

s. 42 Review of Police Board Response to a Service and Policy Complaint
Terms of Reference – revised January 12, 2021 (revision highlighted in bold)

SUMMARY

On June 5, 2020, the Police Complaint Commissioner (the Commissioner) wrote to the Director of Police Services (the Director) outlining concerns with the response to a Service and Policy complaint by the Vancouver Police Board (the Board), and recommended, per the Commissioner's authorities under s. 177(4)(e), that the Director exercise one of the authorities under Part 8 of the *Police Act* to examine various related matters. Specifically, the Commissioner recommended that the Director consider:

- an analysis of the findings, conclusions and methodology of a 3rd party study commissioned by the Board, including concerns raised by the complainants regarding the study, and where required, conduct further study to address gaps or inadequacies in the report; and
- an analysis of the processes used by the Board to conduct the study including the procurement 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.

The Director has considered the recommendation and is exercising her discretion under s. 42(1) to study, investigate and prepare a report related to matters raised by the Commissioner's correspondence of June 5, 2020.

BACKGROUND

The background leading up to the Commissioner's recommendation is set out in the Commissioner's June 5, 2020 correspondence, and includes the following key events:

- On May 24, 2018, the Vancouver Police Department released data on "street checks" in response to a Freedom of Information request. The data, which covered the period 2008-2017, showed that Black and Indigenous people were over-represented in these interactions and heightened concern on the part of the BC Civil Liberties Association (BCCLA) and the Union of BC Indian Chiefs (UBCIC) that the practice was discriminatory.
- On June 14, 2018, the UBCIC and the BCCLA launched a joint Service and Policy complaint (the Complaint) with respect to the Vancouver Police Department's (VPD) training programs, policies, and internal procedures on the practice of "street checks". The Complaint was subsequently amended (July 12, 2018) to include additional concerns related to the over-representation of Indigenous women and gaps in record keeping. The BCCLA and UBCIC also subsequently submitted recommendations to the Board (July 17, 2018) regarding the methodology to be used in responding to the Complaint. This included a community-based research assessment of the impact of the practice on affected communities.
- On June 20, 2018, the Board acknowledged the Complaint and referred it to the Service and Policy Complaints Review Committee (the Committee).
- **On October 10, 2018, the Board advised the Complainants that the Committee had considered the Complaint, and the report of the VPD investigation of the Complaint, at its September 26, 2018 meeting. The VPD investigation report found no statistical basis for the conclusion that the actions of VPD officers are discriminatory and made six recommendations to the Board. The Board accepted these recommendations and added a seventh recommendation that the Board engage an independent third party to analyze and interpret the street check data and to study the impacts of street checks on Indigenous and racialized people.**

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- The BCCLA and UBCIC recommended that the Board defer the adoption of new policy until the findings of further independent reports were known; the Commissioner concurred and advised the Board on December 6, 2018 that approval of the recommendations without further study was premature.
- On May 17, 2019, the Board advised the Commissioner that it had selected Pyxis Consulting Group Inc. (Pyxis) to conduct the independent study following a bidding process. The final report was tabled and discussed at the Board's February 20, 2020 meeting.
- On March 12, 2020, the Commissioner received an undated concluding letter and the final Pyxis Report. The Board accepted the report's findings and 34 recommendations and committed to ongoing oversight and involvement to monitor concerns related to racial profiling, oversee the annual audit of street checks, and ensure the recommendations were acted on.
- On April 8, 2020, the BCCLA and UBCIC requested the Commissioner review the Complaint, citing concerns with certain procedural shortcomings and findings of the Pyxis Report, as well as concerns with the new VPD Street Check Policy.
- In the Commissioner's response, dated June 5, 2020, the Commissioner advised the BCCLA and UBCIC of the recommendations made to the Director under separate letter, as referred to in the Summary of these Terms of Reference. The Commissioner also advised the BCCLA and UBCIC that an order of investigation had been issued on December 19, 2019 based on concerns expressed by Pyxis researchers about inappropriate comments and behaviour they observed from two VPD officers during two separate "ride-alongs" conducted as part of their study. These concerns were included in a draft version of the Pyxis Report but were removed from the final Pyxis Report. The professional standards investigation into this matter was ongoing at the time of the Commissioner's June 5, 2020 correspondence.

