



Living in
Community

**Living in Community Submission to the
Special Committee on Reforming the Police Act**

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Introduction

On behalf of Living in Community Society, we are writing to offer several recommendations to the Special Committee on Reforming the Police Act.

Living in Community (LIC) is a provincial non-profit society, based in Vancouver, that brings together diverse stakeholders to collaboratively improve the health and safety of sex workers and address community concerns as they arise. Stakeholders involved in our work include current and former sex workers, sex work support and advocacy organizations, Indigenous groups, health organizations, community policing centres, business organizations, all levels of government, and social service organizations. At LIC, we undertake public education, policy advocacy, and sharing of our unique model of collaboration with the goal of creating communities that are healthy and safe for everyone.

In our work over the past seventeen years, the role of policing in community safety has always been a difficult topic. Due to the criminalization, stigmatization, violence, and discrimination that sex workers face, many sex workers and sex work support and advocacy organizations have long raised concerns about both the laws governing sex work and the ways in which police enforce these laws. In the LIC model we can have differing opinions, but what we all agree on is that policing as it currently stands perpetuates harm against sex workers and must be changed.

As members of a community, we are always all in relationship. To be in *good* relationship, though, requires mutual respect, transparency, and reciprocity. To that end, we offer four recommendations that speak to the ways in which sex workers have experienced harms done by policing and that point to alternate solutions that prioritize dignity, safety, and harm reduction. These recommendations relate to several of your focus areas in this review, most notably areas 1), 2), and 3).¹ More information about these recommendations, and a background informing them, is provided below.

Recommendations

- 1. Direct police forces to cease enforcement of sex work-related offences, namely those found to be unconstitutional in 2013, including Communication, Material Benefit, and Procuring.**
- 2. Mandate community-developed, community-led training for all police officers about sex work stigma, harm reduction in sex work response, and the differences between sex work and trafficking.**
- 3. Stop targeting sex workers under the guise of wellness checks/ street stops or anti-trafficking rescue missions, including sting operations.**
- 4. Issue an immediate moratorium on the use of street stops.**

¹ Special Committee on Reforming the Police Act. "Terms of Reference." <https://www.leg.bc.ca/parliamentary-business/committees/42ndparliament-1stsession-rpa/termsofreference>

Background

Our recommendations in this consultation relate to two overarching systemic problems: the laws governing sex work, and ways police enforce these laws. As such, this section provides background information critical to the justification of these four recommendations.

Legislation Governing Sex Work

In *Canada (Attorney General) v Bedford*, 2013 SCC 72, the Supreme Court of Canada unanimously determined that Canada's sex-work related laws were unconstitutional and infringed upon sex workers' rights, under the *Canadian Charter of Rights and Freedoms*, to freedom of expression and to life, liberty, and security of person.² The federal government was then given one year to propose new legislation that upheld sex workers' rights. Unfortunately, when the federal government's Bill C-36, the *Protection of Communities and Exploited Persons Act* (PCEPA), received Royal Assent in November 2014, it reinforced the same unconstitutional laws and practices which the Supreme Court had struck down.³

The PCEPA legislation mandated that a "comprehensive review" was to be undertaken within five years of the law's passage, i.e. by December 6, 2019, to review its impacts.⁴ No review has yet occurred. On March 30 2021, the Canadian Alliance for Sex Work Law Reform – an alliance of 25 sex workers' rights groups across the country – and several individual applicants launched a constitutional challenge against the laws included in PCEPA.⁵ Specifically, their Notice of Application seeks to strike down the sex work prohibitions against "impeding traffic (s. 213(1)), public communication (s. 213(1.1)), purchasing (s.286.1(1)), materially benefiting (s. 286.2(1)), recruiting (s. 286.3(1)), and advertising (s. 286.4) in the Criminal Code, because they violate sex workers' constitutional rights to security, personal autonomy, life, liberty, free expression, free association, and equality."⁶

Impact of Current Laws and Enforcement

Our current sex work laws under PCEPA, known as 'end-demand' laws, make sex workers less safe. In this model, all aspects of the sex industry other than selling sexual services are illegal. The impacts of the criminalization and stigma of end-demand laws include that:

- Sex workers are forced to work in more clandestine and isolated environments to evade law enforcement.
- It is more difficult to find safer indoor places to work as these businesses are criminalized.
- It is difficult for sex workers to work together for safety as these activities are criminalized.
- It is more difficult to set clear boundaries with clients on the phone or through advertising as these activities are criminalized.
- Clients try to rush street-based sex workers to get in a car with them before the sex worker feels comfortable or safe doing so, in order to evade law enforcement.

