

VIA EMAIL: BCPolicingPlan@gov.bc.ca.

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Lynda Cavanaugh
Assistant Deputy Minister
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RE: BC Policing and Community Safety Plan

Dear Mr. Pecknold and Ms. Cavanaugh,

Thank you for the opportunity to comment on the BC Policing and Community Safety Plan. We appreciate that the government is undertaking this initiative – both to develop a forward-looking plan for policing in British Columbia, and to involve stakeholders in the development of the plan.

It is critical that policing be reformed in British Columbia. The introduction of the Independent Investigations Office was a key step towards increased accountability for a limited but important range of police conduct. However, there is much more that needs to be done to ensure that the public are best and justly served by their police.

As you know, the BCCLA has been active on the issue of policing and police accountability for many years. Our concern is animated by the desire to ensure that our system of law enforcement remains democratic and constitutional. Through public education, discussion and debate, representations to government and the law enforcement community, advocacy, litigation and casework, the Association regularly acts to ensure that enforcement agencies stay within the

Careful lines drawn by lawmakers at the municipal, provincial and federal level, and operate with due regard for Canada's constitution, including the Charter of Rights and Freedoms, and Canada's international human rights treaty commitments. Canada's laws must be enforced in a manner that recognizes and respects the autonomy, dignity, and security of people affected by enforcement action.

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We have had consultations around the province as well, in 2010. These revealed policing successes around the province, but also a disturbing array of problems in the 14 rural communities that we visited. Since then we have continued to hear of policing problems from many of these communities, and we have travelled repeatedly to hear from local people about these issues. Among the issues identified to the BCCLA are a lack of de-escalation skills; the poor treatment and disproportionately high level of policing of Indigenous people and lack of appropriate relationship-building and consultation with local First Nations, a perceived failure to take reports of crime received from First Nations communities seriously; the poor treatment of intoxicated arrestees; poor cell conditions in police detachments; the problems associated with short-term placement of officers by RCMP in small communities; and police self-investigation and lack of accountability. These concerns are canvassed voluminously in our report *Small Town Justice: A report on the RCMP in Northern and Rural British Columbia*. It is attached to this submission for your consideration.

We have a number of comments on the plan, and we choose to focus our comments in a number of areas. The fact that we leave some aspect of the plan out of our comments does not necessarily mean that we agree or disagree with that proposal.

Values

We would add that, in addition to the support of local governments and collaboration with justice sector partners, a successful implementation of police reform also requires the support of First Nations. We are very pleased to see that the need to build better relationships and trust between police and First Nations is reflected elsewhere in the plan, and we think that the importance of the

relationship with First Nations should be recognized in the values statement.

We also suggest that the government consider adding a recognition of the importance of input and collaboration from community stakeholders. Clearly, through this consultation, the government has already demonstrated that it considers this to be a key value, and we think it would be useful for that to be articulated as part of the values set out in the plan.

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The Rising Cost of Policing

We appreciate the recognition given in the plan to the significant increase in policing costs even as crime rates decline in Canada. We also recognize that some of the things proposed in this plan that we support, and other measures related to policing that BCCLA supports, may increase these costs. We appreciate that the implementation of needed reforms to the policing system is likely to entail increased and potentially long-term investment costs, but we expect that the return from positive reforms to policing will provide significant societal benefits over time.

We note as an aside that the Criminal Justice reforms have, in part, a goal to realize cost-efficiencies in the system. Efficiency is a laudable goal, but we point out that the justice system has been handling far more cases and been coping with significant reductions in real funding over the years. As we have mentioned in our *Justice Denied* report, cost-cutting measures can have far-reaching and negative effects on the system for years into the future – increasing costs and negative societal impacts in the long run.¹ We caution against an undue fixation on efficiency both in the Criminal Justice reforms and the policing reforms that could hobble the chance to achieve positive changes.

¹ BCCLA, *Justice Denied* (Vancouver: BCCLA, 2012) at p. 11. Available at: http://bccla.org/our_work/justice-denied-the-causes-of-bcs-justice-system-crisis/

Action Item #2

The plan states that the government will consider using existing and new categories of law enforcement personnel to provide cost-effective services in support of policing. The plan that the government will conduct a review that might include private security and other groups, and the role they might play in policing.

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The BCCLA is opposed to the delegation of policing tasks to private security companies. The optimal solution to the issue of police overburden – if this is a genuine and documented problem – is to ensure that there are adequate professionally trained and qualified police resources available. Security firms are not regulated or overseen in the manner that police are. They lack the training, education, discipline and professionalism that police officers are required to possess.

