



SUBMISSION OF THE BC CIVIL LIBERTIES ASSOCIATION TO THE SPECIAL COMMITTEE ON REFORMING THE POLICE ACT

April 30, 2021

Respectfully submitted to the Special Committee by:

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The British Columbia Civil Liberties Association's main office is located on unceded and unsurrendered Indigenous land belonging the xʷməθkʷəy̓əm (Musqueam), Skwxwú7mesh (Squamish), and səliłwətaʔt/Selilwitulh (Tsleil-Waututh) Nations. The BCCLA is committed to the full realization of the rights of Indigenous peoples.

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Executive Summary

Waylon Jesse Edey, Travis Rood, James Reginald Butters, James Daniel McIntyre, Hudson Brooks, Myles Gray, Kenneth Robert Hanna, Craig Andrew Ford, Dale Culver, Kyaw Din, Clayton Donnelly, Barry Shantz, Everett Patrick, Chester, Julian Jones.

These are the names of some of the people killed by police and in police encounters in the past five years in BC.

We are thankful for the opportunity to make submissions and recommendations to the Special Committee on Reforming the Police Act related to policing in BC under the *Police Act*; the role of police with respect to complex social issues disproportionately impacting racialized and low-income communities; the scope of systemic racism within BC's police agencies; and measures necessary to ensure the *Police Act* is consistent with the United Nations Declaration on the Rights of Indigenous Peoples.

Our submissions and recommendations fall within the following seven general areas:

1. Aligning the *Police Act* with the United Nations Declaration on the Rights of Indigenous Peoples
2. Shifting Policing Resources to Community Services
3. De facto Decriminalization Using the *Police Act*
4. Ending Police Street Checks in BC
5. Addressing Massive Gaps in Surveillance Technology & Privacy Protections
6. Restricting Police Use of Force
7. Strengthening Police Oversight and Supporting Impacted People

We do not make any recommendations calling for more training or more resources for policing; our key recommendation is to reduce the scale and scope of policing power in BC. Our recommendations are also not intended to be cherry-picked or used to tweak police services. Our recommendations are comprehensive with the goal of rethinking safety and achieving a full transformation, especially one that upholds Indigenous jurisdiction and justice systems. It is ineffective to think about piecemeal reforms when the challenge remains with the system itself.

BCCLA List of Recommendations

Aligning the *Police Act* with the United Nations Declaration on the Rights of Indigenous Peoples

Recommendation 1.1: The BCCLA recommends that the *Police Act* must be amended, in collaboration with Indigenous peoples and governments, to address historic and ongoing colonization and align the Act with the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*.

Recommendation 1.2: The BCCLA recommends that the *Police Act* be amended to specifically recognize justice powers of Indigenous nations including joint or consent-based decision-making in an Indigenous government-to-Crown government relationship.

Recommendation 1.3: At a minimum, the Province of BC must obtain free, prior and informed consent from each Indigenous Nation before subjecting them to municipal police forces or the RCMP in BC, and not withdraw provincial program and service funding for any Indigenous Nation who does not consent to such policing.

Recommendation 1.4: The BCCLA recommends that the province immediately cease criminalizing Indigenous human rights and s.35 recognized and protected Aboriginal Rights and Title.

Recommendation 1.5: The BCCLA recommends that the province immediately commit to an Indigenous women, girls and 2SLGBTQQA-led process to address the Calls for Justices of the National Inquiry into Missing and Murdered Indigenous Women and Girls.

Shifting Policing Resources to Community Services

Recommendation 2.1: The BCCLA recommends that the *Police Act* be amended to limit the scale and scope of policing power in BC.

Recommendation 2.2: The BCCLA recommends that policing resources be redirected to develop and enhance non-policing community-based services and upstream safety

solutions. Policing resources dedicated to policing mental health, homelessness, drug use, sex work, and Indigenous land defense should be re-allocated to community services.

Recommendation 2.3: The BCCLA emphasizes that all existing recommendations and calls to action from the National Inquiry into Missing and Murdered Indigenous Women and Girls, provincial Missing Women Commission of Inquiry, Human Rights Watch's "Those Who Take Us Away," and the Downtown Eastside Women's Centre "Red Women Rising: Indigenous Women Survivors in Vancouver's Downtown Eastside" be implemented without delay.

