



**Attorney General
Justice
Office of the Minister**

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Dear members of the African Nova Scotian Decade for People of African Descent Coalition,

Thank you for your open letter dated June 17th, 2019. Ongoing collaboration and open communications will be necessary to improve relations between the African Nova Scotian community and police. As we take action on the Wortley Report, I am committed to change informed by the perspective of the African Nova Scotian community and other racialized communities. This letter addresses some of the issues you have raised.

Understanding of street checks

As we move forward it will be important to reach a common understanding of the term 'street check'. For purposes of the moratorium in the Directive dated April 17, 2019, a street check is defined as an interaction between police and a person for the purpose of collecting and recording identifying information for general intelligence purposes.

Police have statutory and common law duties including preservation of the peace, prevention of crime, and protection of life and property. In carrying out those duties, police may request information from individuals, including when police are looking into suspicious activity. Police authority to request information of individuals has been upheld in Canadian courts. Courts have also recognized that police cannot discharge their duties in a manner that arbitrarily detains a person or compels their identifying information without reasonable grounds to do so.¹ To the extent police practices around street checks would result in arbitrary detention, those practices would not be condoned. We would be pleased to have further discussions about the law in this area.

As I noted in my previous letter of May 31st, the inappropriate use of street checks is unacceptable. This is why I issued a Directive on April 17, 2019 placing a moratorium on street checks for pedestrians and motor vehicle passengers. The moratorium is to prohibit police from engaging in random, arbitrary street checks of pedestrians and motor vehicle passengers, including those based on race or other discrimination. The moratorium ensures police can continue essential activities including motor vehicle stops, investigating offences, executing warrants and inquiring into suspicious activity (discussed more below).

Monitoring the Moratorium

It is essential to ensure the moratorium is having an impact on the streets. For this reason, I have asked both the Halifax Regional Police and RCMP for information on:

- current statistics for street checks since the moratorium began;

¹ For some discussion on the law in this area see: *R. v. Mann* 2004 SCC 52 and *R. v. Grant* 2009 SCC 32

- actions that each force has taken to ensure all officers are aware of the Directives I have issued;
- what consequences have been identified for non-compliance;
- how the police have communicated and enforced the Directive dated March 29, 2019 with respect to ensuring that street checks are not used as part of a quota system nor as a performance measurement tool; and
- what other actions each force has taken to implement the recommendations set out in the Wortley Report since its release.

Requiring the public release of statistics on street check data will be something that we consider as part of regulation development. This could take the form of requiring police to produce annual reports respecting the previous year's street check activity. These reports, as suggested by Dr. Wortley in recommendation 2.23, could contain information on reasons behind the street checks conducted, and the demographic characteristics of those subject to street checks. Such reports could be shared publicly.

Access and use of street check data

Since the Directive was issued, the HRP has told us it has disabled the street check function in Versadex, HRP's records management system, and restricted access to the historical street check data to criminal analysts and supervisors. These changes also apply to RCMP Halifax District as they utilize Versadex.

HRP has also developed a retention plan for historical street check records (<https://www.halifax.ca/sites/default/files/documents/city-hall/boards-committees-commissions/190617bopc912.pdf>). According to the HRP, all historical street checks records – both HRP and RCMP – will be purged from Versadex in December 2020, aside from records retained for investigative purposes; those records will then be subject to the retention schedule of the investigation itself. Citizens are able to access their street check records by making application to HRP's access to information process by end of October 2020 (see <https://www.halifax.ca/fire-police/police/programs-services/accessing-information>).

These steps show tremendous progress and signal a true commitment to addressing inappropriate police practices around street checks.

Moving toward strict regulation

As I have stated before, the status quo is not acceptable and street checks, if used appropriately, can be a valuable policing tool. What is needed are strict rules for when and how street checks are used. As you are aware, Dr. Wortley cautioned that an outright ban may not necessarily change the frequency of police stops or how civilians experience policing in public settings. Officer training to enhance respectful, professional, and non-racially biased interactions with citizens must also be part of the solution. Funding and support with respect to training was included in the directive issued in the spring.

Regulating the practice of street checks could make the requirements in the moratorium permanent; it could “ban” random or arbitrary stops; and it could address how police collect, store, and access identifying information. It could also place sanctions on the police misuse of street check practices and build in accountability and consequences for police who do not follow procedures.

I know there is a lot of concern about the term “suspicious activity.” Suspicious activity has been defined in the Directive dated April 17, 2019 as any activity where, under all of the circumstances, there are objective, credible grounds to request identifying information. The Directive also requires police officers, when inquiring into suspicious activity and it is feasible to do so, to first make inquiries of an individual to confirm or dispel the officer’s suspicion without requesting identifying information. This definition and the requirement to dispel suspicion, where possible, were adapted from the “Report of the Independent Street Checks Review” by the Honourable Michael H. Tulloch. This approach is discussed by Dr. Wortley in his report on street checks at pages 167-168. Recommendation 2.5 discusses possible conditions in which a street check might be legally conducted. These conditions, such as where the information documents suspicious activity that might help identify future criminal activity, could be set out in regulations. Further discussion on these important concepts will be helpful in moving forward.

Concerns outlined in open letter of April 10th

Your letter of April 10th identified several areas in which the DPAD Coalition would like to see action including an apology from the HRP and RCMP for the disproportionate number of street checks undertaken against African Nova Scotians; a remedy to the harm caused by the collection of street check information; and the implementation of the Kirk Johnson decision with respect to collecting data on the role of race in traffic stops. With respect to the Kirk Johnson decision, the only recommendation applicable to the Department of Justice has been implemented and the remaining issues may be something that can be addressed by the Working Group. This is also relevant as Dr. Wortley’s recommendation regarding the collection of data on *all* police stops (recommendation 3.2) could be included in a regulation.

Further, I agree that there are issues of systemic racism in the criminal justice system that negatively impact the African Nova Scotian community. As a result, I have directed staff to further explore Recommendation 4.11 from Dr. Wortley’s report as it relates to developing infrastructure for African Nova Scotians in the justice system.

The Wortley Report Action Planning Working Group

Returning to the theme of collaboration and open communications, the intent of the bilateral meetings proposed by Valerie Pottie Bunge, co-convenor of the Wortley Report Action Planning Working Group is to have a dialogue about the proposed mandate, objectives, and composition of the Working Group. These conversations will inform the Group’s terms of reference, understanding that the department intends to move towards strict regulation.

The other intent of the bilateral meetings is to identify the needs that stakeholders may have in order to participate fully. In your letter you have outlined several such needs, including that “community participation must be properly resourced”; the Department of Justice is open to this proposition. Another need identified was access to independent legal advice on the legality of street checks. As you noted in your open letter, the Human Rights Commission has asked retired Chief Justice Michael MacDonald for such an opinion. You also drew attention to the recent Supreme Court of Canada case of *R. v. Le* (2019 SCC 34) and we agree that this case will provide useful guidance in this area.

I remain hopeful that the Working Group will be able to continue its work on advising government on an action plan to effectively respond to the recommendations of the Wortley Report as we head toward strict regulation. I am also hopeful that the DPAD Coalition will be able to participate in this work, as the voices and perspectives represented by this organization are valuable.

In closing, thank you for your letter, and your commitment to collaboration and open communications. Valerie Pottie Bunge from the Department of Justice will be in touch in the near future to arrange a meeting.

Sincerely,



Mark Furey