



February 12, 2021

Vancouver Police Board
2120 Cambie St
Vancouver, BC V5Z 4N6

VIA EMAIL

Re: VPD Service or Policy Complaint – 2018-133; OPCC #2018-14863

Dear Vancouver Police Board,

We are writing on behalf of the British Columbia Civil Liberties Association (“BCCLA”) and the Union of British Columbia Indian Chiefs (“UBCIC”) regarding the Pyxis-authored Vancouver Police Board Street Checks Report (“Pyxis Report”) and to follow up on the Vancouver Police Board’s closure of our joint policy complaint regarding street checks.

BACKGROUND

Our policy and service complaint was submitted on June 14, 2018, after we reviewed street check data released by the Vancouver Police Department (“VPD”). The data strongly suggested to us that street checks have been conducted in a racist and discriminatory manner, contrary to the *Charter of Rights and Freedoms* and *B.C.’s Human Rights Code*. The Vancouver Police Board concluded their review of our complaint on February 20, 2020, a decision that partially rested upon the Board’s acceptance of the findings of the external review in the Pyxis Report.

We learnt by way of two letters, dated June 5, 2020 and July 30, 2020, from Clayton Pecknold, Office of the Police Complaints Commissioner, about the removal of a relevant paragraph from the Pyxis Report. This paragraph detailed alleged comments and behaviour by two VPD officers during two of the twelve VPD ride-along excursions. We were very disturbed to find out about the basis for the investigation, described by the Commissioner as:

...[c]oncerns 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.

This information was very troubling and, in a letter dated June 24, 2020, we wrote to the Vancouver Police Board requesting further information regarding this deletion and the disclosure of any field notes or other ancillary materials prepared by Pyxis for the Vancouver Police Board. We subsequently found out — through media reports and not the Vancouver Police Board — that the Vancouver Police Board Street Checks Review Committee had decided to release a draft of the report to the VPD, and a subsequent chain of events leading to the removal of that paragraph from the final report.¹ This chain of events included VPD Deputy Chief Howard Chow having “lengthy discussions” with a Pyxis researcher about the section in question, and Chow then speaking to the Vancouver Police Board Street Checks Review Committee about the “variety of reasons” for the removal of the paragraph.

Our Vancouver Sun Op-ed on the matter is here: <https://vancouversun.com/opinion/stewart-phillip-and-harsha-walia-why-did-the-vancouver-police-board-hide-racism-in-vpd-ranks>

VANCOUVER POLICE BOARD GOVERNANCE AND ACCOUNTABILITY

We are incredibly troubled and concerned about this series of events as well as the subsequent statement by Vancouver Police Board members. Vancouver Police Board vice-chairman Barj Dhahan was reported as saying “I don’t think the independence of the whole process was in any way compromised.”² The Vancouver Police Board is tasked with providing civilian governance and oversight over one of the most powerful institutions in our city, and the handling of our complaint and the editing of the Pyxis report should be taken with the utmost seriousness by the Vancouver Police Board.

It is our view that the actions of the Vancouver Police Board violated their obligation to provide impartial civilian oversight of the Vancouver Police Department; to govern with independence, integrity, and be accountable to the community.

The Vancouver Police Board’s Policy and Procedure Manuel [states](#) that:

The Board’s guiding principles and values are:

¹ Dan Fumano, “Exclusive: Internal police board emails raise questions about review of VPD street checks,” November 20, 2020: <https://vancouversun.com/news/local-news/exclusive-internal-police-board-emails-raise-questions-about-review-of-vpd-street-checks>

² Dan Fumano, “Exclusive: Internal police board emails raise questions about review of VPD street checks,” November 20, 2020: <https://vancouversun.com/news/local-news/exclusive-internal-police-board-emails-raise-questions-about-review-of-vpd-street-checks>

- (1) Independence: Our decisions are strategic and policy-oriented, and free of political or partisan influence.
- (2) Integrity: We promote and exhibit the Departmental values of integrity, professionalism, accountability, and respect.
- (3) Objectivity: We support the Department through critical oversight, advocacy and strategic direction, all in the best interests of the Department and the community.
- (4) Accountability: We hold the Department accountable by monitoring, measuring and challenging. We are accountable to the community.

And further that:

As a statutory governance body, the Police Board must be and be seen to be:

- (1) operating in all ways mindful of its civic trusteeship obligation to the public and accountability for the governance of the Police Department;
- (2) independent of Police Department administration and management, political affiliation and interest groups;
- (3) subject to the needs of confidentiality and security, open, transparent, and accessible to both the public and Police Department; and
- (4) responsive to the community

OVERSIGHT AND GOVERNANCE CAPACITY OF BOARD IN QUESTION

As you are aware, the Director of Police Services has appointed David Loukidelis to conduct a review, under section 42 of the *Police Act*, of the Vancouver Police Board's response to our service and policy complaint, the Board's role in service and policy complaints generally, and to make recommendations to improve the Board's governance capabilities. The Director of Police Services also initiated a second study pursuant to s. 42 of the *Police Act* to conduct an analysis of the processes employed by the Board to conduct the Street Checks study including the selection and retention of the contractor.

