



**REPORT OF THE CIVILIAN REVIEW AND COMPLAINTS COMMISSION
FOR THE ROYAL CANADIAN MOUNTED POLICE**

**REVIEW OF THE RCMP'S POLICIES AND PROCEDURES
REGARDING STREET CHECKS**

Royal Canadian Mounted Police Act

Subsection 45.34(1)

February 26, 2021

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1. Introduction

Police street checks have been the topic of several recent reports and significant regulatory change in some provinces. The majority of this work has focused on the conduct of municipal and provincial police agencies when they engage in front-line police work. The traditional street check involves a police officer asking a member of the public to voluntarily identify themselves to support some underlying law enforcement purpose. For instance, the police may wish to identify people congregating in a high-crime neighbourhood, or those who associate with known criminals. A key element of a street check is that responding to the police's request is voluntary. Members of the public who are asked for such information are not detained or arrested and have no legal requirement to identify themselves to the police or to provide any other information. Street checks do not include other regulatory interactions, such as traffic stops under the provincial motor vehicle legislation.

Street checks have the potential, in certain narrow situations, to be a valuable tool to the police to support investigations or to provide criminal intelligence. However, they also threaten the basic constitutional rights of Canadians. At the core, Canadians enjoy a right to privacy from state intrusion and this right must be jealously guarded. Moreover, street checks attract strong concerns given the power imbalance inherent in police–public interactions. Members of the public may not be aware of the voluntary nature of street checks and may feel compelled to identify themselves. Further, frequent street checks in marginalized communities have the strong potential to cause resentment and fear of the police. Canadian police operate by consent of the communities they police, not through fear. Bias, whether conscious or unconscious, towards marginalized groups must be avoided.

In its role as a civilian oversight body for the RCMP, the Civilian Review and Complaints Commission for the RCMP (“the Commission”) decided to examine street checks in the RCMP context. The RCMP is a unique policing organization in Canada. It provides federal policing services across the entire country, and in most provinces and in all three territories, it provides provincial or territorial policing services. In addition, it provides municipal policing services in a host of municipalities. In essence, the RCMP operates in many regions as the local, provincial, and federal law enforcement agency.

The RCMP shares many of the same issues and challenges relating to street checks as other police agencies, albeit sometimes in a different context. Thousands of RCMP members come into contact with the public every day. Instead of reinventing the wheel, the Commission has built on the many expert reports already published concerning street checks at the provincial level and adapted the key notions into the RCMP environment, modified as necessary for the RCMP's role.

The purpose of this report is to address the RCMP's policy, training, and practice concerning street checks and to identify areas for improvement. The key findings and recommendations in this report focus on strengthening the RCMP's policy suite, enhancing training, and identifying stronger practices to ensure the protection of individual rights, while providing a framework for effective law enforcement.

Considering the Commission's broad power to initiate reviews of specified RCMP activities,¹ the Commission retains the ability, in the future, to consider more detailed and particular elements of this activity. This includes examining the ground-level implementation of RCMP policy in specific regions or the effects of RCMP street checks on minority communities using a more targeted review of specific regions, mandates, or communities. However, the Commission is satisfied that the recommendations proposed in this report will lead to a more fair and equitable approach to street checks across all of the RCMP's mandates.

2. The Commission's findings and recommendations

FINDING No. 1: The RCMP's definition of "street check" in its national policy is inadequate.

FINDING No. 2: The RCMP's national policy concerning informed consent to provide information in the context of a "street check" is inadequate.

FINDING No. 3: The RCMP's national policy prohibition on random or arbitrary street checks is appropriate.

FINDING No. 4: The RCMP's national policy concerning bias-free policing as it relates to street checks is generally appropriate, but requires further clarity.

FINDING No. 5: Due to the inadequate definition of "street check" in the RCMP's national policy and deficiencies with respect to recording "street check" data, the RCMP does not currently have an effective method to determine whether its members are abiding by the relevant policies and does not have adequate abilities to assess and evaluate its members' compliance.

FINDING No. 6: The RCMP's policy concerning the documenting of street checks is insufficient.

FINDING No. 7: The RCMP's current training concerning street checks is generally appropriate.

¹ *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 [RCMP Act], s 45.34.

Recommendation No. 1: The RCMP should amend the definition of “street check” to reflect the following:

“**Street check** means a voluntary interaction with the public, initiated by the police officer, where the police officer makes a request for personal identifying information to support a law enforcement purpose. A street check can occur anywhere and within any of the RCMP’s mandates.”

Recommendation No. 2: The RCMP should clearly enumerate any exceptions to this policy (e.g. undercover operations).

Recommendation No. 3: The RCMP should amend the national policy to include the following:

“Before requesting any personal identifying information from a member of the public in the course of a street check, a member must obtain the person’s informed consent and record it in their notebook.”

Recommendation No. 4: The RCMP should provide the following standard wording, or wording of similar effect, to its members for the purpose of obtaining informed consent in the context of a street check:

“This is a voluntary interaction. You are free to leave at any time. I am requesting [nature of information requested] for the purpose of [reason for the street check]. You do not need to provide me with this information. If you choose not to provide this information, you will not be arrested or detained. Your personal information may be retained in accordance with the *Privacy Act*.”

This standard wording should be available in both of Canada’s official languages as well as any other languages common to the area being policed, particularly Indigenous languages.

Recommendation No. 5: If an individual does not consent to provide their personal identifying information in the course of a street check, their personal identifying information should not be recorded in the police operational records management system unless other lawful authority exists to do so.

Recommendation No. 6: To avoid confusion or ambiguity, the RCMP should consistently use one term to refer to the information collected about individuals during a street check, and define this term clearly within the policy.

Recommendation No. 7: The RCMP should enhance its national street check policy to provide guidance to RCMP members operating under a federal mandate on how street checks should be conducted in provinces that have restricted police street checks.

Recommendation No. 8: The RCMP's national policy concerning street checks should include specific directions on how to prevent bias or the appearance of bias when conducting street checks.

Recommendation No. 9: The RCMP's national policy concerning street checks should include an internal auditing function that can be triggered by community concerns.

Recommendation No. 10: The RCMP's national policy concerning street checks should provide for regular internal auditing that includes advice from subject matter experts in bias-free policing.

Recommendation No. 11: The RCMP should amend its national policy to require that all street checks be entered into an operational records management system unless they meet clear criteria for exceptional situations where the street check need not be entered.

Recommendation No. 12: The RCMP should ensure that street checks within the policy definition proposed in this report are readily extractable from the RCMP's operational records management systems.

Recommendation No. 13: The RCMP should review the minimum retention times for street checks to ensure they are consistent with the requirement to dispose of personal information as soon as it is no longer necessary for a law enforcement purpose. The Commission recommends a general one-year retention period for street checks unless a specific exception applies, such as in the case of a public complaint or where the person submits a request to access their personal information.

Recommendation No. 14: The RCMP should consider the feasibility of retaining certain non-identifying information pertaining to street checks for a longer period for statistical purposes.

Recommendation No. 15: The RCMP's national policy should provide that street check occurrences not include any personal identifying information where the subject of the street check refuses to voluntarily provide such information.

Recommendation No. 16: The RCMP should consider adding a function to street check occurrences to identify street checks where the individual declined to provide personal identifying information.

Recommendation No. 17: The RCMP should consider how race-based data is collected and maintained in the course of a street check.

Recommendation No. 18: Following the changes to street check policy identified in this report, the RCMP should update the training provided to RCMP cadets pertaining to street checks and ensure that existing members are made aware of the changes.

3. Methodology

In completing this report, the Commission drew on the following sources:

- The report of the Honourable Michael Tulloch entitled *Report of the Independent Street Checks Review*²
- The legal opinion prepared by the Honourable J. Michael MacDonald for the Nova Scotia Human Rights Commission³
- Interviews with RCMP members from the following divisions: Yukon, British Columbia, Manitoba, Nova Scotia
- A review of selected street check data recorded in the RCMP's operational records management system
- A review of relevant secondary sources, such as leading academic publications
- Relevant RCMP policies
- The applicable law, such as the *Canadian Charter of Rights and Freedoms* and the *Privacy Act*

The Commission does not intend to replicate the work of either the Tulloch report in Ontario or the MacDonald report in Halifax. Rather, it has used these reports to inform its analysis of the RCMP's policy, training, and practice.

The Commission reviewed a sampling of street check occurrences to become familiar with the RCMP's current practices. The Commission did not conduct a systematic file review of RCMP street checks—in part because of the RCMP's wide mandate across

² Honourable Michael Tulloch, *Report of the Independent Street Checks Review* (Toronto: Queen's Printer for Ontario, 2018), available at: www.mcscs.jus.gov.on.ca/sites/default/files/content/mcscs/docs/StreetChecks.pdf (accessed January 28, 2021)

³ Honourable J. Michael MacDonald, "Independent Legal Opinion on Street Checks for the Nova Scotia Human Rights Commission" (2019) [MacDonald report], available at: https://humanrights.novascotia.ca/sites/default/files/editor-uploads/independent_legal_opinion_on_street_checks.pdf (accessed January 28, 2021).

municipal, provincial, and federal policing and its blend of rural and urban policing. Problems that arise in urban policing environments differ from those in rural environments. Solutions that target a specific urban problem might not be transferable to the rural environment. In a similar vein, solutions to problems found in a municipal policing context might not work in the RCMP's federal policing context.

Additionally, the Commission did not engage in widespread outreach to communities or special interest groups for similar reasons and because of regional concerns that arise. Minority groups and their needs differ across geographic regions. In that sense, many of the problems that arise in the context of street checks may require special tailored solutions to the precise community in question and may not be transferable to other contexts. It would be difficult, if not impossible, to adapt such considerations into a nationwide survey of the RCMP's street check policy.

Nevertheless, the Commission is satisfied that its review of primary and secondary sources is sufficient to conduct a review of the RCMP's national policies and to recommend solutions that can be tailored as necessary to the unique mandates and communities policed by the RCMP.

4. Definitions

The term "street check" (sometimes referred to as "carding"⁴) is not a legal term of art, and it is not always well-understood. It is also not consistently defined. Different police agencies use different definitions and the public often has a different view than police agencies on what does or does not constitute a street check. The core element, however, is that a street check involves an interaction between a police officer and a member of the public.

Police interactions with the public

Police officers may interact with members of the public for different reasons and in different ways. They are often the first point of contact that individuals will have with the criminal justice system and are "one of the most identifiable and recognizable components of the criminal justice system."⁵ Three broad categories of police interactions can be extracted from the prevailing Canadian law:

- **Voluntary interactions:** An individual chooses to voluntarily engage with the police. They are free to leave at any time and are free to decide what information, if any, they share with the police.

⁴ As discussed in the Tulloch report, "carding" is a term generally associated to a specific practice within the Toronto Police Service, but has widely been used by the general public to refer to street checks.

⁵ Amy Peirone et al., "The Social Environment of Daily Life and Perceptions of Police and/or Court Discrimination among African, Caribbean, and Black Youth," *Canadian Journal of Criminology & Criminal Justice* (2017) 59 (3): 346–72.

