

June 18, 2020

Examining the Future of Policing in Edmonton: Reflections on Reform & Accountability – Part I

By: Asad Kiyani

The killing of George Floyd in the United States has prompted a swell of public activism across Canada. Building on the initial wave of ‘Black Lives Matter’ initiatives – which was itself sparked by police killings of other Black citizens in the United States several years ago – and tapping into decades-long demands for public sector reform across Canada, this activism has in particular focused on Canadian policing. Part of the public debate is about defunding and/or abolishing policing.

Edmonton City Council was recently presented with such a motion (summarized [here](#)), and is currently hearing from members of the public about the proposal. It is a timely initiative, not just because of the public outcry, but because Alberta had begun the process of reviewing the provincial *Police Act*, [RSA 2000, c P-17](#), even before George Floyd’s death three weeks ago.

In this blog post and one to follow, I offer a slightly edited version of the presentation on which I based my comments to Edmonton City Council. The motion covers a lot of ground, including potentially freezing the scheduled budget increase for the Edmonton Police Service (EPS); independent oversight of complaints against the police and other enforcement officers (such as Transit Peace Officers); and, a review of the city’s street checks policy.

My presentation addressed the latter two points, based on the assumption that EPS will continue to exist in some form going forward. However, as I noted in a subsequent letter to Mayor Don Iveson and members of City Council, my remarks were certainly not intended to forestall a debate on defunding or abolition. In particular, I do not advocate postponing that debate until “more data” or “better data” is collected. I advocate for data collection as part of an enhanced accountability mechanism that presupposes the existence of police in some form. The minimum standards of accountability I recommend can certainly be implemented alongside these debates about more foundational issues.

This first post focuses on data collection in the context of policing. The second will briefly address police oversight mechanisms, the need for greater accountability in Edmonton, and some more context in response to specific questions I was asked at Council.

Lived Experience as a Starting Point

Given both the significant investment made by the people of Edmonton in policing and policing-like services, and public debate and concern about policing practices in the city, it is essential that the city move towards increasing accountability and transparency for policing. I note that

others may have additional recommendations for improving accountability. My remarks are certainly not intended to be comprehensive.

My recommendations draw on the research and findings of other experts and jurisdictions. While Edmonton is its own city, there is much to be learned from the experience of others. Where appropriate, I cite research conducted in Canada and by BIPOC.

In some respects, the motion before Council is not specific enough. One of the dynamics of conversations around allegations of police bias is that there is a lack of clear information, especially on race and criminal justice: see Scot Wortley, “[Hidden intersections: research on race, crime and criminal justice in Canada](#)” (2003) 35:3 *Canadian Ethnic Studies* 99, and, Paul Millar and Akwasi Owusu-Bempah, “[Whitewashing Criminal Justice in Canada: Preventing Research through Data Suppression](#)” (2011) 26:3 *Canadian Journal of Law and Society* 653.

Communities of colour are instead asked to take the police’s word on many things: that cities need a particular (or greater) level of policing, that police are not biased, that police are not violent, that police do not abuse their discretion. The police demand trust when the evidence suggests that trust does not exist. The reality is that many communities of colour have very different lived experiences of policing than those described by police. These lived experiences are themselves evidence of what has gone awry in policing.

Data Collection

In that vein, it is important as part of a system of independent civilian oversight that the EPS collect and make publicly available important data about its activities. This information can go some way towards alleviating concerns that policing in Edmonton is structurally biased, and testing assertions that certain police practices (such as carding or street checks) are useful. They will also enhance accountability for the massive expenditures made towards policing by City Council. As I note below, many of these arguments apply to other municipal enforcement officers as well.

This data should document *who* police interact with; *why* police interact with them; and *what results* from these interactions. As noted by Lorne Foster and Les Jacobs in “[Why Police Should Collect Racial Data](#)” (2017) 14:1 *Canadian Diversity* 16, the information should be (1) demographic, including at a minimum: race, sex, age of those stopped, searched and arrested; (2) contextual, explaining the reason for the stop, search and/or arrest; and (3) outcome-oriented: explaining the result of the stop (charges laid/not laid, arrests made, convictions obtained, injuries inflicted/suffered).

Police in Canada have historically been reluctant to collect and/or make public this data. Part of the concern seems to be that street check data in particular will be weaponized against police to ‘prove’ they are racist. Street checks, also known as carding, are police practices of stopping individuals who are not suspected of having committed or intending to commit a crime, and collecting identifying information about them. This information is then stored by police for potential later use. In effect, street checks are random stops of individuals not suspected of wrongdoing, for the purpose of gathering intelligence that may or may not be used. Cursory

analysis of street checks often shows that members of minority groups are disproportionately randomly stopped by police.

