



April 10, 2019

Open Letter to:

Minister Mark Furey
Attorney General and Minister of Justice
Province of Nova Scotia

Dear Minister Furey:

Re: Position of the African Nova Scotian Decade for People of African Descent (ANSDPAD) Coalition on Street Checks

About the ANSDPAD Coalition

The African Nova Scotian Decade for People of African Descent (ANSDPAD Coalition) is a group of organizations and individuals serving African Nova Scotian people, communities, interests and needs. The Coalition recognizes African Nova Scotians as a distinct people and works to ensure that African Nova Scotian people and communities are recognized and supported as an integral part of Nova Scotia's past, present and future. The group's members recognize that the International Decade for People of African Descent (2015-2024) provides a unique opportunity to build provincial, national and international momentum for change that will benefit people of African descent in Nova Scotia and beyond.

The Coalition expresses gratitude to all of the African Nova Scotians who contributed by sharing their street check and other racial profiling experiences. We also remember all of those who have suffered in silence. We acknowledge the humiliation and indignity that accompanies such interactions with police and reaffirm our resilience in making our voices heard and joining with all African Nova Scotians to continue the fight for justice.

Halifax Street Checks: A Chronology

On January 7, 2017, a CBC news investigation found that Black people in Halifax were three (3) times more likely to be stopped by police than White people.

On January 17, 2017, some members of the ANSDPAD Coalition wrote to the Serious Incident Response Team (SiRT) and the Nova Scotia Human Rights Commission to request that those two organizations work with the Board of Police Commissioners and the Police Complaints Commissioner to ensure that:

1. Street checks end immediately and
2. an independent, evidence-based examination be undertaken to determine:
 - The legality of street checks under Canadian law;
 - All policies and practices relating to street checks with a view to examining the way in which they can violate citizens' rights;
 - The direct and adverse discriminatory impact on African Nova Scotian individuals; and
 - Remedies for the harm caused to African Nova Scotian individuals and communities as a result of the disproportionate use of street checks to date, and additional safeguards for all citizens.

In response, Halifax Regional Police said they would *not* cease street checks and the organizations with legal authority over the police did not require them to stop.

Two years later, on January 30, 2019, a CBC news investigation found that Black people in Halifax were four (4) times more likely to be street checked by police in 2017-2018.

On March 27, 2019, the extensive expert report prepared by Dr. Wortley documented that African Nova Scotians are actually six times more likely to be street checked by police. The report forcefully confirmed what African Nova Scotians have been saying for decades: police in this province have been carrying out a surveillance and information gathering regime that overwhelmingly targets African Nova Scotians and their communities. Racial profiling continues.

The Wortley report has strengthened the ANSDPAD Coalition's position that street checks are illegal, discriminatory and harmful and should be banned immediately. This position applies to all street checks conducted in Nova Scotia, not just those undertaken within the Halifax Regional Municipality.

Illegal Street Checks Affect Everyone

Street checks affect everyone. Indeed, the overwhelming majority of people street checked by police were not African Nova Scotian. For example, according to the Wortley report, 104 120

White people were street checked between 2006 and 2017. Asian, South Asian, Arab/West Asian and Indigenous persons were also noted in the street checks statistics. Everyone's rights are at stake.

Street Checks Are Illegal

There is no legal authority enabling police to undertake street checks. Police do not have the legal authority to engage in street checks. There is no legislation, constitutional nor common law power authorizing such checks. As such, they should cease immediately.

We live in a constitutional democracy wherein police derive their power and legal authority from the people. The police must operate within the legal parameters set out in the Constitution, including the *Canadian Charter of Rights and Freedoms*, legislation and the common law.