It is also relevant to note that during 2019, the Director of Police Services established provincial policing standards governing police stops. While the scope of these standards is broader than "street checks" alone, interactions that would fall under the VPD's definition of "street checks" are included. These standards were approved by the Minister on October 29, 2019 and took effect January 15, 2020. The standards were intended to provide interim Provincial direction to all police agencies on this subject, while further consultation on additional matters that may be addressed in the standards continued and which will result in further amendments to the standards.

PURPOSE OF THE REVIEW

The overall purpose of the review is to examine the Vancouver Police Board's response to the Service and Policy complaint filed jointly by the UBCIC and BCCLA regarding street checks, and the Board's role in Service and Policy complaints generally, and to make recommendations aimed at improving the governance capabilities of the Board and all municipal police boards in British Columbia when responding to Service and Policy complaints.

The review will include two parts:

Part A: Analysis of the 3rd party study. Part A will be focused on the 3rd party study commissioned by the Board to assist in responding to the Complaint. The purpose of Part A is to consider whether the 3rd party study provided the Board with information needed to inform its response to the Complaint, assess any gaps, and make recommendations to the Director regarding what further study or other actions may be appropriate to address the gaps.

Part B: Analysis of the Board's role in the Complaint and recommendations for advancing board governance capabilities with respect to Service and Policy complaints. Part B will be focused on the

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Board's activities in relation to the Complaint. The purpose of Part B is to consider the Board's activities in relation to the 3rd party study, its level of independence from the Vancouver Police Department, and the resources and training available to assist members of the Board in responding to Service and Policy complaints. Part B will produce recommendations for improving the governance capabilities of the Board and all municipal police boards when responding to Service and Policy complaints.

SCOPE

The scope of Part A will include:

1. Conducting an analysis of the findings, conclusions and methodology of the 3rd party study commissioned by the Board, as contained in the Pyxis Report.
2. Identifying and assessing gaps in the data gathered, and gaps between the final and draft versions of the Pyxis report, that may have prevented the police board from having the information it needed and was seeking through the 3rd party study to assist in responding to the Complaint.
3. Making recommendations to the Director regarding further study or other actions that may be appropriate to address the inadequacies in the report with respect to the data gathered and the conclusions reached from that data.

The scope of Part B will include:

4. Analysis of the activities of the Board in relation to the 3rd party study, including:
 - o The processes used to select the contractor;
 - o The terms of the contract, including their adequacy to support effective contract management, ensure public accountability, and address the disposition of records;
 - o The processes used to monitor the progress of the study and the Board's role in those processes;
 - o The timeline and process for finalizing the report, including the respective roles of the Board, the VPD and the contractor in reviewing the draft report(s) and recommending or making changes to the final report, and in particular the decision to remove information relevant to the scope of the Complaint from the final report;
 - o Any actions taken by the Board to ensure records and documentation used to support the findings of the report were preserved.
5. Analysis of the Board's level of independence from the VPD with respect to Service and Policy complaints, including the process by which Board members are debriefed on important documents.
6. Analysis of the training and resources available to the Board and to police boards generally regarding their role in responding to Service and Policy complaints under the *Police Act*.
7. Recommendations to improve the governance capabilities of police boards generally and the Vancouver Police Board specifically, when responding to Service and Policy complaints under the *Police Act*. This may include recommendations regarding procurement processes where the need for a contract to assist in responding to a complaint is identified.

APPROACH AND METHODOLOGY

The Director will engage one or more consultants to conduct the review:

- A consultant with formal legal training or an academic or community research background will be responsible for Part A.

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- A consultant with expertise in board governance, preferably specific to police boards, will be responsible for Part B.

Conflict of Interest

The consultant(s) and any sub-contractor(s) must be free of any perceived conflict of interest, including but not limited to current, pending or recent (within the previous five years) contracts or employment with either Pyxis Consulting, the VPD or the Board.

In addition, the consultant responsible for Part A must not be a former police officer.

Methodology

The consultant(s) will submit a workplan to the Director of Police Services outlining the methodology and timelines for Parts A and Part B, within two weeks of their contract start date.