Of course, all data must be interpreted, and there are limitations to the conclusiveness it can provide. Police forces routinely resist the conclusions that can be drawn from limited data. However, the reality is that the information already available is treated as circumstantial evidence of systemic discrimination in policing, particularly when combined with the lived experiences of those stopped by police. Refusing to collect more specific data about stops and their outcomes is unlikely to alter these views.

There is too much to be said on these issues of data interpretation for a blog post. As Owusu-Bempah notes [here](#) (at 10), “discussion about the collection of race-based criminal justice statistics in Canada can be traced back to 1929.” I plan to thoroughly explore this issue and others – including whether street checks are even constitutional – in a forthcoming article, but for now make three brief points.

First, in *R v Brown*, [2003 CanLII 52142, 64 OR \(3d\) 161 \(CA\)](#), the Ontario Court of Appeal pointed out that because police officers will rarely say they stopped someone because of their race, circumstantial evidence will invariably be the only way to prove racial profiling. While that was expressed in the context of an individual stop, the logic holds up when looking at aggregate data: it tells us something important about the relationship between race and criminal justice.

Second, this sort of data can be valuable for understanding not only policing, but systemic bias in other aspects of the criminal justice process. This includes: charging, bail decisions, sentencing, prison discipline, and parole. That information should also be collected by the relevant authorities.

Third, collecting the data I recommend enhances accountability *beyond* attempting to understand and limit racial bias. In the more mundane sense of ‘accounting’, it helps City Council and the public understand how hundreds of millions of dollars are being spent, and what results from that massive expenditure. In the context of a debate about defunding the police, this information seems relevant.

Contrary to the [claims of the Alberta Serious Incident Response](#) Team (tasked with investigating police use of force and misconduct claims), there is clear value to collecting this information, particularly in times of public debate and distrust. Importantly, there are benefits beyond accountability that accrue to members of the public, those communities that are overpoliced, and the police themselves. Foster and Jacobs [note](#) that proper data collection and sharing offers a number of potential advantages, and has been found to:

- Avoid rhetoric and accusation and promote more rational dialogue about appropriate policing strategies.
- Send a strong message to the community that the department is against racial profiling and that racial profiling is inconsistent with effective policing and equal protection.

- Build trust and respect for the police in the communities they serve through increased transparency and public accountability.
- Provide departments with information about the types of stops being made by officers, the proportion of police time spent on high-discretion stops, and the results of such stops.
- Help shape and develop training programs to educate officers about racial profiling and interactions with the community.
- Enable the development of police and community dialogue to assess the quality and quantity of police-citizen encounters.
- Alleviate community concerns about the activities of police.
- Identify potential police misconduct and deter it, when implemented as part of a comprehensive early warning system.

In this light, while data collection is often framed in a context of suspicion of police, it has the potential to serve police interests in important ways, including by demonstrating the utility of street checks.

In Edmonton, the question of street check utility remains unanswered. EPS has greatly reduced the number of street checks it undertakes in recent years. This downturn appears to coincide with news reports showing racial disparities in who is subject to street checks and greater oversight of checks by EPS employees. At the same time, police officials continue to insist that street checks are a [valuable tool](#). This argument follows from a June 2018 [review of Edmonton’s street checks policy](#). Those reviewers were unable to draw conclusions on race and policing in part because, as suggested above, the quality of the data available did not allow them to (at 288). Nonetheless, that review declared that street checks should not be banned because they were a useful tool for police, and that banning street checks “may have significant consequences for the safety and well-being of communities” (at 286). However, no evidence of the utility of street checks was offered.

A [thorough review of comparable practices](#) was recently completed in Ontario. That review was comprehensive in that it looked at all carding policies in the province, rather than just one police force. [Elsewhere](#), I have summarized those findings as follows:

Justice Michael Tulloch of the Ontario Court of Appeal conducted an extensive review of carding policies and determined that that the ratio of ‘productive’ stops to overall stops is “extremely low”, and no discernable relationship between limiting random checks and preventing crimes exists in Canada, the United Kingdom or United States.

Many police services reported that purely random checks produced low-quality information, and a report commissioned by the Toronto Police Services Board noted “it is easy to exaggerate the usefulness of these stops, and hard to find data that supports the usefulness of continuing” them.

As well, the costs of poorly-managed street checks and carding are high, including: a toll on mental and physical health; the establishment of a confrontational relationship with police; making it harder to obtain or retain employment (including with police) because people not suspected of any criminal activity are nonetheless listed in police databases; and, encouraging people to commit crime, particularly when they feel discriminated against.