Street checks involve police stopping a person or otherwise recording information about a person *without* having reasonable and probable grounds – or even reasonable suspicion – to believe the person has committed a criminal offence - as is required by law. As such, street checks potentially violate a person's right to privacy; right to life, liberty and security of the person; and the right to be free from arbitrary detention. As noted by the United Nations Working Group of Experts on People of African Descent:

In 2015, the Ombudsman of Ontario, in a submission entitled "Street Checks and Balances", was of the view that "stopping citizens without an objective and reasonable basis for believing that they may be implicated in a recent or ongoing criminal offence, or where there are reasonable and probable grounds to arrest them, is unconstitutional". He considered it "a form of arbitrary detention contrary to section 9 of the Canadian Charter of Rights and Freedoms". He also considered that the purported benefit of street checks — their effectiveness as a policing tool to improve public safety — did not meet the reasonable limits test established by section 1 of the Charter and that the detrimental effects of street checks on individuals and the community were simply too great to justify the practice.

African Nova Scotians' (and other Nova Scotians') right to liberty is being infringed by unlawful state action, in violation of the legal rights afforded by the Canadian Charter of Rights and Freedoms.

Street Checks Are Discriminatory

The practice of street checking as illustrated by the Wortley Report is racially discriminatory, and a form of racial profiling against African Nova Scotians that contributes to overrepresentation in the criminal justice system. As such, Street checks violate the Charter guarantee to substantive equality under the law; and are human rights violations under the Nova Scotia Human Rights Act.

Street Checks Are Harmful

Beyond their illegality, street checks cause immense harm to African Nova Scotians (and others) through the individual, family and community trauma that is created by the checks. The sharing of street check data can also interfere with employment and volunteer opportunities and cross border travel. Moreover, being street checked for no legal reason creates mistrust of the police.

On another level, street checks/racial profiling support the misalignment of police services insofar as police are engaged in places where they are not needed - and potentially not in places where they are needed. They can also contribute to the overrepresentation of African Nova Scotians in the criminal justice system.

Street Checks in Context: From Enslavement to Segregation to Systemic Racism, Racial Profiling and Overrepresentation

The illegal practice of street checks is but one example of systemic (and sometimes individual) anti-Black racism within the criminal justice system. The harms of street checks are disproportionately born by African Nova Scotians. The extreme disproportionate use of street checks against African Nova Scotians must be understood in the context of Nova Scotia's history of slavery and segregation - the legacy of which continues to shape access to power, resources and opportunities for both African Nova Scotians and other Nova Scotians today.

The enslavement and segregation of African Nova Scotians was legally enforced and created the racialized structure underlying contemporary Nova Scotian society. That enforcement (whether intentional or arising from unconscious/implicit bias) has always involved the surveillance and monitoring of African Nova Scotians. African Nova Scotian communities were geographically separated from White towns; sundown 'laws' were enforced preventing African Nova Scotians from being in White towns after dark; and African Nova Scotians were forbidden from socializing together at certain times in our history. "Customary" codes of segregation were maintained by law enforcement as in the case of Viola Desmond. The Kirk Johnson case and the Nova Scotia Human Rights Commission study on consumer racial profiling provide further evidence of the daily surveillance that African Nova Scotians face – especially young Black men.

Building on reports such as the Donald Marshall Jr. Commission, it is time for a major overhaul of policing and other criminal justice practices to ensure fair, legal and constitutional treatment of African Nova Scotians. The ANSDPAD Coalition working with all African Nova Scotians have the capacity to lead this work in partnership with government.

Street checks and other forms of racial profiling in Nova Scotia are part of a national and international anti-Black phenomenon rooted in the global conditions created by the enslavement and colonization of African peoples. Most recently, the United Nations Working Group of Experts on People of African Descent (UNWGEPAD) made the following recommendation following its country visit to Canada, which included a site visit to Halifax:

The Working Group recommends that the practice of carding, or street checks, and all other forms of racial profiling be discontinued and that the practice of racial profiling be investigated and the perpetrators sanctioned. There must be a cultural change in law enforcement and greater respect for the African Canadian community.

The ANSDPAD Coalition has begun to explore possible legal options.