Recommendation 2.4: The BCCLA supports the recommendation by Battered Women Support Services that there be a comprehensive provincial review of policing domestic violence and sexualized violence.

Recommendation 2.5: The BCCLA recommends that the continuance of the provincial HUB Model / Situation Tables, especially the participation of police officers, be contingent on the production of empirical evidence as to whether it is more beneficial than detrimental.

Recommendation 2.6: The BCCLA recommends strict privacy guidelines and adherence to privacy laws in disclosure and sharing of sensitive personal information between agencies participating in the provincial HUB Model / Situation Tables.

Recommendation 2.7: The BCCLA recommends shifting from a criminalizing and stigmatizing approach to mental health that has defaulted to using police as first responders to mental health crisis in BC. Instead, the province should provide up-stream supports, engage in a comprehensive review of the *Mental Health Act*, and move toward mental health paramedic services and civilian and community-led crisis teams to support those in emergency mental health crisis.

De-facto Decriminalization Using the Police Act

Recommendation 3.1: The BCCLA recommends that the *Police Act*, in particular section 2.1, be amended or new regulations be developed that prohibits all police forces in BC from using provincial or municipal resources toward enforcement of certain offenses that criminalize socio-political condition and disproportionately impact the health, safety and well-being of Indigenous, Black and racialized communities.

Recommendation 3.2: The BCCLA submits that Dr. Bonnie Henry's recommendations to use the *Police Act* as a mechanism of decriminalization of simple drug possession at the provincial level should be enacted.

Recommendation 3.3: The BCCLA recommends full decriminalization of simple drug possession. This means removing all criminal sanctions and other regulatory measures — such as administrative penalties, fines, drug seizures, involuntary treatment or coerced diversion programming — for the possession of substances for personal use. The BCCLA does not endorse any amendments to the *Police Act* that enable police to criminalize, sanction or prohibit drug use or simple drug possession.

Recommendation 3.4: The BCCLA echoes the long-standing recommendation for a civilian-operated program for attending to people who are chronically incapacitated in a public place, a civilian-operated sobering centre, and an enhanced civilian-based detoxification program to replace policing-involved responses to public intoxication.

Recommendation 3.5: The BCCLA recommends that the new provincial sex work guidelines supported by Living in Community and adopted by the BC Association of Chiefs of Police in 2017 should be harmonized across jurisdictions and made binding. The Provincial Sex Work Enforcement Guidelines are intended to support safety and relationship building with sex workers across BC and to harmonize approaches in municipalities across BC.

Recommendation 3.6: The BCCLA recommends that the provincial government co-develop, with Indigenous governments, provincial guidelines for the non-enforcement of criminal or bylaw offenses related to residing in tent cities and homeless encampments.

Recommendation 3.7: The BCCLA recommends that BC law require all policing agencies in BC to disclose any and all agreements they hold with other agencies.

Recommendation 3.8: The BCCLA recommends that the *Police Act* in BC be amended to include “Don’t Ask, Don’t Tell” regulations. “Don’t Ask” regulations in the *Police Act* would prevent police officers from inquiring into anyone’s immigration status during encounters with police, and “Don’t Tell” provisions would mandate that the police treat personal information as confidential and be restricted from communicating this information to federal immigration and border services agencies.

Recommendation 3.9: The BCCLA recommends that the *Police Act* be amended to explicitly direct the severance of any formal cooperation agreements between all police departments in BC and federal immigration enforcement agencies.

Recommendation 3.10: The BCCLA echoes the recommendation of the National Indigenous Justice Summit that all levels of government must recognize “the sui generis nature of Indigenous protests relating to the potential of irreversible harm to Indigenous lands and waters in the context of unresolved Aboriginal and Treaty rights claims.” We further recommend that the provincial government co-develop, with Indigenous governments, provincial guidelines for the non-enforcement of criminal charges against Indigenous land defenders and nations exercising Indigenous jurisdiction and law.

Ending Police Street Checks in BC

Recommendation 4.1: The BCCLA recommends an immediate ban on police street checks in BC.

Recommendation 4.2: The BCCLA recommends that historic street check data containing personal information should be purged.