More details on each of those points, as well as the 100+ recommendations on carding policies, can be found in the full report [here](#). In short, street check practices tend to reduce community trust, including willingness to report crime to police that are seen as abusive or biased, and willingness to cooperate with police forces that are seen as abusive or biased. As Justice Tulloch notes (at 108), even if street checks are effective – as suggested is the case in Edmonton – those positive benefits must be weighed against their counterproductive effects:

As outlined in detail earlier, there is little to no evidence that a random, unfocused collection of identifying information has benefits that outweigh the social cost of the practice. Given the social cost involved with a practice that has not definitively been shown to widely reduce or solve crime, it is recommended that the practice of randomly stopping individuals to gather their identifying information for the creation of a database for intelligence purposes be discontinued in those remaining jurisdictions that still employ the practice.

There are thus strong pragmatic arguments in favour of banning street checks outright: they are of questionable utility, and can cause more harm than good. Yet if they are to continue in the short-term, then they should be subject to rigorous analysis to understand how they are being employed and what results from them. As noted above, it is no longer sufficient for EPS to merely assert that their practices are not biased or that these questionable tools are valuable; there is already information to the contrary. At least through collecting more specific information on race, EPS may demonstrate its good intentions to the communities that view it with the most suspicion.

These data collection campaigns should extend beyond street checks to all policing and quasi-policing initiatives of the city. This would include data on stops, searches, and arrests made by police, including stops made in enforcement of the *Traffic Safety Act*, [RSA 200, c T-6](#). It should also include stops made by police and other municipal officers in the enforcement of bylaws governing activities such as (but not limited to) loitering, panhandling, jay-walking, the use of bicycles (and e-bikes and e-scooters), and interfering with “street furniture”. The same should be done in respect of interactions with the public (including students) that are conducted by School Resource Officers and Transit Peace Officers. All of this data should satisfy demographic, contextual, and outcome requirements, as well as be publicly accessible, subject to public monitoring, and form the basis for ongoing internal review.

Looking beyond traditional policing tasks (and reflecting on what they ought to be) is part of the current public debate. One of those questions is whether police should be enforcing bylaws. Regardless of the answer to that question, there is significant potential for racial, ethnic and other disparities to arise in bylaw enforcement. As an example, Edmonton [Bylaw 5590](#) (Traffic Bylaw Amendment No. 150), prohibits climbing on or interfering with “street furniture” placed on or along any public or private street or space that is used as a road. “Street furniture” includes (but is not limited to) “poles, traffic control devices, waste receptacles, benches, bus enclosures, trees, plants, grass, utilities, planters, bicycle racks, newspaper boxes or any other similar property.” Edmonton’s own street check review warned that while such bylaws grant lawful authority for stops, there is a great deal of subjectivity involved in identifying violations and choosing how to respond, and thus much turns on individual officer discretion (at 289). Monitoring and understanding these exercises of discretion is important for the reasons outlined above.

Of course, serious privacy concerns arise about this information; robust protections should be in place to ensure that the data is used for understanding and improving policing, and not shared with other police agencies or outside actors. Many street checks databases are linked to other forces. Even if they are only used internally, they have a reinforcing effect. A police officer may stop a person and see that they are ‘known to police’ and adjust their interaction as a result, perhaps by treating the person as more of a threat. Of course, the individual may only be known to police because they are routinely stopped by police without cause, and never charged with (let alone convicted of) an offence.

Police databases can have other insidious effects. In Ontario, potential employers conducting background checks were [often presented with information from carding databases, as well as other non-conviction records](#). The sharing of such information with employers and even US border officials restrains peoples’ abilities to work, volunteer and travel. Ontario eventually passed [legislation](#) to limit such information sharing. Edmonton City Council should ensure the availability and use of both the proposed data collection systems *and* all currently existing databases are similarly constrained. This will go some way towards improving the credibility and accountability of EPS.

In Part Two of this post, I will shift focus from data collection and street checks to other aspects of accountability. I will briefly discuss recommendations for police oversight mechanisms, pointing to Ontario’s recent reviews of its multiple oversight bodies, as well as the specific context of policing in Edmonton and community relations.

This post may be cited as: Asad Kiyani, “Examining the Future of Policing in Edmonton: Reflections on Reform & Accountability – Part 1” (June 18, 2020), online: ABlawg, http://ablawg.ca/wp-content/uploads/2020/06/Blog_AK_EdmontonPolicePart1.pdf

To subscribe to ABlawg by email or RSS feed, please go to <http://ablawg.ca>

Follow us on Twitter [@ABlawg](#)

