



hogan's alley society



BRITISH COLUMBIA
CIVIL LIBERTIES
ASSOCIATION



July 6, 2020

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

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 you today with the 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 68 organizations, listed in full below.

Political leaders and police officials have made a series of recent comments regarding systemic racism in policing. Mike Farnworth, Minister of Public Safety and Solicitor General, released the following statement: "Everyone deserves to be treated fairly by the police, and our government acknowledges that for many Black, Indigenous and other people of colour, that hasn't always

been the case.”² Mayor Kennedy Stewart held a press conference, acknowledging, “Black, Indigenous and people of colour across our province expect people like me and the premier to use our privilege and our power to do something profound.”³ Stewart has introduced a motion at City Council to write to the Vancouver Police Board regarding ending street checks. Vancouver Police Chief Adam Palmer stated, “Tackling racism requires a response from the entire community, including the police,”⁴ though he later denied systemic racism in policing.⁵

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.

We are writing you to put actions to your words and 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.⁶ 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.⁷ In 2016, Indigenous women, who comprise 2% of Vancouver's women population, accounted for 21% of women who were street checked.⁸ Amnesty International states, "Bias and stereotyping play into the officers' decisions of who to stop and why."⁹

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."¹⁰ 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."¹¹

The VPD says street checks can also occur "if a police officer checks on the well-being of an at-risk person."¹² "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."¹³ 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.¹⁴

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."¹⁵ 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."¹⁶

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.”¹⁷ 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.¹⁸

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.¹⁹ 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.**

Legal Context

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, 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.”²⁰ 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.”²¹

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.”²²

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.”²³

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.

Under the *Police Act*, municipal police boards are required to “take into account the priorities, goals and objectives of the council of the municipality.” Section 26(4) of the Act also 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 Vancouver 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.”²⁴

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.

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 protests against police killings of Black and Indigenous people, your statements about addressing systemic racism are not enough. There is a responsibility resting on your shoulders and you must take immediate 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 decisively.

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



Kukpi7 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 Community Alliance
10. BC First Nations Justice Council
11. BC Government and Service Employees' Union
12. BC Health Coalition
13. BC Poverty Reduction Coalition
14. Canada Philippines Solidarity for Human Rights
15. Canadian Association of Elizabeth Fry Societies
16. Canadian HIV/AIDS Legal Network
17. Carnegie Community Action Project
18. Centre for Gender & Sexual Health Equity
19. Check Your Head: The Youth Global Education Network
20. Chrysalis Society
21. Community Legal Assistance Society
22. Cops Out of Schools
23. Council of Canadians–Vancouver and Burnaby Chapter
24. Crackdown Podcast
25. Criminalization and Punishment Education Project
26. Critical Muslim Voices
27. Disability Alliance BC
28. Downtown Eastside Women's Centre
29. Federation of Asian Canadian Lawyers
30. First United Church Community Ministry Society
31. Four Directions Trading Post
32. Graduate Student Society at SFU
33. Health Justice
34. Hollyhock
35. Hua Foundation
36. Jail Accountability and Information Line
37. Law Union of British Columbia
38. Leadnow
39. Migrante BC
40. Options for Sexual Health
41. Our Homes Can't Wait Coalition
42. Pacific Association of First Nations Women
43. Peers Victoria
44. Pivot Legal Society

45. Prisoner Correspondence Project
46. Prisoners' Legal Services
47. QMUNITY: BC's Queer Resource Centre
48. RainCity Housing
49. Rise Women's Legal Centre
50. Sanctuary Health
51. Sex Workers United Against Violence Society
52. Sierra Club BC
53. South Asian Mental Health Alliance
54. South Asian Network for Secularism and Democracy
55. Sulong UBC
56. SumOfUs
57. SWAN Vancouver Society
58. Tierra Negra Arts
59. Together Victoria
60. Trikone Vancouver
61. UBC Black Student Union
62. UBC Social Justice Centre
63. UBC Students Against Bigotry
64. WAVAW Rape Crisis Centre
65. West Coast Environmental Law Association
66. West Coast LEAF Association
67. YouthCO HIV & Hep C Society
68. 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 “Minister’s statement on Police Act reform,” June 12, 2020, <https://news.gov.bc.ca/releases/2020PSSG0034-001065>.

³ “Vancouver mayor calls on Premier Horgan for review of policing in B.C.,” Vancouver Courier, June 11, 2020, <https://www.vancourier.com/news/vancouver-mayor-calls-on-premier-horgan-for-review-of-policing-in-b-c-1.24150686>.

⁴ “Vancouver police chief wants peace, justice for George Floyd’s family,” Vancouver Courier, June 11, 2020, <https://www.vancourier.com/news/vancouver-police-chief-wants-peace-justice-for-george-floyd-s-family-1.24150894>.

⁵ “Dan Fumano: Systemic racism not evident in Canadian policing, VPD chief says. Critics disagree,” Vancouver Province, June 26, 2020, <https://theprovince.com/news/local-news/dan-fumano-vpd-chief-adam-palmer-talks-police-reform-racism/wcm/e3fba1f8-8299-4482-9a6b-0516008ce549>.

⁶ “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.

⁷ “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>

⁸ “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/>

⁹ “Carding and anti-Black racism in Canada,” Amnesty International, August 23, 2019, <https://www.amnesty.ca/blog/carding-and-anti-black-racism-canada>.

¹⁰ “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/>.

¹¹ “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/>.

¹² 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/>.

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- ¹⁴ 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>.
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- ¹⁶ “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.
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- ¹⁸ “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>.
- ¹⁹ Stephen Harrison, “B.C. police departments disproportionately street check Indigenous and Black people,” December 16, 2019, <https://www.needsmorespikes.com/blog/bc-street-checks>.
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- ²³ *R. v. Le*, 2019 SCC 34.
- ²⁴ *Bagnell v Taser International Inc.* 2006 BCSC 1857.