation with the Independent Reviewer, set a budget for the fulfillment of his mandate
- e. All ministries and all agencies, boards and commissions of the Government of Ontario shall, subject to any privilege or other legal restrictions, assist the Independent Reviewer to the fullest extent possible so that the Independent Reviewer may carry out his duties and they shall respect the independence of the review
- f. All police forces, members of a police force, police officers, and municipal police service boards in Ontario should, subject to any privilege or other legal restrictions, assist the Independent Reviewer

to the fullest extent possible so that the Independent Reviewer may carry out his duties and they shall respect the independence of the review.