- **Detentions:** An individual is detained briefly under police common law powers of investigative detention⁶ or under other legislative provisions.⁷ They are not free to leave and may in some cases be subject to a cursory search. Depending on the circumstances, the individual may be informed of certain rights under the *Canadian Charter of Rights and Freedoms* [“Charter”].
- **Arrest:** An individual is arrested under police powers of arrest. They are not free to leave and are subject to further police powers of search. The individual must be informed of certain Charter rights.

Street checks are a subset of voluntary interactions, where the police ask for personal identifying information from an individual who is not being detained or arrested. The term “street check” can also be deceiving. Street checks do not necessarily happen on the street, nor are they always conducted in the context of front-line policing. Particularly given the RCMP’s wide mandate, street checks could occur in many different situations or locations. Each of the following hypothetical scenarios would constitute a street check for the purposes of this report:

1. A general duty RCMP member in Prince George, British Columbia, is performing municipal policing services and asks a person walking through a high-crime neighbourhood for their name to support a general police intelligence file on organized crime.
2. An RCMP member performing federal protective policing duties in Ottawa, Ontario, approaches someone loitering in a high-rise tower containing an embassy for their identification to assist in their protective mandate.
3. A general duty RCMP member in Arviat, Nunavut, is patrolling the airport and asks an arriving newcomer for their name to support the interdiction of contraband entering the community.
4. An RCMP provincial traffic enforcement member in Nova Scotia stops a vehicle for speeding and asks a passenger for their name and date of birth to determine if they have any outstanding warrants.
5. RCMP members with a federal enforcement mandate who are planning for a gathering of world leaders meet with activist groups around the country who plan to protest the event. The RCMP members ask for identifying information from key players to maintain effective liaison between the police and protest groups.
6. An RCMP member in rural Manitoba goes door to door to conduct neighbourhood inquiries following a cottage break and enter. The member asks residents for their identifying information to record in a police file.

⁶ See *R v Mann*, 2004 SCC 52, for a broad discussion of police powers of investigative detention.

⁷ For instance, provincial legislation such as those regulating motor vehicles or liquor often contain provisions that allow a police officer to detain a person and demand identifying information.

In each of these cases, the RCMP member had no legal authority to detain or arrest the individual in question. Instead, they were seeking the voluntary cooperation of the individual to support a law enforcement purpose. In each case, the individual could lawfully refuse to cooperate without any legal consequence.

What is not a “street check”?

Most voluntary interactions between the police and the public do not amount to street checks. Effective policing requires strong bonds between the police and the community. The RCMP—and Canadian police generally—evolved from the English principle of policing by consent, where the public collectively consents to being policed by fellow “citizens.” This includes what are often referred to as the Peelian principles of policing (after Sir Robert Peel, the 19th Century British Home Secretary who founded London’s Metropolitan Police Force and is widely regarded as one of the founders of modern policing)—although their genesis appears to be from the first Commissioners of Police in London, as opposed to Sir Robert Peel himself.⁸ One relevant principle in the present context requires the police:

To recognise always that to secure and maintain the respect and approval of the public means also the securing of the willing co-operation of the public in the task of securing observance of laws.

Over time, many policing organizations became more centralized and moved away from a community-centric model to one of enforcement. In essence, policing adopted the crime control model as its primary orientation. More recently, however, the focus has returned to the Peelian ideal with the adoption of a “community policing” philosophy. This more modern approach has been the focus of numerous studies and reports over the past several years, and there is no precise definition or single approach.⁹

Community policing incorporates a mixture of maintaining order and offering community service. The responsibility for community relations is on every police officer, and the power base shifts from complete police control to a shared power with the community. Most importantly, recruitment and training must be geared towards relationships and problem solving instead of an exclusive focus on crime control.¹⁰ The RCMP has adopted a problem-oriented policing style—called “CAPRA”—which is mandatory training for each new cadet at the RCMP Training Academy. Breaking it down, the CAPRA model requires consideration of Clients, Analysis, Partnerships, Response, and Assessment when addressing any policing problem. Individual RCMP members are expected to:

⁸ Department of Home Office, “Definition of policing by consent” (2012), available at: <https://www.gov.uk/government/publications/policing-by-consent/definition-of-policing-by-consent> (accessed January 28, 2021).

⁹ Department of Justice Canada, “Police Discretion with Young Offenders, chapter IV Organizational Factors Affecting Police Discretion” (2016), available at: <https://www.justice.gc.ca/eng/rp-pr/cj-jp/yj-ji/discr/org/supp-appu.html> (accessed January 28, 2021).

¹⁰ Ibid.

- incorporate the actions of relevant actors such as victims of crime, suspects, and persons in need of assistance
- consider the characteristics of the incident such as the social context, the physical setting, and the actions taken before, during, and after the events, and
- consider the responses and perceptions of members of the public and private/public institutions as they apply to the problem¹¹

Thus, community policing has two major components: (i) community partnerships; and (ii) problem solving.

Examples of the various outcomes of the community policing approach include community consultation, proactive and problem-oriented crime prevention activities, interagency cooperation, interactive policing, reducing the fear of victimization, and the development of police officers as generalists.

Since community policing focuses on the needs of a specific community, there is no blanket approach. An approach that works in one jurisdiction may not be applicable in another. This is particularly true for the RCMP, which has a broad mandate and which serves diverse communities. The community priorities for large urban settings will not necessarily be the same as those of an isolated First Nations community. One underlying focus remains the building of relationships with the community and its members. This will inevitably result in more interactions with the public, and therefore also increases the possibility of some contacts being characterized as street checks. Accordingly, to understand, discuss, and offer recommendations for regulating such interactions, it becomes important to clearly define what is and what is not a street check for the purposes of this report.

General interactions with the public that support the RCMP's broader role in the community but do not have a link to a specific law enforcement purpose are not street checks. Moreover, where the interaction is initiated by the member of the public as a request for service, the subsequent interaction would generally not be considered a street check.¹²

In addition, many voluntary interactions between the police and the public, although related to a law enforcement purpose, do not result in a request for personal identifying information. For instance, the police may canvass a neighbourhood asking if anyone witnessed a crime. If no personal identifying information is requested or collected, this does not amount to a street check.

¹¹ Joseph P. Hornick et al., *A Police Reference Manual on Crime Prevention and Diversion with Youth*, Ottawa: Canadian Research Institute of Law and the Family and the Solicitor General Canada (1996).

¹² For instance, when a person calls the police to report a theft, they would expect to be asked to provide their name, address, and other identifying information. Since the person initiated the request to police, it would not be considered a street check.

Finally, a street check—which is voluntary—is fundamentally distinct from a police demand for personal identifying information that is authorized by law. Many police interactions with the public may at first glance appear to be a street check, but in fact are authorized by law. Most commonly, the driver of a vehicle may be detained and must identify themselves on demand of a police officer under provincial traffic laws. Many provincial liquor or cannabis laws also require people to identify themselves in certain situations. To be clear, if the police have a lawful basis to demand personal identifying information, the interaction is not a street check.

For instance, the following hypothetical scenarios would not be characterized as street checks for the purposes of this report:

1. A general duty RCMP member in Leduc, Alberta, volunteers as a coach for a youth sports team and interacts with kids and their parents, sometimes while on duty. As part of his coaching duties, he collects names and phone numbers of the team members.
2. An RCMP member with a federal enforcement unit visits a mosque in Montréal, Quebec, and speaks with the imam about ideas to build stronger police relations with the community.
3. A general duty RCMP member in Yarmouth, Nova Scotia, delivers a presentation to a local school about preventing drug abuse.
4. A member of the public calls the RCMP in Prince George, British Columbia, to report a break and enter. When an RCMP member responds to the call, they ask for the person's name, date of birth, and other personal identifying information as part of the investigation.
5. An RCMP member in Saskatchewan asks a patron in a licensed premise for their identification to ensure they are of a legal age to drink.

A general definition of “street check”

From the above, we can extract a general definition of a street check for the purposes of this report. **A street check is a voluntary interaction with the public, initiated by the police officer, where the police officer makes a request for personal identifying information for a law enforcement purpose.** The “law enforcement purpose,” as discussed in more detail below, does not mean that the activity is specifically authorized by law. A street check can occur anywhere and can occur across any of the RCMP's mandates.

This definition captures more activities than might classically be defined as a street check and is wider than that considered by the Tulloch or MacDonald reports. The Commission is of the view that taking an expansive approach will lead to more pragmatic recommendations, which will be of greater assistance to the RCMP in the construction of a coherent national policy.

What is a law enforcement purpose?

A law enforcement purpose is not the same as an activity authorized by law. A law enforcement purpose is one that is meaningfully connected to the duties of a police officer. At common law, all police officers have the duty to preserve the peace, prevent crime, and protect life and property.¹³ Similarly, the RCMP Act states that it is the duty of RCMP members who are peace officers to preserve the peace, prevent crimes as well as other federal and provincial offences, and to apprehend “criminals and offenders and others” who may lawfully be taken into custody.¹⁴ A law enforcement purpose also includes carrying out the RCMP’s provincial and federal mandates, such as protective policing and national security.

Typical examples of a law enforcement purpose include investigating, preventing, or detecting the commission of offences, keeping the peace, protecting life and property, gathering criminal intelligence, and protecting critical infrastructure. Street checks may be conducted to support these objectives. However, a law enforcement purpose is one that is also reasonable and justified in the circumstances. An arbitrary or random street check or one that is motivated by bias (whether conscious or unconscious) is inconsistent with a law enforcement purpose.

5. Discrimination and street checks

The major concern raised amongst different communities has been the link between street checks and discrimination of various forms. The most often cited form of discrimination attributed to street checks is racial discrimination.

Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination¹⁵ defines racial discrimination as follows:

[A]ny distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Discrimination based on race is the expression of racism—that is, a belief that some groups are inferior to others. This belief, and associated stereotypes such as a group’s predisposition towards violence or other crimes, evolve into assumptions that influence systems or institutions in a manner that favours the dominant group’s power and

¹³ *Dedman v The Queen*, 1985 CanLII 41 (SCC), [1985] 2 SCR 2 at para 14; *R v Mann*, 2004 SCC 52 (CanLII), [2004] 3 SCR 59 at para 26.

¹⁴ RCMP Act, *supra* note 1, s 18.

¹⁵ United Nations General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination* (December 21, 1965), *United Nations Treaty Series*, Vol. 660, p. 195. Canada ratified the Convention on October 14, 1970.

privilege.¹⁶ However, racism is not always conscious or intentional. Systemic or institutional racism have been increasingly identified as problem areas in policing. Such systemic racism arises through:

Patterns of behaviour, policies or practices that are part of the structures of an organization or an entire sector [that] disadvantage or fail to reverse the ongoing impact and legacy of historical disadvantage of racialized persons. This means that even [if not intentional, the] “normal way of doing things” might be having a negative impact on racialized persons.¹⁷

In policing, one of the ways that systemic or institutional racism manifest is through racial profiling:

Racial profiling is any action taken by one or more people in authority with respect to a person or group of persons, for reasons of safety, security or public order, that is based on actual or presumed membership in a group defined by race, colour, ethnic or national origin or religion, without factual grounds or reasonable suspicion, that results in the person or group being exposed to differential treatment or scrutiny.