The plan notes that it is critical to ensure appropriate accountability, training and standards are in place to support any such delegation. We are pleased to see this recognized, but we strongly recommend that police work be limited to police officers.

Wally Oppal's 1994 report made a long list of recommendations for additional regulation of private security. While some measures were adopted by the province, there remains a huge gap in regulation of private security. As BCCLA has stated in the past, private security personnel can have a significant impact on the freedoms and liberties of citizens. These individuals detain, use physical force, search people and property and undertake surveillance of people to gather personal information about them. All of these things implicate individuals' *Charter*-protected rights, but *Charter* remedies may be unavailable against private security agents as they may not be considered "government". For this reason and many others, we favour police officers being the ones who exercise the state's police powers. Consideration of the potential creation of *Charter* rights vacuums must guide the government's deliberation in respect of non-government actors sharing in policing functions.

Action Item # 3:

The relationship between First Nations and law enforcement in B.C. has a fraught history. Today, there is ongoing systemic and other discrimination against First Nations in the criminal justice system. Across the north we have heard from many First Nations communities that police treat them poorly compared to non-First Nations communities. Indigenous people are woefully over-represented in the criminal justice system and in prison. Indigenous youths are over-represented in youth detention. The tragedy of the missing and murdered women is only one manifestation of the deep problems in the relationship between First Nations and the Crown's law enforcement agencies.

We make no substantive comment on this action item other than to say that we are encouraged that the government plans to take these issues seriously and that we look forward to positive outcomes from the government's reform, in concert with First Nations, of police service delivery for First Nations.

Action Items #4 & 5:

The BCCLA supports initiatives to give communities enhanced input into local policing. The measures outlined in Mr. Oppal's 1994 report may be instructive in this regard.

In particular, we believe it would be a positive step to ensure representation from vulnerable and marginalized communities, as well as Indigenous people, on police boards and other police governance structures.

Action Item # 6:

Equitable, bias-free policing is an important goal to be achieved by police forces in British Columbia. We are, unfortunately, a long way from the achievement of that goal.

Racial profiling is one aspect of this problem. Across Canada, and in B.C., racial profiling and disproportionate police attention paid to

persons of colour remains a significant issue. Numerous reports from across the country have confirmed this. Here in B.C., our own intake and meetings with people province-wide indicate to us that there is a significant problem with racially-based targeting by police, notably First Nations people and First Nations youth. We have recently learned of reports that the transit police in the Lower Mainland have been asking people that they deal with, who seem “foreign”, questions about their status in Canada and, in some cases, detaining them while they contact federal authorities to confirm their status. Elsewhere, the Ottawa Police Service has recently embarked on a traffic stop race data collection project to evaluate its own practices in this regard, having been required to do this in order to settle a human rights complaint.

Racial profiling is an ineffective law enforcement strategy and it is violates fundamental civil liberties protected by the *Charter*. BCCLA has long fought to end this practice, which allows racism and social bias to direct and distort the way the state’s powers affect individuals. Communities who are subjected to racial profiling are unfairly over-policed, unjustly scrutinized, and disproportionately represented in the criminal justice system.² Individual victims have their liberty taken from them, are stopped, searched, arrested, subjected to unwarranted force, detained, and in extreme cases, injured or killed as a result.³

Over-policing on the basis of race is one aspect of the problem. Under-protection on the basis of race is another aspect. We consistently hear reports from across B.C. that First Nations do not feel as if they can rely on the police for protection or to deal with crimes committed against them. In some communities, we are aware that First Nations individuals are reluctant to call the RCMP at all for fear that they will be unfairly treated. In other cases, Indigenous families and communities are disappointed by the way in which crimes against them are investigated. For example, we are deeply troubled by reports that we have received from families in Prince Rupert about their

² See Tanovich, David. *The Colour of Justice: Policing Race in Canada*. Irwin Law (2006); and Aboriginal Justice Implementation System “*Report on the Aboriginal Justice Inquiry of Manitoba*” (November 1999)(online: <http://www.ajic.mb.ca/volume.html>), accessed August 2013.