As complainants and as community members, we are deeply troubled that the publicly available materials related to the board review of our complaint, and the resulting decision to conclude it, portray the final Pyxis Report as comprehensive. We note that there are no agendas, minutes, or terms of reference available online for the Vancouver Police Board Street Checks Review Committee of the Board. The minutes of the February 20, 2020 meeting of the Service and Policy Complaint Review Committee indicate that Ms. Montgomery from Pyxis Consulting spoke to the committee about the objective of the street checks review. The minutes note the following in relation to what she told the committee:

“[ob]servations were also conducted which included ride-along's in each division, and walk-alongs with patrol. **All the information that was gathered and integrated and coordinated and submitted into the final report** which is available on the Police Board website.”³ [emphasis added]

³ Service and Policy Complaint Review Committee minutes February 20, 2020, page 2, <https://vancouver.ca/police/policeboard/meetingminutes/2020/2020-02-20-SP.pdf>

The minutes of the meeting also summarize comments from Vice Chair Dr. Sherri Magee that ostensibly support the oversight and governance role of the Board: “[i]t was important for the Board to commission external consultants that were separate from the VPD to assist the Board in its oversight and governance role by addressing the concerns of various segments of the community with respect to profiling and discrimination”⁴ [emphasis added]. The minutes then indicate that Dr. Magee pronounced that the “Pyxis report is comprehensive and provides detailed information on the needs of the community and the gaps that need to be addressed as well as the areas that require on-going attention”⁵ [emphasis added]. A motion that the Board conclude its review of our complaint was thereafter passed.

It is difficult to reconcile this publicly available information provided by the Board regarding its review and conclusion of our complaint - including its acceptance of the Pyxis Report as comprehensive - considering that it is now known that at least one or more members of the Vancouver Police Board knew that “inappropriate and racially insensitive comments” were removed from the Pyxis Report.

As complainants who have a direct interest in this matter and keeping in mind the Vancouver Police Board’s civic trustee obligation, we ask the Vancouver Police Board to provide us with the following information regarding the Vancouver Police Board Street Check Review process:

- Did the Vancouver Police Board Street Checks Review Committee inform the full Vancouver Police Board about its decision to provide the October 2019 draft Street Check Review report to the VPD in November 2019?
- On what basis did the Vancouver Police Board Street Checks Review Committee decide to remove the section about officers making “inappropriate and racially insensitive comments”?
- What were the reasons provided to the Vancouver Police Board Street Checks Review Committee by Howard Chow, or any other member of the Vancouver Police Department, for seeking the removal of the “inappropriate and racially insensitive comments” from the final version of the Street Check Review Report?
- Did the Vancouver Police Board Street Checks Review Committee consider the implications for the Board-commissioned Street Check report’s integrity and independence when it made its decision to remove the “inappropriate and racially insensitive comments” after having been briefed by Howard Chow?

⁴ Service and Policy Complaint Review Committee minutes February 20, 2020, page 2, <https://vancouver.ca/police/policeboard/meetingminutes/2020/2020-02-20-SP.pdf>

⁵ Service and Policy Complaint Review Committee minutes February 20, 2020, page 2, <https://vancouver.ca/police/policeboard/meetingminutes/2020/2020-02-20-SP.pdf>

- Did any Vancouver Police Board members communicate directly with any Pyxis researchers about the section of the draft report that included “inappropriate and racially insensitive comments”?
- What steps did the Vancouver Police Board take to ensure the integrity of data and to maintain records from Pyxis Consulting?
- Was the full Vancouver Police Board informed about the decision to remove the paragraph regarding VPD officers making “inappropriate and racially insensitive comments” *prior to* accepting the findings and recommendations in the final report by Pyxis?
- Importantly, was the whole Vancouver Police Board informed about the decision to remove the paragraph regarding officers making “inappropriate and racially insensitive comments” *prior to* concluding our complaint regarding racism in street checks?

OUR STREET CHECKS COMPLAINT

Given the public trust at stake with the Vancouver Police Board’s commissioned Pyxis Report, and in light of the information about the deleted paragraph that contains information that is directly relevant to the nature of the street check review, we call on the Vancouver Police Board to:

- 1) Review its prior decision to accept the findings of the Pyxis-authored Vancouver Police Board Street Checks Review report, and**
- 2) Re-assess its decision to conclude the review of our street check policy complaint.**

The Pyxis Report concluded that “the available data and information could neither confirm nor deny police racism.” However, the substance of the deleted paragraph; the involvement of at least one senior VPD officer in discussions regarding editing out a paragraph relating to officers’ inappropriate and racially insensitive comments; as well as the discrepancy in report versions all raise very serious concerns about the objectivity, methodology, and findings of the Pyxis Report.

The deleted paragraph regarding comments and behaviour during two of the twelve VPD ride-along excursions are directly relevant to the Pyxis Report that the Vancouver Police Board accepted. Furthermore, discriminatory behaviour and attitudes were at the very core of our concerns in our original complaint. We originally filed the policy complaint because we were alarmed by the release of data indicating that the VPD was discriminating against Black and Indigenous people, and Indigenous women in particular.

BAN ON STREET CHECKS

In light of these new revelations raising very serious flaws in the objectivity and methodology of the Pyxis Report, as well as our previous challenges to the findings of the Pyxis Report and request for a review to the OPCC ([see Appendix B](#)), we reiterate our urgent call for the Vancouver Police Board to implement an immediate ban on the arbitrary, racist, and illegal practice of police street checks ([see Appendix A](#)).

We reiterate our call for the Vancouver Police Board to take immediate action to address systemic discrimination in policing by ending all street checks in Vancouver and BC. Street checks are harmful and discriminatory for Indigenous, Black, and low-income communities. Street checks are also illegal with no basis in statute or case law, and you have the powers to ban them.

The province is currently undertaking a review of the *Police Act*, however the decision to ban street checks must not be deferred to the Special Committee on Reforming the Police Act. Especially because street checks are an arbitrary police practice that are not even authorized under the *Police Act*, street checks can and must be banned immediately.

We look forward to your prompt and thorough attention to this matter, and please do not hesitate to get in touch with us if you have any questions or wish to discuss this further.



