

REVIEW OF THE  
VANCOUVER POLICE  
BOARD'S STREET  
CHECKS COMPLAINT  
PROCESS

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## GLOSSARY

The following terms are used in this report:

“Act” means the *Police Act* (British Columbia),

“BCCLA” means the British Columbia Civil Liberties Association,

“Board” means the Vancouver Police Board,

“City” means the City of Vancouver,

“Commissioner” means the Police Complaint Commissioner of British Columbia,

“Committee” means the Street Checks Committee of the Board,

“Department” means the Vancouver Police Department,

“Director” means the Director of Police Services, who is appointed under the Act,

“Ministry” means the Ministry of Public Safety and Solicitor General,

“OPCC” means the Office of the Police Complaint Commissioner for British Columbia,

“Pyxis” means Pyxis Consulting Group Inc., a consulting firm,

“research director” refers to the director of the Department’s Planning, Research and Analysis section,

“RFP” refers to a request for proposals, a form of procurement process, initiated by a document with that name and used by the Board in retaining Pyxis,

“UBCIC” means the Union of British Columbia Indian Chiefs.

In addition, terms such as the “then executive director” of the Board, or “executive director of the time”, and so on, are used below to distinguish between the present executive director, Stephanie Johanssen, and the former executive director, Patti Marfleet, who retired in April 2019. Also, reference to “the Deputy Chief” is a convenient reference to Deputy Chief Howard Chow.

## INTRODUCTION & SUMMARY

This report flows from my appointment by the Director, under section 42 of the Act, to review issues associated with the Board's response to the complaint lodged by the UBCIC and the BCCLA about the Department's "street check" activities. Those organizations had complained in 2018 that the Department was, related data suggested, conducting street checks "in a discriminatory manner", contrary to the *Canadian Charter of Rights and Freedoms* and B.C.'s *Human Rights Code*.

The Board immediately referred that complaint—key elements of which are described below—to the Department for investigation. The Department produced a report in response in 2018, making six recommendations to the Board related to street checks, which the Board adopted. The Board also resolved to commission an outside review of the Department's report and retained Pyxis to do that. Pyxis's 2019 report to the Board in turn made 34 recommendations related to the Department's conduct of street checks, all of which the Board adopted.

This report focusses on issues related to the Board's selection of Pyxis to do the work, a choice that the complainants and others have criticized because Pyxis had done work for police agencies in the past, including related to street checks. Concerns were also raised in light of the later revelation that a paragraph was removed from the Pyxis report that described allegedly racially insensitive comments and poor behaviour by two unidentified officers. Criticism was also levelled at the Pyxis report because it concluded that the data neither confirmed nor denied the existence of bias or racism in the conduct of street checks.

The complaint and ensuing events have arisen in the context of widespread allegations and concerns about bias and discrimination, racism even, in Canadian policing generally, and in relation to in street checks specifically. Such concerns are undoubtedly of great importance, especially for Indigenous, Black and other racialized and marginalized communities. Such concerns also have implications for the public interest in principled, discrimination-free community policing. Concerns of this kind are reflected in street check reviews that have been conducted across Canada in recent years and in other studies across the country of discrimination or racism in policing.

As important as they are, this review's terms of reference do not encompass those concerns. Nor do they entail assessment of the Department's street check practices themselves. Nor do the terms of reference task me with expressing any views on the lawfulness of street checks as a matter of policing law. Last, the terms of reference for this report do not contemplate review of the research design, methodology or outcomes of Pyxis's work.

The issues at hand are, rather, at their heart about police governance and oversight. The terms of reference require me to assess how the Board selected Pyxis to conduct the review, the terms of that engagement, how Pyxis's work was monitored and how its report was finalized.

On those issues, I have found no evidence that the process, or the decision, to select Pyxis was tainted by improper considerations or by influence from the Department. Further, the Department's lack of familiarity with how to retain and contract with an outside consultant contributed, I conclude, to the Board's decision to involve the Department in that process. This included canvassing the Department for possible consultants, getting its comments on the scope of work, helping with contract documentation, and participating in the first part of the Street Check Committee's meeting to evaluate the proposals. While I conclude that these things did not, in substance, affect the scope of work or Pyxis's selection, these facts could reasonably create an unfortunate appearance regarding the Board's independence in such matters.

It is clear the Board had difficulty identifying possible consultants, despite the efforts of the Street Check Committee and Board staff. At the same time, the Board did not make the opportunity public and did not canvass colleagues elsewhere in Canada. This contributed to a small field of proponents, with only two proposals received. There is no question that Pyxis was well qualified to do the work, i.e., that it had the necessary skills and experience to do the work. However, any concerns that the field of proponents could have been broader might have been avoided had the Board made more efforts to advertise the opportunity.

It is also clear that the Street Check Committee alone made the decision to select Pyxis, which it assessed as having the better of the two proposals. From the perspective of appearances, however, the Board's decision to ask the Department to comment on the proposals, and to participate in even the start of the evaluation meeting, was not ideal.

The form of contract used by the Board was, to say the least, concise and, since it said nothing about retention or control of Pyxis's working documents, Pyxis did not retain its investigators' field notes. There was nothing untoward in this in the absence of any contract terms preventing it—it was entirely up to Pyxis to decide what to do with those records. For future service arrangements, the Board should ensure that its contract template contains clauses addressing control of working records, for freedom of information and contract monitoring purposes.

On the question of monitoring Pyxis's work progress, it is clear the Board's executive director and the Street Check Committee diligently kept on top of the matter, seeking regular updates, and helping Pyxis arrange community consultations.

Pyxis sent a draft of the report to the Board for comment. The Board invited the Department to comment, which again might create a poor perception, but I have no substantive concerns about this. As a matter of administrative fairness, it is common for oversight agencies to give those being reviewed or investigated an opportunity to comment on factual matters, to correct any errors or omissions. The Department's comments on the report were minimal and limited to a few simple factual matters, not Pyxis's findings. I conclude there was no impropriety in the Department's comments or its being given an opportunity to comment (noting also that Pyxis declined to make all the changes suggested to it).

Regarding removal of the paragraph in the Pyxis report that described concerns about two unidentified officers' behaviour, the evidence is that Pyxis removed the paragraph and did so because, it said, the paragraph was an outlier, and its presence could distract from the response to its report. At the same time, it is clear the Deputy Chief brought the paragraph to the Board's attention and took steps to initiate a formal disciplinary investigation under the Act. The Department reported the matter to the Commissioner, who then brought it to the complainants' attention and who have expressed concern about the paragraph's removal and the lack of transparency about it.

The evidence is that the Board decided not to disclose the paragraph's removal at the time because the matter was being investigated. There was, however, no legal or ethical impediment to the Board publicly disclosing the concerns and the fact that an investigation was underway and being transparent at the time could have avoided much controversy.

The Board's policy is to refer all service or policy complaints to the Department for investigation, essentially automatically. Nor does the Board appear to involve complainants in the processing of their complaints. I have concluded that the Board should revisit its approach to such complaints, certainly the more complex or sensitive ones that raise significant issues, with a view to directly investigating them itself—perhaps through on-call outside investigators—rather than handing them over to the Department in all cases.

This is a matter of resources and experience, a challenge that exists for all police boards in the province, which are clearly dependent on the services they oversee and govern for their practical existence. If boards are to function effectively in this area, they require better provincial support for their investigative functions, and there are various ways to do this, possibly including funding for investigations, maintaining a roster of available investigators, or more. An alternative would be to give the Commissioner responsibility for such complaints, if not in all cases, at least where the Commissioner determines that a service or policy complaint raises an issue of possibly province-wide import.

Similarly, police board members are undoubtedly talented and experienced people, but it is clear that more needs to be done in terms of training, education and mentorship to support

their valuable work. The Ministry is already moving ahead to enhance training and education for police boards, which is commendable, and this effort should be monitored and adjusted as needed.

Many of my recommendations touch on matters within the mandate of the Special Committee on Reforming the Police Act, which continues its vital work. Some of those recommendations also fall within the scope of 2019 report of the Special Committee to Review the Police Complaints Process, which made recommendations to government. This report is prepared under section 42 of the Act, which requires the Director to submit it to the Minister of Public Safety and Solicitor General. In light of the two reviews just mentioned, I urge the Director to recommend that the Minister bring this report's recommendations to the attention of the Special Committee on Reforming the Police Act.

It is important to thank those involved in this review for their cooperation. The timeframe for this review was ambitious and was ultimately extended by three weeks at my request. My work involved assessment of roughly 5,000 pages of documents and interviews with dozens of individuals. The Board, the Department and the Commissioner's office each unhesitatingly disclosed records to me and Board members, the Board's former and present executive directors, and Department officials and employees readily spoke with me. I also spoke with Curt Griffiths, who was the co-investigator on the Pyxis review team. BCCLA and UBCIC staff also shared with me their well-informed and constructive insights into their complaint and into the issues covered by the terms of reference. The Commissioner and Assistant Commissioner also generously assisted my understanding of their involvement in this matter. Last, but not least, Ministry staff were unfailingly helpful in providing background information about police governance and oversight. My thanks go to everyone for their cooperation and support.

In the interests of transparency, readers should be aware that I sent a partial draft of this report to the Board and to the Department. I wanted to give the Board as an institution, and Street Check Committee members individually, an opportunity to identify corrections of fact they believed were necessary. It was similarly vital to allow the Department to correct any factual errors it spotted.

I did not send anyone my conclusions, or findings, my recommendations. My narrow goal was to ensure that, in fairness—as the Board did with the Pyxis report—they had an opportunity to correct factual errors on which my findings and recommendations would be based. I considered their comments but made the final decision on the facts. Any errors or omissions in this report are mine alone.

As for my findings, I recognize that my finding no impropriety in the selection of Pyxis, or the monitoring or evaluation of its work, may not be welcomed in all quarters. I can assure

readers, however, that my findings are based on close review of, again, thousands of pages of documents and interviews with many individuals. The best I can do is reassure everyone that I have done my work, that I have inquired into the issues, as diligently and thoroughly as possible, and in an independent, neutral, and disinterested manner.

In closing, it is worth underscoring here that one of my key recommendations below is that the Ministry should *not* proceed with the second portion of its examination of the matter. The stated purpose of that further review was to consider whether Pyxis's report provided the Board with information needed to inform the Board's response to the complaint, as well as to undertake further study necessary to fill any gaps. This effectively would involve conducting a review of a review, i.e., a detailed analytical review of Pyxis's analysis of the Department's analysis of its conduct of street checks. As explained further below, in all candour, for the Ministry at this time to conduct a review of a review of the Department's review would for any one of several significant reasons be, bluntly put a waste of time.

A key consideration is that the complainants have time and again made very clear their firm position that all street checks should be banned across the province. By contrast, the Department's first annual audit of its street checks practices—an audit flowing from the Pyxis recommendations—demonstrates that the Department continues to see value in street checks.<sup>1</sup> The parties' positions remain far apart, therefore, and any further review of the matter in relation to the Department is not going to advance anyone's interests.

Nor would it shed light on the issue of street checks issues across the province. Street checks have become an issue before the Special Committee on Reforming the Police Act, which may make recommendations on the matter. Further, the Director has issued a provincial policing standard on police stops and continues to receive comments on it. It is reasonable to suggest this standard may change. If any further analysis is wanted, therefore, I firmly believe the Ministry should undertake that through a province-wide study, involving the gathering of original data across police services, along the lines of the Tulloch inquiry in Ontario.

Another issue that should be address on a provincial basis is the legality of "street checks", "police stops", or "carding". The BCCLA, UBCIC and others are clear that "street checks" are illegal. One can assume that provincial standard on police stops has been issued on the implicit basis that the kinds of police stops it describes are lawful. My strong view is that there needs to be more clarity on what these different terms mean and which of them is, in fact, lawful. Only then policies and practices be fashioned to either regulate them or, possibly, ban them. This issue is vitally important and should be part of the province-wide study that is needed.

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<sup>1</sup> This January 30, 2021 report to the Board was presented at the Board's February 18, 2021 meeting: <https://vancouverpoliceboard.ca/police/policeboard/agenda/2021/0218/4-2-2102G01-Board-Report.pdf> (accessed April 14, 2021).

## LEGISLATIVE FRAMEWORK

To set the stage, this section offers an overview of the relevant aspects of the Act, which creates the legislative framework for oversight and governance of municipal police services such as the Department.

### *Police Boards: Structure and Functions*

Where a municipality provides policing through a municipal police department, a “municipal police board” is established under the Act. Its members consist of the municipality’s mayor, a member appointed by the municipal council and up to seven more members appointed by Cabinet in consultation with the Director.<sup>2</sup>

The board appoints and employs a “chief constable”, as well as other constables and employees, that the board “considers necessary to provide policing and law enforcement” in the municipality. The department’s duties and functions are to enforce laws, “generally maintain law and order in the municipality” and “prevent crime”. These functions and duties are “under the direction of” the board, which determines the department’s “priorities, goals and objectives”. The board is required to consider the provincial “priorities, goals and objectives for policing and law enforcement” that the Minister establishes, and the “priorities, goals and objectives” of the municipality’s council. The department’s chief must report annually to the board on implementation of programs and strategies to achieve the set priorities, goals, and objectives.<sup>3</sup>

The board also must make rules in relation to several objectives. It must make rules respecting “the standards, guidelines and policies for the department’s administration”. It must make rules to prevent “neglect and abuse” by department officers. Last, it must make rules about “the efficient discharge of duties and functions” by the department and its officers.<sup>4</sup>

A board may “study, investigate and prepare a report on” policing, crime prevention and law enforcement in the municipality. Reports must be provided to the Director on request. If a report suggests that an officer has breached discipline, or that there may be criminal liability, the board must submit the report to, respectively, the chief or the minister.<sup>5</sup>

The board must submit a provisional annual budget to the municipal council each year. The amount of that budget must be included in the municipality’s annual budget. If the council

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<sup>2</sup> Section 23(1).

<sup>3</sup> Section 26. The board must send its priorities, goals and objectives to the director after their establishment or after any change to them.

<sup>4</sup> Section 28. These rules are effective only after they have been filed with the director.

<sup>5</sup> Section 29.

does not approve a budgeted item, either the board or council may ask the Director to decide if it should be included in the budget. The Director's decision must be reported to the board, council and minister.<sup>6</sup> The council must pay for an expenditure that "the municipal police board members"<sup>7</sup> certify is within the board's budget.<sup>8</sup>

### *Police Boards: Service or Policy Complaints*

The complaint underlying this report is commonly referred to as a "service or policy complaint". Anyone may complain about "the general direction and management or operation" of a department. A complaint may also be made about the "inadequacy or inappropriateness of" any of several aspects of a department's functioning. Such a complaint may be about the department's "staffing or resource allocation", "training programs or resources", "standing orders or policies", "ability to respond to requests for assistance", or "internal procedures."<sup>9</sup>

The board is responsible in the first instance for dealing with such complaints and may pursue any one of several options. It can ask the chief to "investigate and report on the complaint", "initiate a study concerning the complaint", "initiate an investigation into the complaint", "dismiss the complaint with reasons", or "take any other course of action the board considers necessary to respond adequately to the complaint."<sup>10</sup> The Commissioner may recommend that the board undertake an investigation if the board has not done so.<sup>11</sup>

At the end of the process that the board has chosen, it must send the complainant, the Director and the Commissioner "an explanation for" its action "in respect of the service or policy that is the subject of the complaint" and, if applicable, "a detailed summary of the results of any investigation or study". A dissatisfied complainant may ask the Commissioner to "review the matter".<sup>12</sup> The Commissioner may, even if the complainant has not asked, review decisions of the board about the complaint, recommend "further investigation, study, course of action or changes to service or policy", or recommend that the Director exercise functions of the Director (including investigations or studies by the Director).<sup>13</sup>

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<sup>6</sup> Section 27.

<sup>7</sup> It is not clear why the reference here is to "the municipal police board members", as opposed to saying "the board" is to certify.

<sup>8</sup> Section 27 also provides that the board must not make an expenditure, or enter an agreement to make an expenditure, that is not specified in the board's budget and approved by the council. At first glance it strikes an odd note to refer to an expenditure having to be "in the board's budget and approved by the council", as opposed to "in the board's budget as approved by the council".

<sup>9</sup> Section 168.

<sup>10</sup> Section 171(1).

<sup>11</sup> Section 171(2).

<sup>12</sup> Section 172.