Addressing Massive Gaps in Surveillance Technology & Privacy Protections

Recommendation 5.1: The BCCLA recommends the immediate implementation of select recommendations from “To Surveil and Predict A Human Rights Analysis of Algorithmic Policing in Canada” to

- Make reliability, necessity, and proportionality prerequisite conditions for the use of algorithmic policing technologies, and moratoriums should be placed on every algorithmic policing technology that does not meet these established prerequisites.
- Expressly regulate the retention and destruction of biometric data by law enforcement authorities.
- Require law enforcement bodies to obtain prior judicial authorization in order to deploy algorithmic surveillance technology at public gatherings and in online environments.

- Place moratoriums on law enforcement agencies' use of technology that relies on algorithmic processing of historic, mass police data sets, pending comprehensive review.
- Establish a blanket prohibition against relying on algorithmic predictions to justify interference with individual liberty.

Recommendation 5.2: Enhance democratic oversight by imposing strict preconditions on the use of privacy-invasive technology, including privacy impact assessments, public consultation, and approval by an oversight body.

Recommendation 5.3: The BCCLA recommends a strict prohibition on private entities from disclosing any personal information that they have collected from individuals to law enforcement bodies unless:

- (i) exigent circumstances exist,
- (ii) the individual about whom the information is about has clearly consented to the private entity sharing the information with law enforcement. As a safeguard, the request for consent from the individual must be in plain language to best ensure they understand the agreement.
- (iii) judicial authorization has been granted to law enforcement to collect the personal information about an individual from the third-party company (and vice versa).

Recommendation 5.4: The BCCLA recommends the immediate suspension of any existing data-sharing arrangements between law enforcement bodies and third parties for which there has been no privacy analysis, public scrutiny or consultation, nor any democratic oversight.

Recommendation 5.5: The BCCLA recommends strengthening the standards that apply to body worn cameras. The BCCLA does not support the use of body worn cameras for police due to their privacy-invasive nature and the lack of evidence that they prevent harms in policing. We recommend that the current standards that apply to body worn cameras be strengthened and that any policing agency already deploying them should suspend their use until they have undertaken the measures outlined above (i.e. Privacy Impact Assessment, public consultation, and approval by an oversight body).

Recommendation 5.6: The BCCLA recommends that any police agency already deploying body worn cameras in BC must suspend their use until they have undertaken specific measures (i.e. Privacy Impact Assessment, public consultation and Police board/Director of Police Services approval).

Restricting Police Use of Force

Recommendation 6.1: The BCCLA recommends that the *Police Act*, regulations, and provincial standards be amended to strictly restrict use of lethal force.

Recommendation 6.2: The BCCLA recommends that the *Police Act*, regulations, standards, and policies be amended to remove passive language that obscures violent police actions.

Recommendation 6.3: The BCCLA recommends that the Province, in consultation with Indigenous nations and vulnerable communities, overhaul existing police structures to create comprehensive public reporting on police use of force in British Columbia.

Recommendation 6.4: The BCCLA recommends that public reporting on use of force must prioritize clear accessible language that upholds the human dignity of individuals involved. At a minimum, this should include disaggregated data (race, ethnicity, gender identity, age, location etc.), type of force or weapon used, if an individual was killed or seriously harmed, the police service involved, and if investigated by an oversight body.

Recommendation 6.5: The BCCLA supports the immediate action plan of the National Indigenous Justice summit to implement a multi-pronged Indigenous de-escalation strategy:

- A no-carry policy in Indigenous communities, or in urban areas with large Indigenous populations, and on calls involving Indigenous identified individuals as a first response.
- Vigorous and ongoing Indigenous trauma-informed de-escalation training and teams for Police, which include Indigenous Peoples and mental health professionals.

Recommendation 6.6: The BCCLA recommends that the *Police Act* create a new model for public safety that de-centers use of force from the provision of police services.

Recommendation 6.7: The BCCLA recommends that the government, in partnership with Indigenous nations and vulnerable communities, undertake a public review of all firearms, weapons, use of force techniques, and, further, restrains weapon-types used by police services in British Columbia with the goal of significantly disarming and restricting police authority to use force.

Recommendation 6.8: The BCCLA recommends the elimination of the use of neck restraints and full-body restraint devices.