Harsha Walia, Executive Director
On behalf of the BC Civil Liberties Association



Grand Chief Stewart Phillip
President



Chief Don Tom
Vice President



Kukpi7 Judy Wilson
Secretary-Treasurer

On behalf of the Union of BC Indian Chiefs

CC:

Clayton Pecknold, Police Complaint Commissioner
Wayne Rideout, Acting Assistant Deputy Minister and Director of Police Services
David Loukidelis, David Loukidelis QC
Mike Farnworth, Minister of Public Safety and Solicitor General

Appendix A



September 17, 2020

Mayor Kennedy Stewart, Chair of Vancouver Police Board
Vancouver Police Board

Premier John Horgan
Mike Farnworth, Ministry of Public Safety and Solicitor General
Brenda Butterworth-Carr, Director of Police Services
Cabinet of BC

VIA EMAIL ONLY

Subject: Immediate Municipal and Provincial Ban on Police Street Checks

We are writing to follow up with you today to reiterate our urgent call to implement an immediate ban on the arbitrary, racist, and illegal practice of police street checks.

The BC Civil Liberties Association is Canada's oldest civil liberties organization, with an emphasis on law enforcement accountability. Black Lives Matter-Vancouver is working against police brutality and anti-Blackness. BLM-Vancouver uplifts Black voices and supports the organizing work of Black folks and allies in undoing systemic racialized violence. Hogan's Alley Society is an organization committed to daylighting the presence of Black history in Vancouver and throughout BC. The Union of BC Indian Chiefs is a political advocacy organization representing more than half of First Nations across BC. WISH Drop-In Centre Society works to improve the health, safety and wellbeing of women involved in Vancouver's street-based sex trade. Sixty percent of women accessing WISH identify as Indigenous and twenty percent as trans and two-spirited individuals.¹

This urgent call is co-signed by 87 organizations, listed in full below. Another 8,265 individuals have signed a petition calling for an immediate ban on police street checks:
<https://act.bccla.org/banstreetchecks>

There are a number of important community demands to address systemic racism, especially anti-Indigenous and anti-Black racism, in policing, such as defunding the police, redirecting policing resources to community groups to address health crises, developing fully civilian and

robust oversight bodies of police forces, removing colonial policing forces on unceded Indigenous lands, and more.

The province is currently undertaking a review of the *Police Act*, however the decision to ban street checks must **not** be deferred to the Special Committee on Reforming the Police Act. Especially because street checks are an arbitrary police practice that are not even authorized under the *Police Act*, street checks can and must be banned immediately. Vancouver City Council and Victoria City Council have both unanimously passed City Council motions calling on the Vancouver and Victoria and Esquimalt Police Boards, respectively, to prioritize ending street checks.

We are writing you to take immediate action to address systemic discrimination in policing by ending all street checks in Vancouver and BC. Street checks are harmful and discriminatory for Indigenous, Black, and low-income communities. Street checks also have no basis in law, and you have the powers to ban them.

What are Street Checks?

A street check is a discretionary police practice where police stop a person in public, question them outside the context of an arrest or detention or police investigation, and often record their personal information in a database. Street checks are interchangeably referred to as carding or police stops. A street check can include recording of personal information upon observation of someone by the police, without any face-to-face contact between the person and officer. Street checks also take the form of wellness checks. Police officers in full uniform and carrying a gun often conduct wellness checks, thus introducing a hierarchy of authority and threat of force.

Street checks “evade” the *Charter* protections guaranteed to people under arrest or investigative detentions.² Even if someone is theoretically free to leave during a street check (the police characterize street checks as “voluntary”), this is impracticable. Due to the inherent power imbalance between a police officer and a member of the public, people frequently believe they have no choice but to obey the police—especially when the person stopped is vulnerable, relies on public space to live, is Indigenous, Black, racialized, or has experienced state violence.

Lived Realities

Indigenous and Black people are significantly over-represented in the numbers of street checks conducted by the Vancouver Police Department (VPD). Between 2008 and 2017, Indigenous people accounted for over 15% of street checks despite being 2% of the population, and Black people accounted for 4% of street checks despite making up 1% of the population.³ In 2016, Indigenous women, who comprise 2% of Vancouver’s women population, accounted for 21% of

women who were street checked.⁴ Amnesty International states, “Bias and stereotyping play into the officers’ decisions of who to stop and why.”⁵

According to Chief Don Tom, Vice President of the Union of BC Indian Chiefs, “Indigenous people continue to experience institutionalized discrimination in the justice system and a disproportionately high level of interaction with police, which is furthered by the practice of street checks. In an era of reconciliation, this is simply unacceptable.”⁶ Lama Mugabo, Director of Hogan’s Alley Society, elaborates: “The issue of police street checks is fundamentally connected to anti-Black racism and police violence in our city.”⁷

The VPD says street checks can also occur “if a police officer checks on the well-being of an at-risk person.”⁸ “At-risk” has become a pretext to justify street checks in the form of wellness checks in over-policed neighborhoods, such as the Downtown Eastside of Vancouver. Police wellness checks disproportionately affect homeless people, sex workers, people who use drugs, and people in mental health distress. Such checks are an inappropriate means of providing care for people living in poverty and/or vulnerable due to gendered, colonial, and racial violence.