Racial profiling includes any action by a person in a situation of authority who applies a measure in a disproportionate way to certain segments of the population on the basis, in particular, of their racial, ethnic, national or religious background, whether actual or presumed.¹⁸

As noted by the United Nations (UN) Committee on the Elimination of Racial Discrimination, the functioning of the criminal justice systems throughout the world has been permeated by racial or ethnic discrimination,¹⁹ leading to “a particularly serious violation of the rule of law, the principle of equality before the law.”²⁰ In 2005, the Committee recommended that State parties “take the necessary steps to prevent questioning, arrests and searches which are in reality based solely on the physical appearance of a person, that person’s colour or features or membership of a racial or ethnic group, or any profiling which exposes him or her to greater suspicion.”²¹

¹⁶ Ontario Human Rights Commission, *Racial Discrimination* (2012), available at: http://www3.ohrc.on.ca/sites/default/files/Racial%20discrimination_English_accessible.pdf (accessed January 28, 2021).

¹⁷ *Ibid.*

¹⁸ *Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc.*, 2015 SCC 39, at para 33.

¹⁹ United Nations Committee on the Elimination of Racial Discrimination (CERD), *CERD General Recommendation XXXI on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System* (2005), at p. 1.

²⁰ *Ibid.*

²¹ *Idem* at para 20.

After meeting with federal and provincial representatives in several locations throughout Canada in 2016, a group of UN experts was concerned “at reports that racial profiling by the police . . . continues on a daily basis in [Canada], with a harmful impact on [I]ndigenous peoples, as well as on ethnic minority Muslims, African-Canadians, and other ethnic minority groups.”²²

In addition to referring to “clear evidence that racial profiling is endemic in the strategies and practices used by law enforcement [including] the arbitrary use of ‘carding’ or street checks [that] disproportionately affects people of African descent,”²³ the group also seemed to establish a link between strong police presence in certain areas populated by racialized²⁴ groups and the overrepresentation of such groups within incarcerated persons.

Current events have prompted Canadian politicians and other high-ranking officials to publicly recognize the prevalence of systemic racism and unconscious bias within several institutions. The Minister of Public Safety and Emergency Preparedness, Bill Blair—himself a former Toronto police chief—stated that “racialized people . . . experience systemic racism and disparate outcomes within the criminal justice system.” With respect to footage showing RCMP members using force against Chief Allan Adam of the Athabaskan Chipewyan First Nation in Alberta and his wife—an incident that raised public concern—Minister Blair commented that Indigenous people “still face systemic barriers in Canada, and the racism they face often takes form in interactions with law enforcement.”²⁵

²² United Nations Committee on the Elimination of Racial Discrimination (CERD), *Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada* (September 13, 2017), 93rd Sess, UN Doc CERD/C/CAN/CO/21-23, available at: <https://undocs.org/CERD/C/CAN/CO/21-23> at para 15 (accessed January 28, 2021).

²³ United Nations Office of the High Commissioner for Human Rights, *Statement to the media by the United Nations’ Working Group of Experts on People of African Descent, on the conclusion of its official visit to Canada* (October 17–21, 2016), available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20732&LangID=E> (accessed January 28, 2021).

²⁴ The Commission recognizes that race is a social construct based on a number of factors such as skin colour, ethnic origin, and even language and religion. It is also inappropriate to use the term “racialized” to describe Indigenous people, who are the original inhabitants of Canada. However, the Commission uses the term “racialized” here to refer broadly to communities who have experienced discrimination on the basis of race. This is not to lump the experiences of all these groups together, as these experiences can vary greatly, but to acknowledge that in a society where race continues to grant privilege and power or take them away, the differential treatment of so-called “racialized” people by societal institutions like government and the police must be recognized. Where the Commission is referring to a distinct group, such as Black people, the Commission will use that term. Note that the secondary sources referred to and quoted by the Commission may use the term “racialized” differently.

²⁵ Carolyn Dunn, “Alberta RCMP deputy commissioner denies systemic racism in policing in Canada,” CBC (June 9, 2020), available at: <https://www.cbc.ca/news/canada/calgary/alberta-rcmp-racism-policing-1.5605360> (accessed January 28, 2021).

After initially denying that systemic racism impacted interactions between RCMP members and the public, RCMP Commissioner Brenda Lucki later acknowledged “that systemic racism is part of every institution, the RCMP included [and that the RCMP had] not always treated racialized and Indigenous people fairly.”²⁶ She reiterated the RCMP’s commitment to better understand “some of the unintended barriers that exist, and to work to correct them.”²⁷ Policy reforms are also being considered to address systemic racism and policing at the provincial and municipal levels.²⁸

The RCMP Commissioner’s reluctance to recognize that systemic racism affected the RCMP, as well as the wording of her revised statement, reflected a common misconception—that is, equating an accusation of systemic racism with a charge that the whole of the police force holds consciously or even unconsciously racist beliefs.²⁹ An important distinction to make, particularly when it comes to racial profiling, is that police officers who do not hold any racist beliefs may still apply practices that are rooted in common beliefs and policies shaping the police force and which perpetuate systemic discrimination, even though the police force does not itself explicitly promote racist or otherwise discriminatory practices.³⁰ That is to say, a well-intentioned police officer can unknowingly act in a manner that is perceived by others to be racist. The crucial point to remember is that everyone’s perception is their subjective reality. When an individual subjectively perceives racism, they subjectively experience racism, whether it was intended or not.

This challenge impacts more than just the reputation of an organization. The effect that negative interactions with law enforcement can have on members of the public must also be taken into account.

Like other individuals, police officers interpret a given situation through their worldviews informed by factors such as experiences and education, and based on certain characteristics of the persons involved—including race.³¹ This type of bias is related to persistent racial prejudices that perpetuate inequality in social, political, and economic relations, and can lead to discrimination. As often highlighted, recruitment efforts designed to achieve greater representation of minority groups among police forces is one strategy aimed at reducing the impact of this imbalance. Another is awareness

²⁶ Statement by Commissioner Brenda Lucki (June 12, 2020), available at: <https://www.rcmp-grc.gc.ca/en/news/2020/statement-commissioner-brenda-lucki> (accessed January 28, 2021).

²⁷ Ibid.

²⁸ Mohy-Dean Tabbara, *Socio-economic conditions and systemic racism in the criminal justice system trap Black and Indigenous people in a vicious cycle. The evidence is clear*, Institute for Research on Public Policy (July 21, 2020), available at: <https://policyoptions.irpp.org/magazines/july-2020/dismantling-vicious-cycle-of-poverty-and-systemic-racism-should-guide-criminal-justice-reform/> (accessed January 28, 2021).

²⁹ Victor Armony et al., *Les interpellations policières à la lumière des identités racisées des personnes interpellées : Analyse des données du Service de Police de la Ville de Montréal (SPVM) et élaboration d’indicateurs de suivi en matière de profilage racial*, Rapport final remis au SPVM (2019), available at: https://spvm.gc.ca/upload/Rapport_Armony-Hassaoui-Mulone.pdf at p. 16 (accessed January 28, 2021).

³⁰ Ibid.

³¹ *Idem*, at p. 18.

training about racial profiling and unconscious bias; however, while this can enable police officers to recognize and manage their biases in order to improve their decision-making skills, it is not certain that it can reduce the impact of implicit biases on the manner in which police officers carry out their duties. This is partly because biases almost automatically affect the way in which individuals read a situation and their surrounding environments.³²

Decisions regarding resource allocation or the design of police strategies and investigative techniques within police services do not escape biases, and can be driven by the implicit association between racialized groups and criminal activity.³³ On the one hand, it has been argued that a stronger police presence in disadvantaged areas can be explained by the fact that the social and structural conditions in poorer, disadvantaged neighbourhoods or communities are conducive to lawbreaking.³⁴ On the other hand, the police presence alone can be a contributor to a higher crime rate through increased police–public interactions and increased detection of crime. In effect, a high police presence in what is perceived to be a high-crime area can be a self-perpetuating cycle. Moreover, studies point to police being more active in areas populated by individuals who are regarded by the police and even the public as stereotypically “threatening.”³⁵ Stereotypical perceptions that certain groups are threatening or prone to violence can lead to greater vigilance on the part of police services,³⁶ which may also lead to more interactions and more forceful intervention by police.³⁷

Conversely, societal views that other subsets of the population are less likely to associate with crime or violence can result in under-vigilance by the police.³⁸ Police may not have a great presence in what are viewed as low-crime neighbourhoods. This lack of police presence reduces the number of police–public interactions and results in a lower detection of crime. Again, this can manifest in a self-perpetuating cycle.

As an example, certain racialized communities “are traditionally most impacted by counter-terrorism measures”³⁹ by law enforcement, which can add to the stress of individuals who are viewed by society as potential enemies because of their religion or cultural background. Following the 9/11 attacks, Canadian Muslims and citizens of Arab descent expressed feelings of discrimination, marginalization, and isolation as a result of some national security measures applied by the RCMP that targeted members of

³² Ibid.

³³ Lorie Fridell, *Producing Bias-Free Policing: A Science-Based Approach*, Springer (2016). The author, based in the United States, refers to studies revealing over-vigilance of racial and ethnic minorities, Muslims, and men.

³⁴ Victor Armony et al., *supra* note 29, at p. 49.

³⁵ Ibid.

³⁶ Lorie Fridell, *supra* note 33.

³⁷ Victor Armony et al., *supra* note 29, at p. 49.

³⁸ Lorie Fridell, *supra* note 33.

³⁹ Wayne Hanniman, “Canadian Muslims, Islamophobia and national security,” *International Journal of Crime and Justice* 36 (2008) 271, at pp. 274 and 282.

these communities.⁴⁰ This illustrates how far-reaching law enforcement actions can be; not only did innocent persons who were directly affected by such measures feel they were treated unfairly by authorities, but the fact that security agencies focused on them may have also contributed to society associating entire communities with terrorism.

Interactions with police officers—even for short periods—can lead to mental health consequences. For example, members of the Black population in Halifax stated that—during and after street checks they experienced a considerable amount of stress and described their emotional state in relation to these encounters as “frustrated, embarrassed or humiliated.”⁴¹ Some said that the embarrassment resulted from being “treated like a criminal,” at times in front of onlookers.⁴²

There is also evidence that negative encounters with police officers lead to mental health stressors such as anxiety, insomnia, and PTSD symptoms, particularly when the individual feels they were disrespected and made a victim of injustice.⁴³ Even vicarious contacts with police can be harmful to the well-being of a member of a racialized group if they feel that an individual who is close to them was unfairly stopped due to their identity.⁴⁴ It has been suggested that being stopped by the police on one occasion can “increase stress by creating the expectation that the individual will be stopped again in the future.”⁴⁵ The mental health impact is only one of the consequences of police contact that has been linked to poorer educational achievement among youth;⁴⁶ in some cases, this can lead to the weakening of positive social bonds, leaving affected individuals socially excluded and with fewer opportunities.⁴⁷

Moreover, individuals wondered whether the information recorded by police during street checks was accessible to other police officers or potential employers. Some racialized residents in Ontario reported that they felt as though their successes and positive contributions to their community was diminished due to being reduced to a stereotype about criminality.⁴⁸ Many individuals who had frequently experienced racial

⁴⁰ *Idem*, at p. 281.

