

Ruling unlikely to sway police away from carding



Toronto civil litigator [Sarah O'Connor](#) says that a recent ruling involving "carding" is unlikely to sway new Chief of Police Mark Saunders away from his decision to continue the controversial police practice.

"Toronto Police defend carding as an invaluable intelligence-gathering tool, but, there is no evidence to suggest that carding reduces crime," says O'Connor, whose practice at [O'Connor Richardson Professional Corporation](#) includes state accountability.

She tells [AdvocateDaily.com](#) that in *Elmardy v. Toronto Police Services*, 2014 ONSC 2952 (CanLII), Justice Frederick Myers awarded Mutaz Elmardy \$27,000 in damages, "but said he would not express an opinion about whether carding is constitutional, useful or a source of hostility between the police and public," O'Connor says.

The case relates to an incident back in January 2011 when Elmardy was walking home from evening prayers at a mosque. Myers found that Elmardy had been unlawfully arrested and searched, assaulted by Const. Andrew Pak, and then was left handcuffed outside in -10C weather for up to 25 minutes, for no apparent reason.

The judge determined that Pak committed battery on Elmardy and also violated his constitutional right to be secure from arbitrary detention. The judge also found that the officer violated Elmardy's constitutional right to be secure from unreasonable search and seizure, as well as the man's rights under 11.10 (a) and (b) of the Charter that arose upon his detention.

Elmardy sued Pak and his employer, the Toronto Police Services Board.

The judge in this matter says Pak "took the law into his own hands and administered some street justice.

"Whether Mr. Elmardy was a known recidivist criminal with a long history of contacts with the criminal justice system or a completely innocent victim who was just walking down the street coming home from prayers on a cold night is irrelevant. The Charter protects all of us," Myers wrote in his decision.

O'Connor says this decision will "assist innocent victims to seek compensation when injured while carded and lays the foundation for future cases to have a judicial determination of the constitutionality of the practice of carding."

She adds that a concerning aspect of the case is that the Office of the Independent Police Review Director (OIPRD) investigation found the complaint was unsubstantiated.

"It is unlikely the officers will face any disciplinary measures," says O'Connor. "A question that should be answered is how the OIPRD found the complaint unsubstantiated where a judge awarded damages to Elmardy. How is the burden of proof for OIPRD complaints higher than the burden of proof in civil cases?"