The Vancouver Area Network of Drug Users describes, “We’ve got police going constantly up and down the block, checking peoples IDs and stopping people in supposedly arbitrary but really targeted checks.”⁹ In *Red Women Rising: Indigenous Women Survivors in the Downtown Eastside*, Indigenous women recount the experience of street checks along a continuum of police harassment and violence, and recommend an end to the police practice of street checks.¹⁰

For disproportionately Indigenous, Black, trans, and low-income sex workers trading sex on the street, repeated wellness checks on various strolls pushes the trade further underground. This makes it more difficult to work, limits income and sex workers’ ability to vet dangerous dates, and results in increased vulnerability and violence. The VPD Sex Work Enforcement Guidelines outline that sex work between consenting adults is not an enforcement priority: “VPD does not seek to increase the inherent dangers faced by sex workers, especially survival sex workers.”¹¹ However, the WISH Mobile Access Project (MAP) Van receives reports of almost-nightly police presence on strolls, and frequent stops and checks by police. As one trans sex worker reported, “When [clients] are trying to avoid police like that – you just get into the vehicle, right.”¹²

Police wellness checks often have a tragically fatal impact, with a growing number of police killings across Canada of overwhelmingly Indigenous, Black, immigrant and/or racialized people in mental health distress, including Ejaz Ahmed Choudhry, Kyaw Naing Din, Phuong Na (Tony) Du, Robert Dziekański, Regis Korchinski-Paquet, Chantel Moore, Ian Pryce, O’Brien Christopher Reid, and Naverone Woods. The Canadian Mental Health Association BC Division notes “police are, by default, becoming the informal ‘first responders’ of our mental health

system.”¹³ A CBC investigation reveals that since the year 2000, around 70% of police-involved fatalities in Canada have been of people in mental health or substance use crisis, or both.¹⁴

While there has been much emphasis on street checks in Vancouver, the same pattern emerges in municipal police departments across BC. Data from Abbotsford, Central Saanich, Nelson, New Westminster, Oak Bay, Port Moody, Saanich, and West Vancouver police departments reveal a decade of street checks targeting Indigenous, Black and racialized communities, with Indigenous women particularly over-represented in all departments’ data.¹⁵ In West Vancouver in 2018, Indigenous women represented 17.6% of all street checked women, despite making up 0.6% of the population. Street checks are clearly a harmful practice, impacting over-policed Indigenous, Black, racialized, and low-income communities. **Street checks must end across BC.**

Vancouver Police Board Street Check Review

In June 2018, the BC Civil Liberties Association and the Union of BC Indian Chiefs filed a joint complaint, calling for an immediate investigation of the significant racial disparity revealed in the VPD’s practice of street checks. The complaint also called for an independent study into the impact of street checks on Indigenous, Black and racialized people, as well as policy development on the collection of personal information resulting from police checks.

A former Edmonton police superintendent who now operates Pyxis Consulting Group was commissioned by the Vancouver Police Board to author a street check review. The Vancouver Police Board Street Check Review, released in February 2020, simply assumed and concluded that street checks are valuable and non-discriminatory, despite the lack of any evidence in the review to support the claim. Contrary to the VPD’s assertions that street checks are not arbitrary, the review itself provided clear evidence that police are arbitrarily stopping people without lawful authority, including people who were “walking in the rain,” “walking a dog on a church lawn,” “standing on a street corner,” or simply “a clean couple in a poor hotel.”

In January 2020, the Vancouver Police Board concluded the complaint, citing recommendations from the Pyxis Street Check Review Report and the new VPD street check policy. The BC Civil Liberties Association and the Union of BC Indian Chiefs asserted that there were serious problems with both the Pyxis Report and the VPD policy and asked the Office of the Police Complaints Commissioner to review the Vancouver Police Board’s decision.

Since then, the BC Civil Liberties Association and the Union of BC Indian Chiefs have received two letters from Police Complaint Commissioner Clayton Pecknold. In the first letter, dated June 5, Commissioner Clayton Pecknold revealed a Vancouver Police Professional Standards (VPD-PSS) investigation was ordered on December 19, 2019 into disturbing and inappropriate conduct and comments about racialized and vulnerable people from two Vancouver police officers

witnessed by Pyxis contractors while conducting research for the Vancouver Police Board Street Check Review. Researchers stated that during two separate VPD “ride-alongs” one officer made a number of “inappropriate, racially insensitive comments” and another made “inappropriate comments about vulnerable and marginalized people, had anger issues, and was overly terse and extremely rude to a member of the public.” The Commissioner asserted that if the conduct was substantiated, it would constitute misconduct. Even more shocking, these allegations were included in a draft of the Pyxis Street Check Review Report, but were missing from the final public report; the report that the Vancouver Police Board had accepted.

On July 30, 2020, Commissioner Clayton Pecknold issued a follow-up letter outlining the conclusion of the investigation. VPD-PSS interviewed VPD officers and Police Board members and attempted to interview eight Pyxis researchers. All Pyxis researchers declined to be interviewed or provide documentation in relation to the investigation and claimed that all field notes had been destroyed. As a result, a Notice of Discontinuance was issued since the investigator was unable to identify the two officers. The Director of Police Services is now initiating a review of the Vancouver Police Board’s complaints process to examine the methodology and findings of the Pyxis Street Check Review Report, the Vancouver Police Board’s level of independence from the VPD, and resources available to assist the Vancouver Police Board in responding to policy complaints.

This highlights the fundamental flaws of both the Pyxis Street Check Review Report and the Vancouver Police Board’s handling of our Service and Policy complaint regarding street checks.

Legal Context

In January 2020, BC introduced new provincial policing standards. While these new policing standards regulate the police practice of police stops and street checks, they do not impose a positive duty on police officers to tell a person being street checked that they do not have to provide their personal information. Importantly, the standards do not prohibit street checks. The Vancouver Police Board street check review and the new provincial policing standards normalize the practice of street checks, despite there being no legal basis to do so.