³ See Tanovich, *ibid.*, and see BCCLA, *Racial Profiling*. BCCLA, 2007, at p. 31.

relationship with local RCMP, and in particular, the perceived shortcomings of investigations into suspicious deaths of First Nations people in the city. It appears to the families of these deceased young Indigenous persons, and to groups like ours, that there is a problematic pattern in which the families and communities are not properly engaged and informed by the RCMP concerning the investigation process. At worst, this gives rise to the impression in First Nations communities and beyond that these investigations are being given short shrift by the RCMP. We have heard similar reports from other communities in the north. Of course, there is also the well-documented failure of police to respond properly to the tragedy of murdered and missing Indigenous women, both in the north and in the south.

Other forms of profiling are equally egregious, including social or economic profiling. It has long been the case that poor people, people with mental health issues and street-involved people have reported experiencing unfair and discriminatory policing. Recently, Pivot Legal Society and the Vancouver Area Network of Drug Users have filed a complaint against the Vancouver Police Department over allegations of significantly skewed by-law enforcement by the VPD in which up to 95% of city-wide tickets for some by-law offences were issued in the Downtown Eastside.⁴ Over-policing of poor people has been alleged in Victoria based on community interviews.⁵ Again, this discrimination offends fundamental rights and freedoms, and it must be stopped.

We strongly suggest that racial profiling, social profiling, and other forms of systemic discrimination including the allegations of under-protection and the factors leading to that under-protection, be a part of the proposed review. We are pleased that the Ministry will engage experts and ensure meaningful community input. We suggest that this should involve travelling to communities across the province to ensure

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<http://www.pivotlegal.org/vandu> and [pivot allege discrimination by vpd in by law ticketing](#)

⁵ See Vancouver Island Public Interest Research Group, *Out of Sight: Policing Poverty in Victoria, Coast and Straits Salish Territories*, 2012, <http://www.vipirg.ca/wp-content/uploads/2012/02/PolicingPovertyVictoria-VIPIRGonline.pdf>.

that the widest range of people are able to participate. We also support the use of ongoing audits to check on performance.

We understand that some police forces are reluctant to collect data on the race of the individuals that they deal with as subjects of their actions. For example, in the Ottawa project, the police union reacted vociferously against the collection of race data at traffic stops, claiming that ethnicity should not be placed in the spotlight and that their work is about dealing with criminality and not with race.⁶ We urge the government to reject reasoning of this sort if it is offered to you during this review. It is vital to collect this sort of aggregate data – while maintaining the privacy of the individuals concerned – in order to identify the existence of and extent of any problem of profiling in British Columbia. Given the harmful effects of profiling on racialized communities, it is discriminatory *not* to engage in this inquiry, rather than the contrary.

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We are concerned that the March 2015 return date may be inadequate to obtain the data required to assess the state of policing and bias in B.C. We note that the research project in Ottawa on traffic stops, which involves the police, York University, and the Ontario Human Rights Commission, is slated to take two years. That is for just one large municipality; dealing with this at a provincial scale is likely to be a significant and time-intensive endeavor – though one that will be worthwhile if done properly.

Action Item #7:

BCCLA has often spoken of the need for province-wide standards for police agencies, rather than a patchwork approach. We support the Ministry in embarking on consultations in relation to this, and we look forward to participating in this discussion as it moves forward.

⁶ <http://www.torontosun.com/2012/05/07/police-association-blasts-move-to-collect-race-data>

Action Item #8:

As noted in the plan, many of the potentially worthwhile initiatives to support crime prevention, reduction and community safety require stable year-over-year funding for their long-term success. We encourage the government to seriously look at ways to ensure that such funding is available for appropriate programs, in order to produce long term societal benefits (and cost savings). The measures ultimately adopted need to respect the fundamental rights and freedoms of individuals, and must be developed in a way that avoids unjustifiable interference with individual privacy rights.

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In relation to the “Civil/Administrative Law Strategies to Enhance Community Safety”, the BCCLA has objected strenuously to the province’s relatively recently-implemented civil forfeiture scheme. With appropriate judicial oversight, such programs can be justified, but for the province to take such action without a court’s authority is a denial of due process. It is encouraging to see recognition of the necessity of judicial authority in the Plan, but we will be watching this development closely to ensure that any measures drawn up are constitutional and provide due process.

We have also been clear in our opposition to the province’s Automatic Roadside Prohibition. As you know, we have intervened at the Court of Appeal in *Chisholm et al. v. Superintendent of Motor Vehicles*. We have set out our position to the Attorney General in that forum.

Action Item #10:

British Columbia has pursued a risk-fraught course of data integration projects without appropriate attention to privacy, security and other rights and policy issues. In recent years the *Freedom of Information and Protection of Privacy Act* has seen numerous amendments to facilitate data integration and data sharing and there must be no further legislative reforms in this direction until the current amendments have been properly evaluated and serious concerns addressed. Among those concerns is the clear failure of various Ministry’s data systems

and integration projects to maintain appropriate privacy protections and security.