<sup>13</sup> Sections 173 and 177(4)(e). Section 173 requires the Commissioner's annual reports to include any recommendations made to boards or the Director and may comment on any responses that the Commissioner receives.

## COMPLAINT OVERVIEW

This review ultimately flows from the complainants' service and policy complaint that the Department was conducting street checks in a discriminatory manner. Citing the Department's own data from 2008 to 2017, the complainants contended that the data "reveal a racial disparity in the rates of street checks", and added that "it is indisputable that Indigenous and Black people are overrepresented in the rates of street checks conducted by the VPD", resulting in "disproportionate rates of police stopping, questioning, and eliciting or recording the personal information of people from Indigenous and Black communities."<sup>14</sup> They contended that the data "create a strong suggestion that street checks are being conducted in a discriminatory manner, contrary to the *Canadian Charter of Rights and Freedoms* and B.C.'s *Human Rights Code*."<sup>15</sup> Referring to a draft Department street check policy, the complainants contended that it was not "adequate in its present form, particularly in light of the new statistical evidence of discrimination."<sup>16</sup>

The complainants also stated that, while "the data does not reveal reasons for this disparity, we believe that there is a public interest in an immediate and in-depth investigation by the OPCC into this matter."<sup>17</sup> The complainants also called on the Commissioner to "exercise the fullest extent of your statutory authority to ensure that it [the complaint] is properly and fully investigated by the Vancouver Police Board."<sup>18</sup> They asked the Commissioner to consider other actions in response to their concerns:

We further request that you consider exercising your authority under s. 177(4) of the *Police Act* to take all actions that you consider necessary to deal with this issue, including making recommendations to the Vancouver Police Board, engaging in research on the practice of street checks in *all* municipal police forces under the jurisdiction of the OPCC, including an audit of all data related to this practice. We would support a recommendation by your office, should you consider it appropriate, that the Director of Police Services or the Minister cause an independent external audit and review of the practice of street checks, with a view to creating a provincial standard to govern all law enforcement in British Columbia.<sup>19</sup>

The complainants amended their complaint on July 12, 2018, asking the Commissioner "to direct the Vancouver Police Board to include disparities in both the race and gender in the number of street checks as part of the investigation into the Complaint."<sup>20</sup> That letter also

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<sup>14</sup> Ibid.

<sup>15</sup> Complaint letter, page 2.

<sup>16</sup> Ibid., page 3.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid., page 3

<sup>19</sup> Ibid., pages 3-4.

<sup>20</sup> Amending letter, page 2.

asked the Commissioner to “direct the Vancouver Police Board to include the practice of police stops where no data is recorded as part of the investigation into the Complaint.”<sup>21</sup>

When it received the complaint, the Board, as appears to be its invariable practice, immediately sent it to the Department to investigate. The Department analysed its street checks data and reported back to the Board in the autumn of 2018. Its report, *Understanding Street Checks*, made six recommendations, which the Board adopted, but the Board also resolved to retain an outside consultant to review the methodology and analysis in the Department’s report, and conduct community consultations to better understand the views and lived experiences of those affected.

A closing note is necessary. When I consulted with them during this review, the BCCLA and UBCIC expressed the concern that the privacy concern raised in their complaint was not addressed. The *Freedom of Information and Protection of Privacy Act* authorizes a public body to collect, use and disclose personal information—which would include personal information collected during a street check—“for the purposes of law enforcement”.<sup>22</sup> The term “law enforcement” is defined as including “policing, including criminal intelligence operations”.<sup>23</sup> I fully appreciate the complainants’ concerns on this front and believe that, ultimately, they point to the need for a provincial study into all aspects of street checks and other forms of police stops.

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<sup>21</sup> Ibid., page 3.

<sup>22</sup> Section 26(b).

<sup>23</sup> Schedule 1 to the Act. The definition also includes investigations, or proceedings, that lead or could lead to a penalty or sanction being imposed.

### ***TERMS OF REFERENCE FOR THIS REVIEW***

As noted earlier, this report is prepared under section 42 of the Act, and the following is an accurate statement of the terms of reference that the Director established for this review:

1. Analysis of the Board's activities in relation to the third-party study, including:
  - (a) The process used to select the contractor,
  - (b) The contract's terms, including their adequacy to support effective contract management, ensure public accountability, and address the disposition of records,
  - (c) The processes used to monitor the progress of the study and the Board's role in these processes,
  - (d) The timeline and process for finalizing the report, including the respective roles of the Board, the Department and the contractor in reviewing the draft reports, and in particular the decision to remove information relevant to the scope of the complaint from the final report,
  - (e) Any actions taken by the Board to ensure records and documentation used to support the findings of the report were preserved.
2. Analysis of the Board's level of independence from the Department with respect to service and policy complaints, including the process by which Board members are debriefed on important documents.
3. 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 Act.
4. Recommendations to improve the governance capabilities of police boards generally, and the Board specifically, when responding to service and policy complaints under the Act. This may include recommendations regarding procurement processes where the need for a contract to assist in responding to a complaint is identified.

The following section assesses the Board's actions in the procurement process and its selection of the consultant for the independent outside review. It also deals with the review and acceptance of the report, and the removal of a paragraph from the report.

## **HANDLING OF THE PROCUREMENT PROCESS**

### **CREATING THE PROCUREMENT DOCUMENTS & IDENTIFYING CANDIDATES**

#### ***Assessment of the facts***

The following section outlines my findings about how the RFP process was conducted. It deals with creation of the RFP document itself, how the review objectives and scope of work were described, and how possible consultants were identified.

To the best of the recollection of anyone at the Board, this was the first time it had gone through a procurement process to hire an outside consultant. It is therefore unsurprising that no one was familiar with how to create the necessary procurement documents or run such a process. The Board possessed no RFP template or precedent for a consulting contract. It was also unsure who might be qualified to do the work. The Board therefore had to look elsewhere for guidance on how to conduct the RFP process, for documentation to create that process and the resulting services contract, and in identifying possible proponents.

Board members with relevant experience helped, as well as Department and City staff. Ultimately, the RFP was prepared by the Board's then executive director, who was a lawyer but who had no experience in procurement, a specialized area of the law. She used a precedent that a Board member provided to her. Street Check Committee members and Department staff commented on draft procurement documents the executive director prepared. The Department commented on the scope of work and provided the names of possible consultants, an issue discussed below.

The following discussion outlines the facts underlying these findings.

On October 1, 2018 email, Board staff emailed Chief Adam Palmer, confirming that, as he had apparently suggested, the Board had reached out to Department staff for assistance with the RFP. That same day, the Deputy Chief asked to be present at a meeting among Board staff and Department staff about the RFP.

An October 2, 2018 email from Board staff to the Department confirmed that a meeting about the RFP would be held on October 17, 2018. That same day, a civilian Department employee sent Board staff a copy of the publicly available request-for-information package that the Edmonton Police Commission had posted for a 2018 street check review. The Deputy Chief also weighed in on October 17, 2018, emailing Board staff to say that "given that this document is relatively close to what we are looking at and after you have had a chance to

discuss with the Board, we can reword and create an RFI<sup>24</sup> that is specific to our needs. Just let us know your wishes.”

An October 10, 2018 internal Board email indicated concern on the part of the then executive director about Board members knowing that staff were to meet with Department representatives about the RFP's preparation. The concern was, I accept, about appearances and it must be underscored again that, unlike City or Department staff, the Board's staff had no experience with RFP processes. It should also be noted that this email does not detract from the evidence that Board staff prepared the RFP documentation, relying on the precedent from a Board member, although the Department did, as described below, comment on the document.

On October 18, 2018, the Board's executive director of the time emailed the Deputy Chief. She told him that she had met with a Board member, who had given input into the nature and scope of the review. The executive director reported that this Board member saw the review:

...as a fairly limited piece of work, do-able within the set timeframe and not too costly.

With respect to the first part, the data review, she's not sure that the consultant would need access to the police database. Rather she sees the consultant just reviewing the document "Understanding Street Checks" to confirm that the research appears to have been done correctly and thoroughly and that the conclusions follow from the data. The consultant would identify any gaps in the research or any inconsistencies etc. The consultant may need to sit down with Jennie or Drazen and have them explain how they arrived at the statistics and the conclusions. Claire says it's basically just to have a second set of eyes independently confirm (or not) the conclusions in the report. She doesn't see this as a huge piece of work.

With respect to the second part, she has a number of rfps around this type of work (community consultation) and is going to send them to me. She doesn't see this as near the scale of the Toronto or Edmonton work. She suggests we provide examples of community groups we believe should be contacted (like UNYA, Sisterwatch, WISH etc) and then let the consultant figure out how to survey them and their clientele.

We talked about sending the RFP to a select few names. I am going to ask Josh Paterson if he has any suggestions.

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<sup>24</sup> On its face this appears refer to a form of procurement document known as a "request for information". As I understand it, these are typically used where a client wishes to better define a matter for which it needs assistance, i.e., where the client seeks information from the market about the matter. It can then be followed by a request for proposals or tender process. A "request for expressions of interest" falls somewhere between a request for information and a request for proposals, though such a request sometimes may be substantially the same as a request for proposals.

We also discussed a Board Committee to review the proposals etc.

Once I get [the Board member's sample RFP documents] I can see what, if any, help we need on the actual RFP. Trust this is ok – we will let you know if we need help! Thanks!

On October 22, 2018, the executive director emailed the BCCLA's then executive director, Josh Paterson. She told him that the RFP was being created, indicated that the Board envisioned that the RFP would be "distributed to a select number of individuals/organizations who have demonstrated knowledge/expertise", and asked "[d]o you have any suggestions of names you think should be included [in the invitation]?". He responded the same day, indicating that the BCCLA would provide suggestions for consultants who might be invited to submit a proposal.

On October 23, 2018, the Board's executive director emailed Street Check Committee members, attaching the draft RFP for comment. She added that the "timeline on this is very tight so I'm hoping you will have a chance to review and provide feedback by the end of the week." She told them that the "plan will be to send this (hopefully by November 1) to a select group of independent consultants or academics and solicit proposals." She mentioned that the BCCLA intended to provide "some suggested names at their end". She also said that another Board member had suggested the name of a possible consultant and asked the other members to provide names of possible outside consultants. The executive director also emailed the Deputy Chief, the research director and another civilian employee of the Department, enclosing the draft RFP for comment and saying, "[t]hank you for your input and ideas around this RFP....I would really appreciate any comments, edits etc."

A City lawyer also emailed comments on the draft RFP to the executive director on October 25, 2018 and forwarded a contract template with his comments. He raised the issue of "getting this out to market", noting the City's practice was to post opportunities on the provincial government's BC Bid website, post them on the City's website, and send notices to any relevant industry groups. He offered to connect the Board with a City procurement specialist who could help make the opportunity known.<sup>25</sup> There is no indication that the Board took up this invitation.

On October 30, 2018, the Deputy Chief emailed back comments from the Department:

Sorry I didn't get this to you earlier, I am sitting here with [two Department staff members] going through the RFP and have the following recommendations:

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<sup>25</sup> The same lawyer also later gave the Board supporting advice on questions about the RFP process after it had been launched. City staff also offered advice on the RFP during its open period, including about business licensing and insurance requirements. The executive director also communicated with the BCCLA's executive director about the business licensing matter.

1. We are wondering if there should be some elaboration on these two criteria (below), from the perspective of the candidate this might be ambiguous – not really sure if there is a difference on what you will elicit.

- Individual or Organizational Profile
- Project Team Experience & Expertise

2. We all recognize the methodology and process will be a vital component of this study, it will be important that the consultant considers a broad sector of the community that includes residents/merchants and not limited to advocacy/interest groups. We are not sure if this ought to be included in the RFP.

As discussed in our previous meeting, we think it's important that the successful candidate has a strong understanding of policing and criminological issues. This will enable the research to be conducted more expediently and with a broader perspective of issues and challenges relative to street checks.

This email also forwarded an October 25, 2018 email that the Deputy Chief had received from a civilian Department employee about the draft:

Overall, I think that the draft RFP looks good. It seems quite broad, however, I think from the meeting last week with [the Board's executive director], the PB seeks simplicity. While that may work, I wonder if we need to tighten the evaluation criteria a bit more. Specifically, in section 1.6.3 (see table below), I am not clear on what an *Individual/Organization Profile* is, or how it would be evaluated. Does it blend with Project Team Experience/Expertise?

In terms of the second criteria (*Understanding Assignment & Approach*), I would rename to "Proposed Approach", where the PB can evaluate the project plan, understanding of scope of work, amongst other factors. Finally, while not weighted heavily, is the "Value Add" different than experience? ...

Section 2.1.8 – In addition to community consultation, do we want the candidates to consider consulting with our frontline officers, especially in respect to providing an opinion on our street checks practice, policy, and training? This will depend on what is asked of our members and how. For instance, if a ride-along is requested than they would have to undergo a criminal records check (like always). The question will be if the consultant sees value in gaining perspective from frontline officers than we would provide access. However, if the aim is only for community consultation than this will be not needed. We feel this will bring some balance to the final picture, by having input through the lens of officers doing the street checks.

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On October 30, 2018, the Board's executive director emailed a revised RFP document to Street Check Committee members, the Deputy Chief, the research director, and the same Department civilian employee, as follows:

No changes were made regarding proponents bidding only one aspect, either the data review or the community consultation.

Views at the Board meeting on this were mixed and from a comment made by [the BCCLA's then executive director] I know he would have concerns about splitting it across two different consultants because the information across both pieces may not get synthesized. So maybe we just stay with the idea of one consultant who puts together an appropriately skilled team?

Also I couldn't think of a way to put parameters on the amount of community consultation – I've just said it's up to the consultant to gauge the appropriate amount and to ensure it's representative.

Please review this critically and provide any comments or concerns. We should try to get this out next week.

I will get [Board employee] to try to set up a meeting (in person or phone) for next week.

In terms of names I have the following – Howard I think you mentioned a couple of names as well.

Could you send them to me, along with contact information if you have it. We really could use more names, especially local ones. Thanks.

Also on October 30, 2018, The Deputy Chief emailed the Board's executive director, telling her that he had attended a meeting that day with Justice Michael Tulloch, the Ontario Court of Appeal judge responsible for a review of street checks in Ontario. The email noted that a BCCLA lawyer, Dylan Mazur, had attended that meeting:

...Some interesting points were made that might be relevant to your RFP. More specifically, Dylan Mazur asked Justice Tulloch on what the best methodology for Vancouver's external review would be, his response was as follows:

- A six month window is "woefully short";
- The consultant should speak with police officers;
- Feedback from impacted community members is important;
- The consultant should hold public meeting/consultations, to obtain feedback from the general public;
- provided access to our data; [sic]
- it is important that everyone feels that they have been heard;

· Justice Tulloch mentioned that he would be hesitant to recommend someone who didn't have a solid understanding of the criminal justice system because the issues of street checks has important nuances and details that need to be captured.

I just thought this information would be useful to the board towards next steps. Given that BCCLA asked the question they might have certain expectations.

Part 2 of the RFP document as issued set out the business requirements and scope of work, opening with this statement of purpose:

**2.1.1** The Vancouver Police Board (the Board) is seeking proposals to retain a qualified and experienced consultant possessing knowledge of the issues surrounding police street checks, expertise analyzing and interpreting data, a strong understanding of policing and criminological issues, and expertise and experience in stakeholder consultation, preferably with Indigenous and racialized community members Refer to Part 2 – BUSINESS REQUIREMENTS & SCOPE OF WORK for an in-depth scope of work.

Two substantive requirements were described this way:

**2.1.7** Data Review: The Consultant will review data on street checks practice, policy, procedures and guidance on street checks and use of them as a policing tool the Report. The data is largely contained in the Report. The consultant is not expected to re-do the work done by VPD staff to prepare the Report. Rather the consultant is expected to review the work that was done and the conclusions that were reached. The consultant will determine whether the methodology used to produce the data is sound and whether the conclusions reached, reasonably emanate from the data. The Consultant will identify any weaknesses or gaps the Consultant finds in the methodology, and/or the data and/or the conclusions. For this work the Consultant will be given access to the VPD staff who prepared the Report and who can explain and demonstrate how the data and conclusions were reached and provide any source data the consultant may wish to review.