Police often link street checks to alleged suspicions of crime, which is a misleading blurring between street checks and investigations. In the *Halifax, Nova Scotia Street Checks Report*, Scot Wortley documents that “The majority of the police officials who took part in the consultation process admitted that many street checks are of poor quality and contribute little to public safety. At almost every police meeting and focus group, the phrase ‘garbage in, garbage out’ was used to describe this situation.”¹⁶ The Tulloch report in Ontario similarly found “there is little to no evidence that a random, unfocused collection of identifying information has benefits that outweigh the social cost of the practice.”¹⁷

Street checks are an illegal police practice. There is no applicable statute actually authorizing street checks in BC. No police officers in BC have explicit statutory authority or power to conduct street checks. There are also no common law policing powers justifying street checks. The legal opinion provided by J. Michael MacDonald to the Nova Scotia Human Rights Commission concludes, “The common law does not empower the police to conduct street checks, because they are not reasonably necessary. They are therefore illegal.”¹⁸

In *R v Le*, the Supreme Court of Canada found an interaction involving a street check constituted arbitrary psychological detention. The Court held “detention exists in situations where a reasonable person in the accused’s shoes would feel obligated to comply with a police direction or demand and that they are not free to leave. Most citizens, after all, will not precisely know the limits of police authority and may, depending on the circumstances, perceive even a routine interaction with the police as demanding a sense of obligation to comply with every request.”¹⁹

Jurisdiction to Ban Police Street Checks

Both the Vancouver Police Board and the provincial Director of Police Services have the jurisdiction to end the police practice of street checks.

Section 26(4) of the *Police Act* authorizes municipal police boards to “determine the priorities, goals and objectives of the municipal police department.” Banning street checks is a policy matter within the jurisdiction of the Police Board. Even *if* this was an operational decision, the BC Supreme Court has held, “The [Vancouver Police] Board is ultimately responsible for all aspects of policing performed by the Vancouver Police Department, whether they are policy or operational matters.”²⁰ Further, under the *Police Act*, municipal police boards are required to “take into account the priorities, goals and objectives of the council of the municipality.” On July 22, 2020, Vancouver City Council unanimously passed a motion stating “Vancouver City Council’s priority is to end the practice of street checks in Vancouver.”²¹

The provincial *Police Act* also authorizes the provincial Director of Police Services to establish mandatory standards respecting “the promotion of unbiased policing and law enforcement services delivery.” The BC government, thus, also has the jurisdiction to immediately prohibit the police practice of street checks across the province. Particularly as street checks are not actually authorized or regulated under the *Police Act*, ending street checks is an issue separate from the review of the provincial *Police Act* and the work of the Special Committee on Reforming the Police Act that is currently under way.

In conclusion, we call on you to exercise your powers and jurisdiction to implement an immediate ban on the harmful, arbitrary, illegal and racist practice of police street checks.

Amidst ongoing protests against police killings of Black and Indigenous people, there is a responsibility resting on your shoulders. You must take immediate and decisive action to eliminate street checks. Prohibiting street checks is only one part of the many actions needed to end the harms of policing, but it is a necessary part.

We strongly urge you to act now and act conclusively.

Sincerely,



Harsha Walia, Executive Director
On behalf of the BC Civil Liberties Association



Latoya Farrell, Policy Staff Counsel



Lama Mugabo, Director
On behalf of Hogan's Alley Society



Grand Chief Stewart Phillip
President
On behalf of the Union of BC Indian Chiefs



Chief Don Tom
Vice President



Kukpi' Judy Wilson
Secretary-Treasurer



Mebrat Beyene, Executive Director
On behalf of WISH Drop-In Centre Society



Emily Johnson
On behalf of Black Lives Matter-Vancouver

With the Co-Signatory Organizations:

1. 350 dot org
2. 350 Vancouver
3. Abolition Coalition
4. Amnesty International Canada
5. Anti Oppression Educators Collective
6. Atira Women's Resource Society
7. Battered Women's Support Services
8. BC Association of Aboriginal Friendship Centres
9. BC Centre on Substance Use
10. BC Community Alliance
11. BC Federation of Labour
12. BC First Nations Justice Council
13. BC Government and Service Employees' Union
14. BC Health Coalition
15. BC Poverty Reduction Coalition
16. Canada Philippines Solidarity for Human Rights
17. Canadian Association of Elizabeth Fry Societies
18. Canadian HIV/AIDS Legal Network
19. Carnegie Community Action Project
20. Catherine White Holman Wellness Centre
21. Centre for Gender & Sexual Health Equity
22. Check Your Head: The Youth Global Education Network
23. Chrysalis Society
24. Coalition of Child Care Advocates of BC
25. Community Legal Assistance Society
26. Cops Out of Schools
27. Council of Canadians–Vancouver and Burnaby Chapter
28. Crackdown Podcast
29. Criminalization and Punishment Education Project
30. Critical Muslim Voices
31. Disability Alliance BC
32. Downtown Eastside Women's Centre
33. Eastside Flea
34. Eastside Studios
35. East Van Arts & Culture Society
36. Ending Violence Association of BC
37. Federation of Asian Canadian Lawyers
38. First United Church Community Ministry Society
39. Four Directions Trading Post
40. Gabriela BC
41. Graduate Student Society at SFU
42. Health Justice
43. Hollyhock

44. Hua Foundation
45. Jail Accountability and Information Line
46. John Howard Society of the Lower Mainland
47. Law Union of British Columbia
48. Leadnow
49. Man Up Productions
50. Migrante BC
51. Options for Sexual Health
52. Our Homes Can't Wait Coalition
53. PACE Society
54. Pacific Association of First Nations Women
55. Peers Victoria
56. Pivot Legal Society
57. Poverty Kills
58. Prisoner Correspondence Project
59. Prisoners' Legal Services
60. QMUNITY: BC's Queer Resource Centre
61. Rainbow Refugee
62. RainCity Housing
63. Red Braid Alliance for Decolonial Socialism
64. Rise Women's Legal Centre
65. Sanctuary Health
66. Service Employees International Union Local 2
67. Sex Workers United Against Violence Society
68. Sierra Club BC
69. Simon Fraser Public Interest Group
70. South Asian Mental Health Alliance
71. South Asian Network for Secularism and Democracy
72. Stand Earth
73. Sulong UBC
74. SumOfUs
75. SWAN Vancouver Society
76. Tierra Negra Arts
77. Together Victoria
78. Trikone Vancouver
79. UBC Black Student Union
80. UBC Social Justice Centre
81. UBC Students Against Bigotry
82. Vancouver Area Network of Drug Users
83. WAVAW Rape Crisis Centre
84. West Coast Environmental Law Association
85. West Coast LEAF Association
86. YouthCO HIV & Hep C Society
87. YWCA Metro Vancouver