Examples of the government's failed and deeply flawed data systems are numerous and include the main justice and social services systems which are under consideration for even further integration. As we noted in our recent report on the BC Services Card:

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In 2013, the Auditor General highlighted "serious security flaws" in JUSTIN, the Ministry of Justice's integrated electronic system for managing and administering the criminal justice process. His audit found that the system, which contains extremely sensitive personal information, was not properly protected from internal and external threats. Excessive user access, lack of audit trails, and the inability to detect unauthorized access compounded these threats. The JUSTIN report followed a 2008 audit of CORNET, the BC Corrections case management system, which also identified security weaknesses regarding internal access to sensitive information. According to Auditor General Doyle, the government should have applied the recommendations from the CORNET audit to its other IT systems: "This failure to act, and the very fact that significant security weaknesses were allowed to exist at all, leads us to question the quality of IT leadership and governance around criminal justice information."⁷

The \$182 million Integrated Case Management (ICM) system is another technology project beset by apparent mismanagement, technical malfunction and high profile criticism. Based on expansive information sharing, ICM is part of the larger Social Service Sector Integrated Information Management Project lead by the Office of the Chief Information Officer. ICM is the first component of this broader project to be implemented and as such, serves as the foundation for future information sharing across the social services sector.

¹ Office of the Auditor General of British Columbia. 2013. *News Release: Auditor General outlines serious flaws with B.C.'s criminal justice security system*, www.bcauditor.com/pubs/2013/report9/securing-justin-system-access-and-security-audit-ministry.

...
ICM has raised red flags with privacy advocates from its inception... Former BC Information and Privacy Commissioner David Loukidelis recommended that the government “should not proceed with any more data sharing initiatives until a meaningful public consultation process has occurred, and the outcome of that process is an enforceable code of practice for data sharing programs.⁸ Calls for government transparency and public debate in advance of the system’s launch went unheeded, however.

ICM’s Phase 2 implementation moved forward without public consultation in April 2012. By July of that year, BC’s Representative for Children and Youth Mary Ellen Turpel-Lafond issued a scathing critique of the system, questioning its effectiveness, security and reliability and stating that the volume of technical problems left real doubt as to whether “child safety can be assured through the use of the ICM.”⁹ Serious system flaws caused a number of civil society organizations to call for a public inquiry. The Ministry of Children and Family Development hired a consultant to investigate the problem-plagued system while taking remedial steps “to stabilize the solution and allow time for more robust review of suitability”¹⁰. The consultant’s report, issued in November 2012, found fault in a wide range of areas from procurement, governance and training to technical design and implementation. It said that ministry officials failed to adequately monitor the development of the ICM and to ensure

² Office of the Information and Privacy Commissioner for British Columbia. 2010. *Submission of the Information and Privacy Commissioner to the Special Committee to Review the Freedom of Information and Protection of Privacy Act*, www.leg.bc.ca/foi/.../Information_and_Privacy_Commissioner.pdf.

³ Turpel-LaFond, Mary Ellen. 2012. *Statement. July 12, 2012*. Victoria, BC: Office of the BC Representative for Children and Youth, www.rcybc.ca/Images/PDFs/Statements/ICM%20July%202012%20FINAL.pdf

⁴ Queenswood Consulting Group Ltd. 2012. *MCFD-Integrated Case Management System: Interim Assessment Report*, www.integratedcasemanagement.gov.bc.ca/documents/icm-mcfd.iar.pdf

the system was designed to properly support child-care work. Turpel-Lafond said the report confirmed her earlier warning, calling the findings “brutal” and the ICM “a colossal failure”.

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These and other critical data systems are already failing to meet requirements for appropriate security, privacy, governance and functionality. To call for further data integration initiatives against this backdrop is nothing short of reckless. Rather, it is beyond time for the implementation of former Commissioner Loukidelis’ recommendation that data sharing initiatives be subject to a meaningful consultation process and enforceable code of practice. The data sharing enthusiasm of the government is insufficiently tempered by concern for the safety and security issues raised by well-intentioned information sharing. To date there has been very little attention given to the real and genuine concerns about data sharing providing a barrier to accessing needed services. Information sharing with the police has to be examined extremely carefully to avoid the unintended, but entirely predictable, consequence of preventing vulnerable people from accessing services. In the BCCLA’s view, community service providers, including transition house providers, need to have a much more prominent role in the deliberations about data sharing and the real risks their clients face through well-motivated data-sharing. As the transition house sector knows only too well, their clients’ data security is potentially a matter of life and death.