**2.1.8** Community Consultation: The consultant, through whatever format(s) the Consultant deems to be most effective (eg. surveys, focus groups, and interviews), will consult with Indigenous and racialized community members in Vancouver in order to provide the Board with research into the impacts of street checks on Indigenous and racialized people. The particular focus of this research will be to identify how street checks policies, procedures and training could be designed to minimize negative impacts of street checks on Indigenous and racialized people. In carrying out this work the Consultant will be expected to work with community organizations which serve Indigenous and racialized citizens in Vancouver. Examples of such organizations include but are not limited to, UNYA, Sisterwatch, WISH, Atira, Vancouver Native Housing Society, Lu'ma Native Housing Society, and Carnegie Centre. In order to reach a broad sector of the affected community the consultant should also include consultation with

local residents, merchants or businesses, and frontline police officers. The consultant will be expected to gauge when it has conducted sufficient community consultation to ensure that the results are reasonably representative.

**2.1.10** The Consultant's report will be used to guide the VPD and the Board in designing training, policies and practices around the conduct of police street checks in the City of Vancouver.

**2.1.11** The requirements of this RFP are limited in both scope and duration: The work will commence in January 2019 and the Consultant's final report will be due in July 2019.

The scope of work was described as follows:

**2.3.1** A Committee of the Board will administer the Contract. The successful Consultant will work in close collaboration with the Committee of the Board and with VPD staff, particularly for the Data Review portion; the successful Consultant will also work with Community service organizations and potentially businesses and residents for the Community Consultation portion.

**2.3.2** The Consultant will be responsible for participating in a project start-up meeting to go over the existing information, as well as the proposed work plan and scope of work. The Consultant may be required to attend a Board meeting and/or a meeting with Stakeholders to review the proposal prior to project start-up.

**2.3.3** The Consultant will report on the results of the Data Review and the results of the Community Consultation and make recommendations that would assist the Board and the VPD in developing policies, practices and training around police street checks.

**2.3.4** The Consultant's final report must include a summary of each community consultation or engagement, including a synthesis of the feedback and comments collected.

Turning to how the Board approached making the opportunity widely known, an October 31, 2018 email from the Board's executive director advised the Street Check Committee, the Deputy Chief and the research director that six consultants had been identified and asked for the names of more possible consultants.<sup>26</sup> Her email identified, among others, three academics, two of whom were at Ontario universities and one of whom was at a British Columbia university. The BCCLA and a Board member had identified the same British Columbia candidate. The UBCIC was also invited, through a vice-president of that organization, to suggest possible consultants, but there is no record in the material to hand that it did so.

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<sup>26</sup> Her email did not name the consultants who had been identified to date.

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The email identified Curt Griffiths as a possible consultant, and it also another individual, who eventually submitted a proposal. The executive director did not say where she obtained those two names. In a November 1, 2018 email from the Deputy Chief to Street Check Committee members and the executive director, he stated that “[t]he suggestions I was going to offer were Curt Griffiths and [the second proponent]”, adding that the number of names identified so far seemed “adequate”.

For their part, Street Check Committee members told me that they recalled being asked to identify possible consultants and to canvass their contacts for possible names. A contact of one of the committee members, a university professor, identified another academic who might be interested in submitting a proposal. That other academic’s name was also on the BCCLA’s list of two different individuals who might usefully be retained, but specifically for the community engagement portion of the work.

The RFP was communicated to the identified candidates in a November 6, 2018 email from the executive director. She forwarded that email on the same day to Street Check Committee members and to the Deputy Chief, and that email identified a further two possible consultants, one a retired judge and another a university professor, to whom the invitation had been sent. The other possible consultants were those described above.

On November 8, 2018, the executive director advised the BCCLA’s executive director that the invitation had been sent, including to candidates that the BCCLA had identified.

On November 14, 2018, Ruth Montgomery emailed the executive director, advising that she had heard about the RFP from Curt Griffiths and that her company, Pyxis, would be submitting a bid jointly with him.

In the following weeks, the Board’s executive director tried to elicit responses from possible proponents and fielded questions from one of them about the RFP. Some candidates were slow to respond, and others—including those recommended by the BCCLA—either did not acknowledge receiving the invitation in the first place or did not submit a proposal.

### *Conclusions about the preparation of the RFP and identification of proponents*

The first finding at this stage relates to the Board’s decision to invite the Department to comment on the draft RFP, notably the scope of work it set out. I have found no evidence that the Department improperly sought to narrow the ambit of the proposed work or slant expectations in its favour. In fact, the Department usefully pointed out that the scope of work was broad and somewhat generally stated and could be refined. This said, there is no doubt that—although it was done in good faith—inviting the Department to comment on the scope

of work for an independent, external review of the Department's own work on the issue could reasonably cause observers to question the independence of the external review.

The second finding is that the Board could have done more to identify possible proponents. This is not to say that Pyxis did not have the skills or experience to do the work, or that it should have not been retained. That is clearly not an issue, as the description below of Pyxis's qualifications shows. Rather, the material before me establishes that, although it asked the Department, Street Check Committee members and the BCCLA for the names of possible proponents, the Board could have taken further steps to identify qualified proponents.

There are no indications in the material, for example, that the Board asked colleagues across the country for assistance. Nor did the Board advertise the opportunity, including through BC Bid, or reach out to individuals who had done similar work in Ontario or Nova Scotia. This likely was driven by the Board's desire to proceed quickly, having set a very ambitious six-month deadline for the work. Still, further efforts could have been made to identify possible consultants, which might have helped combat perceptions that the field of candidates was limited.

## ***EVALUATION OF THE PROPOSALS***

### ***Assessment of the facts***

Only two proposals were received, one of which was the successful Pyxis proposal.<sup>27</sup> It identified Ruth Montgomery as the principal investigator and listed Curt Griffiths as a co-investigator. It also identified three additional co-investigators, all of whom have graduate degrees (as do Ruth Montgomery and Curt Griffiths).

Ruth Montgomery, a former superintendent with the Edmonton Police Service, was described as a justice and policing consultant working across a range of policing-related matters. Among her listed recent work experience was a 2018 street checks review in Edmonton, a 2017 review of contemporary policing responsibilities for Public Safety Canada, and a study of access to justice for women in rural and remote areas of British Columbia. She was advisor to the Ottawa Police Service gender audit in 2016-2018. She had worked with the Canadian Police Sector Council to develop the National Competency Framework for police recruit training, and with the Canadian Police College and the Justice Institute of BC to conduct needs assessments and to design, develop and deliver educational programming.<sup>28</sup>

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<sup>27</sup> At the time the Pyxis contract award was made known, the Board's executive director emailed the BCCLA and advised that none of the possible consultants the BCCLA identified had submitted a proposal.

<sup>28</sup> The experience described here for Ruth Montgomery, Curt Griffiths and the other investigators is not exhaustive of their full relevant experience.

Curt Griffiths' recent experience included the above-described 2018 street checks review in Edmonton, a 2017 operational review of the Department, 2016 studies of patrol deployment in the Delta Police Department and Saanich Police, and an operational review of the Winnipeg Police Service in 2013. His work included reports for Public Safety Canada on policing responsibilities and other policing matters. His experience was also described as including research with the Canim Lake Indian Band, work with representatives of the Council of Yukon First Nations on a review of policing in Yukon, studies of policing and the lived experiences of residents in Vancouver's Downtown Eastside, and work with the Musqueam Band on a study of alcohol and drug use among youth and young adults. He also had been the principal investigator on a study of crime and justice among the Inuit in the Eastern Arctic and he was described as having worked closely with hamlet councils in the region. At the time, he was engaged in a study of the delivery of policing services to the Tsawwassen First Nation.

The other three co-investigators were described as having experience in policing-related research and investigations, including through work they had done with Ruth Montgomery and Curt Griffiths.

Pyxis listed three references from British Columbia police agencies or individuals associated with police agencies. The Department was not listed as a reference.

The second proposal was submitted by a consulting firm. It identified two British Columbia-based academics as principal investigators. Like the Pyxis investigators, they had each done extensive policing-related research, investigations, and policy work. Many of their projects were done for police agencies, including in British Columbia. One of them was described as having completed dozens of police-based and community-based research projects for three British Columbia municipal police departments and several RCMP detachments in the province. These included evaluations of entire detachments or departments, or specific aspects of police organizations.

The second principal investigator was described as, among other things, a recognized expert in advanced statistical analysis who also had experience researching street checks.

This proponent provided references from three Canadian police agencies. The Department was not listed as a reference.

The Board's then executive director prepared a template evaluation chart for the Street Check Committee to use in evaluating the proposals. It had four categories, with these weightings: proposed approach (40%); cost and schedule (25%); project team experience and expertise (30%); and value add (5%). She then gave the Street Check Committee a version of the template with each proposal's salient features summarized underneath each of the four evaluation categories.

On November 30, 2018, she emailed the two proposals to the Deputy Chief and the research director, whose group had been involved in the Department's original work in response to the complaint. Her email said that, "While you won't be part of the official evaluation, I'm sure Committee members will appreciate any comments you may have. Thank you for participating – see you Tuesday at 1:00". It is apparent from the material that "Tuesday at 1:00" refers to the Street Check Committee's December 3, 2018 meeting to consider the proposals.

The Deputy Chief and the research director each confirmed that they attended the meeting. The current executive director also recalled their attendance, saying that this was for "preliminary input", and stating that they were not present when the Street Check Committee reviewed the evaluation chart for the proposals or formed its recommendation to the Board to retain Pyxis. She noted that the Deputy Chief was the Department's liaison to the Board. She also recalled that the then executive director was adamant that the Board, and Board staff, needed to be independent of the Department in this process, including in the evaluation of proposals and the award of the contract. As noted below, however, the proposals were sent to the Department for comment and Department representatives, including the Deputy Chief, were invited to attend part of the evaluation meeting.

The Deputy Chief told me that he and the research director attended only the first part of the evaluation meeting. He could not precisely recall what questions were asked, but believed they would have been about logistics, regardless of which of the two proponents was selected. He did acknowledge that, although he could not be sure, the Street Check Committee might have asked about the two proponents, both of whom he had worked with before. He told me that, if he had been asked, he would have said that either proponent could do the work, and he told me it did not matter to him which was selected.

The research director said that neither he nor the Deputy Chief participated in the evaluation. He did, however, apparently offer his view to the Street Check Committee that the proponents needed to be familiar with policing, have the rights skills and experience, and be sure to interview officers.

Street Check Committee members with whom I spoke confirmed these perspectives, notably that they alone decided that Pyxis should be retained.

After the evaluation meeting, the executive director emailed a series of questions to Pyxis on December 5, 2018, seeking clarification on several points in its proposal and, on December 5, told Street Check Committee members that the questions had been answered. The Deputy Chief was copied on that email.

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The entire Board met on December 6, 2018 and, during the closed portion of the meeting, chose the Pyxis proposal.<sup>29</sup> The executive director informed the other proponent by email the next day.

On December 12, 2018, the BCCLA's then executive director called the executive director and expressed concerns about Pyxis's selection. This was said to be because Pyxis had done the Edmonton street checks review and because of Pyxis investigators' previous work for police. These concerns were passed on to Ruth Montgomery that day, and she responded to Board staff on December 13, 2018.

The decision to retain Pyxis was made public in early January 2019. In the ensuing days, Pyxis and Board staff were in touch about the handling of communications between the Board and Pyxis, e.g., about Pyxis's work plan and monitoring of work progress.

### *Conclusions about evaluation of the proposals and selection of Pyxis*

Earlier, I concluded that the Department's involvement in commenting on the draft procurement document and identifying possible proponents did not, in substance, cross the line, but could reasonably cause observers to question the independence of the process. Similarly, while I conclude that the Street Check Committee alone chose Pyxis—noting that the only other proponent had also done work for police, including the Department—the decision to send the proposals to the Department for comment, and to have Department representatives attend even the beginning of the evaluation meeting, was unfortunate. Involving the Department, which was the respondent to the complaint and whose work was to be scrutinized by an independent outside expert, to even this extent created decidedly less-than-optimal optics.

## **CONTRACT TERMS & RECORDS RETENTION ISSUES**

### *Assessment of the facts*

The terms of reference require me to review the contract's terms, including their adequacy to support effective contract management, ensure public accountability, and address the disposition of records. They also call on me to review any actions that the Board took to ensure records used to support the findings in the Pyxis report were preserved.

These issues arise largely because the Department's efforts to identify the two officers whose conduct was called into question by the paragraph that Pyxis removed from its report were hampered by the fact that Pyxis shredded its investigators' field notes at some stage. There

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<sup>29</sup> The executive director confirmed to me that there were no Department representatives at this portion of the meeting.

was no contractual impediment to Pyxis doing this because the contract between Pyxis and the Board was silent on the question.

The Board's then executive director asked the City's lawyers for an example of a services contract, which they provided on October 25, 2018. On December 6, 2018, the research director sent her a copy of a contract that he said could be adapted to the project at hand. In addition, on December 4, 2018, a civilian Department employee emailed a contract sample to the Board's executive director, as follows:

I've also attached something that I got from City legal a while back for services agreement [*sic*] – it has all the “motherhood” type legal clauses that COV require – eg: insurance – and other clauses that may need to be considered.

This email also said that a Department employee could “help with standard FOIPPA [*Freedom of Information and Protection of Privacy Act* (FIPPA)] type clauses as I presume the contractor will be collecting information/data.”

On December 10, 2018, the Board's executive director sought the research director's comments on the draft Pyxis agreement, saying in doing so that she had kept the contract “simple”. The research director had no comments on the draft. The Deputy Chief that same day emailed the executive director about ensuring that the contract would require Pyxis to appear before the Board after completion (which the executive director confirmed). It appears he had not seen the draft contract itself.

The draft contract was sent to Ruth Montgomery, of Pyxis, the same day. She returned it, signed on behalf of Pyxis, that day. The executive director sent it to the City's lawyers on December 11, 2018, to get the mayor's signature on the City's behalf.

The Pyxis agreement was three pages long, including the cover and signature pages. The contract appended copies of the issued RFP document and Pyxis's proposal. Neither of these documents, or the contract terms, deal with records retention or a right for the Board to obtain copies of field notes or other material collected or compiled by Pyxis.

These are the types of clauses one might expect to see in a services agreement of this kind, including because the Board is a public body under FIPPA. FIPPA imposes on the Board and its service providers duties respecting collection, use and disclosure of personal information; it also creates a right of access to records in the custody or under the control of the Board. These matters issues are often addressed in such contracts, notably on the privacy side.<sup>30</sup>

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<sup>30</sup> For example, the provincial government's general services agreement contains extensive privacy-related clauses that govern service providers.

Appeal decisions under FIPPA suggest that records held by a contractor often will be in the public body's "control" for the purposes of access to information, in some circumstances that may not be so. Whether the Board could validly have argued that Pyxis's field materials were outside the Board's "control" is not the issue. The point, rather, is that appropriate contractual provisions can clarify the matter for all concerned, since a public body can stipulate in a service agreement that it has "control" of a contractor's working notes, field notes, interview notes, and so on, for access to information purposes.<sup>31</sup> Another reason to have such clauses is to enable the public body to hold a contractor accountable under the contract by obtaining copies of the contractor's working records.

Neither of these objectives was accommodated in the contract between Pyxis and the Board. The consequences of this are demonstrated by the Board's response to the complainants' June 24, 2020 access to information request for Pyxis's field notes. The Board told the complainants that it did not possess any field notes. Another consequence is that the Department's investigation into two officers' conduct was hampered because Pyxis did not keep its field materials, which was perfectly acceptable for it to do in the ordinary course of business absent contractual controls to the contrary.

Ultimately, the material at hand indicates that the Board focused on ensuring that Pyxis's work was completed in a timely way, with a report being produced in good time. Put another way, the Board was interested in the end-product of Pyxis's expert review, not in preserving field notes or working papers leading to Pyxis's report. Of course, the Board had no way of knowing in advance that access to field notes would become an issue, but for future arrangements, the Board's services agreement template should contain appropriate clauses to deal with privacy, access to records and the Board's right to obtain copies of service-related records. This would better support the Board's FIPPA duties, its general accountability, and its ability to ensure service providers' appropriate contract performance.

## ***MONITORING OF PYXIS'S WORK PROGRESS***

### ***Assessment of the facts***

The evidence clearly shows that the Board's executive director diligently tried to ensure timely progress by Pyxis. It is also clear that she and the Street Check Committee did a lot of work to help ensure that appropriate community consultations were held. The discussion below necessarily intertwines discussion of the Board's efforts to monitor Pyxis's progress with discussion of the Board's efforts to help with community consultations.

