



Alberta Association of Chiefs of Police

Attachment 2

November 6, 2020

Honourable Kaycee Madu
Minister of Justice and Solicitor General of Alberta
424 Legislature Building
10800 - 97 Avenue
Edmonton, AB T5K 2B6

RE: Street Checks

Minister Madu,

The Alberta Association of Chiefs of Police (**AACP**) is grateful for the opportunity to provide initial input on street checks in Alberta. Street checks are, at their core, conversations between police and the community. They are an effective tool for reducing crime and enhancing community safety and well-being. Street checks are not illegal.

There is no uniform definition of street checks; however, the AACP suggests it must only capture face-to-face interactions, outside of police stations, where personally identifying information is collected by police. The information is collected for a valid law enforcement purpose such as inquiring into offences that have been or might be committed; inquiring into suspicious activities to detect offences; or gathering information for intelligence purposes.¹ The AACP specifically refutes any suggestion that observations from distance constitute a street check.

The AACP would also like to firmly establish it does not endorse the practice of “carding”. Random or arbitrary collection of information has no place in policing.

Legal Landscape

The AACP Law Amendments Committee canvassed the October 2019 opinion (**Opinion**) prepared for the Nova Scotia Human Rights Commission. We believe there was a misapplication of the legal test in rendering the conclusion that street checks are illegal.

The Opinion accurately confirms police generally derive powers from either statute or common law. In the absence of either, the Supreme Court of Canada has articulated a test when police can exercise ancillary powers.² The Opinion fails by conflating police powers with police techniques or tools.

With a power, comes a reciprocal obligation for a member of the public. A good example is the common law application of investigative detention. If a police officer is lawfully placed to exercise the power to detain, there is a correlative requirement for a member of the public to submit to the detention. Failing to do so may result in further criminal jeopardy.

¹ Reference to the *Collection of Identifying Information in Certain Circumstances – Prohibitions and Duties*, Ontario Regulation 58/16.

² *Fleming v Ontario*, 2019 SCC 45.



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When police conduct a street check, there is no obligation for a person to accede to the request. There is no power being exercised at the time. This has been recognized by the Supreme Court of Canada as well in stating "...the police cannot be said to "detain", within the meaning of ss. 9 and 10 of the Charter, every suspect they for the purposes of identification, or even interview."³ The Honourable Michael H. Tulloch of the Ontario Court of Appeal conducted a fulsome review of street checks in Ontario in 2018. Justice Tulloch carefully considered the socio-legal landscape of street checks, and made the following remarks (with emphasis added):⁴

As long as police interactions involve no significant physical or psychological restraint, the Charter rights under section 9 and 10(b) are not engaged.

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

It is possible an otherwise legal practice can become problematic. As stated above, "carding" is not endorsed by the AACP. According to Justice Tulloch carding is a "small subset of street checks in which a police officer randomly asks an individual to provide identifying information when the individual is not suspected of any crime, nor is there any reason to believe that the individual has information about any crime."⁵ Carding may be illegal whereas street checks are not. To state is succinctly, police do not require articulated authority to have voluntary conversations with members of the public, nor to collect information from members of the public.

Utility and Value

Street checks are fundamentally an interaction between police and community members. They are a tool used in community policing.

The consequences of removing street checks was commented on by Dr. Curt Griffiths in his 2018 study focused in Edmonton as follows:⁶

Banning street checks may have a number of negative consequences, including 1) displacement to other police tactics that may be less transparent and subject to less oversight and accountability; 2) hindering efforts to prevent crime, ensure safety and well-being of citizen and efforts to solve crimes; 3) not resolving the issue of procedural justice in police-citizen encounters; and 4) would not, in itself, improve relations with communities of diversity or strengthen the partnerships that exist between [police] and community organizations.

³ *R v Mann*, 2004 SCC 52 at para 19.

