



December 11, 2024,

Mrs. Daphney Colin

Chair of the Public Security Commission and
Borough Councillor

Mr. Abdelhaq Sari

Vice-chair of the Public Security Commission and
City Councillor

Mrs. Christina Smith

Vice-chair of the Public Security Commission and
Mayor of the City of Westmount

Mr. Younes Boukala

Member of the Public Security Commission and
Borough Councillor

Mrs. Lisa Christensen

Member of the Public Security Commission and
City Councillor

Mr. Marc Doret

Member of the Public Security Commission and
Mayor of the City of Dorval

Mr. Benoit Gratton

Member of the Public Security Commission and
Borough Councillor

Mr. Peter McQueen

Member of the Public Security Commission and
City Councillor

Re: Banning the illegal practice of Street Checks in Montreal

Dear Members of the Public Security Commission of Montreal,

I am writing to you on behalf of the BC Civil Liberties Association (“BCCLA”) in support of the Ligue des droit et libertés’ and numerous civil society organizations in Montreal and the province of Quebec for a ban on the arbitrary and illegal practice of street checks.

The BCCLA’s fight to ban street checks

The BCCLA works to promote, defend, sustain, and extend civil liberties and human rights in British Columbia and Canada. We achieve this through our core programs including litigation, law and policy reform, public legal education, and community-based advocacy. The BCCLA focuses on the relationship between people and the state, and the ways in which the state can limit, contravene, or advance human rights and liberties. Paying particular attention to the needs of vulnerable individuals and oppressed communities, the BCCLA strives to help marginalized communities obtain justice and redress for violations.



In 2018, the BCCLA started its campaign against street checks following the release of Vancouver Police Department (VPD) data showing a decade of street checks that were conducted in a discriminatory fashion against Indigenous and Black people contrary to the *Charter of Rights and Freedoms* and B.C.'s *Human Rights Code*.

On May 24, 2018, the Vancouver Police Department released data on street checks from 2008 to 2017 based on a Freedom of Information Request. According to the data, 15% of street checks were conducted against 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.

On June 14, 2028, we issued a joint policy complaint with the Union of British Columbia Indian Chiefs (UBCIC) calling for an immediate investigation of the significant racial disparity revealed in the VPD's practice of street checks. We called on the Vancouver Police Board to initiate an independent study that would analyze the released VPD street check data, the efficacy of street checks as a policing tool, the impact of street checks on Indigenous, Black and racialized people, as well as requested the Board develop a policy on the collection of personal information resulting from police checks.

Unfortunately, the Board hired Pyxis Consulting, run by a former Edmonton police superintendent, to conduct the external review. In 2020 Pyxis Consulting published their report and the Board closed our complaint. In June 2020, we were notified by the Office of the Police Complaints Commissioner that a Vancouver Police Professional Standards investigation was ordered into disturbing and inappropriate conduct and comments about racialized and vulnerable people by two police officers. Pyxis contractors observed this behavior while conducting their research. Their observations and allegations were ultimately deleted from the final published report. The Board was also aware of the deletion. This further highlights the insidious routine, low-visibility nature of street checks that allows it to escape review.

Street Checks have no basis in law

A street check is a discretionary and arbitrary police practice where police stop a person in public, question them without reasonable suspicion, **outside the context of an arrest or police investigation**, whether personal information is or is not recorded in a police database for intelligence purpose. Street checks can also be observational, where identifying information is recorded in a database without police stopping and interacting with an individual. This arbitrary and discriminatory practice is not authorized by statute, regulation, or common law.

People in Canada have the right to move freely without fear of unjustified state intervention. Street checks interfere with both a person’s liberty right to be free from arbitrary detention and their privacy right to be free from unreasonable search and seizure. Since street checks fundamentally impede a person’s movement, street checks are a form of arbitrary detention that is not authorized by law.

