



Office of the  
Police Complaint Commissioner

---

British Columbia, Canada

June 5, 2020

Grand Chief Stewart Phillip, President  
Chief Don Tom, Vice-President  
Kukpi7 Judy Wilson, Secretary-Treasurer  
Union of BC Indian Chiefs

Latoya Farrell, Staff Counsel  
BC Civil Liberties Association

Dear Grand Chief Phillip, Chief Tom, Kukpi7 Judy Wilson, and Ms. Farrell,

**Re: VPD Service or Policy Complaint – 2018-14863, Union of BC Indian Chiefs and BC Civil Liberties Association**

I write further to your letter of April 8, 2020. I have now considered your request that I recommend further review of your Service and Policy complaint. I have considered the matter in the context of my broader authorities under the *Police Act* ("Act"). In addition to considering your request pursuant to section 172 (2) of the Act, I have determined that you have a direct interest in a related matter and pursuant to section 93(9) of the Act I am providing you with information concerning that investigation.

### **Background of Service and Policy Complaint**

On June 14, 2018, my office received a complaint from the Union of BC Indian Chiefs (UBCIC) and the BC Civil Liberties Association (BCCLA) with respect to the Vancouver Police Department's (VPD) training programs, policies, and internal procedures on the practice of "street checks". This complaint was filed after the VPD released data on street checks from 2008 to 2017 and you assessed that the data establishes that Indigenous and Black people are overrepresented in the rates of street checks conducted by the VPD. You are concerned that this represents disproportionate use of street checks as involving racialized communities. You also note concern that the number of street checks conducted may be used formally or informally as an indicator of performance.

On June 20, 2018, the Vancouver Police Board (the Board) acknowledged the complaint and advised that they would formally consider the complaint at their September 20, 2018, Service

---

Clayton Pecknold  
Police Complaint Commissioner

5<sup>th</sup> Floor, 947 Fort Street  
PO Box 9895 Stn Prov Govt  
Victoria, British Columbia V8W 9T8  
Tel: (250) 356-7458 Fax: (250) 356-6503

Toll Free 1 877-999-8707 # Website: [www.opcc.bc.ca](http://www.opcc.bc.ca)

and Policy Complaints Review Committee meeting. (The meeting was re-scheduled to September 26, 2018.)

On July 12, 2018, you outlined further concerns regarding the VPD's data by noting that Indigenous women are significantly overrepresented. You requested inclusion of the disparities in both race and gender in the number of street checks as part of the investigation. Furthermore, you highlighted a concern with the VPD not recording the contact with an individual who they stop and question. You requested inclusion of the practice of police stops where no date is recorded.

On July 17, 2018, the BCCLA and the UBCIC sent correspondence to the Board outlining four recommendations regarding the methodology to be used in considering the complaint.

On October 10, 2018, the Board issued their report on the complaint and concluding correspondence. The Board concluded that there is no statistical basis for the conclusion that the actions of VPD officers are discriminatory. The report made six recommendations which the Board approved. The Board added a seventh that the Board staff seek proposals from independent third parties to analyze and interpret the VPD data and to study the impacts of street checks on Indigenous and racialized people.

After being advised of the Board's decision from their meeting on September 26, 2018, a preliminary response by you was issued. That response made some observations and recommended that the Board adopt a new policy only once it has had the benefit of further independent reports.

On December 6, 2018, Police Complaint Commissioner Stan Lowe advised the Board that pursuant to s. 173 of the *Police Act*, he recommended further study as he concurred with the UBCIC and BCCLA. The former Commissioner noted that without independent reports, the approval of recommendations is premature.

On May 17, 2019, the Board provided the OPCC with an update on the status of the matter. This update outlined that the Board approved Pyxis Consulting Group Inc. (Pyxis) as the successful bidder to conduct the independent study. The review was anticipated to be released publicly with the Board's final report at the September 19, 2019, Board meeting. However, on July 19, 2019, the Board provided a further update advising that work conducted by Pyxis was set to be completed by the end of 2019, noting the report would be released publicly.

The Board considered the matter at their February 20, 2020, meeting. On March 12, 2020, the OPCC received an undated concluding letter and the final Pyxis Report. The Board stated that it had reviewed, considered and accepted the findings of the report and supported the 34 recommendations. The Board committed to ongoing oversight and involvement to monitor the broader community's concerns with respect to racial profiling, oversee the annual audit of street checks, and to ensure that action continues to be taken with respect to the recommendations. The Board concluded the complaint.

## Your Request for Review

You request that I exercise my authorities and “hope that it will result in recommendations to the Board for further investigation, study, courses of action or changes to service or policy and/or make recommendations to the Director.” You provide your concerns with the Pyxis Report and the VPB Board Policies with supporting rationale some of which I highlight below.

You are of the view that the actions taken by the Board are insufficient and do not address the core of your complaint. Your request states that the VPD's Street Check Policy is confusing and that “the preamble, definitions, and provisions of this policy undermine the premise that it can regulate street checks by preventing unlawful detentions, discrimination, and the illegal collection and use of personal information by the VPD.” You outline your concerns with the nature of “voluntary interactions” in the context of existing power imbalances between the police and individuals most particularly with respect to Indigenous and racialized communities.

You further note that the policy conflates street checks (voluntary interactions) with police stops (authorized by statute or case law). This is confusing to police officers and the public and demonstrates a lack of clarity within the VPD about what *is* a street check.