Strengthen Police Oversight and Support Impacted People

Recommendation 7.1: To enhance the protection of human rights for all in BC, all police in BC should fall under a single oversight body that is truly independent and civilian, investigates criminal conduct against police officers and refers charges to a special prosecutor, investigates and make binding decisions regarding policy and misconduct complaints, and is transparent and involves victims in review processes.

Recommendation 7.1.1: Ensure the oversight body is led by an officer of the legislature, has its own statute, and that all members are civilian and reflect the diversity of BC's population.

Recommendation 7.1.2: Provide the oversight body and its investigators with the full range of powers to enable them to conduct fair, independent, and effective investigations into any police wrongdoing, from misconduct to criminal actions (both on and off duty).

Recommendation 7.1.3: The oversight body must have access to a special prosecution service to safeguard independence and impartiality when approving charges.

Recommendation 7.1.4: Empower the oversight body to initiate investigations upon review of a court decision where the judge criticized the truthfulness of a witness officers' evidence or testimony.

Recommendation 7.1.5: We recommend that the oversight body be required to publicly disclose whether a complaint has been filed against an officer and whether an investigation is underway.

Recommendation 7.1.6: Any findings of misconduct or laying of charges against a police officer needs to be made available in a public registry and kept up to date.

Recommendation 7.1.7: The oversight body should be mandated to collect demographic data, including gender, age, race, religion, ethnicity, mental health status, disability, and Indigenous status of complainants and other affected parties to align with international best practices and much of the public sector in Canada. This aggregated data should be made available to the public at least annually.

Recommendation 7.1.8: The BCCLA recommends that victim support, counselling, and legal representation be available to ensure the complainant or other impacted person's wellbeing is essentially safeguarded.

Recommendation 7.1.9: Expand the scope of the police oversight body to apply to these enforcement officers and public employees that support police officers in BC: conservation officers, RCMP reserve constables, civilian employees of the RCMP, bylaw officers, jail guards and anyone who plays an important role regarding the treatment of those in police custody.

Recommendation 7.1.10: Enable people in BC to access the oversight body to complain about the conduct of railway police.

Recommendation 7.2: The oversight body must be developed in full partnership and with the full co-operation and consent of Indigenous peoples, including centering Indigenous conceptions of justice.

Recommendation 7.3: Acknowledging that it will take time to fully engage with Indigenous people and ensure their participation and consent in the new oversight model for BC, we recommend that the following changes should be enacted without delay:

- Subject all public employees with police-like powers to OPCC and IIO oversight.
- Fully civilianize all oversight bodies.
- Make the findings of police oversight bodies binding, enforceable, and publicly available.
- End the CRCC and OPCC practice of “informal dispute resolution”.
- Enable the OPCC to initiate their own investigations or hearings.
- Shift all investigations of police misconduct directly to the OPCC.
- Incorporate principles of Indigenous conceptions of justice.
- Expand the mandate of the IIO to include sexual assault and gendered violence by police officers.
- Require police forces to provide subject officers’ notes to the IIO.
- Gather more data directly from Affected Persons.
- Cooperate more closely with other oversight bodies.
- Report more consistently on the outcome of cases referred to crown counsel.

Recommendation 7.4: Ensure that documents and records produced and in the custody of associations of chiefs of police that relate to their public police functions fall within the scope of access to information legislation. Prescribe the BCACP and BCAMP as public bodies to Schedule 2 of the *Freedom of Information and Protection of Privacy Act*.

Recommendation 7.5: Prohibit private donations to policing services in the province, either directly or indirectly through charity foundations.

Recommendation 7.6: Prescribe the Vancouver Police Foundation as a public body to Schedule 2 of the Freedom of Information and Protection of Privacy Act.

Recommendation 7.7: To enhance civilian oversight of policing in BC, restrict the eligibility of people who can be appointed as the Director of Police Services to those who are truly “civilian” and who have never worked for a law enforcement agency, either in Canada or elsewhere.

Miscellaneous

Recommendation 8.1: Require the Director of Police Services to (i) maintain a public registry of all recommendations from reviews relating to BC policing, and (ii) at least once a year provide a registry update to (a) confirm which recommendations have been implemented and how, and (b) the reasons for not implementing other recommendations.