⁴¹ Scot Wortley, *Halifax, Nova Scotia: Street Checks Report*, Nova Scotia Human Rights Commission (2019), available at: https://humanrights.novascotia.ca/sites/default/files/editor-uploads/halifax_street_checks_report_march_2019_0.pdf at p. 6 (accessed January 28, 2021).

⁴² *Idem*, at p. 7.

⁴³ Ontario Human Rights Commission, *Under Suspicion: Research and Consultation Report on Racial Profiling in Ontario* (April 2017), available at: http://www3.ohrc.on.ca/sites/default/files/Under%20suspicion_research%20and%20consultation%20report%20on%20racial%20profiling%20in%20Ontario_2017.pdf at p. 83 (accessed January 28, 2021). See also David R. Williams, *Stress and the Mental Health of Populations of Color: Advancing Our Understanding of Race-related Stressors*, *J Health Soc Behav.* (December 2018); 59(4): 466–485, at p. 456.

⁴⁴ Aaron Gottlieb and Robert Wilson, *The Effect of Direct and Vicarious Police Contact on the Educational Achievement of Urban Teens*, *Child Youth Serv Rev.* (August 2019); 103: 190–199, at p. 195.

⁴⁵ *Idem*, at p. 194.

⁴⁶ *Idem*, at p. 195.

⁴⁷ *Idem*, at p. 192.

⁴⁸ Ontario Human Rights Commission, *Under Suspicion: Research and Consultation Report on Racial Profiling in Ontario* (April 2017), available at:

profiling expressed a sense of resignation to the ongoing expectation of unfair treatment.⁴⁹

As a whole, police officers are no more or less prone to implicit biases than are non-police officers,⁵⁰ and there is evidence suggesting that “the majority of people have an implicit bias that associates certain races with crime.”⁵¹ Yet, the difference lies in the type of situations involved in policing, which often require quick decisions, the exercise of power, and reactions that include the use of force. “When you have that kind of time and response restriction, bias is going to show,”⁵² and the consequences of such biases are more severe than those exercised by people who do not occupy positions of power.

Despite the absence of uniform requirements to collect data about the individuals who are subjected to street checks by police in Canada, there is some indication that Black and Indigenous persons are more likely to report that they have been unfairly stopped by police, and treated as suspicious without reason.⁵³ Sometimes, the stereotypes at play relate to factors that make up “social determinants of justice,” namely employment, income, stable housing, health, and education.⁵⁴ Having “poorer” social determinants generally leads to more negative outcomes in the justice system, such as being denied bail, being convicted of an offence, getting a criminal record, or being sentenced to incarceration. In Canada, poor social determinants disproportionately impact Indigenous and Black people. This is partly due to structural disadvantages, and “systemic targeting, racial profiling, unnecessary violence committed against racialized

http://www3.ohrc.on.ca/sites/default/files/Under%20suspicion_research%20and%20consultation%20report%20on%20racial%20profiling%20in%20Ontario_2017.pdf at p. 83 (accessed January 28, 2021).

⁴⁹ Ibid.

⁵⁰ Jeffrey Sherman, professor of psychology at the University of California, Davis, as quoted in Tiffanie Wen, “Is it possible to rid police officers of bias?”, BBC News (August 27, 2020), available at: <https://www.bbc.com/future/article/20200827-is-it-possible-to-rid-police-officers-of-bias> (accessed January 28, 2021).

⁵¹ In reference to the work of Jennifer Eberhardt, psychologist at Stanford University, in Tiffanie Wen, “Is it possible to rid police officers of bias?”, BBC News (August 27, 2020), available at: <https://www.bbc.com/future/article/20200827-is-it-possible-to-rid-police-officers-of-bias> (accessed January 28, 2021).

⁵² Jeffrey Sherman, *supra* note 50.

⁵³ See, for example: Ontario Human Rights Commission. *A Collective Impact: Interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service*. Government of Ontario (November 2018), available at: http://www.ohrc.on.ca/sites/default/files/TPS%20Inquiry_Interim%20Report%20EN%20FINAL%20DESIGN%20for%20remed_3_0.pdf#overlay-context=en/news_centre/ohrc-interim-report-toronto-police-service-inquiry-shows-disturbing-results (accessed January 28, 2021); the Environics Institute for Survey Research and the Canadian Race Relations Foundation, *Race Relations in Canada 2019 Survey*, available at: https://www.crrf-fcrr.ca/images/Race_Relations_in_Canada_2019_Survey_-_FINAL_REPORT_ENGLISH.pdf (accessed January 28, 2021).

⁵⁴ Institute for Research on Public Policy, *Rethinking Criminal Justice in Canada* (2018), available at: <https://irpp.org/wp-content/uploads/2018/10/Rethinking-Criminal-Justice-in-Canada.pdf> at p. 13 (accessed January 28, 2021).

communities by the police and the Canadian justice system more broadly further contribute to the worsening of these determinants.”⁵⁵

Members of Black, Indigenous, and racialized communities have reported that they believed they experienced profiling due to living in lower-income neighbourhoods. Others thought it was because they engaged in behaviours that are erroneously considered as suspicious simply because they do not match the stereotype, such as walking or shopping in upscale areas that are predominantly white, or driving an expensive vehicle.⁵⁶ These perceptions are supported by data, and although white Canadians with poor determinants of justice are “more likely to interact with the criminal justice system than their more affluent and less vulnerable counterparts . . . the most important distinction is that the criminal justice system does not target them.”⁵⁷

It has also been suggested that “racialized women are profiled in gender-specific ways (for example, as suspected drug users, drug couriers or sex workers) [and are therefore] more vulnerable to police racial profiling.”⁵⁸

In Ontario, the Special Investigations Unit (SIU) investigates cases involving a police officer where there is a death, serious injury or discharge of a firearm by a police officer at an individual.⁵⁹ A review of a number of SIU investigations showed “a lack of legal basis for police stopping or detaining Black civilians in the first place; inappropriate or unjustified searches during encounters; and unnecessary charges or arrests.”⁶⁰

The general lack of clarity regarding the nature of police stops, discussed below, is problematic when considering the inherent power imbalance that is present when a police officer—particularly one who is armed and in uniform—approaches a member of the public for the purpose of questioning them, even in the absence of reasonable grounds or a reasonable suspicion to believe that they have committed any offence.

⁵⁵ Mohy-Dean Tabbara, *supra* note 28

⁵⁶ Ontario Human Rights Commission, *Under Suspicion: Research and Consultation Report on Racial Profiling in Ontario* (April 2017), available at: http://www3.ohrc.on.ca/sites/default/files/Under%20suspicion_research%20and%20consultation%20report%20on%20racial%20profiling%20in%20Ontario_2017.pdf at pp. 23, 79, and 84 (accessed January 28, 2021).

⁵⁷ Mohy-Dean Tabbara, *supra* note 28.

⁵⁸ Andrea S. Anderson, “Seeing Gender Differently in the Racial Profiling” (Paper presented to the Ontario Human Rights Commission and York University Racial Profiling Policy Dialogue (February 16-18, 2016), as referred to in Ontario Human Rights Commission, *Under Suspicion: Research and Consultation Report on Racial Profiling in Ontario* (April 2017), available at:

http://www3.ohrc.on.ca/sites/default/files/Under%20suspicion_research%20and%20consultation%20report%20on%20racial%20profiling%20in%20Ontario_2017.pdf at pp. 22–23 (accessed January 28, 2021).

⁵⁹ However, their mandate does not extend to the conduct of RCMP members.

⁶⁰ Ontario Human Rights Commission. *A Collective Impact: Interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service*. Government of Ontario (November 2018), available at: http://www.ohrc.on.ca/sites/default/files/TPS%20Inquiry_Interim%20Report%20EN%20FINAL%20DESIGN%20for%20remed_3_0.pdf#overlay-context=en/news_centre/ohrc-interim-report-toronto-police-service-inquiry-shows-disturbing-results at p. 3 (accessed January 28, 2021).

These interactions can be frightening and leave individuals feeling intimidated. Many individuals either believe that they have no choice but to comply with an officer's demands, or they reluctantly submit to questioning and searches even though they think their rights are being violated.⁶¹ This is true "especially when the person stopped is vulnerable, relies on public space to live, is Indigenous, Black, racialized, or has experienced state violence."⁶² It has been reported that some police officers become hostile or even threaten to arrest individuals who challenge their authority during street checks,⁶³ contributing not only to individuals feeling vulnerable and powerless during these encounters but also to the perception that police officers abuse their power to harass innocent people, intimidate them and violate their rights.⁶⁴

Unreasonable stops by police, whether experienced or witnessed, undermines police legitimacy. Individuals who feel as though their community is being unfairly targeted because of their race or ethnicity often do not trust police officers. The consequences of strained relationships between police officers and the communities they are mandated to protect are significant. For one, diminished "trust means that police have limited community information and no clear communication channels to solicit"⁶⁵ information to move criminal investigations forward. It can also result "in a decline in reported crimes and willingness to cooperate with police, testify in court etc."⁶⁶ For example, some members of the Black community in Halifax communicated their reluctance to cooperate with investigations or to report crimes "because they believed that the police did not care about members of the Black community."⁶⁷ Others indicated that they would no longer call the police for assistance due to previous experiences, with one person stating that she had been made to feel like a criminal rather than a victim.⁶⁸ Moreover, feelings of distrust that are entrenched in communities who feel they are treated unfairly by police can cause resistance to police initiatives to establish relationships with them and "good officers" [to be] treated with cynicism."⁶⁹

⁶¹ British Columbia Civil Liberties Association et al., "Open Letter Calling for an Immediate Municipal and Provincial Ban on Police Street Checks" (July 6, 2020), available at: <https://www.amnesty.ca/sites/default/files/Open%20Letter%20Ban%20on%20Street%20Checks%20June%202020%20%281%29.pdf> (accessed January 28, 2021). See also Scot Wortley, *Halifax, Nova Scotia: Street Checks Report*, Nova Scotia Human Rights Commission (2019), available at: https://humanrights.novascotia.ca/sites/default/files/editor-uploads/halifax_street_checks_report_march_2019_0.pdf, at p. 6 (accessed January 28, 2021).

⁶² British Columbia Civil Liberties Association et al., *supra* note 61.

⁶³ Scot Wortley, *supra* note 41, at p. 6.

⁶⁴ *Idem*, at p. 7.

⁶⁵ Wayne Hanniman, *supra* note 39, at p. 276.

⁶⁶ *Ibid*.

⁶⁷ Scot Wortley, *supra* note 41, at p. 16.

⁶⁸ *Idem*, at p. 16.

⁶⁹ *Ibid*.

Aside from the legal questions surrounding street checks, this section has sought to provide some insight into the impacts that racially biased practices can have on members of affected communities. It is apparent that what may be considered a routine check by a police officer can have serious consequences for members of the public who have reported feeling intimidated and frightened during such encounters. This not only speaks to the level of public confidence in police services (and thus the effectiveness of community policing), but also to the quality of policing, which in turn adversely affects the criminal justice system.⁷⁰ Improvident street checks can *lower* the effectiveness of policing in a community.