The methodologies used during Part A are expected to include reviewing relevant literature, reports, records and documents, conducting interviews, and may, depending on gaps identified in the Pyxis study, include a means for inviting and considering public input. Part B will primarily involve reviewing relevant literature, reports, records and documents and conducting interviews.

Relevant literature, reports, records and documents include but may not be limited to:

- Correspondence related to the Complaint, as referred to under the Background section of these Terms of Reference;
- Draft and final copies of the Pyxis report;
- Records that document and support the conclusions reached in the report;
- Independent legal opinions related to the practice of street checks in Canada, including the opinion provided to the Nova Scotia Human Rights Commission;
- Reports and memos provided to, or produced by, the Board or the Service and Policy Complaints Review Committee related to the Complaint, including status reports and draft or final copies related to the 3rd party study;
- Board or Service and Policy Complaints Review Committee minutes related to the Complaint;
- Documents and records related to the selection of the contractor for the 3rd party study (e.g., the Request for Proposals or other tendering process documents, records documenting the evaluation of responses)
- The contract with the successful respondent, Pyxis consulting;
- Board policies and procedures related to Service and Policy complaints and the engagement of contractors; and
- Police board training materials, manuals or other resources which are currently used by the Board to provide guidance regarding Service and Policy complaints, or which could be relevant to use moving forward.

Parties that will be interviewed will include but may not be limited to:

- Members of the research team that led or assisted with the 3rd party study by Pyxis Consulting;
- Members of the Board;
- Sworn or civilian members of the VPD who were involved in the response to the Complaint;
- Representatives of the BCCLA and the UBCIC; and
- The Commissioner or a delegate.

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RESOURCES/INPUTS AND ACCOUNTABILITIES

In conducting the review, the consultant(s) may request access to any reports, records and documents described above that are in the custody and control of the Board, the VPD, Pyxis Consulting or Policing and Security Branch. The consultant(s) will maintain a detailed inventory of all reports, records and documents provided to the consultant(s) by these or other parties. The consultant(s) will substantiate their findings by including detailed references to source documents in draft and final reports (e.g., document title, version/date, and page numbers). Upon completion of the final report, the consultant(s) will return or destroy reports, records and documents provided by the Board, the VPD, Pyxis Consulting, Policing and Security Branch or other parties. It is also expected that the consultant(s) will create records to document its findings and that these will be managed in accordance with the relevant terms of the Province's General Service Agreement.

The Board, VPD, Pyxis Consulting and Policing and Security Branch will each be asked to identify a primary contact person for the review team, to facilitate access to records, requests for interviews, and other information requests as needed. The consultant(s) will route requests for information through the primary contact persons.

The consultant(s) for Parts A and B will make every effort to coordinate their requests for information to minimize disruption to persons who may be asked to participate in the review and/or provide information.

DELIVERABLES AND SCHEDULE

As noted under the Approach and Deliverables section of these Terms of Reference, the consultant(s) for Parts A and B will submit a workplan to the Director outlining the methodology and timelines for each component of the review, within two weeks of the contract start date.

The consultant(s) will update the Director regarding the progress of the review within six weeks of the contract start date.

The consultant(s) will submit a penultimate report to the Director for each component of the review within 11 weeks of their contract start date and a final report within 14 weeks of their contract start date.

The consultant(s) will also share the penultimate reports, in confidence, with the Board and the VPD, to provide an opportunity to identify errors of fact.

The penultimate and final reports will describe the methodologies used and the general findings and analysis for the respective Parts of the review, as outlined in the Scope and Approach and Methodology sections of these Terms of Reference. The Part B report will also include recommendations to improve the governance capabilities of the Board and of police boards generally when responding to Service and Policy complaints.

Consideration may be given to extending the timeline for the penultimate and/or final reports, upon mutual agreement between the consultant(s) and the Director.

The Director will provide a copy of the final report to the Solicitor General, as required by the *Police Act*, and to the Chair of the Board, the Chief Constable of the VPD, the Commissioner, and the Complainants. The report will be made publicly available on the Ministry of Public Safety and Solicitor General website.