⁴ Independent Street Check Review – The Honourable Michael J. Tulloch, Queen’s Printer for Ontario, 2018, Chapter 4 – Policing: Powers and Limits. (**Tulloch Report**)

⁵ Tulloch Report at page 4.

⁶ City of Edmonton Street Checks Policy and Practice Review – Prepared for the Edmonton Police Commission, Dr. Curt Griffiths et al., 2018 at page 295/296. (**Griffiths Report**)



There is suggestion in the Nova Scotia Opinion that street checks have limited value. The studies conducted by Griffiths and Tulloch would, at least, suggest otherwise. Every police agency encourages members to interact with the public as much as possible, both to build relationships and to deter crime.

In fact, street checks in Alberta, when properly conducted, are consistent with the statutory mandate established by the *Police Act* as follows:⁷

- 38(1) Every police officer is a peace officer and has the **authority, responsibility and duty**
- (a) to perform all duties that are necessary [...]
 - (ii) to encourage and assist the community in preventing crime,
 - (iii) to encourage and foster a co-operative relationship between the police service and the members of the community

Street checks are a valuable tool for police and have helped solve serious and violent crimes. Further still, street checks have helped police locate missing people. If used properly, street checks can enhance the safety of our historically marginalized populations.

Countless examples on positive use of street checks are available. A few examples on short notice were provided by our colleagues at the Calgary Police Service including some recent examples.

- August 2020 – a mother reported her son missing after not hearing from him for several weeks. A street check conducted days earlier assisted police with reuniting the family.
- August 2020 – a shooting victim was dropped off by unidentified occupants in a vehicle registered to a company. A street check report assisted in identifying witnesses and ultimately led police to the crime scene.
- August 2020 – CPS was asked to check on the welfare of an individual. Responding members relied upon a street check report confirming the individual suffered from mental health degradation and had the propensity to become violent. This information prepared the members to provide a safe and efficient call for service.

Weighing Benefits & Harm

The AACCP recognizes building and maintaining community trust and legitimacy is paramount. We are committed to delivering equitable and professional policing.

Various communities in Edmonton participated in the 2018 study led by Dr. Griffiths. This included Bent Arrow Traditional Healing Society, Native Counselling Services of Alberta, Somali Edmonton, Africa Centre, Youth Empowerment and Support Services and REACH to name a few. Interestingly, there was no consensus on the question of whether street checks should be banned.⁸ Instead of banning street checks, community groups commented on equity and procedural fairness in the use of street checks. They called upon police to engage the communities in a meaningful

⁷ *Police Act*, RSA 2000, c P-17

⁸ Griffiths Report at page 167.



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way, suggesting when the baseline relationship is healthy, street checks will be less concerning. One community member suggested "...the police should not change practices merely as a response to public pressure but should develop and execute policy with integrity and thought based on best practices."⁹

This perceived harm associated with street checks is part of a much larger relationship piece with diverse communities across Alberta. The practice, or absence, of street checks is not the balance point for community trust. There is an important foundational piece in building and maintaining

robust relationships with the communities we serve. When that is done, street checks are part of a larger ecosystem of trust and understanding.

Conclusion

There is a fundamental difference between street checks and carding. The hallmark of carding is randomness, and the term refers to situations where police randomly ask an individual for identifying information when they are not suspected of a crime, nor have any information about a crime.¹⁰ Unfortunately, "the two terms have erroneously become synonymous."¹¹

We fundamentally care about safety for Albertans. A moratorium on street checks may have harmful consequences to the safety and well-being of those we serve. We ask the Government of Alberta to consider working with the AACP and communities to establish uniformity across the Province rather than simply ban street checks. The issues are sufficiently complex to require further discussion and action.

We welcome an in-person meeting to discuss the topic of street checks.

Respectfully,

Chief Dale McFee, President
Alberta Association of Chiefs of Police

⁹ Griffiths Report at page 168.

¹⁰ Tulloch Report at page 35.

¹¹ Tulloch Report at page 35.