6. The law surrounding street checks

Much like the challenges in finding a clear definition of a street check, the law surrounding street checks is also complicated. Earlier, this report made it clear that the distinction between street checks and other forms of police interactions is their voluntary nature. Indeed, the Supreme Court of Canada affirmed that the police have the right to interact with the public. However, there is no corresponding duty on the public to either identify themselves or provide any information to the police, unless there is an independent legal obligation to do so.⁷¹

This report does not canvass the situations where the public are required by law to provide personal identifying information to the police. These situations fall outside the definition of a street check as discussed earlier in this report. Therefore, this section will focus only on situations where the police have no lawful authority to *require* an individual to provide personal identifying information to them.

Unfortunately, there is not a bright line delineating voluntary police interactions and detention. There are various forms of detention and, unlike arrests, a detention can occur without the active intent of the police officer to detain the person. When assessing whether a person is detained, one must look at the perceptions of the individual. The idea being that an individual being asked questions by the police may feel detained, even if the police officer had no intentions of actually detaining them. The Supreme Court keenly remarked to this point that “neighbourhood policing gives rise to a complex situation.”⁷²

⁷⁰ Ontario Human Rights Commission. *A Collective Impact: Interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service*. Government of Ontario (November 2018), available at:

http://www.ohrc.on.ca/sites/default/files/TPS%20Inquiry_Interim%20Report%20EN%20FINAL%20DESIGNED%20for%20remed_3_0.pdf#overlay-context=en/news_centre/ohrc-interim-report-toronto-police-service-inquiry-shows-disturbing-results at p. 4 (accessed January 28, 2021).

⁷¹ *R v Grant*, 2009 SCC 32 [*Grant*].

⁷² *R v Suberu*, 2009 SCC 33.

Two main rights under the Charter are relevant when discussing street checks. Section 9 of the Charter, which provides that:

Everyone has the right not to be arbitrarily detained or imprisoned.

And section 8 of Charter, which provides that:

Everyone has the right to be secure against unreasonable search or seizure.

Section 9 of the Charter

Section 9 of the Charter, which prohibits “arbitrary detention,” is relevant to a discussion of street checks. Its purpose is to protect individual liberty against unjustified state interference. Its protections limit the state’s ability to impose intimidating and coercive pressure on citizens without adequate justification.

The majority of the Supreme Court of Canada found in *R v Grant* that a detention by the police can arise in two ways:

- (1) A person is legally required to comply with a direction or demand by the police; or
- (2) A person is not under a legal obligation to comply with a direction or demand, but a reasonable person in the subject’s position would feel so obligated and would conclude that they were not free to go.⁷³

Therefore, a detention exists in situations where a reasonable person feels obligated to comply with a police direction or demand and that they are not free to leave. The majority of the Supreme Court of Canada’s reasons in *R v Le* also highlighted what is the key concern with street checks:

Most citizens, after all, will not precisely know the limits of police authority and may, depending on the circumstances, perceive even a routine interaction with the police as demanding a sense of obligation to comply with every request.⁷⁴

This is the very problem police encounter when conducting street checks. The police officer may honestly believe they are making a voluntary request of a member of the public. However, the member of the public may have a very different perception. *Grant* specifically identified that the individual’s own experiences and perceptions were relevant in assessing whether a detention had occurred:

. . . The individual’s particular circumstances and perceptions at the time may be relevant in assessing the reasonableness of any perceived power imbalance between the individual and the police, and thus the reasonableness of any perception that he or she had no choice but to comply with the police directive.⁷⁵

⁷³ *Grant*, *supra* note 71 at para 30.

⁷⁴ *R v Le*, 2019 SCC 34 [*Le*] at para. 26.

⁷⁵ *Grant*, *supra* note 71 at para 30.

For that reason, the police officer's intention in approaching a member of the public is not determinative of whether a detention has taken place. Nevertheless, the Court recognized that not every police–citizen interaction is a detention within the meaning of section 9 of the Charter, and highlighted that many police–citizen encounters are relatively innocuous, involving nothing more than passing conversation.

The dilemma is in determining when the line between passing conversation and detention is crossed. To make this determination, it is essential to consider all the circumstances of the police encounter. Section 9 requires an assessment of the encounter as a whole and not a frame-by-frame dissection as the encounter unfolds.

The Supreme Court considered this topic with the *Le* decision. In this case, the police were not investigating a specific crime. They were on patrol when they saw young men in a private backyard and went to speak with them given the high-crime area and the late hour. The key ruling of the Court discussed the topic of detention and concluded as follows:

This is important because it underscores that these young men were not legally required to answer the questions posed by the police, produce their identification, or follow directions about where they could place their hands. The officers had no legal authority to force them to do these things. Therefore, our analysis in this case will focus on the second way a psychological detention arises: whether a reasonable person, who stood in the appellant's shoes, would have felt obligated to comply and would not have felt free to leave as the police entered the backyard and made contact with the men.⁷⁶

This statement highlights the importance for RCMP members (like all police officers) to recognize the scope and limit of their authority when interacting with members of the public who are not initially subject to any investigation. The Court in *Le* also recognized one impact that could arise from frequent street checks:

. . . It is more reasonable to anticipate that frequency of police encounters will typically foster more, not less, "psychological compulsion, in the form of a reasonable perception of suspension of freedom of choice" Individuals who are frequently exposed to forced interactions with the police more readily submit to police demands in order to move on with their daily lives because of a sense of "learned helplessness"⁷⁷

The courts have also recognized that the retroactive determination of the nature of a detention can cause problems in the context of community policing. That is to say, if a police officer does not recognize that a particular interaction is causing a psychological detention, they may not consider the Charter rights at play. Similarly, this confusion can lead an individual to feel compelled to answer a question out of fear of arrest. The Ontario Court of Justice recently remarked that:

⁷⁶ *Le*, *supra* note 74 at para 28.

⁷⁷ *Idem* at para 109.

While the dissenters in *Omar* at the Supreme Court of Canada left the question “for another day” whether police should caution persons that they stop and question that they need not remain or answer questions, I would simply observe that **the right would seem to be a hollow one if police can question individuals knowing those individuals have no obligation to respond, but the individuals themselves are kept ignorant of that right** [emphasis added]. Regardless, the detention that flowed from the police conduct towards the passengers in the case before me triggered their s.10(b) rights. Had they been informed of those rights they may very well have chosen to respond differently to police or not at all.⁷⁸

The Ontario Court of Justice also acknowledged the requirement to balance individual liberty rights and privacy interests with a societal interest in effective policing. Given their mandate to investigate crime and keep the peace, police officers must be empowered to respond quickly, effectively, and flexibly to the diversity of encounters experienced daily on the front lines of policing. This balance is challenging, given what the Court described as “the lack of certainty and practical ‘on-the-street’ guidance offered by the s.9 jurisprudence in the context of community policing interactions.”⁷⁹

Section 8 of the Charter

Privacy is a central focus of section 8 of the Charter, which protects people against unjustified state intrusions upon their privacy interests.⁸⁰ The Supreme Court of Canada has explained that, in fostering the underlying values of dignity, integrity and autonomy, section 8 protections extend to information that is at the biographical core of personal information and which individuals in a free and democratic society would wish to maintain and control from dissemination to the state.⁸¹ This includes information that tends to reveal intimate details of the lifestyle and personal choices of the individual.⁸² Informational privacy has been defined as the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others.⁸³

Informational privacy includes at least three distinct—though overlapping—conceptions of what privacy is:

- privacy as secrecy
- privacy as control, and
- privacy as anonymity

⁷⁸ *R v Hamidu*, 2020 ONCJ 478.

⁷⁹ *Idem* at para 51, citing Brown J.A. in the decision *R v Omar*, 2018 ONCA 975 (CanLII), [2018] OJ No. 6346 (CA) at para 97.

⁸⁰ *Hunter v Southam Inc.*, [1984] 2 SCR 145.

⁸¹ *R v Spencer*, 2014 SCC 43 [*Spencer*]; *R v Plant*, [1993] 3 SCR 281.

⁸² *Idem*, *Plant*.

⁸³ *R v Tessling*, [2004] 3 SCR 432.

Privacy as secrecy encompasses the expectation that information disclosed in confidence will be held in trust and confidence by those to whom it is disclosed.

Privacy also encompasses a wider notion of control over, access to, and use of information. This aspect of privacy derives from the assumption that all information about a person is in a fundamental way his own, for him to communicate or retain for himself as he sees fit.⁸⁴

The Court noted that privacy as anonymity permits individuals to act in public places but to preserve freedom from identification and surveillance.⁸⁵ This anonymity can be compromised when a person's quantity of stored information allows others to observe a pattern of activity.

Although the courts have highlighted this concept of privacy most recently in the context of Internet and cell phone usage, the principles are equally applicable to the topic of street checks. In order for individuals to control information "as they see fit," it is important that they be fully informed as to why the police are soliciting street check information. Similarly, the recording of identifying information by the police creates a documented record of a person's activities, which may result in the person being unfairly prejudiced in a future unrelated police investigation. The Supreme Court aptly identified the critical importance of this aspect of privacy:

Privacy concerns in relation to information are at their strongest where aspects of an individual's identity are at stake, such as in the context of information "about one's lifestyle, intimate relations or political or religious opinions."⁸⁶

As much as an individual's right to privacy is protected by the Charter, the public naturally enjoys the right to share this information to the police, *if they so choose*. The Commission's review did not identify a clear finding from the courts that fully informed and voluntary consent is necessary in all cases before a person can give up their privacy rights. However, in the Commission's view, such a choice *should* nevertheless be fully informed and voluntary in practice.

This point is central to the Commission's review of street checks. Without fully informed and voluntary consent, the right to privacy under section 8 of the Charter can be undermined. As such, to be fully informed, a person must be provided with *sufficient information about the right* to make the decision in a meaningful manner.⁸⁷ For the consent to be voluntary, the *person must have had a real choice in providing the purported consent*.⁸⁸

⁸⁴ *Spencer*, *supra* note 81.

⁸⁵ *Ibid*.

⁸⁶ *R v Mills*, [1999] 3 SCR 668.

⁸⁷ *R v Borden*, [1994] 3 SCR 145.

⁸⁸ *Syndicat Northcrest v Amselem*, [2004] 2 SCR 551.

The case law surrounding voluntariness and consent in police interactions with the public is complex, particularly when criminal charges or seized evidence results from an ostensibly innocuous interaction. The court assesses both subjective and objective considerations in deciding whether to admit any evidence resulting from that interaction. This makes it difficult for both private individuals and the police officers to appreciate the precise scope and limits of the police authority during a given interaction. The main focus will usually be whether the interaction was truly voluntary, or whether it in fact amounted to a psychological detention.

This is a key point to understanding the difficult distinction between a voluntary interaction and a detention. It may not be until well *after* a police interaction that the police officer becomes aware, through a finding of the court, that the interaction amounted to a detention. For this reason, the Commission’s conclusion is that it is advisable—in fact, necessary—to ensure that informed consent is obtained before collecting personal identifying information in the context of a street check.

Discrimination and the law

As previously discussed, discrimination is a key concern related to street checks. The law recognizes that racial profiling of any sort is wrong. As explained by the Ontario Court of Appeal:

In my view, it is self-evident that a decision need not be motivated solely or even mainly on race or racial stereotypes to nevertheless be “based on” race or racial stereotypes. If illegitimate thinking about race or racial stereotypes factors into suspect selection or subject treatment, any pretence that the decision was reasonable is defeated. The decision will be contaminated by improper thinking and cannot satisfy the legal standards in place for suspect selection or subject treatment.⁸⁹

The Commission endorses this view and expands it slightly. If a street check is motivated in any fashion by a protected ground listed in section 3(1) of the *Canadian Human Rights Act*,⁹⁰ it is improper and contrary to the RCMP’s policy.

