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Deputation on Facial Recognition System¹

What's the problem with facial recognition technology as a police surveillance and investigation tool? It's illegal, dangerously inaccurate, unregulated, initially deployed by Toronto Police Service ("TPS") by stealth, without notice or authorization, and it provides government with unprecedented power to track people going about their daily lives. Is this the kind of society do we want? That's the question. If yes, then the question is why, when and how.

If the TPS practice of **carding** is rightly rejected by this Board, then it should at least put a moratorium on the future use of facial recognition technology, because it renders all of us walking ID cards. Facial recognition technology is carding by algorithm, and a notoriously inaccurate algorithm at that. It's like the police fingerprinting and DNA swabbing everybody at Yonge and Bloor during rush hour, then processing it in a broken DNA and fingerprint database processor. You are all currently risking a class action on this matter, and ought to mitigate damages racked up to date by ordering a moratorium on its use henceforth.

We say it's illegal in that facial recognition technology is a mass, indiscriminate, disproportionate, unnecessary, warrantless search of innocent people without reasonable and probable cause. Its false-positive rate renders it staggeringly, dangerously inaccurate; it is not ready for primetime in Toronto.

TPS knows very well, or ought to have known, that even the London Metropolitan Police, which is being sued for its use of FRT, *last summer* published a "comprehensive legal framework" on its website, providing "information about why the Met is trialling the technology, where and when it has been used and how we will engage with Londoners during the deployments." In addition, safeguards are being put in place to require that police disclose their proactive efforts to avoid the appearance of racial profiling by neighbourhood.

The deployment of facial recognition technology by TPS over the past year was without notice to the unsuspecting public, without notice to those individuals surveilled, without explicit authorization by Toronto City Council, without any legislative authority by Parliament or Queen's Park, and without a warrant, or other judicial or quasi-judicial oversight. In a word, TPS was

¹ Michael Bryant, Executive Director & General Counsel, ccla.org, media@ccla.org. The Canadian Civil Liberties Association has been freedom fighting in courts, legislatures and city councils for over 50 years, appearing in the SCC more than any other litigant, other than the governments we fight. Small but mighty, we have a staff of less than ten people, and an annual budget that is less than what TPS spends on stationary every year, which is not to say it isn't good stationary.

self-regulating its use of facial recognition surveillance in secret, and are hereby unregulated, without any independent oversight or standards in place. A moratorium is needed until such standards are put in place.

The current use of the technology by TPS begs the question: does Toronto want this in our City, either commercially or as a police investigation and enforcement tool? The decision to deploy facial recognition technology by police is a singular, profound, ominous decision for which this Board and the broader Council ought to debate and vote upon, permitting public accountability. This month the San Francisco Board of Supervisors voted 8-1 to ban its use. Other US cities and one state are amidst a democratic debate on similar bans.

That hasn't happened in Toronto. I say, for that reason alone, your board and City Council may be liable for damages. Criminal prosecutions touched in any way by facial recognition technology are in jeopardy. Further use without regulation is knowingly reckless.

Putting behind what's happened to date, CCLA recommends the following, for starters:

1. A moratorium on the future use of FRT for the time being;
2. A Council motion debating the use of this technology henceforth;
3. If City Council votes yes, then this Board or the Council ought to delegate to the Privacy Commissioners to work with Commission staff, NGOs, the federal and provincial Solicitors and Attorneys General, and global technology experts to propose standards, checks and balances upon its use, and put that proposal to a Council vote;
4. Any such regulations ought to include the obtaining of a general warrant for its use. Prior restraint is necessary for the use of FRT based on the historic experience with StingRay surveillance technology, which have been found to have been used used indiscriminately, then show up in police reports as anonymous tips, without the legal requirement of disclosure of its use, or a warrant;
5. In the alternative, some form of independent, quasi-judicial or judicial oversight is needed. TPS ought to justify, for its every deployment of FRT: why, when and how it is necessary and proportionate in the circumstances to turn us all into walking ID cards.
6. Permit affordable access to the FRT data by defendants in a prosecution, equal to the prior restraint applied to police, via subpoena by defendants, akin to subpoenas to Rogers and Bell for cell phone data mirroring the Stingray data.
7. Storage of the data must also be the subject of standards and oversight, akin to DNA storage and databank laws in Canada.