² *Canada (Attorney General) v Bedford*, 2013 SCC 72. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do>

³ Government of Canada. "Prostitution Criminal Law Reform: Bill C-36, the Protection of Communities and Exploited Persons Act." https://www.justice.gc.ca/eng/rp-pr/other-autre/c36fs_fi/

⁴ Pivot Legal Society. December 9, 2019. "Letter Inquiring about the Status of the PCEPA Review."

https://www.pivotlegal.org/letter_inquiring_about_the_status_of_the_pcepa_review

⁵ Canadian Alliance for Sex Work Law Reform. March 30, 2021. "News!!! Sex Worker Human Rights Groups Launch Constitutional Challenge." <https://sexworklawreform.com/sex-worker-human-rights-groups-launch-constitutional-challenge/>

⁶ Ibid

- Sex workers can face eviction if their landlord finds out they do sex work due to the material benefit law and the stigma created by criminalization.
- Sex workers face stigma and judgement when accessing health, social, and criminal justice services and supports.⁷

Moreover, though selling sexual services is not illegal, sex workers continually report being routinely surveilled and harassed by law enforcement. This has been exacerbated through the COVID-19 pandemic as many street-based sex workers in BC have reported an increase in police harassment. These effects can often be more dangerous for Indigenous, immigrant, and migrant sex workers, as police may make racialized assumptions that these women are being trafficked for the purposes of sexual exploitation and conduct raids that put these sex workers in danger.

The British Columbia Context: Recommendations and Provincial Guidelines

Though the laws governing sex work are federal, there is much that can be done at the provincial level particularly regarding the enforcement of these laws. Further, BC-based research and best practices already exist.

In *Forsaken: The Report of the Missing Women Commission of Inquiry* (2012), Commissioner Wally T. Oppal recommended police forces take an approach of non-intervention for consenting adults in the sex trade. He directed (recommendation 5.8) all police forces in British Columbia to consider developing and implementing sex work enforcement guidelines, based on the model of the Vancouver Police Department's Sex Work Enforcement Guidelines, in consultation with sex workers in each jurisdiction.⁸

While not perfect or universally enforced, the Vancouver Police Department (VPD)'s guidelines did provide a step forward as they directed VPD officers not to intervene in cases where consenting adults are purchasing or selling sex. The Guidelines stated that "[t]he VPD does not seek to increase the inherent dangers faced by sex workers, especially survival sex workers. Therefore, where there are nuisance related complaints against survival sex workers, alternative measures and assistance must be considered with enforcement a last resort."⁹ However, the non-enforcement approach did not apply to im/migrant sex workers who continued to experience VPD raids under the guise of anti-trafficking 'rescue.' In a statement to the City of Vancouver in July 2020, SWAN Vancouver noted that the "VPD used the Guidelines' philosophy that 'human trafficking is an enforcement priority' to continue its surveillance and unnecessary raid and rescue approach to women who did not need to be rescued."¹⁰

In 2017, the British Columbia Association of Chiefs of Police (BCACP)'s Sex Work Enforcement Guidelines further supported a non-intervention approach. These Guidelines state that "[w]here police receive nuisance-related complaints concerning sex work activity, and especially in cases involving persons

⁷ Centre for Gender & Sexual Health Equity. December 2019. *Harms of end-demand criminalization: impact of Canada's PCEPA laws on sex workers' safety, health & human rights*. http://www.cgshe.ca/app/uploads/2019/12/Harms_2019.12.16.v1.pdf; Global Network of Sex Work Projects. 2015. "The Real Impact of the Swedish Model on Sex Workers."; Levy, J. 2014. "Criminalising the Purchase of Sex – Lessons from Sweden."; Socialstyrelsen (Swedish National Board of Health and Welfare), 2008. "Prostitution in Sweden 2007."; Open Society Foundations, 2015. "10 Reasons to Decriminalize Sex Work."

⁸ Oppal, Wally T. 2012. *Forsaken: The Report of the Missing Women Commission of Inquiry*.

<https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/inquiries/forsaken-es.pdf>

⁹ Vancouver Police Department. 2013. *Sex Work Enforcement Guidelines*. <https://vpd.ca/police/assets/pdf/reports-policies/sex-enforcement-guidelines.pdf>, page 3.

¹⁰ SWAN Vancouver Society. July 23 2020. "Submission to City of Vancouver re: Motion B3 Decriminalizing Poverty and Supporting Community-led Safety Initiatives."

involved in survival sex work or who are exploited, consideration will be given to whether enforcement, alternative measures, or assistance is the best response to both keep sex workers safe and mitigate community concerns.”¹¹ The Guidelines also state that “[p]olice agencies in BC should prioritize the enforcement of Criminal Code provisions respecting sexual services based on the principles and guidelines outlined in this document. Enforcement priorities should be based on risks and safety considerations.”¹² Once these guidelines were developed, they superseded and effectively replaced the VPD’s guidelines.