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<sup>31</sup> Such clauses can require the contractor to promptly deliver the records promptly after request by the client public body, so the latter can respond to any relevant access request under FIPPA.

Emails among Board staff and Street Check Committee members confirm that the Street Check Committee held update meetings to receive reports on progress with the project. This was foreshadowed from the outset. In a December 4, 2018 email to Ruth Montgomery, the Board's then executive director asked whether Pyxis would "be willing to provide an informal progress update to the [Street Check] Committee every 2 months or so", to which Ruth Montgomery replied, "Yes, we would be pleased to do that."

A considerable proportion of the communications related to efforts to arrange community consultations. These included efforts by the executive director and Street Check Committee members to identify appropriate groups for consultation. These communications also involved Pyxis, Department staff and outside individuals and groups. The communications, it is fair to conclude, involved attempts to ensure the quality and breadth of the consultations, but also to ensure that the work progressed in a timely way.

Regarding arranging consultations, on April 3, 2019, a community lawyer with the BCCLA emailed the executive director, asking when Pyxis would hold community consultations. She responded that she would ask Pyxis and respond to him. The same day, Ruth Montgomery told the executive director she would respond directly. By May 2019 it was clear that Pyxis was working on connecting with groups to arrange consultations, and the Board was aware of this.

Related to this, Board staff were clearly keeping tabs on Pyxis's progress on arranging consultations and keeping Street Check Committee members informed. On more than one occasion staff sought Street Check Committee members' assistance in identifying groups to be consulted, and in getting those groups lined up for consultation. One example is a May 15, 2019 staff email to the Street Check Committee, updating them on this issue and noting that a meeting might be needed to help advance the consultations.

There are indications in the material that around this time Pyxis was having difficulty connecting with some groups, and that some of these were concerned about the process, including because they lacked trust in police and Pyxis's interviewers.<sup>32</sup> The executive director expressed concern to Pyxis on May 14, 2019 that the original outside deadline of the end of May for community consultations, and the July deadline for the report, were at risk. On May 15, 2019, Pyxis responded by saying that Pyxis had "been very successful to date in securing the participation of a broad range of community organizations and are in the process of setting up focus group sessions".

The same day, Pyxis wrote to the executive director offering to update the Street Check Committee on progress and Pyxis's plan for on-time report completion. The executive director

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<sup>32</sup> There are no indications that this lack of trust was based on interactions with individual Pyxis interviewers. It appears to have been general, based on other experience to date.

responded that she believed the Street Check Committee “would definitely appreciate a project update and some reassurance that everything is on track”.

On April 30, 2019, the Commissioner asked the Board for an update on progress with the Pyxis review. The Board’s chair responded in a May 17, 2019 letter, copies of which were sent to the complainants, the Department, and the Director. This is the relevant portion of the chair’s response:

As the Board motion [initiating the outside review] indicates the independent review comprises two aspects:

- I. A review of the data on street checks practice, policy, procedures and guidance on street checks and use of them as a policing tool; and,
- II. Stakeholder consultation to identify how street checks policies, procedures and training impact Indigenous and racialized people.

Pyxis has commenced data analysis and has been provided access to all VPD training materials, the VPD’s draft street checks policy, street checks data, organizational charts, and examples of investigative files which include street checks. Pyxis has conducted interviews and focus groups with members from various ranks throughout the VPD, including frontline officers, sergeants, staff sergeants, members from specialized investigative units, crime analysts, and managers from the Operations Divisions. Two ride-alongs per district, and four ride-alongs with BET (12 in total) will be conducted and evaluated.

Pyxis has also begun the stakeholder consultation meetings to gather information on the lived experiences of persons in various communities, with a particular emphasis on persons in communities of diversity. Some of the participating community organizations include Metro Vancouver Aboriginal Council, Lu’ma Native Housing, Urban Native Youth Association, WISH, the Khalsa Diwan Society, and Living in Community. Representatives from BCCLA and UBCIC have also been contacted to participate in the consultation process.

Analysis and findings will follow the completion of this work. Pyxis will also be conducting a literature review and will be considering relevant reviews on street checks practices across Canada including:

- I. Honourable Justice Tulloch’s report “Report of the Independent Street Checks Review” on Ontario’s regulations and implementations;
- II. Dr. Scot Wortley’s report “Halifax, Nova Scotia: Street Checks Report”; and,
- III. Curt Griffith’s report “City of Edmonton Street Checks Policy and Practice Review”.

It is anticipated that the review will be completed in July 2019 and be released publicly, along with the final report from the Board, at the September 19, 2019 Board meeting at the Musqueam Cultural Pavilion.

The letter added that the Street Check Committee would continue to monitor progress. It also updated the Commissioner on progress with implementing the six recommendations that the Board had adopted based on the Department's report to the Board about the complaint.

The Board's executive director continued to be in touch with Pyxis throughout May and June 2019, seeking updates on progress, almost exclusively about progress with consultations. On May 27, 2019, for example, she emailed Pyxis to seek an update, and Pyxis emailed a report to her that same day, which sent to the Street Check Committee that day. This was to update the Street Check Committee on progress since the last update, on April 23, 2019. The update report reviewed work done to identify and meet with community groups, and it also contained this passage:

#### **Analytics**

The VPD Planning, Research & Audit Section report detailed a comprehensive analysis of the Street Check interactions of VPD officers from the years 2012-2017. The Board requested that the Project Team conduct a review of this analysis, and identify gaps in the analysis or conclusions, and provide recommendations going forward with this aspect of the analytics as they pertain to Street Checks.

After a thorough review of the initial report, a meeting was held with PR&A representatives to discuss the findings and the methods that were utilized to reach the conclusions. Some areas were noted as being limited in their validity, and suggestions were made for how to better improve the data analysis to ensure the conclusions were reliable. Specifically, there was concern surrounding the number of Street Checks conducted on Indigenous Women. To better answer this query, the Project Team requested PR&A to examine a small population of Street Checks from October 2018 to February 2019, as this was the time period when an additional "Check Wellbeing" PRIME code was added. Although several of the "checks" would appropriately be considered "Check Wellbeing", of particular interest was the discrepancy within the data, as many similar behaviour patterns (and responses) were coded in very different ways, thereby obscuring the actual reality. This is a concern within the larger database as well, and will be addressed in the final report.

During this meeting, some limitations to the PRIME/Versadex input screen were also identified, such as the lack of a "time" field in the data entry page. As time is crucial to examine the context under which police encounters are made, it was discussed and decided that PR&A should embark upon an exercise to build a more comprehensive database of Street Check encounters in 2018. As coding an entire year of Street Checks was not feasible nor mandatory, a random sampling frame was given to PR&A with

directions on how to select a simple random sample from the data that would represent Street Checks in 2018 from the database. The sample size was 352 files, which would yield results at a 95% confidence level with a confidence interval of +/- 5%.

The resultant database was superior to the entire 5 year population of Street Checks previously put together by PR&A, as it contained not only the date and place of the encounter, but the time field as well. This is extremely valuable, as some of the conversation surrounding bias or random checking may be ameliorated if the encounter is late at night at a high offence location.

The database is being validated and compared to overall larger database provided by PR&A. At this point, little disparity has been found in the conclusions. In general, Street Checks within the database are entered on individuals who have a lengthy criminal record, or those that have been identities at risk and are being checked for “well being”.

The final report will include the following elements:

- (A) General synopsis of the validity and reliability of the PR&A analysis and conclusions;
- (B) Recommendations for an ongoing “audit” schedule and procedure/method; and,
- (C) Identification of data issues and possible remedies.

During May and June 2019, the executive director, Board members—including Street Check Committee members—Pyxis, the Department and outside groups continued to be in touch about eliciting community participation. On June 11, 2019, for example, the executive director forwarded to the Street Check Committee an update from Pyxis on progress with community consultations. The Street Check Committee met during May and June to discuss progress reports and matters related to the Pyxis review.

On July 2, 2019, the executive director emailed Pyxis, asking for a synopsis of what work remained for Pyxis to be able to complete the review and report to the Street Check Committee. Pyxis provided the synopsis that day; it included a report on the work remaining to arrange and conduct consultations. The executive director sent this to the Street Check Committee.

Also, on July 2, 2019, Pyxis informed the executive director, in a phone call, that it would not be able to meet the original deadline for the report. The executive director reported this to the Street Check Committee immediately.<sup>33</sup> Committee members responded that it was best not to rush the process by trying to insist on the original deadline, some of them noting the need to ensure broad and meaningful community consultations. They also supported Pyxis providing an update in September.

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<sup>33</sup> She informed Chief Adam Palmer the next day.

The Board's website was updated the next day, to indicate the Pyxis report would be finalized by the end of 2019. The full Board was made aware of the situation at its July 18, 2019 meeting.<sup>34</sup> On July 17, 2019, the executive director told the complainants that the report would be completed by year's end and provided a copy of the most recent Pyxis update report.<sup>35</sup>

Pyxis provided a further update in a September 6, 2019 report emailed to the executive director, which she forwarded to the Street Check Committee that day. On September 12, 2019, the executive director emailed Pyxis, asking for available dates to meet with the Street Check Committee, in November, to discuss the report after its delivery to the Board. The next day she emailed Pyxis to ask when the draft report would be delivered. On September 29, 2019, Pyxis told the Board's executive director the report was about to be edited and would likely be delivered on October 4, 2019.

The report was emailed to the executive director on October 9, 2019 and she notified the Street Check Committee the next day, adding that she would courier copies to them and noting that they would need to meet in about three weeks, "to provide any final input before it goes forward to the full Board."

The complainants asked, in a November 18, 2019 email to the Board's executive director, if they would "be able to have any advance access to the report, or if we will find out about it when the public does. Any insight or updates you can provide about this file and next steps would be most appreciated." The executive director responded two days later, saying "We will provide you with an embargoed copy of the report a couple of days before it is released publicly online. Public release is set for the February 20th 2020 Board meeting, but it will be posted online on the 18th."

Before discussing my findings about the monitoring of Pyxis's work progress, it is worth noting, in fairness, two examples of communications between the Department and the Board that speak to awareness of proper boundaries between them in this context.

On January 15, 2019, the Board's then executive director emailed the Deputy Chief, asking about the Department's consideration of the Tulloch report on street checks, which had by then been released. The Deputy Chief replied that day as follows, in relevant part:

As for other recommendations, the initial feeling is that we incorporate relevant discussions of the Tulloch report with the Montgomery review. Allowing this process to

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<sup>34</sup> The related report to the Board was posted online after the meeting.

<sup>35</sup> Her email to the BCCLA's executive director said, "Please find attached a report from the Vancouver Police Board's Street Checks Review Committee, as a status update to your service or policy complaint #2018-133, OPCC File #2018-14863."

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operate freely without any perceived interference. In other words, in the interests of a few months we don't want to make changes, because the review team might not agree etc.

The second example is from February 14, 2019, when an officer with the Department emailed the Board's executive director, asking if a civilian researcher with the Department could brief the Department's Indigenous Advisory Committee on Pyxis's progress. The executive director replied that day as follows:

I'll run it by our Street Checks Committee – as the review is an independent Board initiative, I know we are only trying to use the VPD for data, and assistance. I will see if the Street Checks Committee is okay with [the Department researcher] providing the update, or if perhaps someone from our end should do it (or even Pyxis consulting who we have contracted to conduct the review).

### *Conclusions about monitoring of Pyxis's progress*

As for my conclusions on the monitoring of Pyxis's progress, what emerges from the material is a clear sense that the Board, through its staff and the Street Check Committee, diligently kept up to date on Pyxis's progress and conscientiously tried to ensure the work was done in a timely way.

Another observation relates to the fact that Department members or Department staff, or both, attended at least some of the project update meetings. To offer only one example, the Deputy Chief and other Department representatives were present for an April 23, 2019 meeting at which Ruth Montgomery, of Pyxis, was to update the Street Check Committee.

One might argue that the terms of reference for the review were such that the Department had to be involved in the project overall, and specifically in update meetings such as this. After all, the Department possessed the raw data that Pyxis was mandated to analyze. Similarly, the Department possessed policy and other documentation necessary for the review. It was also necessary for the Department to cooperate so that Pyxis could meet with officers. These things necessarily would involve, and did involve, direct communications between Pyxis and the Department, by email and in person, throughout the project. In other words, the Department and Pyxis were already dealing directly with each other, not through the Board, and necessarily so.

Having Department representatives at update meetings was, in light of this, not substantively inappropriate. Moreover, these were updates from Pyxis to the Street Check Committee about progress on the project and having the key Department representatives there offered Pyxis the opportunity to raise with the Street Check Committee any concerns about the

Department's cooperation.<sup>36</sup> Further, with Department representatives present, direct, face-to-face clarifications would be easier, and the Street Check Committee could obtain personal commitments from senior Department representatives to rectify any deficiencies that Pyxis or Street Check Committee members identified, thus also affording a measure of face-to-face accountability for the Department.

For these reasons, while I absolutely understand that some observers might be concerned about the propriety of the Department being present at these meetings, I found no evidence that this resulted in the Department influencing Pyxis's findings. Nonetheless, my own view, explained above, is that there were advantages to having the Department attend.

Regarding the timing for the report's completion, many of those involved knew from the outset that the deadline was unquestionably ambitious. It is also clear that everyone involved—the Street Check Committee, Board staff, Pyxis and the Department—faced challenges in identifying appropriate community groups for consultation and in arranging consultations, which consumed considerable amounts of time. This reflects the reality that many communities of diversity exist, sometimes with several organizations speaking for the same community, creating logistical challenges in arranging and holding community consultations. This involved considerable work on everyone's part and took time, which ultimately delayed the report's completion.

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<sup>36</sup> Of course, Pyxis could raise concerns at any time, but the meetings would offer an opportunity to escalate matters if its efforts to secure Department cooperation had failed.

## **REVIEW & ACCEPTANCE OF PYXIS'S REPORT**

### **REVIEW OF THE REPORT**

#### ***Assessment of the facts***

As noted above, Pyxis delivered its report to the Board's executive director on October 9, 2019. The next day, the executive director emailed Ruth Montgomery and asked her to make two minor changes to the report, i.e., by adding missing names of some Street Check Committee members and adding the Deputy Chief's given name. There was a further update on October 11, 2019, to correct the misspelling of a Street Check Committee member's name.

Ruth Montgomery emailed the revised report to the executive director the same day, saying "Done. See attached. Please note the file name I've used is the same as the original – please destroy that one and use the attached as our final." The executive director responded, "Thank you! I believe the attached is the original? When I open it, there don't seem to be any modifications. I have deleted the other versions."<sup>37</sup>

The executive director also emailed the Street Check Committee, asking for permission to send the report to the Deputy Chief, and asking whether he "should be a part of the input conference call in three weeks". Street Check Committee members agreed to both requests. Certainly, on October 22, 2019, the Deputy Chief emailed the executive director, saying that he had a paper copy of the report and asking for an electronic version so he could read it while traveling. The executive director sent him an electronic copy of the report that day.

The Deputy Chief indicated, for this review, that he had passed the draft report to the research director, solely for fact-checking, and the latter sent back some factual comments. These comments were minor, he said.

For his part, the research director indicated that his section, the Planning, Research and Analysis section, had supported Pyxis's work by giving Pyxis access to such raw data, documentation and other information as Pyxis requested. He noted that Pyxis's data specialist created a methodology for review of the Department's street checks data and ran her own analysis, using a random batch of data from the section. He indicated that his section had no other involvement in the report, other than to do a fact-check, as requested by the Deputy Chief.

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<sup>37</sup> The executive director and Ruth Montgomery also corresponded that day, apparently because Ruth Montgomery had sent the wrong version of the report that day. Ruth Montgomery also told the executive director on October 10, 2019 that she would be leaving the country the next day for work and would check emails from time to time.

The executive director and Street Check Committee members emailed back and forth about dates for the meeting at which they would discuss the report. On October 23, 2019, Ruth Montgomery emailed the executive director, saying that, as she was out of the country, she could not attend a Street Check Committee meeting during the suggested dates. She said she would see if Curt Griffiths could attend and he emailed the executive director that day saying that he was also out of the country and could not attend. The executive director asked Pyxis to send another representative and Ruth Montgomery responded, requesting a call to try to arrange for Pyxis's receipt of the Street Check Committee's input.<sup>38</sup>

On October 23, 2019, the executive director emailed the Department, asking if the Deputy Chief could attend the Street Check Committee meeting, "to go over the report and provide any final input". The Deputy Chief emailed the research director and a colleague of his on October 26, 2019, asking them to brief him on the draft report before the review meeting.