A general definition of “personal identifying information”

The federal *Privacy Act* governs the collection, retention, and disposal of what it refers to as “personal information” by federal agencies like the RCMP.⁹¹ The *Privacy Act* defines “personal information” as “information about an identifiable individual that is

⁸⁹ *R v Dudhi*, 2019 ONCA 665 at 62.

⁹⁰ The prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

⁹¹ *Privacy Act*, RSC 1985, c P-21 [*Privacy Act*].

recorded in any form.”⁹² Street check information, which could include a person’s name, address, and date of birth among other details, is typically “personal information” within the meaning of the *Privacy Act*.⁹³

Other reports, such as the Tulloch report, include definitions such as “identifying information.”⁹⁴ As discussed below, the RCMP street check policy refers to “personal identifying information.” The Commission adopts the *Privacy Act* definition of “personal information” in the sense set out above but uses the RCMP’s term of “personal identifying information” for consistency. The Commission uses that term throughout this report to refer to information about an individual such as their name,⁹⁵ date of birth, address, sex, gender identity, medical history, and so on.

Are street checks lawful?

Both the Tulloch and MacDonald reports considered the lawfulness of police street checks. However, as each considered unique evidence and adopted different approaches, they arrived at differing conclusions on the point of lawfulness. In particular, the MacDonald report considered whether police street checks were a lawful exercise of police common law powers via the ancillary powers doctrine.⁹⁶

In the Commission’s view, when street checks are conducted within the scope of the recommendations in this report, they do not represent an exercise of police power that must be considered under the ancillary powers doctrine. Voluntary interactions, where there is true informed consent for the collection and retention of personal identifying information, are permissible and do not require the consideration of police common law powers.

⁹² “Personal information” as defined by section 3 of the *Privacy Act* includes (but is not limited to) race, ethnic origin, religion, age, marital or family status, address, medical history, criminal history, employment history, fingerprints, and blood type. It also includes the person’s name where the name is linked to other personal information about the person or where the disclosure of the name would reveal information about the individual. In the Commission’s view, personal information also includes a person’s sex or gender identity and their sexual orientation.

⁹³ *Privacy Act*, *supra* note 91, s 3.

⁹⁴ The Tulloch report defines “identifying information” as “[a]ny information which, alone or in combination with other information, can be used to identify an individual. Identifying information includes information about an individual’s race, age, sex, sexual orientation, gender identity, marital or family status, socioeconomic circumstances, and education, medical, psychiatric, psychological, criminal or employment history.”

⁹⁵ To be clear, in the context of a street check occurrence, the Commission’s view is that recording a person’s name by itself is nevertheless “personal information” within the meaning of the *Privacy Act*, even where no other information about the person appears with it. That is, the very fact that the person’s name has been recorded by the police following a street check reveals information about the person.

⁹⁶ The ancillary powers doctrine is a legal doctrine that assesses whether a police action that interferes with a person’s liberty, which is otherwise not authorized by law, falls within a police officer’s common law powers.

While the MacDonald opinion considered the issue of informed consent as it applies to street checks, it did not explore the issue in depth:

The question remains, could someone still consent to being street checked? Theoretically, but the threshold is high.⁹⁷

In that sense, the Commission adopts the approach outlined in the Tulloch report:

In a society where the police have at their disposal excessive powers, there is a risk of individual liberties being suppressed. On the other hand, in a society where police lack sufficient ability to investigate and prevent criminality, there is a risk of lawlessness. It is without dispute that both extremes should be avoided. Striking an appropriate balance between society's expectations and the evolution of the law can be a difficult exercise. In the context of policing, it is always important to start from the foundation that "the police are the public and the public are the police". The legitimacy of one requires the approval and respect of the other. It cannot be forgotten that "the public" is an all-encompassing term. Policing practices and their implementation must be fair to all. A practice that further exacerbates inequalities or marginalization should be viewed as failing.

. . .

When a police officer, without bias or discrimination, asks an individual to provide information, and the person voluntarily provides information, then there is no question that the information was properly obtained.

In the Commission's view, this approach is applicable to the broad definition of street checks identified in this report and represents a stronger connection to the state of the law on a national scale.

That said, it remains important to consider provincial approaches to street checks. For instance, Nova Scotia's decision to permanently ban street checks through a Ministerial directive⁹⁸ to police agencies must obviously be considered by RCMP members in Nova Scotia operating under a provincial or municipal policing contract.⁹⁹

7. The RCMP's policy suite

The RCMP's national operational manual sets out a policy framework for conducting street checks. A complete copy of this policy is included as Appendix A. The RCMP's definition of what is or is not a street check is crucial, given that this drives the application of the policy.

⁹⁷ MacDonald report, *supra* note 3, p. 52

⁹⁸ Government of Nova Scotia, Department of Justice, *Moratorium Placed on Street Checks of Pedestrians, Vehicle Passengers* [News release] (April 17, 2019), available at: <https://novascotia.ca/news/release/?id=20190417001> (accessed January 28, 2021).

⁹⁹ As discussed later in this report, RCMP members in Nova Scotia operating under a federal mandate would not be subject to this ban; however, the RCMP must develop policy to consider the best approach.

The RCMP's definition of a street check is inadequate

The RCMP's street check policy provides the following definition:

Street check means an electronic record of information obtained through a contact with a person who was not detained or arrested during his/her interaction with the police.

NOTE: Not all face to face contacts with the public in which identifying information is requested will require an electronic record.

The RCMP has chosen to link its policy to the *recording* of the street check in a police operational records management system instead of linking it to the *action* of performing a street check. That is to say, if a street check is not recorded in a records management system, then it would appear that the policy does not apply.

Moreover, the policy includes a vague notion that not all contacts will be a street check, but does not explain under what circumstances this exception would apply.

With these considerations in mind, the RCMP's definition becomes unreasonably broad and provides no clear guidance on what sort of activities would fall into the "street check" category. Moreover, by defining a "street check" as the electronic record, as opposed to the police activity, it misses many interactions that should be subject to policy guidance.

FINDING No. 1: The RCMP's definition of "street check" in its national policy is inadequate.

Recommendation No. 1: The RCMP should amend the definition of "street check" to reflect the following:

"**Street check** means a voluntary interaction with the public, initiated by the police officer, where the police officer makes a request for personal identifying information to support a law enforcement purpose. A street check can occur anywhere and within any of the RCMP's mandates."

Recommendation No. 2: The RCMP should clearly enumerate any exceptions to this policy (e.g. undercover operations).

What is a voluntary interaction?

A key point in the proposed definition is that the interaction is voluntary. As previously discussed, one of the main concerns with street checks is that those involved may not be aware of the voluntary nature of responding to the police request. Certainly, many people may interpret a voluntary request from the police to be a lawful demand, with which they must comply. This effect may be magnified in certain vulnerable populations.

The RCMP's policy in this regard is not robust. It provides:

2. 6. The subject of a street check is not obligated to provide information to police. Providing personal identifying information must be voluntary.

NOTE: If the interaction is not voluntary, or the willingness of the person providing the identifying information is in question, the member should remind the person that they are free to go and are under no obligation to provide this information.

...

3. 1. 1. You must be aware that the subject of a street check is not obligated to provide information to police.

3. 1. 1. 1. Providing personal identifying information must be voluntary. See sec. 2.6.

This definition is not consistent with the principle of informed consent, as previously discussed. While the policy identifies that the provision of personal information must be voluntary, it does not require an RCMP member to both ensure that the person understands the nature of informed consent and that the person gives such consent prior to requesting such personal information. For this reason, the policy is inadequate.

In addition to providing informed consent, the individual should be told that if they provide information about themselves, this information may be recorded and stored in the RCMP's records management system (unless it would be unreasonable in the circumstances to so inform them). Informed consent on these terms will minimize the privacy concerns about recording and retaining personal information.

Additionally, where a person declines to provide informed consent, their personal identifying information should not be recorded in an RCMP records management system unless other lawful authority exists to retain the information.¹⁰⁰ Otherwise, a person's informed consent becomes meaningless in practice.

Finally, although the RCMP's policy uses the term "personal identifying information," it does not define that term. Elsewhere in the RCMP's *Operational Manual*, it uses the term "personal information," presumably because this is the term used in the *Privacy Act*. To avoid confusion or ambiguity, the RCMP should consistently use one term and define it clearly within the policy.

¹⁰⁰ For instance, if further events transpire after the request that meet the criteria for a police operational file to be generated.

FINDING No. 2: The RCMP's national policy concerning informed consent to provide information in the context of a "street check" is inadequate.

Recommendation No. 3: The RCMP should amend the national policy to include the following:

"Before requesting any personal identifying information from a member of the public in the course of a street check, a member must obtain the person's informed consent and record it in their notebook."

Recommendation No. 4: The RCMP should provide the following standard wording, or wording of similar effect, to its members for the purpose of obtaining informed consent in the context of a street check:

"This is a voluntary interaction. You are free to leave at any time. I am requesting [nature of information requested] for the purpose of [reason for the street check]. You do not need to provide me with this information. If you choose not to provide this information, you will not be arrested or detained. Your personal information may be retained in accordance with the *Privacy Act*."

This standard wording should be available in both of Canada's official languages as well as any other languages common to the area being policed, particularly Indigenous languages.

Recommendation No. 5: If an individual does not consent to provide their personal identifying information in the course of a street check, their personal identifying information should not be recorded in the police operational records management system unless other lawful authority exists to do so.

Recommendation No. 6: To avoid confusion or ambiguity, the RCMP should consistently use one term to refer to the information collected about individuals during a street check, and define this term clearly within the policy.

Provincial restrictions must be incorporated into the RCMP's policy

As discussed earlier, Nova Scotia has banned the practice of street checks within the province. It is possible that other provinces could adopt restrictions or ban street checks altogether in the future. This raises some concerns to the RCMP's multiple policing mandates. Where the RCMP provides municipal or provincial policing services to such provinces, it must comply with such directions. However, when carrying out its federal policing mandate, it would not be legally bound by such restrictions. Such situations would be confusing to RCMP members.

The RCMP's existing policy is insufficient for this purpose. It reads as follows:

2.10. In provinces where the RCMP are designated as police officers, members must comply with provincial legislation relating to the collection of identifying information or street checks.

The RCMP's national policy should provide additional guidance on how members operating under a federal mandate should conduct street checks in provinces that have restricted street checks.

Recommendation No. 7: The RCMP should enhance its national street check policy to provide guidance to RCMP members operating under a federal mandate on how street checks should be conducted in provinces that have restricted police street checks.

Strong protections are necessary to prevent bias

As previously discussed, street checks have the demonstrable effect of exhibiting either real bias or discrimination, or causing the appearance thereof. Even in the absence of any intentional bias, a well-meaning police officer can cause the appearance of bias quite inadvertently. Part of this issue is linked to the trust built between the police and the community in question. This is a separate consideration from street checks and requires a broad-based approach to community policing. However, there are some steps that can be taken to reduce bias, either real or apparent, when conducting street checks.