Unfortunately, in the past few years little to no progress has been made on either implementing the recommendations of the *Forsaken* report or disseminating harm reduction-based sex work enforcement guidelines throughout police forces in the province.

Recommendations

1. Direct police forces to cease enforcement of sex work-related offences, namely those found to be unconstitutional in 2013, including Communication, Material Benefit, and Procuring.

Given that our laws governing sex work have been found to be unconstitutional – and are now facing another constitutional challenge – these laws should not be enforced. The VPD’s and the BCACP’s sex work enforcement guidelines have already begun to recognize that enforcing the current laws often does more harm than good for sex workers. We therefore join with many of our stakeholders and allies in recommending that, as an overarching principle, police forces throughout BC should be instructed not to enforce sex work-related offenses regarding consenting adults.

2. Mandate community-developed, community-led training for all police officers about sex work stigma, harm reduction in sex work response, and the differences between sex work and trafficking.

In the *Forsaken* report, Commissioner Oppal stated that his recommendations “will only be effective if accompanied by changes in police orientation, training and discipline.”¹³ He recommended mandatory training for all police officers in five areas, including both “active engagement in overcoming biases, rather than more passive sensitivity training,” and training about the experiences and needs of those in the sex trade.¹⁴ To our knowledge, no such training has yet been developed or widely disseminated for all police officers in the province. Furthermore, we believe any police training on sex work must distinguish between sex work and trafficking for the purposes of sexual exploitation, as these areas are still often conflated and cause further harm for sex workers (as noted in our next recommendation below).

Living in Community has been delivering training about sex work stigma, stereotypes, and person-centred approaches to frontline service provision for almost ten years. We have approached the VPD

¹¹ British Columbia Association of Chiefs of Police. 2017. *Sex Work Enforcement Guidelines & Principles*. https://d3n8a8pro7vhmx.cloudfront.net/pivotlegal/pages/319/attachments/original/1566600395/BCACPSexWorkEnforcementGuidelines_Endorsed_November2017.pdf?1566600395, page 7.

¹² Ibid, page 6.

¹³ Oppal, Wally T. 2012. *Forsaken: The Report of the Missing Women Commission of Inquiry*. <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/inquiries/forsaken-es.pdf>, page 123.

¹⁴ Ibid, page 124.

and other police agencies throughout BC to offer training on multiple occasions throughout that period. Several sex work organizations we work with also offer training about sex work myths and realities, the differences between sex work and trafficking for the purposes of sexual exploitation, and best practices for frontline responders intervening in community concerns. The training exists, has been offered, and must be taken up by police forces across the province.

3. Stop targeting sex workers under the guise of wellness checks/ street stops or anti-trafficking rescue missions, including sting operations.

Too often, police still assume that most people working in the sex trade have been forced to do so. In reality, while sex work is a spectrum whereby some sex workers have more options available to them than others, sex workers exercise agency and varying degrees of choice in their involvement in the sex trade. When they cannot exercise any agency, it ceases to be 'sex work' and is defined as exploitation or trafficking.

This level of nuance and respect for personal autonomy is needed when engaging with sex workers. Treating all sex work as trafficking only causes more harms for sex workers. When the entire sex industry is understood as trafficking, only crimes that meet the trafficking threshold are of interest to police. Crimes such as assault, sexual assault, robbery, and other serious crimes against sex workers are unaddressed. Predators seize this opportunity and act with impunity. Conflating sex work and trafficking also fails victims of trafficking, as important and needed trafficking resources are wasted trying to 'save' sex workers.

The most common way policing perpetuates this harmful conflation is with sting operations. Sting operations usually happen by police entering a massage parlour to conduct a raid or arranging to meet indoor sex workers at hotels under the guise of being a paying client. One of the most notorious sting operations has been Operation Northern Spotlight, a large and years-long operation that the RCMP led with police agencies across the country. The RCMP described this as an opportunity to "identify and provide support to individuals who are suspected of being forced into the sex trade, or believed to be at high risk of being trafficked."¹⁵ During the seventh national Operation Northern Spotlight in 2017, the RCMP conducted 324 interviews with workers in the sex trade in seven provinces, resulting in only 14 arrests made and six sex workers removed from exploitative situations.¹⁶ To our knowledge, police agencies in BC have stopped formally participating in Operation Northern Spotlight, but sting operations of a similar nature continue to happen. Most recently, in June 2020 the Victoria Police Department conducted a sting operation – called 'Project No More' – where sex workers were catfished into meeting undercover police officers at a downtown hotel and asked if they were being trafficked. In the middle of a global pandemic when sex workers had already lost income and were largely unable to qualify for emergency supports like other workers, this was particularly detrimental.

