



August 13, 2021

New Westminster Police Board
511 Royal Avenue
New Westminster, BC
V3L 1H9

Dear New Westminster Police Board,

Re: Police Street Checks in New Westminster

We are writing on behalf of the BCCLA to call upon you to immediately ban the practice of street checks by the New Westminster Police Department (NWPD). We also ask that you have NWPD’s investigative detention policy independently reviewed and ensure that the public is consulted as part of the review and in the making of any new policy regarding police interactions with the public. We demand that all NWPD policies that involve police interactions with the public be publicly accessible and that the NWPD adopt a clear process to receive questions and concerns from people about their interactions with police and to provide information regarding the options that are available to seek accountability. Finally, we urge Mayor Coté to carefully review his role and responsibilities as Chair of the New West Minister Police Board (“the Board”) before engaging in this matter any further.

Background: General Opposition to Street Checks and Specific Concerns regarding New Westminster

The BCCLA is opposed to street checks in principle: we vehemently condemn the practice of police officers stopping and/or attempting to collect personal information from people where there is no legal authority to do so.

Our reason for writing to you at this juncture, however, is due to our having learned about how a resident of your city – Dr. Jovian Radheshwar – experienced an interaction with two officers from the NWPD in July of 2020. Not only are we concerned about how the officers interacted with Dr. Radheshwar during the incident and the harmful impact it has had on him, but the subsequent response by the Board, and Mayor Coté in his role as Chair leads us to believe that the NWPD and the Board do not appreciate the distinction between investigative detention and street checks.



Apparent Confusion between Investigative Detention and Street Checks

On July 27, 2020, while Dr. Radheshwar was out for a walk, he was stopped by police after sensing he was being followed. The officer asked him twice if he was “Abdul” and said “you look exactly like him”. The officer also asked him for ID. Dr. Radheshwar answered the questions and indicated to the officer that he did not have ID on his person. At no point during this interaction did the officer inform Dr. Radheshwar why he was being stopped. Afterwards, in Dr. Radheshwar’s attempts to ascertain why the officers thought that he was “Abdul”, Sgt. Aman Gosal admitted it was based solely on his sharing a possible identity factor – race – with “Abdul”. This admission of fact is in plain language, in an official email from Sgt. Gosal to Dr. Radheshwar, sent in Sgt Gosal’s capacity as the standards officer for the NRPD.

Later, in an email to Dr. Radheshwar in response to this incident, Mayor Coté stated:

The officers did ask you to stop briefly but once they got closer and realized you were not the person they were looking for they allowed you to proceed. I think it is important to note, that this situation does not fall into the category of a Street Check, which would be a “voluntary” interaction between yourself and the officers. In this situation, it is clear the officers’ actions were in fact an “investigative detention” based on reasonable suspicion that you were the male they were looking for. While normally an investigative detention of any significant length would trigger a requirement for officers to inform you of your Charter Right to access a lawyer, in this situation the incident was so brief in nature that to have done so would have extended the detention unnecessarily and inappropriately. Again I say this not to minimize the impact it has had on yourself but to provide context on how the officers viewed the situation.¹

With respect, we do not think that it was appropriate for Mayor Coté to provide Dr. Radheshwar with his analysis of the matter. Mayor Coté’s erroneous interpretation of the law is concerning and could be construed as intended on having a chilling effect in terms of Dr. Radheshwar’s attempts to hold the police to account.

We offer here an explanation of the difference between investigative detention and street checks:

¹ Email from Mayor Cote to Dr. Jovian Radheshwar re: Police Board Letter (13 November 2020), 2:45 PM.

Investigative Detention

There are two main legal sources for police powers in Canada: i) statutes and ii) the common law (determined by the courts). In exercising their powers, police must use caution to avoid violating the *Canadian Charter of Rights and Freedoms* including a person's right to move freely in society subject only to reasonable restrictions imposed by law and the right not to be arbitrarily detained or imprisoned.²

There is no general power of detention for investigative purposes. However, the Supreme Court of Canada in *Mann* authorizes police officers to detain a person if there are reasonable grounds to suspect in all the circumstances that the individual is connected to a particular crime and that the detention is reasonably necessary on an objective view of the circumstances.³ The power to detain cannot be based on a hunch.

Investigative detentions should be brief in nature but the Court held that at minimum, individuals who are detained for investigative purposes **must** be advised, in clear and simple language, of the reasons for detention in order to satisfy section 10(a) of the *Charter*.

Investigative detentions do not impose an obligation on the detained individual to answer questions posed by the police.⁴

Street Checks

A street check is a discretionary police practice where police stop a person in public, question them outside the context of a detention or arrest and often record their personal information in a database. Street checks are interchangeably referred to as carding or police stops.⁵ A street check

² *Canadian Charter of Rights and Freedoms*, s. 9

³ *R v Mann*, 2004 SCC 52

⁴ *Ibid* at para 45.