On November 17, 2019, Ruth Montgomery emailed the executive director, saying "[w]e've all had one more read of the report and have made a few edits. The revised copy is attached." The executive director responded the next day, asking "Are the changes highlighted in there, or can you briefly summarize them? Just so the members don't have to read the whole thing again." Ruth Montgomery responded that day, saying, in relevant part:

The changes made were punctuation corrections, several table banners colored, plurals changed to singular words, spelling errors corrected, missing words added, redundant words removed, sentences removed and reordered, and several words changed to more professional language. No new content added.

The next day the executive director responded, "As long as there's no new content that's fine".

On November 21, 2019, the executive director emailed Ruth Montgomery again, saying "I just sat down to read this latest version and see that the 'acknowledgment' section is the inaccurate one (before we made all the changes) – are you sure you sent me the most up to date report?" Ruth Montgomery responded that day, apologizing and saying, "Please see attached. This is the version that should have been sent. I've retitled it with today's date to differentiate between the one I sent you a few days ago."

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<sup>38</sup> Ultimately, Curt Griffiths did not attend; Ruth Montgomery did, having agreed on October 31, 2019 to call in by phone from abroad.

On December 3, 2019, the Board's executive director emailed the Deputy Chief:

I finally worked my way through the remainder of the street checks draft report and have put together some notes. I just wanted to run a few of my key points and questions by you in advance of the meeting just to see if we're on the same page. I should have touched base with you about this far sooner than today, but so much has been going on! We can always talk about some of these after today's meeting as well.

There is no indication in the materials that the Deputy Chief replied.

The executive director emailed comments, which she had drafted and then discussed with the Street Check Committee, to Ruth Montgomery on December 5, 2019. The same day she forwarded the same set of comments to the Deputy Chief and asked him if the Department would be commenting. He forwarded that email, along with the executive director's comments, to the research director, adding this:

...I mentioned that we would forward feedback to Ruth re: report through Stephanie. Were there any comments and/or edits that you have on the report, if so can you send directly to Stephanie and cc me please and thanks.

The research director sent the Board's executive director some minor comments on December 6, 2019. She sent the final report to Chief Adam Palmer, the Deputy Chief and the research director on December 17, 2019, with the following observations:

Attached is the final version of the Police Board's Street Check Review report. Feedback was sent to Pyxis on their first draft; they have made some changes and have now noted that no further revisions would be made to the report.

There were some changes they unfortunately did not make (such as clarifying that VPD patrol officers DO attend lunch with the Chief) but, they have taken most into consideration. Full chart of suggested changes and implemented feedback is outlined below.

This report will be coming forward Closed-in-Camera at the January Board meeting, where the Board will be reviewing the VPD's response to the recommendations outlined in the report, as well as discussing the decisions that will be made publicly by the Board in February with respect to the initial Service or Policy complaint.<sup>39</sup>

As this indicates, Pyxis had agreed to revise the report in response to some, but not all, of the comments it received from various sources, including the Department. The "chart of

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<sup>39</sup> The executive director said during this review that she sent hard copies of the final report to all Board members on December 19, 2019.

suggested changes and implemented feedback” that the executive director had prepared also identified where Pyxis had declined to change its report. The changes and feedback were organized by their source, i.e., according to whether they came from the Street Check Committee or the Department.<sup>40</sup>

The research director prepared a report to the Board, dated January 13, 2020, summarizing Pyxis’s findings and recommendations, and discussing the provincial standard for street checks that had been issued in October.<sup>41</sup> This summary report would have been sent to the full Board on January 16, 2020, a week before its January 23, 2020 meeting.<sup>42</sup> The full Board had also received the Pyxis report itself in December.<sup>43</sup>

### *Conclusions about review of the Pyxis report*

In brief, my assessment of the Department’s comments on the report discloses that its input was to say the least minor, consisting of corrections of typos and names. It was, I am satisfied, not calculated (or likely) to influence the report’s findings or recommendations. Further, it is clear Pyxis, which had been firm about the need to protect the independence of its work—something that Curt Griffiths underscored when I spoke to him—was not willing to make all the changes that had been suggested by various sources, including the Department.

Nor do I have concerns about the decision to invite the Department to comment on the draft report. It is a common practice for oversight agencies to, as a matter of administrative fairness, give those being reviewed or investigated an opportunity to comment on factual matters, i.e., to correct any errors or omissions. The Board’s invitation to the Department to comment was not clearly framed that narrowly, but the Department appears to have treated the invitation as limited to factual matters. Its comments certainly were minimal and limited to factual matters, not Pyxis’s findings. I conclude there was no impropriety in the Department’s comments or its being given an opportunity to comment (noting also that Pyxis declined to make all the changes suggested to it).

### **REMOVAL OF THE PARAGRAPH ABOUT OFFICER BEHAVIOUR**

The terms of reference contemplate my reviewing the decision to remove information relevant to the complaint from the final Pyxis report. This refers to a paragraph on page 223 of the draft report, which was removed before the report was finalized.

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<sup>40</sup> This email identifies three Department comments, each of which is minor.

<sup>41</sup> This report was an in camera report. It recommended that the Board discuss the report at its January 23, 2020 in camera meeting, and then be tabled for information at the Board’s February 20, 2020 public meeting.

<sup>42</sup> March 12, 2021 email to me from the executive director.

<sup>43</sup> Ibid.

The paragraph appears to have reflected observations of Pyxis researchers who were on patrol with Department officers. Their first observation was that none of the observed interactions “appeared to be based on race or the result of bias”, there being “legitimate reasons for stops”, i.e., “[i]n most instances police initiated the stop because the behaviour of the individuals caught their attention.” However, the draft report went on to say this:

On one ride along however, one of the officers made a number of inappropriate, racially insensitive comments to the researcher and his partner throughout the shift. These comments were extremely inappropriate and highly concerning, particularly because the research partner was a visible minority of South Asian decent. An officer on another ride along also made a number of inappropriate comments about vulnerable and marginalized people and appeared to have considerable anger issues. When interacting with members of the public he was overly terse and, on one occasion, extremely rude. While these officers were clear exceptions, their behaviour and attitude were highly concerning and something that the VPD needs to address.<sup>44</sup>

In a November 26, 2019 email to the Street Check Committee, the executive director said this:

Good afternoon Street Checks Committee,

Pyxis has forwarded an updated copy of the Street Checks Report, which I have attached. I had asked Ruth to highlight the changes so that you would not have to read the full report again, but unfortunately she had not been keeping note of them, however assured me that it was mainly formatting.

DCC Chow did just draw one major change to my attention that Ruth failed to mention, that I wanted to pass along in advance of our Dec 3rd meeting. In the original report that was disseminated to you, page 223 contained a paragraph about an officer on one of the ride-alongs making inappropriate and racially insensitive comments. DCC Chow had lengthy discussions with Curt about this paragraph and it has since been removed for a variety of reasons, which DCC Chow will speak to at the upcoming meeting.

In the meantime, please be assured that DCC Chow will be initiating a PSS investigation into this member's alleged conduct. As with all serious allegations, it will be looked into in detail.

The research director indicated during this review that he had brought the paragraph's existence to the Deputy Chief's attention, and an October 21, 2019 email from him to the Deputy Chief closes by saying “BTW, read the last pgh on page 223 – not good” (*sic*). The research director also said that he had raised the matter again, at a November 15, 2019 meeting about the then-impending provincial policing standard for street checks and showed the paragraph to the Deputy Chief at that meeting.

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<sup>44</sup> Pyxis report draft, October 9, 2019, page 223.

For his part, the Deputy Chief recalled that he received the report toward the beginning of October. He said that, before he had a chance to look at it, the research director emailed him around the middle of October, saying that the report included a paragraph disclosing conduct that was possibly of concern. He acknowledged in this review that, due to travel, he did not read the report, including the paragraph, at that time.

Rather, after his return to Vancouver about two weeks later, the research director and a colleague brought the paragraph to his attention again, in mid-November. The Deputy Chief said he was annoyed about the paragraph's contents, which to him suggested possible officer misconduct, and decided at once to have the matter investigated. He then met in the afternoon of November 15, 2019 with Deputy Chief Steve Rai—who was ultimately responsible for the Department's Professional Standards Section—Superintendent Martin Bruce,<sup>45</sup> and Inspector Trevor Burmachuk, the officer in charge of the Professional Standards Section, and they decided to initiate an investigation into the allegations.<sup>46</sup>

In an email sent to the Deputy Chief in the evening of November 15, 2019, one of the Department's civilian employees—who had been involved in supporting Pyxis's work and had raised the paragraph with him in a meeting earlier that day—said this:

Further to our discussion, I believe the commentary on page 223 is a conduct issue that should've been directed through the appropriate channels at the VPD, and not through a public document.

However, this information going public may be problematic as a conduct/police act investigation ought to be confidential, with its own integrity and privacy process – anything that interferes with that process isn't ideal as it may prejudice the process. This information is presented in a pre-determined (biased) manner, and if played out in the press, I believe it may influence the process. In a sense, this isn't different from matters that are before the courts – ideally, the process should proceed without it being in the public domain. Absolutely, these that these [*sic*] are serious claims – for that reason, I don't think we want to impugn the integrity of the investigation.

The Deputy Chief recalled that, on November 16, 2019, he was at the Vancouver airport, about to board a flight overseas, and spoke on the phone with Curt Griffiths, in a call that lasted a few minutes. He recalled telling Curt Griffiths that the Department would investigate the matter. He also recalled Curt Griffiths saying something to the effect that this was outlier data, which he should have caught, and would look into. The Deputy Chief also recalled asking

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<sup>45</sup> Superintendent Bruce was in charge of Personnel Services, which oversees Professional Standards, Human Resources, and Training and Recruiting.

<sup>46</sup> The Department in due course notified the OPCC of the investigation.

Curt Griffiths for the officers' identities, and Curt Griffiths also recalled in this review that the Deputy Chief asked this.<sup>47</sup>

It is convenient to note here that the Deputy Chief told me during this review that he had, at some point, told Curt Griffiths not to shred or dispose of any records relevant to this matter, but could not recall with certainty when this was.<sup>48</sup>

The research director recalled in this review that the Deputy Chief told him that he had been in touch with Curt Griffiths about the matter and that Curt Griffiths had said the paragraph was an "outlier" to the report.

On November 17, 2019, the Deputy Chief emailed Deputy Chief Rai, Inspector Burmachuk and Superintendent Bruce, as follows:

I spoke with Curt Griffiths today<sup>49</sup> on the Street Check report issue that I raised on Friday. Curt indicated that he was familiar with the comment on the report involving the officer who made comments to the researcher that were 'inappropriate'. Curt said he needs to talk to his research team to determine context, however believes that it may not be possible to identify the officer – data collecting was anonymized. I am away for 10 days, we can wait for Curt's reply and/or if we need to push this ahead can I suggest Trevor speak with Jennie Gill who can give you excerpts relating to this matter.

That same day, Ruth Montgomery emailed the Board's executive director an updated version of the Pyxis report, saying, "We've all had one more read of the report and have made few edits. The revised copy is attached." The executive director responded the next day, asking "Are the changes highlighted in there, or can you briefly summarize them? Just so the members don't have to read the whole thing again." Ruth Montgomery responded that the changes were "punctuation corrections, several table banners colored, plurals changed to singular words, spelling errors corrected, missing words added, redundant words removed, sentences removed and reordered, and several words changed to more professional language", and also said "[n]o new content added."

It is important to note here that the Board had received the revised draft report on October 11, 2019, and the November 17, 2019 version effectively replaced it for the purposes of Street Check Committee review. Consistent with this, in the days following November 17, 2019, the

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<sup>47</sup> Curt Griffiths told me it is his standard practice to extend confidentiality to officers in projects like this, short of witnessing them engaging in criminal or similarly serious wrongdoing.

<sup>48</sup> The materials before me do not include any emails or other communications on this issue.

<sup>49</sup> As indicated above, The Deputy Chief had flown overseas on November 16, 2019. This may explain why, in an email the next day, he referred to having spoken to Curt Griffiths "today". The other possibility is that The Deputy Chief spoke with Curt Griffiths on November 17, 2019, not November 16, 2019.

executive director had this version printed and sent to the Street Check Committee, for review at their December 3, 2019 meeting.

Returning to the communications between the Deputy Chief and Department colleagues, Inspector Burmachuk responded to the Deputy Chief's November 17, 2019 email about the paragraph on November 18, 2019, as follows (in relevant part):

I agree that we can wait until Howard's return prior to me notifying the OPCC. I would really need some additional facts and maybe some documentation on the incident prior to notifying the OPCC. I realize that we just found out on Friday and may not know all the facts yet. As suggested, I will touch base with Jennie Gill and get some preliminary information.

On November 26, 2019—the same day that the Deputy Chief alerted the Board's executive director to the paragraph's removal—Curt Griffiths sent him an email saying, "Paragraph has been removed when we did some final edits." The Deputy Chief responded by email the next day, "Thanks Curt". On December 11, 2019, he emailed an update to the executive director, "Just to follow up on the concerning excerpt in the Montgomery Consultant's report that was taken out, PSS has requested an order into the investigation" (*sic*).

On January 17, 2019, the Deputy Chief emailed Inspector Burmachuk both the draft and final Pyxis report, and later that day emailed him again, as follows:

FYI for your records and some further context:

The draft report was received in October of 2019 however wasn't reviewed until into November (300+ pages). I was made aware in November and formally sat down in a meeting on November 15<sup>th</sup> to discuss the report in general and possible misconduct concerns that turns up on page 223. I made some preliminary inquiries and left the country for on November 16<sup>th</sup>. Upon my return, I followed up with the issues and OPCC was informed in early December. In case there is any confusion on the timeline.

Note, you should probably mention to the OPCC that the excerpt appears on P. 223 so they don't have any problems finding it. Sorry I forgot to include it in my original email...thnx[.]<sup>50</sup>

As for who decided to remove the paragraph, the Deputy Chief was very clear with me that he did not ask for this to be done. As he put it, this was not his report to write, i.e., it was Pyxis's report. He characterized the report as containing far more critical observations and findings about police and how they interact with or treat racialized communities and other

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<sup>50</sup> This was in response to an OPCC request for copies of the final and draft versions of the report, which The Deputy Chief obtained for this purpose, on the same day, from the Board's executive director.

groups, such as sex workers. In other words, removing the paragraph was not to the Department's advantage. He was very clear that his concern was with the behaviour described in the paragraph, that he was angry about it, and had therefore referred the matter for formal investigation. He also underscored that neither he nor the Department had any incentive to remove the paragraph, and its content was properly referred for formal investigation in any case.

The Street Check Committee met on December 3, 2019 to discuss the report. One of the members raised the issue of the paragraph's removal. Some Street Check Committee members who were present told me that Ruth Montgomery, who joined the meeting by phone on behalf of Pyxis,<sup>51</sup> had definitely told the meeting that Pyxis had decided to remove the paragraph because it was an "outlier" from the report. Others, including the Deputy Chief, could not recall with certainty what she had said.<sup>52</sup> However, as the following discussion indicates, the recollection of Street Check Committee members, the executive director, Department representatives, and the documents at hand, all support the conclusion that it was, indeed, Pyxis's decision to remove the paragraph of concern.

There were, again, four Street Check Committee members. One of them recalled noting the paragraph during her review of the draft report but could not recall whether Ruth Montgomery spoke to the issue at the December 3, 2019 meeting. This member also recalled that she was aware the Deputy Chief was not happy about the paragraph's contents and had therefore launched an investigation.<sup>53</sup> This member also told me that Pyxis decided to remove the paragraph.<sup>54</sup>

Another Street Check Committee member recalled the Deputy Chief speaking to the matter at the December 3, 2019 meeting, saying that he had spoken to Curt Griffiths to try to ascertain who the two officers were. He also told the meeting that the Department had started a formal conduct investigation. This member also learned that Pyxis had decided to remove the paragraph and was refusing to put it back in, saying that the report was its independent report, so Pyxis alone would decide the issue. She recalled that Pyxis had apparently expressed the concern that the paragraph would, if left in, become the focus of the report.

This same member also recalled Ruth Montgomery telling the December 3, 2019 meeting that confidentiality—including for her colleagues, who did not wish to complain about the

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<sup>51</sup> Several Street Check Committee members recalled her saying she was calling from Vienna.