Notes:

¹ Vancouver Sex Workers Rights Collective, “Written Submissions: National Inquiry into Missing and Murdered Indigenous Women and Girls,” Carly Teillet, December 14, 2018, <https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Van-Sex-Worker-Rights-Collective-Final-written-submission.pdf>.

² “Memorandum: A Moratorium on Street Checks,” Pivot Legal Society, July 8, 2019, https://d3n8a8pro7vhmx.cloudfront.net/pivotlegal/pages/3359/attachments/original/1562801392/Memo_to_DPS_Committee_on_Street_Checks_-_20190708.pdf?1562801392.

³ “Policy Complaint Concerning Street Checks by the Vancouver Police Department,” June 14, 2018, <https://bccla.org/wp-content/uploads/2018/06/UBCIC-BCCLA-OPCC-Complaint-re-Street-Checks-Jun-14-2018-Approved-1.pdf>

⁴ “Civil Liberties and First Nations groups file amendment to complaint on VPD street checks; concern with over representation of Indigenous women in new numbers released,” July 12, 2018, <https://bccla.org/news/2018/07/press-release-civil-liberties-and-first-nations-groups-file-amendment-to-complaint-on-vpd-street-checks-concern-with-over-representation-of-indigenous-women-in-new-numbers-released/>

⁵ “Carding and anti-Black racism in Canada,” Amnesty International, August 23, 2019, <https://www.amnesty.ca/blog/carding-and-anti-black-racism-canada>.

⁶ “Civil Liberties and Human Rights Complainants Oppose VPD Street Check Recommendations; Disagree with Key Findings of Street Check Review,” February 18, 2020, <https://bccla.org/news/2020/02/civil-liberties-and-human-rights-complainants-oppose-vpd-street-check-recommendations-disagree-with-key-findings-of-street-check-review/>.

⁷ “Organizations Call on Mayor Kennedy Stewart to Implement Immediate Ban on Racist Police Street Checks in Vancouver,” June 11, 2020, <https://bccla.org/news/2020/06/organizations-call-on-mayor-kennedy-stewart-to-implement-immediate-ban-on-racist-police-street-checks-in-vancouver/>.

⁸ Vancouver Police Provide In-Depth Look at Street Check Data, September 26, 2018: <https://mediareleases.vpd.ca/2018/09/26/vancouver-police-provide-in-depth-look-at-street-check-data/>.

⁹ “Community groups call for a moratorium on street checks,” Carnegie Community Action Project, February 22, 2020, <http://www.carnegieaction.org/2020/02/22/press-release-community-groups-call-for-a-moratorium-on-street-checks/>.

¹⁰ Carol Muree Martin and Harsha Walia, Red Women Rising: Indigenous Women Survivors in the Downtown Eastside, Downtown Eastside Women’s Center, 2019: <https://dewc.ca/wp-content/uploads/2019/03/MMIW-Report-Final-March-10-WEB.pdf>.

¹¹ Kristie McCann, Sergeant Richard Akin and Inspector Cita Airth, Vancouver Police Department Sex Work Enforcement Guidelines, January 2103: <https://vancouver.ca/police/assets/pdf/reports-policies/sex-enforcement-guidelines.pdf>.

¹² “Harms of End-Demand Criminalization: Impact of Canada’s PCEPA Laws on Sex Workers’ Safety, Health and Human Rights,” Centre for Gender & Sexual Health Equity, 2019, http://cgshe.ca/app/uploads/2019/12/Harms_2019.12.16.v1.pdf.

¹³ “Study in Blue and Grey: Police Intervention with People with Mental Illness,” Canadian Mental Health Association BC Division, 2003, <https://cmha.bc.ca/wp-content/uploads/2016/07/policereport.pdf>.

¹⁴ “Most Canadians killed in police encounters since 2000 had mental health or substance abuse issues,” CBC Investigates, April 5, 2018, <https://www.cbc.ca/news/investigates/most-canadians-killed-in-police-encounters-since-2000-had-mental-health-or-substance-abuse-issues-1.4602916>.

¹⁵ Stephen Harrison, “B.C. police departments disproportionately street check Indigenous and Black people,” December 16, 2019, <https://www.needsmorespikes.com/blog/bc-street-checks>.

¹⁶ “Halifax, Nova Scotia Street Checks Report,” Researched and written for the Nova Scotia Human Rights Commission by Dr. Scot Wortley, March 2019, https://humanrights.novascotia.ca/sites/default/files/editor-uploads/halifax_street_checks_report_march_2019_0.pdf.

¹⁷ Ontario report finds carding has little to no value for law enforcement, should be sharply curtailed,” Globe and Mail, January 2, 2019, <https://www.theglobeandmail.com/canada/article-ontario-report-finds-little-to-no-evidence-that-controversial-practice/>.

¹⁸ “Independent Legal Opinion on Street Checks,” J. Michael MacDonald, October 15, 2019, <https://www.halifax.ca/sites/default/files/documents/city-hall/boards-committees-commissions/191021bopc731.pdf>.