⁵ The inconsistent language used to describe these practices across jurisdictions - both within BC, across Canada - contribute to the confusion about what practices are legal and which are not. For example, "carding" is specific to an historic practice in which physical cards were handed out by police to contacts they made in the community. In BC, the standards made by the Director of Police Services under s. 40 (1)(a.1) of the *Police Act* refer only to "police



can include the recording of personal information upon observation of someone by the police, without any face-to-face contact between the person and the officer.

There is no applicable provincial or federal statute authorizing street checks for any police force in BC. The *Police Act* includes a broad list of police duties such as maintaining law and order and preventing crime.⁶ However, it does not explicitly authorize information-gathering practices like street checks. There is also no applicable regulation governing this police practice.

Street checks are also not authorized at common law. Police actions that interfere with individual liberty are only permitted at common law *if* the police can prove that they are ancillary to the fulfillment of recognized police duties. Importantly, the ancillary powers doctrine does not give police *carte blanche* to do whatever they think is necessary to fulfill their duties. The Supreme Court of Canada has consistently interpreted these common law policing powers with a strict test set out in *R v. Waterfield*⁷ and with the onus always resting on the state.⁸ In *Fleming*, the Court recently stated: “[a]n intrusion of liberty should be a measure of last resort. To conclude otherwise would be generally to sanction actions that infringe the freedom of individuals significantly as long as they are effective. That is a recipe for a police state not a free and democratic society.”⁹

We respectfully submit that it seems that the Province is well aware that street checks are a form of detention not authorized by law. The Province, instead, justifies this practice by claiming that

stops” (the terminology of “street checks” is used only in the forward as a synonym). The NRPD, like other police departments in BC, have developed “street checks” policies pursuant to these BC standards on police stops.

⁶ Section 34(2) of the *Police Act* [RSBC] c. 367, states, “The municipal police department, under the chief constable's direction, must perform the duties and functions respecting the preservation of peace, the prevention of crime and offences against the law and the administration of justice assigned to it or generally to peace officers by the chief constable, under the director's standards or under this Act or any other enactment.”

⁷ *R v. Waterfield*, [1963] 3 A11 E.R. 659.

⁸ *Dedman v The Queen*, [1985] 2 S.C.R.; ; *Cloutier v Langlois*, [1990] 1 S.C.R. 158; *R v Godoy*, [1990] 1 S.C.R. 311; *R v Mann*, 2004 SCC 52; *R v Kang-Brown*, 2008 SCC 18; *R v MacDonald*, 2014 SCC 3; and *R v Fleming*, 2019 SCC 45 (“*Fleming*”).

⁹ *Fleming* at para 98.



it is “voluntary”. Section 9 of the British Columbia Provincial Policing Standards on Police Stops recognizes that street checks are supposed to be voluntary because there is no lawful authority supporting them: “Written policy establishes that police interactions with a person where there is no lawful authority to detain or arrest the person are voluntary (emphasis added).”¹⁰ However, slapping ‘voluntary’ on a street check policy does not change the fact that it is experienced as intimidating, threatening, and a form of detention. And although a person is theoretically free to leave during the interaction, 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.

The rate at which Black, Indigenous and racialized people are street checked in BC is grossly disproportionate. This is evident in New Westminster; where, between 2008-2018, Indigenous people were 3.3 percent of the population but 9.3 percent of those street checked and Black people were 2.5 percent of the population in the city but 5 percent of those street checked by the NWPD. Indigenous women are particularly impacted: 13.9 percent of all women street checked in New Westminster were Indigenous.¹¹

In his email to Dr. Radheshwar, Mayor Coté stated that in 2019 the NWPD conducted 381 street checks, but since implementing its new Street Checks (and Police Stops) policy in January 2020, the NWPD had only conducted six. Mayor Coté’s emphasis on this statistic in order to suggest that police do not engage in this practice with as much frequency is concerning because it neglects to consider the pandemic and how the public have been directed to isolate in place for months on end. He also does not consider that the numbers likely do not include incidents similar to what happened to Dr. Radheshwar.

¹⁰ Ministry of the Attorney General, *BC Provincial Policing Standards 6.2 Police Stops* (15 January 2020), online *Government of BC*: <www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/police/standards/6-2-1-police-stops.pdf>.

¹¹ “B. C. police departments disproportionately street check Indigenous and Black people” (15 December 2019), online (blog): *Need More Spikes* <needsmorespikes.com/blog/bc-street-checks>.



Dr. Radheshwar's Experience on July 27, 2020

What happened to Dr. Radheshwar appears on its face to have been an unlawful street check motivated by racial bias. Further, this interaction did not meet the threshold of a lawful investigative detention warranting justification for the stop. Nevertheless, Dr. Radheshwar tells us that he experienced psychological detention.

While we have fundamental problems with the BC Police Stops Standards, this incident directly conflicts with Part 12 of the NWPD's Policy on Street Checks (and Police Stops) and section 6.2.1.4 of the BC Police Stops Standards (requiring your policy to establish "**that the decision to stop a person must not be based solely on that person sharing an identity factor, such as race, with a person being sought by police**"). Furthermore, this stop cannot be classified as a lawful investigative detention because the police failed to advise Dr. Radheshwar of the reason for the detention, contrary to s. 10(a) of the *Charter*. As a result, the officers' interaction with Dr. Radheshwar amounts to a street check that violated his s. 9 *Charter* right to not to be arbitrarily detained.