The following action must be taken by the appropriate authorities using a process that is led by and engages African Nova Scotians. The Coalition requires:

- 1. That street checks be banned in Nova Scotia and that all safeguards recommended in the Wortley Report be applied to other types of police stops;**
- 2. That the Kirk Johnson decision (*Halifax Regional Police Service v. Johnson (No.1)* (2003), 48 C.H.R.R. D/302 (N.S. Bd. Inq.)) be implemented such that police provide a “proposal for how information could be provided on the role of race in traffic stops by the Halifax Regional Police” as set out on page 41 of that decision;**
- 3. That existing street check data not be used;**
- 4. That anyone subject to a street check in the past be given written documentation of the street check information recorded about them; and whether and how their personal information was used – including whether it was shared with other parties;**
- 5. That the harm caused by the collection and use of such street check information be remedied;**
- 6. That once such harm has been remedied, all street check records be destroyed;**
- 7. That the Halifax Regional Police and RCMP issue an apology for the disproportionate number of street checks undertaken against African Nova Scotians;**
- 8. That significant resources be directed toward the community-led development of an African Nova Scotian justice strategy to address street checks and other issues of systemic racism in the criminal justice system. That strategy would include an African Nova Scotian Justice Institute to implement the following initiatives:**
 - a. An African Nova Scotian policing strategy to review and monitor police policies and practice with input from national and local experts in order to eradicate anti-Black racism – whether conscious or unconscious;**
 - b. A Human Rights Monitoring & Advocacy programme – that would support people in safely filing third party police complaints;**
 - c. A Community Justice Legal Defense programme that would enable African Nova Scotians to defend against police abuses;**
 - d. An African Nova Scotian Court Worker and Restorative Justice Program;**
 - e. An Incarceration Support/Reintegration Program;**
 - f. Forensic Assessment & Treatment services;**
 - g. Public Education/Youth Development/Prevention Programming;**

9. That additional ANSDPAD Coalition recommendations be considered once the Coalition has reviewed, discussed and considered the final independent report with Coalition members and other African Nova Scotians across the Province.

In order to create the social conditions necessary for true equality in Nova Scotia, the ANSDPAD makes the following additional recommendations. That the Government of Nova Scotia:

- Recognize and engage with African Nova Scotians – as a distinct people who have made and continue to make profound economic, political, social, cultural and spiritual contributions to Nova Scotia and Canada;
- Institute mandatory collection of disaggregated data identifying where disparities exist for African Nova Scotians in all sectors, including education, employment, health, the justice system and the child welfare system;
- Address the over-representation of African Nova Scotian children in care;
- Strengthen Africentric education curricula and programming, and address discriminatory policies in education;
- Develop legislation to address environmental racism affecting African Nova Scotians;
- Resolve outstanding land title issues affecting African Nova Scotian communities, recognizing the Mi'kmaq as the First Peoples;
- Address inequities in access to health care and employment;
- Address barriers and inequities for newer Canadians, immigrants, refugees and migrant workers; and
- Work with African Nova Scotians provincially and African Canadians nationally to establish reparations commissions at various levels of government.

Re the Wortley Action Plan Working Group

Finally, despite our disappointment that Street Checks have not yet been banned, the ANSDPAD Coalition is committed to working with the Government of Nova Scotia and the Department of Justice in the creation of a collaborative action plan.

The ANSDPAD Coalition agrees that the right voices have to be at the table for this work to happen; therefore as ANSDPAD is a collective voice of African Nova Scotians but does not speak on behalf of the entire African Nova Scotians, we will work to canvass the African Nova Scotian community at-large to identify a cross-section of representatives who can commence dialogue with the Department of Justice as requested to begin to address concerns of injustice through policy, legislation, and the construction of an African Nova Scotian Justice Institute and accompanying strategy. The work of identifying provincial representatives is important and may take time, however we believe that a collective voice is imperative to the success of this action plan.

Submitted on behalf of the:

African Nova Scotian Decade for People of African Descent Coalition (ANSDPAD)

Nova Scotia, April 2019