¹⁹ *R. v. Le*, 2019 SCC 34.

²⁰ *Bagnell v Taser International Inc.* 2006 BCSC 1857.

²¹ Vancouver City Council motion, “Ending Street Checks in Vancouver,” <https://council.vancouver.ca/20200707/documents/b2.pdf>

Appendix B

UNION OF BRITISH COLUMBIA INDIAN CHIEFS



Via email

April 8th, 2020

Clayton Pecknold, Police Complaint Commissioner
Office of the Police Complaint Commissioner
501, 947 Fort Street
PO Box 9895, St Prov Govt
Victoria, BC V8W 9T8

Re: Service & Policy Complaint #2018-133; OPCC #2018-14863

Dear Mr. Pecknold:

I am writing on behalf of the British Columbia Civil Liberties Association (“BCCLA”) and the Union of BC Indian Chiefs (“UBCIC”) to ask that you review our Service and Policy Complaint, OPCC#2018-14863, against the Vancouver Police Department (“VPD”) respecting the use of street checks.

Background

On May 24, 2018, the VPD released data on street checks from 2008 to 2017 based on a Freedom of Information request. According to the data, 15% of all street checks conducted were of Indigenous people, despite representing approximately 2% of the population of Vancouver. Furthermore, over 4% of street checks conducted were of Black people, despite representing less than 1% of the population. Understandably, this left us very concerned about what appeared to be the discriminatory use of street checks against racialized groups.

That summer, the BCCLA and UBCIC launched a joint complaint based on the VPD data. The initial complaint detailed concerns respecting the inadequacy and inappropriateness of the VPD’s training programs, policies and internal procedures on the practice of street checks. Our subsequent amended complaint questioned the statistical overrepresentation of Indigenous females in VPD street check data and made several recommendations.

We asked the Vancouver Police Board (“the Board”) to initiate an independent study that would analyze the released VPD street check data, the efficacy of street checks as a policing tool, and the impact of street checks on Indigenous, Black and other racialized people. We called for a community-based research assessment to determine the impact of the practice on affected

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BCCLA address: 306 – 268 Keefer Street, Vancouver, BC V6A 1X5

Shared lands of the xʷməθkʷəy̓əm (Musqueam), Skxwú7mesh (Squamish) & səliłwətaʔl (Tsleil-Waututh)

communities as well as for the creation of policy respecting data collection, protection and retention of personal information.

In 2018, the VPD brought forward their report “Understanding Street Checks” which contained 6 recommendations approved by the Vancouver Police Board:

1. Formalize the existing VPD street check standards into policy and ensure the policy adheres to new provincial standards;
2. Additional training to ensure VPD officers are using street checks appropriately;
3. Commit to publicly releasing VPD street check data annually;
4. Further existing community relationships to better understand the unique experiences, perceptions and histories of the communities VPD serves;
5. Assign an Indigenous Liaison Protocol Officer to support greater communication between patrol officers and partners in the Indigenous community; and,
6. Establish a new street check category in the records systems to document when officers are conducting wellness checks

In 2018, the Board hired Pyxis Consulting Group Inc. to conduct an independent review of street checks as per our request. On January 15, 2020, the Vancouver Police Board approved a street check policy as required by provincial Police Stop standards. The Pyxis Report (“the Report”) was released to the public on February 20th, 2020.

On February 20th, the Vancouver Police Board accepted the findings of the Report and supported the 34 recommendations outlined in the report. Under s. 171(1)(e) of the *Police Act*, the Board committed to ongoing involvement and oversight through its Governance Committee to monitor the broader community’s concerns respecting racial profiling, oversee the annual audit of street checks, and to ensure continued action respecting the recommendations. Consequently, the Vancouver Police Board concluded the street check review initiated by our policy complaint.

Request for Review

Under section 172 (2) of the *Police Act*, if the person who made the complaint is dissatisfied the person may, within 20 business days of receiving the explanation or summary, request the police complaint commissioner to review the matter. We urge you to exercise your powers of review 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.

- (a) The actions or inactions of the board under s. 171

The Board relied on the Report’s recommendations, VPD’s implementation of a purportedly provincially compliant street check policy, and its continued oversight function to monitor the annual audit of street check data as well as ongoing concerns as reasons for concluding the complaint. **We argue that these actions are insufficient and do not get at the core of our complaint.**

Vancouver's Street Check Policy ("the policy") is confusing and reveals more procedural problems than it provides clarity. The policy preamble begins by stating:

"A Street Check is not appropriate when members are operating with lawful authority to detain or arrest. When members are operating without lawful authority to detain or arrest, this policy provides direction to members with regards to the completion of a Street Check."

This statement acknowledges that police officers have no lawful authority to conduct street checks. The policy further defines street checks as "any voluntary interaction between a police officer and a person that is more than a casual conversation and which impedes the person's movement." Voluntariness is an essential component of the interaction. However, we argue, considering the power imbalance between police officers and the public, impeding a person's movement for reasons other than a "casual conversation" is tantamount to detention—defined in the policy as a situation where "a person reasonably believes that they are not free to leave." This is particularly prevalent in Indigenous and racialized communities where interactions with police are a frequent occurrence. **Essentially, 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.**

The policy also conflates street checks (voluntary interactions) with police stops (authorized by statute or case law). This is indicated under "Member Responsibilities" by the heading "When conducting a Street Check or a police stop where there is lawful authority," implying that there is lawful authority to conduct a street check. **This conflation of voluntary with mandatory is confusing to police officers and the public and demonstrates a lack of clarity within the VPD about what a street check is.**

