April 9, 2014

Toronto District School Board Trustees
5050 Yonge Street
Toronto, Ontario, M2N 5N8

Dear TDSB Trustees:

Re: proposal to expand vulnerable sector search policies within TDSB

We are writing on behalf of the Canadian Civil Liberties Association (CCLA) to express our concern regarding a motion that we understand will be debated this evening. If passed, this measure would require all volunteers entering any TDSB school to submit a vulnerable sector check. We fully appreciate and support the drive for child safety within schools. Nonetheless, we have significant concerns about the breadth of information that police services release on these checks as well as the growing resort to police record checks in society at large, and significantly, we question the utility of record checks in these circumstances. For the reasons elaborated below, we urge you not to pass this motion.

The Canadian Civil Liberties Association is a non-partisan, national, non-governmental, and non-profit organization that has been at the forefront of protecting fundamental freedoms and democratic life in Canada since 1964. Our organization engages in research, public education, civic engagement, monitoring, and litigation in support of our mandate. Currently, CCLA’s work is focused on the following thematic areas: Fundamental Freedoms, Public Safety, National Security and Equality and Anti-discrimination.

For a number of years, CCLA has been conducting extensive research, policy and legal work regarding police record checks. These police checks are highly privacy-invasive; they regularly reveal far more than just criminal convictions, and can contain information about mental health apprehensions, suicide attempts and 911 calls, police contacts, unproven allegations where charges were not laid, withdrawn charges and acquittals. People come into contact with police for many reasons. Individuals from racialized and lower socio-economic communities may have more contact with the police simply because of where they live. CCLA is regularly contacted by people who are excluded from learning opportunities, employment, volunteer placements and community engagement because of police records. These people are not dangerous. Many have not committed any criminal acts at all; they simply have had some form of prior police contact, and as a result, are having doors closed in their faces. Many individuals, including those who have phoned 911 for medical attention or faced false allegations, will simply choose not to participate in their children’s school lives rather than have to disclose this highly personal and private information to school officials.
The barriers that result from widespread record checks might be justifiable if they provided a tangible, concrete improvement to child safety. However, our research, performed in consultation and collaboration with prominent academics, has revealed no evidence that police record checks are an effective way to keep children in schools safe. There is a link between a prior criminal conviction and an increased likelihood to commit an offence in the future. A principal reading a parent’s vulnerable sector check, however, is unlikely to be able to tell whether a specific person actually presents an increased risk to children. Modern risk assessment tools used by trained justice system professionals take into account not only an individual’s record of convictions, but also family ties, education, employment, personal attitude, and many other dynamic factors. These generalized risk assessment tools are far from perfect and even at their best will not offer insight into what type of offence might be committed (breach of probation vs. sexual assault). When we turn to look at the value of non-conviction entries such as charges, acquittals and suicide attempts, even experts would be unable to accurately assess risk to public safety based solely on these records. And unsurprisingly, studies have shown that ‘risk factors’ as interpreted by the lay persons who ultimately receive and make decisions based on these background checks depart markedly from the evidence-based risk assessment criteria.

As a result, we are left questioning the utility of police checks – and we are concerned about the large amount of faith that the public and our institutions place in these checks in their efforts to keep vulnerable populations safe. The operating theory – that police record checks can somehow screen out the ‘bad people’ – is unfortunately not supported by the evidence.

We do agree that the extraordinary position of power and trust held by teachers, principals, and other staff with ongoing, unsupervised contact with or control over vulnerable individuals warrants a high degree of screening. We also agree that we should continue to request vulnerable sector checks for those who have regular, unsupervised contact with vulnerable populations. We are concerned, however, that the criminal record check is relied upon too heavily, too often, and in too many situations, without realizing the concrete negative consequences that occur as a result of requiring individuals to provide this information for a wide range of positions. This does not mean that we should not be vigilant in ensuring student safety. Our schools should have clear policies about who can be left unsupervised with children, as well as mechanisms to elicit student feedback, complete with sensitive complaints policies to encourage those with concerns about conduct to come forward. In short, we should be closely supervising untrained volunteers in our schools, regardless of whether they have a police record or not.

We all want to keep children safe. It is our belief, however, that highly privacy-invasive record checks for anyone who volunteers in a school, regardless of whether they have unsupervised access to children, their level of responsibility or the frequency of their volunteering is neither a practical nor a reliable way to achieve this goal.

What such an expansive policy will almost certainly do is marginalize parents and community members with histories of police contact and mental health issues. These may
be the very parents – and children – who our schools should be proactively reaching out to in order to more deeply engage in school life.

Thank you very much for your consideration. We are aware that this is a complex and difficult subject, and we would welcome further discussion about any of our ongoing research or recommendations.

Sincerely,

Abby Deshman  
Director, Public Safety Program, CCLA

Sukanya Pillay  
General Counsel, CCLA