Additionally, you outline that the policy does not properly address the matters related to personal information collected without lawful authority and note inconsistency between the Street Check Policy and the Pyxis Report recommendations.

You are of the view that the Report “does not sufficiently consider street checks as a whole, nor does it address the basis of our complaint specifically.” You also noted concerns with the lack of evidence to support the claim that street checks are valuable and an “integral component of community safety and security.”

The Pyxis Report also cited Mr. Justice Tulloch's statement that street checks “can” be a valuable tool. However, you noted that the legal authority to conduct street checks in Ontario stems from a regulation which is not present in BC. You suggest that BC's situation is more akin to Nova Scotia's, so it would be pertinent to consider the Nova Scotia Human Rights Commission legal opinion. On that basis you assess the Pyxis Report as “failing to properly assess the use of street checks as a policing tool.”

In your view, the Pyxis Report highlighted “some alarming police practices that warrant further investigation and support our call for a ban on arbitrary street checks.” You provided that there is clear evidence within it that the VPD has been arbitrarily stopping people, which contradicts VPD's assertion that “random and arbitrary stops are not, and have never been part of VPD's policy or practice.”

You noted you were “deeply alarmed” by the consistent reference to street checks as relating to criminal conduct or offenders. According to the Pyxis Report, roughly 40% of VPD street checks were related to bylaw infractions, which are regulatory offences, not crimes under the *Criminal*

*Code.* You are of the view that this undermines the claim that police are engaged in proactive policing and suggests over-policing and pretext policing. Additionally, you outline concerns regarding a person's prior criminal history as not being a legally justifiable reason to stop and question that person and collect/record their personal information.

### **Information provided under section 93(9) of the Police Act**

On December 19, 2019, after receiving a request from the Vancouver Police Department, I issued an order of investigation based on information that was contained in the *draft* report for the Vancouver Police Board Street Check Review, completed by Pyxis Consulting Group Inc. As that report was generated in response to your Service or Policy complaint, I have determined that you have a direct interest in the subject matter of the ordered investigation.

Therefore, I am providing you information pursuant to section 93(9) of the *Police Act*. As this is an ongoing investigation the extent of that information for present must be limited to protect the integrity of the investigation.

The basis for the ordered investigation is concerns expressed by Pyxis researchers related to the conduct of two Vancouver Police Officers. This is alleged to have occurred during two separate "ride-along" excursions in the course of the street checks project. Reportedly, one officer was alleged to have made a number of inappropriate, racially insensitive comments and another is alleged to have made inappropriate comments about vulnerable and marginalized people, had anger issues, and was overly terse and extremely rude to a member of the public. One of the researchers self-identified as a member of a racialized community.

The concerns appeared in the *draft* Pyxis Report but they did not provide sufficient specifics about the conduct of concern or disclose the identity the officers involved. The final report for the Vancouver Police Board Street Check Review released to you *does not* contain the alleged conduct of concern.

Under the oversight of this office, Vancouver Police Professional Standards is conducting the investigation in accordance with direction I have provided. This includes increased frequency of reporting and investigative direction.

Members of the Vancouver Police Board and the Vancouver Police Department have been cooperative and I am satisfied the Professional Standards investigators have undertaken this matter thus far with appropriate rigour and diligence. However, the VPD advises that Pyxis personnel have declined to provide evidence and have indicated that their field notes were destroyed at the conclusion of the project. Thus far, in absence of this evidence the two officers involved have not been identified. The investigation has not revealed any incidents beyond the two reported originally.

The investigation is ongoing. As the matter proceeds I will consider providing further information pursuant to section 93(9) of the Act at the appropriate juncture.

## Decision

I have determined that recommending the Vancouver Police Board conduct further steps in this matter will not address your concerns or produce any further satisfactory results for the public. Additionally, the ongoing investigation I have disclosed to you raises concerns with the conclusions and findings of the Pyxis Report. As this report was commissioned by the Board, there may be concerns with perceived objectivity.

The powers granted to me under *Part 11* of the Act with respect to Service and Policy matters are limited. Police board governance activities and the matter of Street Checks are both subjects primarily under the regulatory purview of the Ministry of Public Safety and Solicitor General.

Section 173(1) (c) provides that, with respect to Service and Policy matters, I may make recommendations to the Director of Police Services that she exercise one of her functions under Part 8 (s.40, 42, 44) of the Act. By separate letter I have recommend that the Director consider the following:

- 1.) Conduct an analysis of the findings, conclusions and methodology as contained in the Pyxis Report and in consideration of the concerns raised by the complainants and where required, conduct further study pursuant to section 42 of the *Police Act* to address any gaps or inadequacies in the report with respect to data gathered and the conclusions reached from that data.
- 2.) Include in the study an analysis of the processes employed by the Vancouver Police Board to conduct the Street Checks study including the selection and retention of the contractor with a view to improving the governance capabilities of police boards generally and the Vancouver Police Board specifically, when responding to Service and Policy complaints under the Act.

Yours truly,



Clayton Pecknold  
Police Complaint Commissioner

cc: Brenda Butterworth-Carr, Assistant Deputy Minister, Director of Police Services  
cc: His Worship Mayor Kennedy Stewart, Chair, Vancouver Police Board

Office of the  
Police Complaint Commissioner