First, the Commission supports the RCMP's current ban on random street checks. As directed in the RCMP's national policy:

2.7. Street check stops must not be random or arbitrary but may be completed for incidents that relate to police and public safety.

This principle builds on the Commission's earlier definition that there must always be an underlying law enforcement purpose to conducting a street check. Random or arbitrary street checks, by their definition, cannot have a cogent law enforcement purpose.

FINDING No. 3: The RCMP's national policy prohibition on random or arbitrary street checks is appropriate.

In addition, the RCMP's current policy highlights the need to prevent the appearance of bias:

1. 1. Bias-Free Policing means equitable treatment of all persons by all RCMP employees in the performance of their duties, and in accordance with the law, and without abusing their authority regardless of an individual's race, national or ethnic origin, colour, religion, gender, sexual orientation, marital status, age, mental or physical disability, citizenship, family status, socioeconomic status, or a conviction for which a pardon has been granted. See ch, 38.2.

2.3 Policing must be professional, open, ethical, respectful, unbiased, and reflect the principles of the *Charter of Rights and Freedoms* and the *Canadian Human Rights Act*.

2. 4. Street checks must comply with bias-free policing directives.

However, the policy does not clearly explain how to achieve this goal. In the Commission's view, further policy guidance is required to ensure that RCMP members understand how to prevent bias or the appearance of bias while conducting street checks. Specifically, where street checks form part of a planned police investigation or operations, RCMP members should consider the issue of bias and incorporate bias-free policing concepts into an operational plan. As an example, the RCMP may wish to reach out to local community groups representing minority interests if they were planning to conduct street checks that might impact the applicable minority group.

As alluded to at the beginning of this report, there are vast differences between different RCMP mandates and different groups that might be impacted by street checks. It is essential that RCMP members and unit commanders be familiar with the groups specific to the community and context in which they provide policing services.

Moreover, where individuals or community groups raise concerns with street checks in a given community, there should be a policy-driven mechanism to ensure internal auditing and accountability to supplement the public complaint process.

In present form, there is a policy requirement for RCMP supervisors to review street check occurrences. In addition, there is evidence that some detachments have conducted internal auditing on street checks. That said, the previously identified concerns relating to the definition of a street check mean that not all street checks as defined by this report would currently be captured in the RCMP's operational records management systems and therefore internal supervision and auditing would not be entirely effective, since crucial street checks would have no internal monitoring. For these reasons, the RCMP's current abilities to assess or evaluate member compliance with relevant policies is inadequate. To remedy this issue, the earlier recommendations on amending the definition of a street check must be implemented.

FINDING No. 4: The RCMP's national policy concerning bias-free policing as it relates to street checks is generally appropriate, but requires further detail.

FINDING No. 5: Due to the inadequate definition of "street check" in the RCMP's national policy and deficiencies with respect to recording "street check" data, the RCMP does not currently have an effective method to determine whether its members are abiding by the relevant policies and does not have adequate abilities to assess and evaluate its members' compliance.

Recommendation No. 8: The RCMP's national policy concerning street checks should include specific directions on how to prevent bias or the appearance of bias when conducting street checks.

Recommendation No. 9: The RCMP's national policy concerning street checks should include an internal auditing function that can be triggered by community concerns.

Recommendation No. 10: The RCMP's national policy concerning street checks should provide for regular internal auditing that includes advice from subject matter experts in bias-free policing.

8. How should street checks be recorded and retained?

The recording and retention of street checks is a challenging topic. On the one hand, recording and retaining street check information in a police records management system provides a record of the interaction and ensures greater transparency. It promotes intelligence sharing within the RCMP and may help achieve police objectives. It also permits the RCMP or other researchers to analyze trends in street checks and to identify areas for improvement. Finally, it assists police oversight agencies, like the Commission, in resolving complaints about police conduct. In the absence of a police record, it is more difficult to provide effective oversight of policing.

On the other hand, recording and retaining street check information in a police records management system places an innocent individual's personal information into a police database. The very nature of a street check means that the person is not the target of a specific police investigation. Canadians enjoy strong privacy protections from government intrusion. For this reason, police should not be retaining personal information for longer than is necessary. The questions become, how should information be recorded and for how long?

This problem has challenged various police agencies. As succinctly stated in the MacDonald report, "The 'data collection' aspect of street checks is not well understood." As a key preliminary point, data collection and retention by the RCMP is governed by federal legislation, even where the RCMP is contracted to perform municipal or

provincial policing services. This places the RCMP on a different playing field than other agencies that follow either provincial or municipal laws concerning privacy and retention of information.

As discussed above, the federal *Privacy Act* governs the collection, retention, and disposal of personal information by federal agencies like the RCMP. In addition to imposing obligations with respect to the retention and disposal of such information, the *Privacy Act* prohibits the very collection of personal information by a government institution unless it relates directly to an operating program or activity of the institution.¹⁰¹ The RCMP's law enforcement mandate means that collecting street check information will generally fall within the RCMP's operational programs and activities. However, where the street check itself was unreasonable (as discussed above), the collection of personal information would arguably be unauthorized. As such, it will not necessarily be reasonable for the RCMP to record or retain any personal information obtained from an unreasonable street check.

Section 6(1) of the *Privacy Act* states that personal information must be retained for a minimum period of at least two years¹⁰² where it has been used for an "administrative purpose." The *Privacy Act* states that an administrative purpose, "in relation to the use of personal information about an individual, means the use of that information in a decision-making process that directly affects that individual." This is to allow the affected individual reasonable time to obtain access to that information.

In the Commission's analysis, the collection of personal information during a street check does not qualify as an administrative purpose within the meaning of section 6(1) of the *Privacy Act*. Although in a loose sense the RCMP member conducting the street check is engaged in a decision-making process, the individual who has been asked to provide their personal information would not generally be directly affected. As such, the two-year statutory retention period does not apply, and it is up to the RCMP to set a reasonable retention period for personal information kept within its operational records management systems.

The RCMP's current policy imposes a minimum two-year retention time on street check occurrences within the RCMP's operational records management systems. This means that the information is purged from the system two years after the street check occurred, at the earliest. In cases where a street check is linked to another police occurrence file,

¹⁰¹ *Privacy Act*, *supra* note 91, s 4.

¹⁰² At least two years, per section 4(1)(a) of the *Privacy Regulations*. If an individual makes a request for their personal information, section 4(1)(b) also requires the institution to retain that information "until such time as the individual has had the opportunity to exercise all his rights under the Act." There is a further retention period of at least two years where personal information has been disclosed to an investigative body following a request for personal information under section 8(2)(e) of the *Privacy Act*. This section concerns disclosure of personal information to an investigative body for the purpose of enforcing any law of Canada or carrying out a lawful investigation. See Schedule II of the *Privacy Regulations* for the designated investigative bodies.

the street check is retained for a period equal to the retention time of the longest linked file.

However, the policy is confusingly vague and contradictory. Recall that the policy noted the following:

NOTE: Not all face to face contacts with the public in which identifying information is requested will require an electronic record.

The policy does not expand on what situations would or would not require an electronic record. This appears to be in conflict with another provision of the same policy document, which provides:

3. 1. 3. Document street checks on the Records Management System (RMS) as soon as possible after the contact, to ensure that the information is readily available to other members.

Finally, the Commission's review of a sampling of street check occurrences suggested that street check occurrences within the RCMP's operational records management systems were sometimes being used in cases that would not be characterized as street checks under the Commission's definition. For instance, they were being used to document suspicious activities or observations where no individuals were approached by the police. The RCMP's existing policy recommends against such a use in one section:

2. 1. Street checks **should** [emphasis added] meet the following basic criteria:

2. 1. 1. the member has had face-to-face contact with a person;

2. 1. 2. the member has obtained identifying information from that person

In another section, the RCMP's existing policy appears to prohibit the practice:

NOTE: Observations of policing value made without a public/police interaction (where the identity of the individual is known) must be recorded through, either an information or an intelligence file.

Either way, the existing policy is confusing and does not appear to be well applied.

A consistent approach is needed. To provide useful data, street checks that fall within the scope of the policy definition must be extractable from the RCMP's operational records management systems.

Moreover, the collection and retention of personal information in the context of a street check must always have a law enforcement purpose. A law enforcement purpose must be more than fanciful speculation that the information may be useful at some time in the future. Where an RCMP member can clearly articulate a legitimate law enforcement reason for collecting personal information (such as the investigation of suspicious

activities or for criminal intelligence purposes), they should obtain a person's informed consent to collect and record their personal information (as discussed above). To be clear, however, unless the RCMP member can clearly articulate a legitimate law enforcement objective for collecting personal information from members of the public, they should not attempt to do so through a street check.

Where the RCMP member seeks to obtain a person's informed consent and personal information through a street check, the RCMP member should record this information in their police notebook, as the policy currently recommends. The RCMP member should then create a street check occurrence report as soon as possible to document the details of the encounter, including the personal information collected as well as the reason for collecting that information. In cases where the RCMP member does not obtain enough information to identify a person, or where the person declines to cooperate, the street check occurrence is still necessary to capture the incident, but no personal identifying information will be added. The RCMP may wish to consider adding some form of statistical tracking for street check occurrences where an individual declines to provide their personal identifying information.

As stated above, the *Privacy Act* does not set out mandatory retention times for personal information gathered following a street check. The retention period should balance the privacy interests of the individual against the need to preserve information if the person requests access to their personal information or decides to lodge a public complaint about the street check.

The existing RCMP Personal Information Bank for Operational Case Records (RCMP PPU 005), which would be that used for most investigational records, sets out a minimum retention time of two years for any collected information. Considering that the personal information collected from a street check is about an innocent person who is not otherwise involved in a police occurrence, a two-year retention time is inappropriate. The Commission recommends a one-year retention period, consistent with the one-year period that an individual has under the RCMP Act to lodge a public complaint following an incident. For this reason, the RCMP may very well need to create a new personal information bank or adjust the retention periods for existing personal information banks to meet this objective. It would not be appropriate for the RCMP to simply rely on the existing policy as a basis for retaining such personal information for a minimum of two years (absent a compelling justification, such as a connection to a specific investigation).

With that said, the Commission recognizes that there may be value in retaining at least some information for statistical purposes. Where the information that is retained is limited, anonymized and/or aggregated such that it is no longer possible to identify

individuals,¹⁰³ it can be useful in understanding trends and identifying any issues with street checks. For example, while names, dates of birth, addresses, telephone numbers and similar sensitive personal information should be purged consistent with the above discussion, the RCMP may wish to consider a process to retain information about the general geographical area of the street check (but not a specific address), the purpose of the street check, the time of the street check, and even limited demographic information. That limited demographic information can include the age (but not the date of birth) or apparent age of the individual at the time of the street check, their sex or gender identity where known, and their apparent race or ethnicity (if this has been recorded in the street check occurrence). The Commission recommends that the RCMP consider the feasibility of retaining, for statistical purposes, non-identifying information for longer than the one-year period recommended above.

