June 29, 2020

**Via email**

Brenda Butterworth-Carr; Tr'injà shär njit dintlät

Assistant Deputy Minister and

Director of Police Services

Policing and Security Branch Victoria

PO Box 9285

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Victoria, BC V8W 9J7

Dear Director Butterworth-Carr:

**Re: VPD Service or Policy Complaint 2018-14863 regarding VPD Street Checks**

I am writing on behalf of the British Columbia Civil Liberties Association (“BCCLA”) and the Union of BC Indian Chiefs (“UBCIC”) to make further recommendations with respect to our request for review of Policy Complaint 2018-1463 against the Vancouver Police Department (“VPD”) and VPD’s use of illegal street checks.

**Background**

In 2018, the Vancouver Police (“the Board”) hired Pyxis Consulting Group Inc. to conduct an independent review of street checks in response to our joint policy complaint. At that time, we voiced our concerns about whether the report would be truly independent and objective given Ruth Montgomery’s over 27 years of experience as a police officer.

The Pyxis Report (“the Report”) was released to the public on February 20th, 2020, at which time the Board accepted the findings of the Report and supported its 34 recommendations. The Board also committed to ongoing involvement and oversight through its Governance Committee to monitor the broader community’s concerns respecting racial profiling, to 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.

On April 8th, 2020, the BCCLA and UBCIC requested that the Police Complaints Commissioner (“the Commissioner”) review the Board’s decision. The BCCLA and UBCIC believed the actions taken by the Board were insufficient and did not adequately address the core of our complaint.

In our request for a review, we stated that the VPD’s Street Check Policy, released January 15th, 2020, was confusing, and that the preamble, definitions, and provisions of the policy undermined their ability to regulate street checks by preventing unlawful detentions, discrimination, and the illegal collection and use of personal information. We also outlined our concerns respecting “voluntary interactions” in the context of existing power imbalances between the police and individuals in Indigenous, Black, racialized, and vulnerable communities.

We believe the Report did not sufficiently consider street checks as a whole, nor did it provide evidence to support the claim that street checks are a valuable policing tool; the Report merely assumed what it was being asked to prove. Furthermore, the Report highlighted some alarming police practices that warrant further investigation and support our call for a complete ban on street checks. Despite VPD’s assertion that street checks are never random or arbitrary, the Report highlighted some examples of police arbitrarily stopping and collecting personal information without legal authority, including “riding a bike”, “walking in the rain”, “clean couple in poor hotel”, and “walking dog on church lawn.”[[1]](#footnote-1)

In his response, the Commissioner revealed that he issued an order of investigation based on the information because of “concerns expressed by Pyxis researchers related to the conduct of two Vancouver Police Officers.” Allegedly, during two separate “ride-along” excursions in the course of the street checks project, 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 concerns that initially appeared in the *draft* Report were not included in the final Report made public. Furthermore, Pyxis personnel have “declined to provide evidence and have indicated that their field notes were destroyed at the conclusion of the project.”

This is incredibly alarming and calls into question the methodology of the research, as well as the credibility of the entire Report. Furthermore, the alleged actions of these two officers demonstrate concerns of systemic racism that were at the heart of our initial complaint, eroding public trust in both the complaints system and the governance bodies established to hold the VPD accountable.

**The Commissioner’s Recommendations**

Based on our request for review, the Commissioner recommended that you exercise one of your functions under Part 8 (s.40, 42, 44) of the *Act* and 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.

**Our recommendations and questions**:

In your letter dated June 24, 2020, you invited the BCCLA and UBCIC to “identify other considerations for the review’s analysis of the Pyxis Report and the scope and approach to any further study that may be conducted to address the gaps and inadequacies of that Report.”

We echo the Commissioner’s recommendations and would also like to add the following:

1. We would like a review of the method by which independent consultants/contractors are selected by the Vancouver Police Board. More particularly, why did the Board decide to select an individual with 27 years police experience, and thus seemingly in a conflict of interest and not truly independent, to conduct a review into whether the VPD were conducting street checks discriminatorily, and whether street checks were a legal and efficacious policing practice?
2. What were the terms of the contract between Pyxis Consulting and the Board? For example, did the contract specifically call for the destruction of all field notes upon completion of the study? If so, how was that decision made and why? Given the controversial nature of street checks and the public criticism of the Report’s credibility and methodology, it seems neither prudent nor common research practice to destroy supporting documentation.
3. Were you or the Board able to immediately and expeditiously request and receive all materials and notes from Pyxis Consulting to ensure further documents and notes are not destroyed? What documents, if any, do you or the Board have in your in your possession?
4. Who had access to the draft report when it was distributed? Who currently has access to the draft report? Given the direct impact on our complaint and the public interest, we are calling for the release of the draft report.
5. Who made the decision to remove the researcher’s concerns respecting the VPD officers from the final report? For example, was the decision made unilaterally by Pyxis Consulting or was it done in communication with members of VPD or the Board prior to finalizing the report?
6. What mechanisms, if any, are put in place to ensure accountability of independent contractors to the Board, the complainants, and, in the cases of policy complaints, the public?
7. Given some of the comments made by the Board Chairperson, Kennedy Stewart, it is evident that the Board does not fully understand their oversight and governance functions. We recommend a review of all training programs and manuals that deal with Board roles and responsibilities to ensure that the materials are consistent with legislation, and to further ensure that all Board members are properly directed on their governance duties, including their powers and jurisdiction.
8. What is the process by which Board members are debriefed on important documents and how can this process be improved so as to ensure meaningful engagement? On Feb 20th, 2020 the Board accepted the VPD Street Check Policy and the 34 recommendations of the Pyxis Report as reasons for concluding our policy complaint. However, some of the Report’s recommendations are in direct conflict with the VPD Street Check Policy. For example, VPD’s street check policy remains silent on the issue of collection, protection, or retention of street check data, particularly illegally obtained personal identification (Recommendation at D.1 of the Report). This raises concerns around the degree to which Board members engaged with the Report, the policy, our complaint, and related documents.
9. Given the Report’s mention of studies, like the Edmonton Report and the Tulloch Report, why did Pyxis Consulting not consider the Nova Scotia Human Rights Commission’s independent legal opinion respecting the legality of street checks?
10. A number of key community organizations are listed as having not provided input to the Report. Did the Board find out why they refused to participate and what their concerns might have been respecting the Pyxis study or methodology? If so, were these concerns addressed, and if not, why not?
11. We ask that any further study that may be conducted to address the gaps and inadequacies of the Report include within its scope and approach:
	1. Opportunities for individual members of the public to provide meaningful input;
	2. Consultation with the BC Human Rights Commission;
	3. Consideration of any independent legal opinion regarding the practice of street check.

While the shortcomings of this Report need to be examined and be publicly acknowledged, we do not recommend any further study of street checks themselves. This Report demonstrates there is currently insufficient will or capacity to undergo a review responsive to the experiences of the communities criminalized by street checks, and more study on this subject risks further marginalizing community and entrenching this illegal and discriminatory police practice.

We hope your review will be done expeditiously. We appreciate your attention to this matter and look forward to hearing from you.

Sincerely,

On behalf of the UNION OF BC INDIAN CHIEFS



Grand Chief Steward Philip Chief Don Tom Kukpi7 Judy Wilson

President Vice-President Secretary-Treasurer

On behalf of the BC Civil Liberties Association



Latoya Farrell

Staff Counsel – Policy

1. Ruth Montgomery et al., “Vancouver Police Board Street Check Review”, (Vancouver: December 2019) p. 100-01. [↑](#footnote-ref-1)