The Board accepted all the recommendations of the Report including the development of policy on the use, storage, access, and retention of street check information.¹ Yet VPD's street check policy remains silent on the issue of collection, protection or retention of street check data. The policy also does not address what happens to personal information collected without lawful authority (either historically or under the purview of the new street check policy). Effectively, VPD's street check policy is inconsistent with the accepted recommendations from the Report. The Board's approval of VPD's street check policy and acceptance of the Report's recommendations are fundamentally at odds and do not provide a solution to our policy complaint. Furthermore, the Board's decision to oversee the annual audit does not remedy the inconsistency. **Simply monitoring the ongoing situation will not prevent the community harm that results from the implementation of this confusing and inadequate street check policy.**

(c) The results of any investigation or study initiated

The Report does not sufficiently consider street checks as a whole, nor does it address the basis of our complaint specifically. In our initial complaint, the BCCLA and UBCIC strongly questioned "the **efficacy** and **necessity** of streets checks as a policing practice." Justification for the use of

¹ Ruth Montgomery et al., "Vancouver Police Board Street Check Review", (Vancouver: December 2019) at Recommendation D.1 [Pyxis Report].

street checks has been anecdotal at best. However, various studies² have demonstrated how discriminatory street checks have eroded police-community relations especially in racialized communities that are frequently over-policed and under-protected.

In our amended complaint, we recommended that the Board exercise its authority to initiate, among other things, a study to “independently analyze and interpret the VPD’s data on police stops/street checks, the VPD’s practice and policy, procedures and/or guidance on street checks, **and the use of street checks as a policing tool.**” Read together, both iterations of the complaint are centered on not only assessing VPD’s data and the community impacts of street checks, but also assessing the legitimacy of street checks as a policing tool. **The report essentially assumes what it was asked to prove.**

The Report relied heavily on future actions of police and assumed that street checks are valuable and an “integral component of community safety and security,”³ despite the complete lack of evidence to support the claim. Such future actions include working with the PRIME Corporation to alter database structure to accommodate VPD practices and educating the community about street checks and their value.

The Report also cited Mister Justice Tulloch’s statement that street checks “can” be a valuable tool. The legal authority to conduct street checks in Ontario stems from a regulation, thereby giving law enforcement statutory authority to stop someone and collect personal identification in very limited circumstances. On the other hand, the legal authority to conduct street checks in British Columbia is not governed by regulation. Our circumstance is more akin to the situation in Nova Scotia. It seems pertinent when assessing the legitimacy of a policing practice to consider the independent legal opinion commissioned by the Nova Scotia Human Rights Commission.⁴ This legal opinion is an in depth analysis of the legality of street checks in a context similar to British Columbia. The Report ignores this vital component to the analysis, failing to properly assess the use of street checks as a policing tool.

Secondly, the Report highlighted some alarming police practices that warrant further investigation and support our call for a ban on arbitrary street checks. The core of our concern includes illegal detentions, racial discrimination and invasions of privacy. Arbitrary street checks are illegal because they involve stopping someone outside of having reasonable suspicion and probable cause that an offence is occurring or is about to occur. There is clear evidence from the Report that the VPD has been arbitrarily stopping people in Vancouver. Some examples of police stopping and collecting personal information without legal authority include “riding a bike”, “walking in the rain”, “clean couple in poor hotel”, and “walking dog on church lawn.”⁵ **This contradicts VPD’s**

² Nova Scotia, Human Rights Commission, *Halifax, Nova Scotia: Street Checks Report*, by Scot Wortley, (Halifax: March 2019).

³ *Pyxis Report* at Recommendation A.1.

⁴ J. Michael MacDonald and Jennifer L. Taylor, *Independent Legal Opinion on Street Checks*, (Halifax: Stewart McKelvey, 2019).

⁵ *Pyxis Report* at page 100-01.

assertion that “random and arbitrary stops are not, and have never been part of VPD’s policy or practice”⁶

We were deeply alarmed by the consistent reference to street checks as relating to criminal behavior or repeat/prolific offenders. According to the Report, roughly 40% of VPD street checks were triggered by bylaw infractions. These are not crimes under the *Criminal Code*; they are regulatory offences. This undermines the claim that police are engaged in proactive policing to prevent crime and instead suggest that over-policing and pretext policing are occurring. This also demonstrates how street checks, habitually associated with criminal behavior and crime prevention, are essentially criminalizing individuals for regulatory offences.

Additionally, prior criminality is not a legally justifiable reason to stop and question an individual and collect/record their personal information. Police officers interviewed in the Report admitted to documenting and collecting information about the movements and whereabouts of individuals “known” to police outside of an active investigation. This monitoring and collection of information occurred from inside their cars without even engaging in a street check—defined as a voluntary interaction with a police officer. This completely undermines the notion of voluntariness assured by VPD’s new street check policy and demonstrates the use of state surveillance to track the movements of individuals without their knowledge and without reasonable suspicion to believe an offence has occurred or is about to occur.

These are just a few examples of the problematic conduct of VPD officers revealed by the Report. For these reasons, we strongly urge you to exercise your independent review function to recommend, at the very least, further investigation into this complaint and the results of the Report.

We appreciate your attention to this matter.

Sincerely,

On behalf of the UNION OF BC INDIAN CHIEFS



Grand Chief Steward Philip
President



Chief Don Tom
Vice-President



Kukpi7 Judy Wilson
Secretary-Treasurer

⁶ Vancouver Police Department, “Understanding Street Checks: An Examination of Proactive Policing Strategy”, (Vancouver: September 2018).

On behalf of the BC Civil Liberties Association



Latoya Farrell
Staff Counsel – Policy

Cc: Hon Mike Farnworth, Minister of Public Safety and Solicitor General
Kennedy Stewart, Mayor, City of Vancouver and Chair, Vancouver Police Board
Adam Palmer, Chief Constable, Vancouver Police Department