<sup>52</sup> It was not possible to confirm this directly with Ruth Montgomery, who emailed me to say she declined to speak with me for this review.

<sup>53</sup> She mentioned that she has notes that support her recollection.

<sup>54</sup> This member ultimately also let the paragraph's removal lie, on the basis that the allegations were being investigated and removal would not affect the report.

incidents described in the paragraph—meant that identifying information could not be provided. This Street Check Committee member also believed that Ruth Montgomery might have told the meeting that Pyxis had decided to remove the paragraph.

Another Street Check Committee member also recalled noting the paragraph of concern when reviewing the draft before the December 3, 2019 meeting. This member could not recall whether the paragraph's removal was noted in an email from the executive director or whether the Street Check Committee learned about it at the meeting. This member recalled that the Deputy Chief mentioned at the meeting that he was very concerned about the matter and wanted to find out who the two officers were. This member also recalled Ruth Montgomery calling into the meeting and explaining that Pyxis had removed the paragraph because it was an "outlier". The member was very clear about this statement.

The fourth Street Check Committee member learned of the paragraph's removal through the executive director's November 26, 2019 email alerting members to the issue, as raised by the Deputy Chief. This member remembered the Deputy Chief speaking to the issue at the December 3, 2019 meeting, advising that the matter needed to be investigated. He then left the meeting, and the Street Check Committee discussed the report. This member recalled that the members all felt confident the matter would be investigated. This member felt that all members accepted the paragraph's removal on the basis that it was not germane to the report's recommendations, noting that the recommended annual street check audits would follow up on such concerns.

The executive director recalled speaking with the Deputy Chief about the paragraph's removal and recalled that he told her he would follow up with Pyxis, to try to find out who the officers were. She recalled that he told her he wanted to uncover their identities so he could refer the matter to the Department's Professional Standards Section, which deals with officer discipline matters. This conversation prompted her November 26, 2019 email to the Street Check Committee, which is quoted above.

As for her statement in that email that the Deputy Chief and Curt Griffiths had "lengthy discussions", the executive director told me she ought not to have used those words in her email as she was not privy to their discussion and had no way of knowing whether the discussions were lengthy.<sup>55</sup>

The Deputy Chief recalled Ruth Montgomery joining the Street Check Committee meeting on December 3, 2019 and, while he could not recall her exact words about the paragraph, he believes that her explanation for the paragraph's removal was consistent with what Curt Griffiths had said to him when she spoke in November, i.e., the paragraph was an "outlier".

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<sup>55</sup> She said essentially the same thing to others in the past, in emails provided to me.

*Conclusions about the paragraph's removal*

The material before me points to the conclusion that Pyxis made the decision to remove the paragraph, and did so on its own motion, not at the Department's request and without pressure on the Department's behalf. I also accept that Pyxis removed the paragraph because, when it considered the matter, it decided that the information in it was an "outlier" to the report. In other words, I accept that the paragraph's removal was done in the exercise of the professional judgement of those responsible for the report's content.

At the same time, it is clear from benefit of today's vantage point that, if the paragraph had been left in, or if the Department had disclosed its removal publicly at the time, concerns about the removal being an attempt to conceal behaviour could never have arisen.

Again, Pyxis felt, in its professional judgement, that the paragraph was an "outlier" and I accept this. I also accept that Pyxis was concerned, as the material indicates, that the paragraph would, if not removed, create controversy that took focus away from its numerous recommendations for improving the Department's practices.

This said, while my view on the paragraph's removal is irrelevant, I note that the report elsewhere dealt with community experiences with officer behaviour like that described in the paragraph.<sup>56</sup> Chapter 10 set out an analysis of researchers' observations of officer-citizen interactions.<sup>57</sup> The researchers completed a survey for each observation of a street check and entered their interpretations of what they saw.<sup>58</sup> Figure 9 in the report depicts the researchers' assessment, in the context of street encounters, of the extent to which an officer behaved respectfully toward the individual. Figure 9 shows that, in 2% of cases, the officer "showed disrespect", and the report says this:

Overall, the researchers determined that in 79% of encounters ( $n = 41$ ), officers showed dominant respect. To clarify, "dominant" in this assessment means continual or "most of the time." In 19% of encounters ( $n = 10$ ), officers were assessed as showing

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<sup>56</sup> Chapter 8, which is titled "The Lived Experiences of Community Members and Organizations", goes into considerable detail about individuals' and groups' perceptions of policing and police in Vancouver, including about how individual officers interact with members of Indigenous and other racialized groups. The report also discusses reports by community members about officer behaviour. For example, at page 140, the report says this: "A youth worker noted, although relationships with the police have improved over the past decade, relationships with frontline officers are still tenuous. Some interviewees stated the VPD has some officers whose engagement skills are good, but noted, regrettably, that many did not possess good engagement skills."

<sup>57</sup> The report describes these as having been made during 12 full-shift ride-alongs with officers in four Department districts, and two full-shift walk-alongs with beat officers.

<sup>58</sup> Pyxis report, final version, page 214.

intermittent respect. *In one encounter, the researchers determined that the officer showed disrespect to the individual.*<sup>59</sup> [my italics]

Moving on from this issue, controversy about the paragraph's removal—which has been characterized in the media as an attempted “coverup”—could have been avoided if the Board had disclosed, when the report was released, that the researchers had reported this behaviour, that the Department was investigating it, and that the OPCC had been notified.<sup>60</sup>

It appears that Street Check Committee members felt that, since the matter was being investigated, nothing needed to be done or said about the paragraph. There also were some concerns among Street Check Committee members, and a concern on the part of one Department civilian employee, that the investigation had to be kept confidential.<sup>61</sup> I disagree. The Board or Department could have disclosed information about the matter without violating any confidentiality requirements, any privacy rights, or any procedural fairness rights. This is again my perspective as a matter of hindsight, and I found absolutely no evidence that the Board proceeded as it did for any improper purpose, but hindsight reveals how things could have been handled more transparently.

## **EFFORTS TO OBTAIN RECORDS FROM PYXIS**

### *Assessment of the facts*

As indicated earlier, the Deputy Chief unsuccessfully tried to ascertain the identities of the two officers whose actions were called into question. It appears that Department investigators could not identify the officers, including because Pyxis said that the field notes had been shredded in the ordinary course. It was not possible, ultimately, for and the investigators to identify the officers and the investigation was ended on that basis.

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<sup>59</sup> Ibid., page 218. This aspect of the report was also adverted to later, in a February 13, 2020 email to The Deputy Chief, the Board's executive director said, “When you and I were talking yesterday about the Pyxis report, you mentioned that although they had removed certain descriptive information about those officers under investigation, it was still accounted for in a chart”, and asking if he was referring to page 218 of the report. The Deputy Chief responded by confirming this was this case, and the executive director closed the email conversation by commenting that she was meeting the next day with the Board's chair and wanted “to make sure I give him all the info.”

<sup>60</sup> On this point, the Board had a copy of the paragraph's text, from the October draft of the report, and could have used this.

<sup>61</sup> In a February 27, 2020 email to the Department, the executive director said this: “Since the Committee was made aware that the details of the alleged incident had been turned over for investigation and that the encounter was still referenced in the report elsewhere (page 218, attached), they did not see the need for further discussion until the investigation has been completed.” There is a reference in her notes of the Street Check Committee's December 3, 2019 meeting that “there may be a general statement that there are some exceptions”, which appears to refer to the statement found on page 218, in relation to Figure 9, discussed above.

This again brings into sharp focus the fact that the contract with Pyxis was silent on this issue. The contract, again, said nothing about ownership of work product underlying the report, about records retention, or about the Board's right to copies of working documents, including researchers' field notes. While the Board could not have anticipated the controversy that would arise over the alleged conduct of two unidentified officers, the agreement's silence on these issues left the Board in a weak position, leaving Pyxis to, as it was perfectly entitled to do, dispose of its working papers in the ordinary course, as Pyxis's work was complete.

When Department investigators asked, Board staff made appropriate efforts to obtain any relevant records from Board members and to provide Board documents as well. In a February 21, 2020 email to Street Check Committee members, the executive director asked them to "advise me if you have any notes or material that pertain specifically to the removal of the paragraph in the first draft of the Pyxis report, alleging officer misconduct" and to "forward [to] me a copy of any relevant materials, if you have any".<sup>62</sup> All committee members responded in the following days. Only one member had anything relevant. She emailed the executive director a page from her copy of the draft Pyxis report, on which she had written "conduct investigation" alongside the paragraph of concern.

In addition, after some internal Board consultation, the executive director provided investigators with a copy of the draft Pyxis report and the final report. The contract and relevant portions of Pyxis's proposal were also provided, as were whatever notes of Street Check Committee meetings the executive director had available.<sup>63</sup>

The Board did not attempt to retrieve records or information from Pyxis to help identify the two officers. As the executive director put it, it would have been inappropriate for the Board to do so because the Department was investigating the matter under the Act, and the Board's intervention would have been offside its proper role. The executive director also noted that, as she understood it, the Department attempted to obtain information or records from Pyxis but could not do so.

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<sup>62</sup> There is also a February 21, 2020 email from the executive director to the Department referring to the fact that the full Board had, at its February 20, 2020 meeting, considered the issue and decided to make available all materials relating to removal of the paragraph in question.

<sup>63</sup> In a March 21, 2021 email to me the executive director confirmed that the Street Check Committee, as an ad hoc committee, kept no formal minutes, which is why she provided whatever handwritten notes she had available.

## BOARD INDEPENDENCE

The terms of reference call on me to consider the Board's "level of independence from the Department with respect to service and policy complaints, including the process by which Board members are debriefed on important documents."

As noted earlier, the Act assigns to police boards the primary responsibility for responding to a service or policy complaint. A board's options include investigating the complaint itself or asking the chief to investigate and report on the complaint.

The complainants have expressed concern that the Department itself investigated their complaint, citing a perceived lack of independence and possibly bias on the Department's part. Concern about police services investigating themselves can really only be addressed by legislative reform. As outlined earlier, the Act itself permits a police board to direct the department to investigate itself. This means any perceived bias is statutorily created, making this a policy issue, not a legal issue. Whether the Act should continue to enable boards to allow departments to investigate themselves in such cases deserves very serious consideration and later I make recommendations about this.

The Board's policy—certainly, its practice—of "automatically" referring service and policy complaints to the Department does, however, raise concerns for me.

The Board's Service and Policy Complaint Review Standing Committee is made up of all Board members. The committee's terms of reference list the service or policy complaint response options set out in the Act, then state the following:

The Board will *automatically* request that the chief constable investigate and report on a complaint, subject to the Board's decision to decline to investigate on the basis that the complaint is frivolous or vexatious, or to select another option in section 171(1), to avoid the delay in waiting until the next meeting to make that decision.<sup>64</sup> [my italics]

This paragraph's language leaves room for the committee to pursue options other than "automatically" ask the Department to investigate complaints. In this case, however, the Board referred the complaint to the Department in a manner that suggests referral to the Department is indeed automatic. This passage is from the Board's July 18, 2018 letter to the complainants:

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<sup>64</sup> Section 3A, Appendix 5, of the Board's policy manual (last revised July 2020): <https://vancouver.ca/police/policeboard/PolicyProcedures/20-Appendix-5-SP-Complaint-Review-Standing-Committee-Terms-of-Reference.pdf> (Accessed February 16, 2021).

I would like to clarify that the Board has taken no action with respect to the complaint you have filed in this matter. *As a matter of process, the VPD investigates all Service and Policy Complaints.* When the complaint comes forward to the Board's Service and Policy Complaint Review Committee the Committee will be provided with the written complaint along with background material, including your letter of July 17<sup>th</sup> and the investigation report.

The Committee will be considering the complaint and background information at its meeting on September 14<sup>th</sup>, 2018. At that time all options outlined in Section 171(1) of the *Police Act* (quoted in your letter) will be available to it. As you are aware, the Board's actions with respect to all Service and Policy Complaints are subject to oversight by the Office of the Police Complaint Commissioner. [my italics]

Consistent with this letter, Board representatives confirmed to me that for some years it has been the Board's practice to refer *all* service and policy complaints to the Department for investigation.<sup>65</sup> The Board does this, I was told, because complaints were being held up pending a Board meeting at which direction could be given. It was felt that routine forwarding to the Department would speed up the process to everyone's benefit.

It was also felt that in almost all cases the Department, not the Board, has the information and expertise necessary to respond properly to service and policy complaints. Some people acknowledged that there will be cases in which the complaint is simple and straightforward and might be handled by the Board alone. But there was a clear view that, in many cases, including the complaint in issue here, the Department is best placed to investigate and report to the Board.

In addition, it was pointed out that, where the Department investigates, it is open to the Board to either reject the Department's report, and any recommendations, direct that further information be provided to the Board or that additional actions be taken. This case was cited as an example, since the Board received the Department's report and accepted its six recommendations, but also resolved to have an outside expert inquire into the matter. Put another way, this case was held out as illustrative of the Board's ability and willingness to require more to be done to resolve a complaint.

I have no doubt that this referral practice was established in good faith. It is commendable that the Board aims to speed up the complaint process by having staff routinely, and promptly, refer all complaints to the Department. Waiting for a committee meeting at which the committee can consider how to handle a complaint will delay matters. It is also reasonable to think that many complaints require access to information, and expertise, that the Department, not the Board, possesses. In such cases, referral to the Department may make

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<sup>65</sup> The policy was implemented to formalize a practice that appears to have evolved in the years leading up to 2014.

sense. Nonetheless, the Board's automatic referral practice raises concerns that ought to be addressed through changes in Board policy and practice.

The first issue is the clear tension between the Board's practice of automatic referral of all complaints and its above-quoted policy, which inaccurately, it seems, suggests that the Board retains discretion to select other approaches case-by-case. Whether this practice aligns properly with the Board's own policy, or with legal requirements relating to the fettering of decision-making authority, is outside this review's terms of reference. However, it is my view that the Board should reassess this issue in light of this review.

The second issue is whether the Board's existing policy on service and policy complaints should be enhanced. The committee's terms of reference contemplate dismissal of frivolous or vexatious complaints, and state that "[t]he Board" may "select another option in section 171(1)". These choices merely restate the law, which is admittedly not very helpful, and the Board should review its policy with a view to articulating factors to guide its decisions on who should investigate such complaints.

These factors could account for the fact that the range of service and policy complaints is broad. At one end, an individual might complain that the Department is providing inadequate traffic enforcement services in the block on which the individual lives. At the other end are complaints such as that underlying this report, i.e., complaints that raise significant societal issues relating to the use of state power, such as concerns about discrimination in the exercise of power and about the treatment of communities of diversity.

A nuanced policy setting out factors for the Board to consider would enhance public trust and confidence in its governance and oversight of the Department. If the Board had been able to turn its mind to a fulsome policy that offered appropriate guidance on such matters, it might not have decided to "automatically" refer the complaint to the Department. It could have chosen to engage outside experts to investigate the complaint from the get-go, as opposed to doing so only after the Department had investigated itself in such a sensitive matter.

This case also underscores that, where the Board does not have the expertise or information necessary to investigate a complaint, and the complaint is not a straightforward complaint about service, it could—and in my view should—retain an outside investigator rather than invariably refer it to the Department. This does not mean the Board has to keep an investigator on staff. It has a part-time ethics adviser on retainer, and it easily could, through a procurement process, establish a roster of qualified investigators to handle complaints on a fee-for-service basis.

As for the process delay concern that appears to have motivated the Board to automatically refer all complaints to the Department, one fix would be to change the composition of the

Board's Service and Policy Complaint Review Standing Committee. At present, all Board members sit on that committee. This is not necessary. A committee of, say, three members could meet more easily (perhaps by telephone or video at the initial complaint receipt stage). The smaller committee could be charged with selecting an outside investigator where the Board itself is not able to investigate, monitor the progress of investigations (including where the Department investigates), review draft investigation reports, and communicate with complainants.

Another change the Board should consider for its complaints policy is a means of ensuring that complainants have an opportunity to be heard. While such complainants may not have natural justice rights in a legal sense, complaints such as the street checks matter raise important public policy questions that surely merit involving complainants to a reasonable extent. In this case, however, the complainants were not afforded any real opportunity to present their concerns further to the Board. Also, when I spoke with the complainants, they expressed disappointment that the Board had not, in their view, made any real efforts to keep them apprised of what was being done with their complaint. The Board should, in my view, consider changing its processes to enable complainants to be heard, and to itself or through its investigators conduct community consultations where appropriate, as part of the complaints process.