Finally, to help provide data to analyze concerns from racialized communities, the RCMP should consider how race-based data is collected and maintained in the course of street checks. Currently, the RCMP does not require the collection of this data in the course of conducting a street check.¹⁰⁴ As a consequence, the Commission did not have access to empirical data to assess the incidence of racialized versus non-racialized street checks. Moreover, the current RCMP definition of street checks does not capture the full range of street check interactions as defined by the Commission. These barriers inhibited the Commission's review of key concerns related to bias and discrimination.

Including race-based data in police street checks would enhance the ability of the RCMP to conduct internal auditing of street check functions and would assist the Commission and other researchers to identify concerns or trends in RCMP street checks.

That said, collecting race-based data has pitfalls and raises additional privacy concerns. These concerns exist across the RCMP's data collection practices and go beyond the scope of street checks. The Commission understands that decisions concerning the collection of race-based data are complex and that this recommendation may be incorporated into larger-scale internal reviews of RCMP data collection.

¹⁰³ Researchers have identified cases where it is possible to "re-identify" an individual based on the information that is retained by an agency, such as date of birth and postal code. For this reason, the Commission recommends that only narrow information be retained for statistical purposes. For an overview of strategies to manage the risks of "re-identification," see the Information and Privacy Commissioner of Ontario's report *De-identification Guidelines for Structured Data*, available at: <https://www.ipc.on.ca/wp-content/uploads/2016/08/Deidentification-Guidelines-for-Structured-Data.pdf> (accessed January 28, 2021).

¹⁰⁴ While RCMP policy does not mandate its collection, the RCMP's operational records management systems support the input of this data.

FINDING No. 6: The RCMP's policy concerning the documenting of street checks is insufficient.

Recommendation No. 11: The RCMP should amend its national policy to require that all street checks be entered into an operational records management system unless they meet clear criteria for exceptional situations where the street check need not be entered.

Recommendation No. 12: The RCMP should ensure that street checks within the policy definition proposed in this report are readily extractable from the RCMP's operational records management systems.

Recommendation No. 13: The RCMP should review the minimum retention times for street checks to ensure they are consistent with the requirement to dispose of personal information as soon as it is no longer necessary for a law enforcement purpose. The Commission recommends a general one-year retention period for street checks unless a specific exception applies, such as in the case of a public complaint or where the person submits a request to access their personal information.

Recommendation No. 14: The RCMP should consider the feasibility of retaining certain non-identifying information pertaining to street checks for a longer period for statistical purposes.

Recommendation No. 15: The RCMP's national policy should provide that street check occurrences not include any personal identifying information where the subject of the street check refuses to voluntarily provide such information.

Recommendation No. 16: The RCMP should consider adding a function to street check occurrences to identify street checks where the individual declined to provide personal identifying information.

Recommendation No. 17: The RCMP should consider how race-based data is collected and maintained in the course of a street check.

9. RCMP training concerning street checks

As part of the review, the Commission obtained copies of the RCMP's cadet training program materials relating to street checks and interviewed RCMP members concerning their familiarity with the existing policy and practice.

Generally, the Commission was satisfied that the existing training communicated the relevant aspects of the existing policy and law to RCMP members.

Given that the Commission is recommending significant changes to the RCMP's national policy concerning street checks, the RCMP should also incorporate these changes into its existing training. Since there is significant overlap between the topic of street checks and other police training—such as detention, arrest, the Charter, and bias—the Commission declines to provide specific recommendations on where to incorporate the materials.

FINDING No. 7: The RCMP's current training concerning street checks is generally appropriate.

Recommendation No. 18: Following the changes to street check policy identified in this report, the RCMP should update the training provided to RCMP cadets pertaining to street checks and ensure that existing members are made aware of the changes.

10. Conclusions

The RCMP is a unique policing organization in Canada because it provides policing services at all three levels of government in many parts of a large nation, in both rural and urban settings. This can make it challenging to develop national-level policies with sufficient detail to provide concrete guidance to police officers. Nevertheless, carefully crafted guidance is made necessary by the complexity of street checks and the impact of their misuse on public trust in the police.

Well-intentioned police officers who have no conscious bias can easily perpetuate a culture of fear and distrust in a community through the careless use of street checks. In small communities, these effects can be magnified. Racism and discrimination are the lived experience of many Canadians. It is crucial that police officers recognize the individual and collective perceptions within their community and that they develop strong community bonds and build trust. Rather than discouraging public contact, street check policies must encourage positive connections while aiming to eliminate those that instill fear.

These factors make it essential that concrete guidance is provided at the national level so that RCMP members can benefit from carefully developed policies that take such considerations in mind. Through this review, the Commission has found significant gaps in the RCMP's existing national policy suite as it relates to street checks.

The eighteen recommendations contained in this report are intended to strengthen the RCMP's national policy suite by clearly defining street checks, ensuring that informed consent is obtained from individuals who are solicited for personal identifying information, and providing a robust reporting regime so that future audits—whether internal or external—have the data to appropriately assess the RCMP's performance.

Moreover, the recommendations aim to ensure that the RCMP retains personal identifying information no longer than is necessary for law enforcement purposes.

However, the concerns with street checks begin at the local level. No matter how robust a national policy may be, local RCMP members and unit commanders must maintain a strong connection with the communities they police and respond immediately to concerns of bias or discrimination.

Police in Canada operate by the consent of the community, not through fear. The RCMP must always aim to understand the unique factors that form the bonds in each community it serves and across all its mandates. The Commission trusts that these recommendations will enhance the RCMP's ability to carry out this challenging task.

Micheline Lahaie
Chairperson

Appendix A

National Operational Manual – Chapter 1.4. “Street Checks” (Amended 2017-02-13)

1. Definitions

1. 1. **Bias-Free Policing** means equitable treatment of all persons by all RCMP employees in the performance of their duties, and in accordance with the law, and without abusing their authority regardless of an individual's race, national or ethnic origin, colour, religion, gender, sexual orientation, marital status, age, mental or physical disability, citizenship, family status, socioeconomic status, or a conviction for which a pardon has been granted. See ch, 38.2.

1. 2. **Street check** means an electronic record of information obtained through a contact with a person who was not detained or arrested during his/her interaction with the police.

NOTE: Not all face to face contacts with the public in which identifying information is requested will require an electronic record.

2. General

2. 1. Street checks should meet the following basic criteria:

- 2. 1. 1. the member has had face-to-face contact with a person;
- 2. 1. 2. the member has obtained identifying information from that person;
- 2. 1. 3. the contact was not the result of an active investigation or call for service; and
- 2. 1. 4. the recording of the information obtained during the contact serves a policing purpose.

2. 2. A street check is a valuable investigative tool that allows the storing and sharing of information related to crime and public safety issues.

2. 2. 1. Street checks can be used to initiate and support investigations, and identify crime trends.

2. 3. Policing must be professional, open, ethical, respectful, unbiased, and reflect the principles of the *Charter of Rights and Freedoms* and the *Canadian Human Rights Act*.

2. 4. Street checks must comply with bias-free policing directives.

2. 5. The police will regularly engage the public as part of routine police practices.

2. 5. 1. The common law provides the authority to police to speak with members of the public during the commission of their duties.

2. 6. The subject of a street check is not obligated to provide information to police. Providing personal identifying information must be voluntary.

NOTE: If the interaction is not voluntary, or the willingness of the person providing the identifying information is in question, the member should remind the person that they are free to go and are under no obligation to provide this information.

2. 7. Street check stops must not be random or arbitrary but may be completed for incidents that relate to police and public safety. Members must have an articulable cause for conducting a street check including but not limited to:

- 2. 7. 1. non-detention or non-arrest interactions;
- 2. 7. 2. suspicious circumstances or behaviour observed by police;
- 2. 7. 3. contact with persons of interest at locations where criminal activity occurs, time of day, or at high crime areas identified by officers, crime analysts, or community stakeholders;
- 2. 7. 4. interactions with persons known to be, or reasonably believed to be, involved in criminal activity;
- 2. 7. 5. gathering information on drug, gang, or organized crime suspects; and
- 2. 7. 6. officer safety interactions with persons or groups who may be deemed a risk to the public or police.

2. 8. The following will not be electronically recorded through a street check:

- 2. 8. 1. offence-related occurrences, investigations, or calls for service;
- 2. 8. 2. confidential human source information;
- 2. 8. 3. a seizure of property;
- 2. 8. 4. weapons offences, violence, or threats of violence; or
- 2. 8. 5. observations of policing value made by an officer without interaction with the public.

NOTE: Observations of policing value made without a public/police interaction (where the identity of the individual is known) must be recorded through, either an information or an intelligence file.

2. 9. If a subject is detained or arrested, a substantive file must be created to articulate the circumstances and grounds of that detention/arrest.

2. 10. In provinces where the RCMP are designated as police officers, members must comply with provincial legislation relating to the collection of identifying information or street checks.

3. Roles and Responsibilities

3. Member

3. 1. 1. You must be aware that the subject of a street check is not obligated to provide information to police.

3. 1. 1. 1. Providing personal identifying information must be voluntary. See sec. 2.6.

3. 1. 2. Street checks are to be documented in your notebook, in accordance with ch. 25.2.

3. 1. 3. Document street checks on the Records Management System (RMS) as soon as possible after the contact, to ensure that the information is readily available to other members.

3. 1.4. Ensure all street checks are complete and accurate.

3. 1. 4. 1. Pay close attention to physical characteristics of the subject, or other identifying characteristics, including clothing, behaviours, habits, and mannerisms, that would uniquely identify the subject.

3. 1. 5. Document date, time, associated vehicles, and locations.

3. 1. 6. Document the investigative and public safety reasons for initiating contact within the text portion of the street check.

3. 1. 7. To ensure the proper retention of street check electronic files, link street checks to all associated/related substantive files in the RMS.

NOTE: For PROS users, see ch. 47.3.. sec. 15.

3. 1. 8. Support and enhance information-sharing and intelligence-led policing by informing other investigators or crime analysts of information obtained.

3. 1. 9. Ensure you check all applicable indices, including CPIC.

3. 1. 10. When information obtained is time sensitive, notify the appropriate section, investigator, or other interested party/parties.

3. 1. 11. If information obtained through a contact with a member of the public results in the person becoming a confidential informant, document this in accordance with ch. 31.1.

3. 1. 12. If you are uncertain whether a contact should be classified as a street check, consult a supervisor.

3. 2. Supervisor

3. 2. 1. Monitor and review all street checks to ensure compliance with this, and any other, applicable policy.

3. 2. 2. Provide guidance to members on the appropriate use of street checks, as required.

3. 2. 3. If a street check does not comply with this policy, request that the record be modified for compliance within the RMS.

3. 2. 4. Verify that members have ensured the proper retention of street check files by linking them to a substantive file, as appropriate.

NOTE: For PROS, see ch. 47.3.. sec. 15

3. 2. 5. Supervisors must put in place a workflow process to ensure supervisor-review of all street checks.

3. 2. 6. Take appropriate action if information entered on a street check may compromise an investigation, or the safety of the public or police.

3. 2. 7. Take action if information received is information that, if divulged, could endanger a member of the public, or if information received, infers a threat to a specific member. See ch. 2.7.

4. Records Management

4. 1. Street checks are kept for two years after being concluded in PRIME/PROS/VERSADEX HALIFAX.

EXCEPTION: A street check that is linked to a secondary operational file must have the same retention period as the linked operational file.