We would also like to note that the NWPD Street Checks policy is not publicly available on the website of the NWPD, contrary to 6.2.1.14 of the BC Police Stops Standards. How do you expect the residents of New Westminster to know what to expect when interacting with the police if none of your policies and procedures are publicly available?

Barriers to Accountability - New Westminster Police Department and Police Board

Dr. Radheshwar sensed what happened to him was wrong and took immediate action. He contacted the NWPD to report the incident. He spoke to NWPD Staff Sgt. Eamonn Ward who told him that the officers had not seen a photo of the suspect they were looking for. Subsequently, Sgt. Gosal contacted Dr. Radheshwar, and during this phone call she explained to Dr. Radheshwar that the responding officers that day had only been given a written description of the suspect. Sgt. Gosal shared an email with Dr. Radheshwar, which stated that the suspect was six feet tall, Middle Eastern, with a medium complexion and thick black hair. Ward and Gosal's admissions confirm that the officers conducted an illegal street check solely based on an identifying factor - race.

Although Dr. Radheshwar filed a complaint as a "question and concern" it was fortunate that the record was somehow forwarded to the Office of the Police Complaints Commissioner (OPCC), as it resulted in an Investigative Analyst with the OPCC contacting Dr. Radheshwar to provide him with further options for accountability available under the *Police Act*. At this juncture, Dr.



Radheshwar decided to file a service and policy complaint to hold the NWPD accountable.

In September, Mayor Coté invited Dr. Radheshwar for a Zoom call to discuss the incident. During this time, Dr. Radheshwar also spoke with the NWPD Chief and communicated his desire to see racial profiling banned.

Dr. Radheshwar's concerns were verified later that fall when he learned that his service and policy complaint was closed by the Board after having reviewed the matter and determining that his interactions with NWPD officers did not constitute a police check. Dr. Radheshwar subsequently asked the OPCC to review the decision and also filed a public trust complaint about his treatment by officers on July 27, 2020.

Dr. Radheshwar has expressed his appreciation for this effort from the OPCC, but, at the same time, has expressed continuing exasperation with the slowness and ambiguity of this accountability process. According to Dr. Radheshwar, interacting with an opaque institution like the OPCC is highly re-traumatizing, and despite good faith efforts on the part of OPCC analysts and agents, the structure seems highly biased in favor of police. Dr. Radheshwar has a PhD in liberal political philosophy, which makes him uniquely suited to carry out this complaint— but he feels overwhelmed by the byzantine nature of bureaucracy, and much to his dismay, he has been ignored by elected officials and policy-makers he has reached out to for help.

After Dr. Radheshwar communicated his dissatisfaction to Mayor Coté, it was at this point that Mayor Coté sent the email denying Dr. Radheshwar's lived experience of having been street checked by asserting that the interaction amounted to an investigative detention.

In December 2020, the OPCC upon review of how the Board handled the service and policy complaint, instructed the Board to take "further action."

We are concerned that any further action by the Board is compromised as a result of Mayor Coté's correspondence with Dr. Radheshwar, and its previous dismissal of his complaint on the basis it was an investigative detention not a street check, which is what the NWPD Professional Standards Unit erroneously concluded.

Opposition to Illegal Street Checks

As you may be aware, we continue to call upon the government of BC (specifically the Minister of Public Safety and Solicitor General) and the Vancouver Police Board to similarly put an end to this discriminatory and illegal practice. Our request to protect residents from street checks are



done in coalition with Hogan’s Alley Society, Black Lives Matter Vancouver, the Union of BC Indian Chiefs, WISH Drop-In Centre Society, over 87 local and provincial organizations, and over 8990 individuals.

Being street checked has had a lasting negative impact on Dr. Radheshwar including the erosion of his trust in the police. As far as we are concerned, one street check is far too many, especially when police officers are able to engage in this conduct with impunity and the ability to evade Crown and judicial scrutiny. For these reasons, we implore you to end this practice and live up to your responsibilities to the community.

Limiting police interactions with the public is necessary to maintain a free and democratic society. Moreover, it is in the best interests of the public to have certainty when it comes to police initiated interactions. There is no acceptable reason for armed officers to stop members of the public without the lawful authority to do so. Moreover, it was unacceptable for Mayor Côté to intercept the accountability process.

Sincerely,

A handwritten signature in cursive script, appearing to read 'V. Martisius', written in black ink.

Veronica Martisius
Staff Counsel, Policy

A handwritten signature in cursive script, appearing to read 'Meghan McDermott', written in black ink.

Meghan McDermott
Staff Counsel, Policy

CC: Dr. Jovian Radheshwar

New West City Council

Chief Constable Dave Jensen

OPCC Clayton Pecknold

Wayne Rideout, Assistant Deputy Minister and Director of Police Services

Mike Farnworth, Minister of Public Safety and Solicitor General