In closing, how the Board chose to implement its decision to secure an independent review of the Department's complaint report has, as noted earlier, raised concerns about the Board's independence. Earlier I found that the Department's involvement was not improper in substance, and that its opportunity to comment on the draft report was fair and appropriate. But there is no doubt that the Board's decision at various stages to involve the Department created the unfortunate yet understandable perception for many that the process was not the independent and objective outside review that the Board promised. Coupled with the fact that it is standard Board practice to refer all service or policy complaints to the Department, to investigate itself, observers might understandably think that the Board is not exercising its oversight duties independently of the Department.

Earlier in this section I outlined some of the reforms the Board should consider in its approach to service and policy complaints, especially for more complex and significant public policy matters such as those raised by the street checks complaint. The practical challenge in implementing such reforms, and more generally in relation to the Board's statutory governance and oversight duties, will be to find ways to ensure the Board is not perceived to identify with the Department and its interests. This could present a challenge as the Board is dependent on the Department for most if not all support services, as well as its office and meeting space, with the Board's budget being tucked into the Department's budget. This has province-wide implications, since all police boards are in a similar position, as discussed below.

## COMPLAINTS-RELATED TRAINING & RESOURCES

The terms of reference direct me to assess “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 Act.” They also invite recommendations “to improve the governance capabilities of police boards generally, and the Board specifically, when responding to service and policy complaints under the Act. This may include recommendations regarding procurement processes where the need for a contract to assist in responding to a complaint is identified.”

These terms obviously require me to assess resources generally available to police boards in relation to their service or policy complaint mandate. The Ministry confirmed that, apart from the newly established Surrey Police Service, the Board is the only municipal police board in the province that has even an executive director, i.e., its own permanent executive staff person. Boards are otherwise essentially entirely supported by civilian staff employed by the police department or service in question, and these staff members perform administrative support services for the board.<sup>66</sup> This is the case for the Board, as well, to a real degree. Also, like other services, the Board is housed at Department headquarters, and uses Department space for many, perhaps most, of its meetings.

In essence, for all but two police boards, when any member of the public reaches out to the board's administration, that individual will end up dealing with the office of the chief of police or with other police department personnel. The optics of this are not ideal, certainly in the context of boards' complaints functions, and point to a need to consider how to remedy this situation. The next section first discusses the issue of training for boards.

### *Training for Board Members*

Regarding training and resources for police board members, it is evident that new members are, upon appointment, given a copy of the Ministry's 2015 *Police Board Handbook*.<sup>67</sup> That document has some 77 pages of guidance for board members, and 200 pages of provincial legislation, including the Act. Part 8.0 of the handbook offers advice on the roles and objectives of boards, and also contains advice on relations between boards and police departments.

As indicated earlier, the Board has its own policy and procedure manual, which is, of course, available to members.<sup>68</sup> The manual, and terms of reference for the Board's service and policy

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<sup>66</sup> As the discussion above indicates, City of Vancouver staff apparently also provide some support for the Board.

<sup>67</sup> <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/police/boards/bc-police-board-handbook.pdf> (accessed March 18, 2021).

<sup>68</sup> <https://vancouverpoliceboard.ca/police/policeboard/manual.htm> (accessed March 18, 2021).

complaint committee, address the complaints process, and I have already recommended that the Board review it.

Regarding training, the provincial government's Crown Agency and Board Resourcing Office, which coordinates public sector appointments, including for police boards, offers online training for appointees, but this is not specifically for police boards and is obviously not about complaints handling.<sup>69</sup> The Canadian Association for Police Governance, a not-for-profit organization consisting of police boards, also offers online training for board or commission members but this is not specific to the British Columbia context.<sup>70</sup>

During this review, the Ministry issued a request for proposals for a consultant to develop and deliver training for police boards. The consultant will be required to lead and consult with a working group of subject matter experts and key stakeholders identified by the Ministry. The outcome will be a practice-based training program that will address the current and evolving needs and priorities of police boards.

I have concluded that, given this recent, and commendable, development, there is little point making any specific recommendations about training specific to service and policy complaint processes. It is, however, abundantly clear that greatly enhanced, province-wide guidance materials and training are needed to better support both new and ongoing board members, including in relation to complaint handling.<sup>71</sup>

A key component of a new program should, in my view, be a program for mentorship of new police board members by existing or former board members. This kind of invaluable, lived-experience guidance is best coordinated by the Ministry, including because the Ministry can more effectively make mentors from one community available to members in other communities. Mentorship need not be limited to complaint handling, but obviously could and should include this aspect of members' responsibilities.

The OPCC's role in this area should also be considered. This review suggests to me that, at least in the case of the Board, greater communication with the OPCC would be beneficial.

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<sup>69</sup> <https://www2.gov.bc.ca/gov/content/bcpublicsectorboardresourcing> (accessed March 18, 2021).

<sup>70</sup> <https://capg.ca/what-is-the-learning-portal/> (accessed March 18, 2021).

<sup>71</sup> For example, the Commissioner told me that the Ministry had, in the past, offered general board training for police board members through the Institute of Corporate Directors. While this was generalized training for directors, the Ministry should keep this kind of training in mind when developing the new materials and training. The Ministry should also keep in mind the 2009 Auditor General report on the information needs of governing bodies such as police boards:  
<https://www.bcauditor.com/sites/default/files/guides/pdf/Report%206%20Part%202%20-%20Guidelines.pdf> (accessed March 18, 2021).

More important, the OPCC undoubtedly could play a valuable role in helping to educate boards about their oversight role in service or policy complaints.

As part of the Ministry's ongoing work on training and support for boards, I recommend that it enhance general training and support for new and existing board members, with special attention to improving their ability to respond appropriately to service or policy complaints.

### *Changes in Oversight Approaches*

This review has revealed the need for the Board and, I am confident, all police boards to have better guidance and practical support in handling service or policy complaints. It also raises the issue of whether police boards should continue to have the oversight mandate they now fulfil.

Again, service complaints may be routine, garden variety matters, such as an alleged lack of proper traffic enforcement in a neighbourhood. Other complaints, however, may allege, or clearly raise concerns about, systemic problems within a department. Here, for example, the central allegation was that the Department's street checks practices were discriminatory. To have a police department investigate itself in such a case could, as it did here, cause concerns about police departments investigating themselves. The fact that, under the current system, departments typically investigate their own officers does not get around such concerns. Where a department is alleged to suffer from a systemic weakness, or engage in a practice that is allegedly discriminatory, the better course is for the board itself to conduct the complaint investigation, not assign the department to investigate itself.

The challenge is, as this review shows, that boards do not have the in-house resources or expertise to carry out investigations. They are understandably ill-equipped, under the present model to do these things. This state of affairs could be remedied in either of two ways.

The first would be to remove the responsibility for such complaints from boards altogether, at least where the matter raises—in the judgement of the Commissioner or the Ministry, perhaps—systemic issues, i.e., issues with possible provincial implications. When I spoke to them, the BCCLA and UBCIC expressed concerns about the current approach to civilian oversight, which necessarily includes the role of police boards. This idea is reflected in, for example, the UBCIC's recent presentation to the Special Committee on Reforming the Police Act:

Currently, the OPCC commissioner also has no authority to substantially investigate policy-level allegations. Our concern is that discriminatory practice is hidden within policy, and service complaints go under-investigated.

Just in the last bit here, the commissioner should....We suggested three things: have the discretion to retain jurisdiction over investigations of misconduct, rather than forwarding them to the police departments; have the discretion to retain jurisdiction over policy and service complaints, and, if deemed necessary, conduct systematic reviews rather than monitor policy issues at arm's length; have free-standing power to hold public hearings, call witnesses and commission evidence — in short, the power to become their own mini-commission of inquiry if a systemic issue is raised.<sup>72</sup>

The second approach would maintain the existing system but provide better support to police boards. As noted above, in cases where boards might decide to investigate a service or policy complaint themselves, it is quite plain that they do not have the internal resources needed to do so. If boards are to continue to play this important role, the Ministry could better support them by maintaining a provincial roster of qualified, independent investigators who can be retained by boards when needed.

Keeping these two choices in mind, I recommend that the Ministry consider whether, in light of the eventual report of the Special Committee on Reforming the Police Act, and the 2019 report of the Special Committee to Review the Police Complaints Process, responsibility for service or policy complaints—at least one raising systemic issues—should remain with police boards or be assigned elsewhere, perhaps to the Commissioner.

A related recommendation is that the Ministry should consider enhancing independent, external audits and reviews of police services, whether these would be done by the Commissioner or the Ministry. This matter involved a police department reviewing itself, a review by a consultant retained by the Board, and then my review. Each of these exercises flows from a complaint about a specific Department practice, but it is, in the end, by chance that the Board handled the matter as it did. Under the current Act, the Board need not have triggered either review. Where a matter of systemic concern, or a matter that is otherwise sensitive, is involved, external, independent audits may be the best approach, and these should not depend on a police board's choice of approach. It should be possible for the Commissioner or Ministry to initiate an own-motion outside audit of police practices, locally or provincially, without a complaint to trigger this.

At the very least, pending any reforms, I recommend that the Ministry should support police boards by maintaining a provincial roster of qualified, independent investigators who can be retained by boards when needed.

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<sup>72</sup> Transcript of Special Committee proceedings, March 26, 2021: <https://www.leg.bc.ca/documents-data/committees-transcripts/20210326am-PoliceActReform-Victoria-Blues> (accessed April 14, 2021).

*Changes in Police Governance: Indigenous Relations*

This review's terms of reference invited me to make recommendations about improving the governance capabilities of police boards when responding to service or policy complaints. That line of inquiry inevitably raised in my mind the issue of how police governance structures might be improved to enhance the representation of Indigenous peoples, nations, and communities. Others of course feel the same way, as the report of the Special Committee to Review the Police Complaints Process shows:

In their presentation, the First Nations Leadership Council indicated that negative stereotyping and racial profiling can lead to systemic discrimination and that there are concerns regarding the potential for systemic misconduct, bias or discrimination which may go unaddressed in the current police complaint system. They noted that, historically, police and law enforcement have played a role in perpetrating cultural genocide against Indigenous peoples. Over-enforcement and police brutality towards Indigenous peoples remain major concerns, and systemic bias and the power imbalance between police and Indigenous peoples is "deeply entrenched and undeniable." Systemic changes could increase the likelihood of building the confidence of Indigenous peoples in the police complaint process and policing in BC in general and would support the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Truth and Reconciliation Commission of Canada's Calls to Action, and other reconciliation initiatives underway in British Columbia.<sup>73</sup>

The same observation applies to enhanced connection between governance of police services and the racialized communities they serve, as the street checks complaint illustrates. This should, in my view, take the form of greater representation on police boards of Indigenous, Black and other racialized peoples. Efforts by the provincial government to promote diversity in appointments to agencies, boards and commissions continue but the Ministry should devote special focus to this in relation to police boards, ideally in consultation with the Ministry of Indigenous Relations and Reconciliation.<sup>74</sup>

Further, from a provincial perspective, I believe there must be enhanced communication and consultation with Indigenous peoples, as well as Black and other racialized peoples. In the case of Indigenous peoples, ongoing liaison between, as examples, the First Nations Justice Council and First Nations Leadership Council and the Director, as well as municipal boards and police chiefs, could help advance reconciliation and improve policing for all people. Nor is consultation and liaison necessarily the only approach. In fact, as others have noted, formal representation of Indigenous peoples in police governance and oversight structures is

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<sup>73</sup> Legislative Assembly of British Columbia, *Report of the Special Committee to Review the Police Complaint Process* (November 25, 2019), page 11. [https://www.leg.bc.ca/content/CommitteeDocuments/41st-parliament/4th-session/pcp/SC-PCP-Review\\_40-4\\_2019-11-25\\_Report.pdf](https://www.leg.bc.ca/content/CommitteeDocuments/41st-parliament/4th-session/pcp/SC-PCP-Review_40-4_2019-11-25_Report.pdf) (accessed April 12, 2021).

<sup>74</sup> Existing efforts to promote diversity in appointments are illustrated by, for example, this source: <https://www2.gov.bc.ca/gov/content/bcpbpublicsectorboardapplications>.

critically important at the provincial not just local level. This is an area in which the Ministry of Indigenous Relations and Reconciliation could assist the Director in seeking reforms.

## **NO NEED FOR YET ANOTHER VANCOUVER REVIEW**

The previous Director also retained me to conduct a review of Pyxis's review of the Department's investigation of its own street checks practices. That retainer was entered into at the same as the retainer for this review, i.e., before this review had started. It is reasonable to conclude that the further retainer may have been prompted by the concerns of the complainants and others that the Pyxis review failed to conclude that street checks are discriminatory.

For reasons given below, however, I strongly recommend to the Director that my further retainer be terminated. This is because developments since the previous Director retained me make it abundantly clear that to now review of Pyxis's report would serve no purpose. Based on my review of the extensive materials I obtained—which were not available to the Director or Ministry before—and based on other circumstances discussed below, it is undeniable that such a review would serve no public purpose. The time has come to move on and consider a province-wide approach to street checks, without piling on yet another review of street checks as they were conducted in Vancouver between 2011 and 2018.

The first reason for this recommendation has to do with the focus of the complaint and the question of whether the Department's street checks practices were discriminatory. The complainants are very clear in their position that there is systemic racism in British Columbia policing. Some leading Canadian police officials have said as much, the Commissioner of the RCMP being an example. Many academics have said the same thing based on their work. Not all police leaders agree and not all public officials do, either. Any examination of street checks, of police stops of all kinds, must surely recognize that these perspectives are about the system as a whole, about policing as a whole, not Vancouver alone. Below I offer many other reasons why a further backward-looking Vancouver review would serve no public purpose, but a key consideration is that the issue of discrimination or racism in policing is about policing generally, including the use of the power to stop citizens, and ought therefore to be addressed at that broader level.

Before explaining this further, here are the terms of reference for the proposed further study, in relevant part:

The scope of Part A will include:

1. Conducting an analysis of the findings, conclusions and methodology of the third-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.

As these terms of reference indicate, the focus of the further work would be to assess the methodology that Pyxis used in reaching its conclusions, and to analyse its findings and conclusions. Pyxis's work, of course, also involved a review of the Department's methodology in investigating its policies and practices and the Department's data analysis and conclusions.

The terms of reference also call for identifying and assessing gaps in the data gathered, but it is clear from my review of the Pyxis report that Pyxis did not gather new hard data about individual street checks, including race-based data. Rather, consistent with its mandate, Pyxis accessed existing Department data and analysed it, although Pyxis did gather information from its patrol observations and community consultations. Having now had the benefit of reviewing the Pyxis report and other materials I obtained, in my view the only way that one might assess the Department's street checks practices, current or past, would be to gather entirely new data, notably race-related data, an exercise that would present significant challenges.

Paragraph two of the terms of reference refers to gaps between the final and draft versions of the Pyxis report. Again, I have had a key advantage the previous Director did not have, i.e., the ability to review an extensive collection of Board and Department materials. That review has revealed no gaps between draft and final copies of the report in terms of data. A prominent concern, of course, has been removal of the paragraph from page 223 of the report, i.e., the paragraph outlining concerns about two officers' conduct, but that issue has been addressed in this review. There is, again, no suggestion in the material I have of any data gaps or data differences between draft and final versions of the report, and there is no need to go through the matter again looking for data gaps.

The terms of reference refer to identifying gaps that may have prevented the Board from having the information it needed, and was seeking, to assist in responding to the complaint. Pyxis concluded that it could neither confirm nor deny that the Department's street checks reflect bias or racism.<sup>75</sup> It bears emphasis that this is a neutral finding by Pyxis: it neither exonerates the Department nor condemns it. That said, Pyxis did not recommend that the

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<sup>75</sup> Pyxis report, page xiv: "This review of street checks, consistent with other reviews, found that the available data and information could neither confirm nor deny police racism or bias. Additionally, considering only the disproportionality of individuals in the street check data could not be used to confirm or deny the existence of bias."

Department stop using street checks but it did make dozens of recommendations on reforming the practice, some of which clearly pointed to the impact on racialized and marginalized individuals and communities and. The Board adopted those recommendations, one of which was to require the Department to conduct an annual audit of street checks, which the Department has done, as discussed below.