Recommendation 8.2: Enable communities to decide for themselves whether police officers should enforce bylaws in their area. Remove the default authority in the *Police Act* and enable local governments to enable or rescind authority for their regions.

Recommendation 8.3: Require policing agencies to maintain up to date procedures on their website for the public to access.

Recommendation 8.4: Repeal the presumptions in the *Civil Forfeiture Act* that make it easier for the Civil Forfeiture Office to prove their case.

Recommendation 8.5: Abolish administrative forfeiture.

Recommendation 8.6: Limit civil forfeiture to the proceeds of crime (not the instruments) and amend the Act so that it targets organized crime as opposed to all unlawful activity.

Recommendation 8.7: End the self-funding model and fund the Civil Forfeiture Office through general revenue.

Recommendation 8.8: Provide legal assistance to anyone facing forfeiture under the *Civil Forfeiture Act*.

Recommendation 8.9: Authorize the collection of race-based and disaggregated data about the people whose property is taken through civil forfeiture, in accordance with the guidance from the BC Human Rights Commission's "Disaggregated demographic data collection in British Columbia: The grandmother perspective."

Recommendation 8.10: Enhance the impartiality of the Civil Forfeiture Office by restricting staff from being embedded with police and/or working out of police agencies in BC.

About the BCCLA

The BC Civil Liberties Association (BCCLA) is the country's oldest civil liberties and human rights organization. Our work spans a range of civil liberties and human rights issues, such as policing, prisons and criminalization, Indigenous rights, national security and surveillance, immigration detention and migrant rights, privacy rights, patients' rights, freedom of expression, democratic rights, and equality rights. The BCCLA is one of Canada's most frequent and successful non-government legal intervenors in the country's highest courts, and is a sought-out and trusted advocacy organization.

The BCCLA was established in 1962 in response to draconian police responses to religious minorities in BC. Since then, we have been advocating for law reform and litigating in the courts and at numerous public inquiries on policing issues. With their family members and loved ones, we have also tried to seek justice for victims of police killings, including Alan Wright, Greg Matters, Bill Gillespie, Dale Culver, Ian Bush, Kevin St. Arnaud, and Clayton Alvin Willey.

We have raised systemic issues in policing at a number of public inquiries. This included the APEC inquiry into the unlawful actions of the RCMP against protestors at the APEC Summit in 1997. We joined with the Union of BC Indian Chiefs and United Native Nations to push for and participate in an inquiry into the death of Frank Paul, a Mi'kmaq man who died of exposure and hypothermia after being dumped in an alley by officers of the Vancouver Police Department in 1998. We made submissions to the Braidwood Inquiry into the death of Robert Dziekanski, a Polish immigrant who was tasered five times at the Vancouver International Airport by RCMP officers in 2007.

The BCCLA was also a party with standing in the provincial Missing Women Commission of Inquiry as well as the National Inquiry into Missing and Murdered Indigenous Women and Girls. We are a member of the provincial Coalition for Justice for Missing and Murdered Indigenous Women and Girls.

We participated in these inquiries with a number of recommendations, including police use of force and our decades-long call to end police investigating themselves. This led to the creation of the Independent Investigation Office in BC to ensure civilian investigation of serious police use-of-force incidents. BCCLA currently sits on the Independent Investigations Office Stakeholder Working Group, on the Advisory Committee to the Director of Police Services in relation to the development of provincial policing standards on street

checks/police stops and bias-free policing, and we participate in the BC government's Advisory Committee on Provincial Policing Standards.

Between 2011 and 2013, the BCCLA, along with the Union of BC Indian Chiefs and the Vancouver Aboriginal Transformative Justice Services Society spent time in rural and small towns and with Indigenous families in the interior and north, including Prince Rupert, Fort John, Williams Lake, and Prince George. There we heard about and documented countless stories of police harassment and violence against Indigenous people as well as the abject failures of police investigations into the deaths of Indigenous peoples, including on the Highway of Tears. We produced the report "*Small Town Justice: A Report on the RCMP in Northern and Rural British Columbia.*"¹

Shortly after, Human Rights Watch released a scathing report "Those Who Take Us Away" detailing racism, neglect and mistreatment by police against Indigenous women and girls in northern BC. The Civilian Review and Complaints Commission (CRCC) confirmed that the RCMP in northern BC failed to adequately record reasons for using force, failed to properly document missing persons investigations, failed to deal appropriately with searches and strip searches, and failed to ensure appropriate domestic violence response.