The Supreme Court of Canada in *R v Le* judicially recognized that racial context was an important part of determining whether a reasonable person would believe they had no choice but to comply with a police demand for information¹. The power imbalance between the police and the public, particularly in the context of Indigenous and racialized communities, warrants the understanding that for many in these communities, voluntariness does not exist. In fact, they are being psychologically detained.

Psychological detention occurs where an individual or a reasonable person would conclude by reason of the police officer’s conduct that he or she had no choice but to comply. Police can only detain someone when they have reasonable grounds to suspect that an individual is engaged in a specific crime and detention is reasonably necessary in the circumstance.

According to *R v Le*, a reasonable person belonging to a racialized identifiable group, particularly in the current climate of heightened awareness of systemic racism in policing, would perceive a street check as coercive. The person being street checked would likely assume they have no choice but to comply, completely undermining any notions of “voluntariness”. **Outside of an investigation into a specific crime, an individual who has been stopped has effectively been arbitrarily detained.** Arbitrary detentions are in contravention of the Charter, and hence, illegal.

There is little evidence that street checks are a valuable policing tool

The three common law police duties are “preserving the peace, preventing crime, and protecting life and property.” Police officers maintain that street checks are valuable because they help protect the public and prevent crime. There is very little evidence to support this claim. In fact, in communities that are disproportionately impacted by street checks, reports have shown that street checks create fear of the police and insecurity.

In Scot Wortley’s report for the *Nova Scotia Human Rights Commission* (2019) a police officer referred to street check data as “garbage in, garbage out².” The report concluded that “street checks have only a small role to play in police investigations and likely have only a small impact on crime rates³”.

¹ *R v Le*, 2019 SCC 34, <https://canlii.ca/t/j0nvf>.

² Nova Scotia Human Rights Commission, Halifax, Nova Scotia: *Street Checks Report*, Scot Wortley, 2019, p.81, <https://humanrights.novascotia.ca/streetchecks>.

³ *Ibid.*, p.150.

In the Pyxis Report, “community members emphasized that how police officers communicate can positively or negatively impact if and how people report personal safety concerns and victimization.”⁴ In Justice Tulloh’s *Report of the Independent Street Checks Reviews* (2018),⁵ he acknowledges that the first interaction with police can have a long-term impact on young people, establishing either a friendly or an antagonistic relationship with police that will last a lifetime.⁶ Street checks are not reasonably necessary for policing and create distrust hindering the ability of the police to protect the public and prevent crime.

Director of the Montreal Police, Fady Dagher’s October 29th comments

The BCCLA is incredibly troubled by Director Dagher’s weaponization of the Nova Scotia street checks ban as an ineffective symbolic gesture, during a public hearing of the Public Security Commission we have been informed of. In pretending the moratorium in Nova Scotia is ineffective, Director Dagher appears to justify why Montreal does not need to ban street checks. Police officers are subject to the rule of law. Training is not law. Policy is not law. Training and policy cannot legitimize or make an illegal practice legal. Reductions in the number of street checks cannot justify an illegal practice either. Banning street checks is a necessary next step in targeting systemic racism in policing. Police officers must obey the law and the orders given by their superiors to ban this illegal practice.

Conclusion

The time for reviewing this illegal, discriminatory, and ineffective policing practice is over. Now is the time for action. It is time to hold state actors accountable. Banning street checks is the first in a series of necessary actions in addressing systemic racism in policing. Do not be distracted by political red herring arguments. We urge the City of Montreal to support a ban on street checks.

Sincerely,



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⁴Pyxis Consulting Group Inc, *Vancouver Police Board Street Check Review*, December 17, 2019, p. 144, <https://bccla.org/wp-content/uploads/2020/02/VPD-Street-Checks-Final-Report-17-Dec-2019.pdf>.

⁵ Justice Michael H. Tulloch, *Report of the Independent Street Checks Reviews*, Queen’s Printer for Ontario, 2018, <https://opcc.bc.ca/wp-content/uploads/2019/06/StreetChecks.pdf>.

⁶ *Ibid.*, at p. 42.