When they complained, the complainants called on the Commissioner to exercise the authority to make recommendations to the Board, and for the Commissioner to engage in research on the use of street checks in the province. They also stated that they would support the Commissioner in a recommendation to the Director or Minister to “cause an independent external audit and review of the practice of street checks, with a view to creating a provincial standard to govern all law enforcement in British Columbia.”<sup>76</sup> The complainants have more recently called for an immediate province-wide ban on street checks, which appears to supersede any call for more to be done about the Vancouver situation alone.

Further, the Director has, since the complaint was dealt with, issued a provincial standard regarding police stops by all municipal police services. This standard continues to be the subject of consultation. The standard is not based on a province-wide audit or review regarding police stops, but the fact is that it has been issued and will, presumably, evolve toward a final standard. If the Director were to decide at this time to pause that process and conduct a province-wide audit of street checks across police services, that might help inform the final standard, or inform a decision on whether to prohibit street checks, but a further review of the historical picture of street checks in Vancouver would not contribute to that province-wide policy process.<sup>77</sup>

The complainants also have repeatedly expressed criticisms of the Department's use of street checks, of Pyxis's work and the Board's response to their complaint. They are implacably opposed to street checks across British Columbia.<sup>78</sup> Given this, it is highly unlikely that their opposition to street checks anywhere in the province would be affected even if a further review of the Vancouver situation found some evidence of discrimination. Such a finding might further heighten their general opposition, but if a further review were inconclusive, as

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<sup>76</sup> Complaint letter, page 4.

<sup>77</sup> I acknowledge that defining what is a “street check” as opposed to “carding”, among other concepts, is difficult.

<sup>78</sup> To give only one recent example, the BCCLA's executive director said this to the Special Committee, on March 19, 2021: “Our third set of recommendations is an immediate ban on police street checks. Data over ten years from every municipal police force across B.C. shows that Indigenous and Black people are over-represented and harmed by street checks. There is also no legal basis for street checks in either common law or statute. Therefore, the province must ban street checks immediately. Almost 10,000 people and 100 organizations, including Hogan's Alley Society, Black Lives Matter, Union of B.C. Indian Chiefs, WISH Drop-In Centre Society and the BCCLA, have written to the provincial government to immediately ban police street checks.” Transcript of Special Committee proceedings, March 19, 2021: <https://www.leg.bc.ca/documents-data/committees-transcripts/20210319am-PoliceActReform-Victoria-Blues> (accessed April 14, 2021).

was Pyxis's, or found no evidence of discrimination, it is highly likely to merely strengthen the complainants' already stated opposition to street checks anywhere.

Another consideration from a provincial perspective is the ongoing work of the Special Committee on Reforming the Police Act, which has been holding public hearings about reforms to the Act. The Special Committee's terms of reference underscore that, rather than pursuing a review of Pyxis's review, the provincial government's resources could be better invested in engaging with the Special Committee and responding to its recommendations. The Special Committee's terms of reference help illustrate why this is so. Specifically, the Legislative Assembly appointed the Special Committee:

... to examine, inquire into, and make recommendations to the Legislative Assembly on the following:

1. Reforms related to independent oversight, transparency, governance, structure, service delivery, standards, funding, training and education, and any other considerations which may apply respecting the modernization and sustainability of policing under the *Police Act* (R.S.B.C. 1996, c. 367) and all related agreements.
2. The role of police with respect to complex social issues including mental health and wellness, addictions, and harm reduction; and in consideration of any appropriate changes to relevant sections of the *Mental Health Act* (R.S.B.C. 1996, c. 288).
3. The scope of systemic racism within British Columbia's police agencies, including the Royal Canadian Mounted Police, independent municipal police and designated policing units, and its impact on public safety and public trust in policing.
4. Whether there are measures necessary to ensure a modernized *Police Act* is consistent with the United Nations Declaration on the Rights of Indigenous Peoples (2007), as required by section 3 of the *Declaration on the Rights of Indigenous Peoples Act* (S.B.C. 2019, c. 44).<sup>79</sup>

Each of these terms of reference plainly encompasses the question of whether street checks involve discrimination or racism. It is therefore unsurprising that several important groups appearing before the Special Committee have variously called for policing reform, province-wide studies of policing, or bans on street checks. Only a few examples are needed to illustrate the weight of this testimony and why it militates against a review of Pyxis's work in relation to a single police department.

Lydia Hwitsum, representing the UBCIC, said this to the Special Committee on March 26, 2021:

A public system review of practices and policies that disproportionately and negatively impact Indigenous peoples should be conducted. Data must be reported in a number

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<sup>79</sup> <https://www.leg.bc.ca/parliamentary-business/committees/42ndParliament-1stSession-rpa/termsofreference> (accessed April 14, 2021).

of areas, including use of force, police procurement of paramilitary unit and military equipment and many others, to better understand the current reality of policing and to have those measured practices towards change. In turn, problematic practices not only must be reformed; they must be eliminated.

There are several key concerns and recommendations we'd like to highlight. One, starting with inadequate community policing functions and the militarization of police in use of force. The militarization of police goes beyond the criminalization of peaceful political demonstrations and land defenders and has implications for day-to-day policing, as well, as seen in the tragic examples of wellness checks resulting in injury and death. There is a crisis, we know, in overrepresentation of Indigenous peoples killed by use of force by police — over 15 percent, in fact, of fatal police encounters since the year 2000.

Resources must be diverted from this militarized policing approach to community policing options. For example, the practice of street checks should be completely eliminated, because they enable the arbitrary perpetuation of biases against those experiencing homelessness or poverty, those that use drugs, sex workers as well as those with mental health challenges. They get targeted.

The level of hyper-vigilance and surveillance involved in this practice is not conducive to healthy relationships between police and community members and creates opportunities for escalating encounters. At the same time, a defensible justification for these acts still remains wanting.<sup>80</sup>

Here is what the BCCLA's executive director, Harsha Walia, said to the Special Committee on March 19, 2021:

Our third set of recommendations is an immediate ban on police street checks. Data over ten years from every municipal police force across B.C. shows that Indigenous and Black people are over-represented and harmed by street checks. There is also no legal basis for street checks in either common law or statute. Therefore, the province must ban street checks immediately. Almost 10,000 people and 100 organizations, including Hogan's Alley Society, Black Lives Matter, Union of B.C. Indian Chiefs, WISH Drop-In Centre Society and the BCCLA, have written to the provincial government to immediately ban police street checks.<sup>81</sup>

These positions on the part of the UBCIC and BCCLA—who were, after all, the complainants—reflect what they told me during this review, that they are opposed to street checks across British Columbia.

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<sup>80</sup> Transcript of Special Committee proceedings, March 26, 2021: <https://www.leg.bc.ca/documents-data/committees-transcripts/20210326am-PoliceActReform-Victoria-Blues> (accessed April 14, 2021).

<sup>81</sup> Transcript of Special Committee proceedings, March 19, 2021: <https://www.leg.bc.ca/documents-data/committees-transcripts/20210319am-PoliceActReform-Victoria-Blues> (accessed April 14, 2021).

In her testimony to the Special Committee, British Columbia's Human Rights Commissioner, Kasari Govender, did not call for a ban on street checks but clearly had concerns about the harm they cause to Indigenous, Black and low-income individuals in all communities:

Finally, turning to street checks. A street check occurs when identifying information is obtained by a police officer concerning an individual outside of a police station that is not involved in an investigation. Street checks can and do result in harm to Indigenous, Black and low-income individuals in communities. Street checks contribute to the over-policing and disproportionate criminalization of these groups. They are not merely an inconvenience. Street checks take a toll on a person's physical and mental health and can impact their ability to pursue employment and educational opportunities.

In October 2019, Nova Scotia's Minister of Justice issued a provincewide moratorium on street checks. He did so specifically because of the discriminatory impact street checks had on Black Nova Scotians, and he did so after receiving an opinion on their legality from the former Chief Justice of Nova Scotia.

We know that street checks are problematic and that they can result in psychological detention, as found by the Supreme Court of Canada in *R. v Le*. We know that street checks are problematic for certain communities in particular. We will provide more detailed recommendations, on how to prevent arbitrary and discriminatory police stops, in my upcoming written submissions to you.<sup>82</sup>

Earlier I noted the complainants' concern that the privacy issue raised in their complaint, about the collection of personal information through street checks, was not addressed through the Board process. I noted that the *Freedom of Information and Protection of Privacy Act* authorizes a public body to collect, use and disclose personal information for "law enforcement", which includes "policing, including criminal intelligence operations".<sup>83</sup> Again, I fully acknowledge the complainants' privacy concerns and am clear that this is another reason for a provincial study into street checks and other forms of police stops, as this would enable a fulsome consideration of the privacy issues.

Another factor is that the previous Director would not have been aware of the recent testimony to the Special Committee, from several agencies and organizations, calling for better data in assessing policing. In her testimony to the Special Committee, the Human Rights Commissioner recommended—as have others appearing before the Special Committee—that

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<sup>82</sup> Transcript of Special Committee proceedings, February 11, 2021: <https://www.leg.bc.ca/documents-data/committees-transcripts/20210211am-PoliceActReform-Victoria-Blues> (accessed April 14, 2021). A search of the Special Committee and Commissioner's websites yielded no published recommendations from the Commissioner to the Special Committee at the time of writing.

<sup>83</sup> Schedule 1 to the Act. The definition also includes investigations, or proceedings, that lead or could lead to a penalty or sanction being imposed.

the Act be amended to require police to “collect, disclose and analyze race-based and other disaggregated data...for the express purpose of eliminating systemic racism in policing.”<sup>84</sup>

On April 7, 2021, the Deputy Chief also testified to this issue before the Special Committee. He stated, as a general matter and not in relation to the Department's street checks practices, that the “data, to a degree, is unreliable”, adding that “policing in B.C. supports the question [*sic*] of race-based data.”<sup>85</sup> He also said this to the Special Committee:

The challenges that we've got right now are that the data, to a degree, is unreliable. The only requirement is that we get the name, the date of birth and the sex of the individual. Otherwise, sometimes it's subjective on the officer at three o'clock in the morning: "I've got a person who's not talking to me, so I've got to take a stab at what ethnicity or racial group he or she may belong to." So the reliability of the data.<sup>86</sup>

It should also be noted that, during my discussion with representatives of the UBCIC and BCCLA, I understood them to harbour doubts about the utility of now undertaking a review of Pyxis's work to review of the Department's report. There was reference to the Department's data on street checks being confused, and there being conceptual confusion about what is a “street check”, which I understood to lead them to doubt the utility of a review of a review into the Vancouver situation alone. It also bears emphasis here that—their comments about data quality aside—the complainants have again stated their view that street checks are illegal and have called for a ban on them across the province. In my view, this fact alone—never mind the concerns about data quality—casts real doubt on whether the complainants would see any benefit in again looking back on the past situation in Vancouver, as opposed to there being a province-wide approach to the issues.

Another factor weighing against proceeding with a review of Pyxis's work is the confirmation to the Special Committee that legislation to enable race-based data collection, which is clearly relevant to the issue of street checks and policing more generally, is in the works. Richard Fyfe QC, Deputy Attorney General, said this during the Ministry of Attorney General's March 22, 2021 presentation to the Special Committee:

...In November, the Ministry of Attorney General assumed responsibility for anti-racism initiatives, and Parliamentary Secretary Rachna Singh was appointed as parliamentary secretary to represent government on this initiative.

We're supporting Parliamentary Secretary Singh to implement two anti-racism mandate commitments. The first commitment is to introduce legislation related to race-

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<sup>84</sup> Ibid.

<sup>85</sup> Transcript of Special Committee proceedings, April 7, 2021: <https://www.leg.bc.ca/documents-data/committees-transcripts/20210407am-PoliceActReform-Victoria-Blues> (accessed April 14, 2021).

<sup>86</sup> Ibid.

based data collection, and the second commitment is to support the introduction of a new anti-racism act. We're in the early stages of mapping out our approaches for this work with the parliamentary secretary, and we've agreed that we'll do this in stages. We're going to start by doing some pre-consultation meetings with Indigenous leaders, racialized groups and other stakeholders to get their feedback and perspectives on some of the key policy issues and considerations on these two initiatives. We'll also seek their advice on engagement approaches.

Once we've done this, we plan to focus on race-based data first and envision starting a more focused consultation process on this issue in the summer and fall. We'll then turn our attention to consultation on anti-racism legislation in the fall and winter of 2022.<sup>87</sup>

These recent acknowledgements that race-related data now available to police, government, the OPCC, boards and the public is questionable point to the need to take a forward-looking perspective on the issue, rather than pore over older, infirm data from Vancouver, a single community. Regarding the quality concerns about the Vancouver data, it is important to note that the Pyxis report itself speaks to the frailties of the Department's street check data and the need to enhance data quality:

A brief snapshot of the VPD data raises some data quality issues and concerns relating to when and how data units are entered as a street check. The lack of a policy on street check usage within the VPD appears to be responsible for at least some of these data capture issues, such as when and why a street check should be used.<sup>88</sup>

For this reason, recommended that the Department “[c]onduct regular assessments of the integrity of street check data.”<sup>89</sup> Setting aside the fact that a review of Pyxis's review would entail using the same Department data about which Pyxis had quality concerns, this Pyxis recommendation speaks to the need for a forward-looking perspective on street checks, including to ensure that race-related data of quality are collected provincially. Again, to now focus on data whose quality has been questioned, and in relation to one department's past practices, would not contribute to the evolving policy landscape around policing generally or street checks in particular.

On the issue of possible changes in policy or law, above I noted the Ministry of Attorney General's confirmation that legislation to provide for race-based data collection is in the works, and that a new anti-racism law is also in the works. These revelations further

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<sup>87</sup> Transcript of Special Committee proceedings, March 22, 2021: <https://www.leg.bc.ca/documents-data/committees-transcripts/20210322am-PoliceActReform-Victoria-Blues> (accessed April 14, 2021).

<sup>88</sup> Pyxis report, page 19. Regarding the quality of the Department's street checks data, earlier I quoted extensively from a Pyxis progress report to the Street Check Committee that commented on concerns with the Department's data. This passage further underscores the challenge that would be involved in finding data that could usefully be analyzed to determine, despite the Department's and Pyxis's conclusions, whether the now closed complaint was in fact well-founded.

<sup>89</sup> Ibid.

emphasize the reality that to focus now on data quality and gaps, and the analytical methodology, of one consultant's review of one department's review of its practices would be out of step with the rapidly evolving policy and legislation environment in the province.

The Special Committee on Reforming the Police Act will not issue its report for some time, but it is reasonable to expect, given the submissions relating to street checks, that it will have something to say about them. Similarly, the provincial government continues to work on responses to the 2019 recommendations of the Special Committee to Review the Police Complaints Process, recommendations that have some resonance for street checks and their oversight. For example, recommendation 12 by that Special Committee is that the Act be amended "to enable the Office of the Police Complaint Commissioner to conduct self-initiated systemic reviews, including data analysis, to highlight emerging or high-level trends, and to report publicly on any findings." This points to the need to consider, in the longer term, how concerns about systemic issues such as those raised by street checks could and should be addressed through province-wide study, not by focussing on a single past complaint about one police service.

Last, to now look back by reviewing Pyxis's review of the Department's work would not account for the fact that the Department's street checks practices have changed since the former Director decided to conduct such a review. The Department recently released its first annual audit of street checks, and that report shows that the Department continues to see value in street checks, but at the same time has conducted far fewer of them than in previous years. The report describes a 94.3% decrease in checks from 2019 to 2020, while noting that, of the 261 recorded events, 186 were misclassified as street checks, leaving only 75 proactive checks, according to the Department. This report's illustration of ongoing changes in Department practice are part of province-wide shifts on this topic and also show that further review of the Department's past practices is unnecessary.

As this discussion shows, there have been material changes in circumstances since the previous Director decided to conduct a further technical review of the Vancouver situation complaint. My work has shown that further review would not, in light of recent developments, not be constructive. For the many reasons given above, I strongly recommend that the Director now terminate my retainer for the further work.

## CONCLUSION

The goal of this review is to address a range of issues relating to the Board's handling of a complaint about discrimination in the Department's street checks practices. My review has identified a range of areas in which the Board might improve its handling of such complaints, and how it discharges its public interest mandate for governance and oversight of the Department. It has also revealed a range of ways in which the governance and oversight of police departments or services could relatively easily be improved across British Columbia. My hope is that the Ministry will take my recommendations to heart and move ahead with the modest yet necessary reforms I have identified.