We are currently in the midst of a multi-year Policing Indigenous Communities Initiative to address policing of Indigenous peoples in BC. The initiative has three main areas of focus: police accountability in Indigenous Communities in Northern BC; access to justice and rights violations at arrest, detention and bail in rural and remote Indigenous Communities; public awareness-raising, and legal education.

Finally, we have also litigated in a number of court cases to limit police powers of entrapment, search and seizure, and illegal spying. We are currently suing the RCMP Commissioner for her extreme delay that prevented the release of a watchdog report by the CRCC into RCMP spying for nearly seven years. In court, we are arguing that delays have plagued the RCMP complaints system for over a decade.²

¹ David Eby, "Small Town Justice: A report on the RCMP in Northern and Rural British Columbia" (2011), online: *British Columbia Civil Liberties Association* <bccla.org/wp-content/uploads/2012/03/2011-BCCLA-Report-Small-Town-Justice.pdf>.

² As of January 18, 2021, 156 interim reports by the CRCC were awaiting a response from the RCMP Commissioner. There are serious consequences for such delays, including situations where RCMP members have retired before the CRCC's report on a complaint against them was complete.

Aligning the Police Act with The United Nations Declaration on The Rights of Indigenous Peoples

The BCCLA urges the Province to seize the opening and amending of the *Police Act* as an opportunity to disrupt normative colonial violence in British Columbia.

Recommendation 1.1: The BCCLA recommends the *Police Act* must be amended, in collaboration with Indigenous peoples and governments, to address historic and ongoing colonization and align the Act with the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*.

Between 1985 and 1990, Indigenous Peoples worked to have their rights respected by the United Nations. The resulting declaration – UNDRIP – was adopted by the UN General Assembly in 2007. At that time, Canada voted against its adoption. Over a decade later, in 2016, Canada became a “full supporter, without qualification,” after the completion of the Truth and Reconciliation Commission of Canada. Choosing to adopt the TRC call for action 43, Canada committed to fully adopting and implementing UNDRIP as the framework for reconciliation. The rights set out in UNDRIP “constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.”³

On November 28, 2019 BC became the first Canadian jurisdiction to pass legislation expressing legislative intent to align provincial law with UNDRIP. The *Declaration on the Rights of Indigenous Peoples Act (Declaration)* affirmed the legal effect of the international human rights instrument to BC law. The Province has clear obligations set out in clause 3 of the Declaration “to take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration.”⁴

Indigenous peoples and their governments must have the full opportunity to participate in, guide, and consent to any future draft bill to reform the *Police Act* prior to its introduction.

³ United Nations. *United Nations Declaration on the Rights of Indigenous Peoples.*, General Assembly Resolution 61/295 (Annex), UN GAOR, 61st Sess., Supp. No. 49, Vol. III, UN Doc. A/61/49 (2008) 15 Article 43.

⁴ Bill 41, *Declaration On The Rights Of Indigenous Peoples Act*, SBC 2019, C44.

The Union of BC Indian Chiefs and the Canadian Centre for Policy Alternatives set out six foundational principles for the general implementation of UNDRIP that should guide the process of rethinking safety and transforming policing in British Columbia and amending the *Police Act*:

1. Implementation of the UN Declaration must be done through collaborative efforts between Crown governments and Indigenous peoples.
2. Implementation of the UN Declaration must facilitate and create legal and policy space for diverse, flexible and dynamic structures, processes, mechanisms and patterns of relations between Crown governments and Indigenous peoples.
3. Implementation of the UN Declaration requires leadership by Indigenous peoples as well as Crown governments.
4. Implementation of the UN Declaration must not become focused on trying to strictly define meanings and terms, and must be taken in its entirety.
5. Implementation of the UN Declaration requires a shift in mindset on how Crown-Indigenous relations are approached, with a focus on the recognition of Title and Rights.
6. Implementation of the UN Declaration includes roles for industry, civil society and the general public.⁵