Therefore, there must be no further move to greater data integration until 1) current systems are appropriately secured and audited; 2) a meaningful consultation takes place about the government’s broader data integration and data sharing project and 3) all the risks, including barriers to access for vulnerable individuals and women and children’s safety risks are properly researched and analysed.

Action Item #11:

We support the improvement of cultural awareness and sensitivity training for police officers in B.C., and we are pleased that the government will work with key stakeholders in reviewing training and best practices. We hope that those stakeholders will include

representatives from various cultural communities and First Nations. We also hope that this program will be mandatory for officers, and recurring and updated throughout the career of police officers.

Action Item #12:

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While BCCLA does not object to the collection of empirical data on the number of police calls involving people with mental illness to assist in the development of effective strategies and appropriate deployment of resources, we are nevertheless deeply concerned about the current use of police-collected data involving mental health incidents and cautious about so-called “gaps” in these data collection practices.

There is no doubt that police need to adequately report on calls and that that will necessarily involve some personal information of individuals involved. However, the current practice in police records checks is to release information about mental health incidents that involve the police. Information about “mental health occurrences” is not only completely irrelevant except in the rare instances which involve genuine threats, but the highly prejudicial nature of these disclosures is actually preventing individuals from successfully securing housing and employment. We have had affected individuals contact our Association who have told us that they would never call “911” again given how the record of their police-involved mental health occurrence has affected their life chances and their social security. Thus, we have the shocking situation in which people are deterred from accessing emergency services for fear of having their personal health information disclosed by the police. However, this situation is readily remedied.

At this time, and most certainly before there is any expansion of information collection, there must be a complete cessation of disclosures on police records checks of any mental health incidents unless there is a well-founded concern about danger to others. We understand that proposed provincial guidelines for police records checks attempted to prevent the disclosure of certain types of mental health incident information, for example, non-disclosure of threats to commit suicide where no action was taken by the police). However,

the draft guidelines addressed only a small sub-set of the information that is released in these discriminatory and highly stigmatizing disclosures.

As the police move forward, admirably, to ensure effective strategies for persons in crisis, it is imperative that they address the inadvertent harms that have been occurring as a result of these incidents being both recorded and disclosed. Especially if the police wish to build trust in affected communities and potentially seek more in-depth information for research, the police records check data disclosure issue must be addressed.

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Action Item #13:

Privacy legislation currently contains many provisions that balance privacy with other social goods, like safety and security. It is not clear that a new law is required; and that clarification and codification of current laws cannot appropriately facilitate the needed collection of information. An initial inquiry should be undertaken to understand the nature of the barrier to accessing needed information that was reported by police during the MWCI.

Any proposal for reform should be the subject of consultation with affected stakeholders, including those agencies and organizations where information-sharing with the police is most problematic.

Action Item #14:

We are concerned that increased collection of intelligence information will result in an exacerbation of the already unacceptable situation of people being prejudiced and discriminated against on the basis of an "adverse contact" on their police records checks. Probably the largest number of complaints that our association receives on the subject of police records checks are in respect to "adverse contact", which is a vague and over-broad category that allows for inappropriate and misleading disclosures improperly targeting people who have found themselves, for example, in disputes with police, declining to assist the police, complained about by a third party with no substantiation or even, on occasion, themselves a victim of a criminal incident.

This entire component of police records checks needs complete re-evaluation and appropriate criteria. This already unfair system stands to be made much worse if even more information of the notoriously subjective and non-substantiated kind that falls under “intelligence” is entered into data systems. If intelligence is to be collected, and of course there is role for intelligence in policing, that information must be silo-ed for police use only, and not permitted to unfairly prejudice those seeking police records checks.

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Conclusion

We thank the Ministry of Justice for the opportunity to comment on this matter. We look forward to working with the government as it moves forward on these reforms, which, if executed properly, could make significant improvements to policing and the respect of people’s fundamental rights in British Columbia.

Should you have any questions, please do not hesitate to contact us.

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Josh Paterson
Executive Director

A handwritten signature in black ink, appearing to read 'M. Vonn', with a horizontal line extending to the right.

Micheal Vonn
Policy Director

cc: Hon. Suzanne Anton, Minister of Justice and Attorney General