Sex workers' organizations have for years been calling for an end to this practice. SWAN Vancouver has stated that in these operations "[p]olice catfish and carry out indiscriminate raids on sex workers,

¹⁵ RCMP. 2018. "Operation Northern Spotlight VII: Canadian police services continue to work together to stop human trafficking." <https://www.rcmp-grc.gc.ca/en/news/2018/operation-northern-spotlight-vii-canadian-police-services-continue-work-together-stop>

¹⁶ DeRosa, K. July 3 2020. "Victoria police's human-trafficking sting upsets sex workers' supporters." *The Times Colonist*. <https://www.timescolonist.com/news/local/victoria-police-s-human-trafficking-sting-upsets-sex-workers-supporters-1.24164308>

which increase adversarial relationships between sex workers and police and contribute to the under-reporting of violence perpetrated against sex workers.”¹⁷ A 2018 release from the Canadian Alliance for Sex Work Law Reform further noted that “[f]or Asian sex workers, who may not speak English and have no reason to trust police, such raids and often warrantless incursions into their homes and workplaces are especially frightening. In particular, law enforcement collaboration with Canada Border Services Agency also often result[s] in anti-immigration tactics such as arrest, detention and deportation, which push sex workers further into isolation.”¹⁸

Misguided ‘rescue’ missions are counter-productive and increase sex workers’ precarity and vulnerability to violence and exploitation. These anti-trafficking strategies also cause loss of income, displacement, and the detention and deportation of migrant sex workers. These practices must end immediately.

4. Issue an immediate moratorium on the use of street stops.

Since 2019, Living in Community has been a member of the provincial Director of Police Services (DPS) Advisory Committee on Police Stops. In this role and along with the other committee members, we have provided feedback to the Policing and Security Branch on the myriad harms associated with street stops, particularly in relation to poor and racialized people.

On October 5 2020, all committee members sent a joint letter to former Director of Police Services and Assistant Deputy Minister in the Ministry of Public Safety and Solicitor General Brenda Butterworth-Carr, as well as several Policing and Security Branch staff, outlining our opposition to the continued use of street stops. As the committee’s unanimous recommendation for a moratorium has continued to be rejected, we reiterate this full recommendation here:

“The communities where we live, work, and organize have been unequivocal in stating that the practice of street stops causes harm and that the only reasonable response from DPS is to cease it entirely. To that end, we have repeatedly called for a clear Provincial Policing Standard that imposes a province-wide moratorium on the practice. In addition to the health and safety harms caused by the practice, we have asserted that it is unlawful, unjust, and rooted in systemic racism and anti-poor discrimination.

“In its current iteration, *Provincial Policing Standard 6.2.1 Police Stops* does not reflect the feedback provided by our organizations, nor does it address the harms that continue to be caused by street stops. Street stops pursuant to this standard will not stop arbitrary detentions, which specifically target Indigenous and Black communities in British Columbia. The imposition of such a standard moreover codifies unlawful police action, as we maintain that street stops are *prima facie* unlawful.”¹⁹

¹⁷ SWAN Vancouver. “Operation Northern Spotlight.” <https://www.swanvancouver.ca/northern-spotlight>

¹⁸ Canadian Alliance for Sex Work Law Reform. October 9 2018. *Sex Worker Human Rights Groups Oppose Police Operation Northern Spotlight*. <http://sexworklawreform.com/wp-content/uploads/2019/02/ONS-press-release.pdf>

¹⁹ Members of the Director of Police Services Advisory Committee on Police Stops (Union of BC Indian Chiefs, Together Against Poverty, Pivot Legal Society, BC Civil Liberties Association, Hogan’s Alley Society, Carnegie Community Action Project, and Living in Community). October 5 2020. *Letter RE: Feedback to the Policing & Security Branch Regarding Street Stops*.

Prohibiting street stops is the only constitutional response to an otherwise illegal policing practice that continues to target Black, Indigenous, and poor people. We recommend an immediate moratorium on the use of street stops.

Conclusion

Thank you for considering our recommendations in this important consultation, along with those of our many stakeholders and allies. Community safety is a critical need, but the current iteration of policing in our province too often contributes to greater harms than it prevents or addresses. A harm reduction approach is needed whereby all community members are treated with respect, including respect for their autonomy and *Charter*-protected rights.

We will end with a final note from Commissioner Oppal in the *Forsaken* report: “Community-based policing can only work when police understand and value members of the community equally.”²⁰

²⁰ Oppal, Wally T. 2012. *Forsaken: The Report of the Missing Women Commission of Inquiry*. <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/inquiries/forsaken-es.pdf>, page 123.