The current *Police Act* and police enforcement of provincial legislation including the *Emergency Programs Act* fails to recognize and respect the inherent right of self-government of Aboriginal peoples protected by s. 35 of the Constitution and recognized in UNDRIP. The *Police Act* must be amended to recognize lawmaking powers, including justice powers, of Indigenous nations. The Act needs to set out jurisdictional clarity, and a practical model of civilian police governance and oversight bodies based on joint or consent-based decision-making in Indigenous government-to-Crown government relationship.⁶

Recommendation 1.2: The BCCLA recommends that the *Police Act* be amended to specifically recognize justice powers of Indigenous nations including joint or consent-based decision-making in an Indigenous government-to-Crown government relationship.

⁵ True, Lasting Reconciliation: Implementing the United Nations Declaration on the Rights of Indigenous Peoples in British Columbia law, policy and practices, November 2018 <online: https://d3n8a8pro7vhmx.cloudfront.net/ubcic/pages/3894/attachments/original/1543299014/UBCIC_CCP_A-BC_TrueLastingReconciliation_full.pdf?1543299014 >

⁶ See Indian Residential School History and Dialogue Center, Implementing UNDRIP in BC: A Discussion Paper Series, <online: <https://irshdc.ubc.ca/about/publications-and-reports/undrip-papers/?fbclid=IwAR0Os33dbkIJaCm8Yr-tX4sdHvwoDJW1VjpXxKEIF1TrfLUygbQ0eDsFjk>>

Recommendation 1.3: At a minimum, the Province of BC must obtain free, prior and informed consent from each Indigenous Nation before subjecting them to municipal police forces or the RCMP in BC, and not withdraw provincial program and service funding for any Indigenous Nation who does not consent to such policing.

For policing in British Columbia to be consistent with UNDRIP as mandated by the *Declaration*, the Province must cease using police to criminalize Indigenous human rights, and s.35 recognized and protected Aboriginal Rights and Title. This requires co-development of provincial guidelines that address the non-enforcement of criminal charges against Indigenous land defenders exercising Indigenous jurisdiction and law. The militarized policing raid on Wet'suwet'en territories in 2020, the subsequent arrests in urban centers during Indigenous-led Wet'suwet'en Strong solidarity actions, as well as protests against the TransMountain Expansion project are evidence of the continued colonial criminalization, rights infringements and violation of the province's *Declaration on the Rights of Indigenous Peoples Act*. The Province must cease using police as enforcers of unconstitutional infringement of Aboriginal rights, including colonial sanctioned resource extraction.

Finally, to fully align BC laws with UNDRIP, the province must fulfill their legal imperative, taking all available action to end genocide against Indigenous women, girls, and 2SLGBTQQIA people. The province must immediately commit to an Indigenous women, girls and 2SLGBTQQIA-led process to address the Calls for Justices of the National Inquiry into Missing and Murdered Indigenous Women and Girls. Indigenous nations, and specifically Indigenous women, girls and 2SLGBTQQIA people, must lead the reimaging of public and community safety in British Columbia.

Recommendation 1.4: The BCCLA recommends that the province immediately cease criminalizing Indigenous human rights, and s.35 recognized and protected Aboriginal Rights and Title.

Recommendation 1.5: The BCCLA recommends that the province immediately commit to an Indigenous women, girls and 2SLGBTQQIA-led process to address the Calls for Justices of the National Inquiry into Missing and Murdered Indigenous Women and Girls.

Shifting Policing Resources to Community Services

Recommendation 2.1: The BCCLA recommends that the *Police Act* be amended to limit the scale and scope of policing power in BC.

Recommendation 2.2: The BCCLA recommends that policing resources be redirected to develop and enhance non-policing community-based services and upstream safety solutions. Policing resources dedicated to policing mental health, homelessness, drug use, sex work, and Indigenous land defense should be re-allocated to community services.

Since 2017, an Indigenous person in Canada is 10 times more likely to have been shot and killed by a police officer in Canada than a white person.⁷ Policing can be a matter of life and death. We do not have the death penalty in Canada, but we give police the lethal power to take a life – even when they are supposed to be trained not to have to kill in the most escalated scenario. Across the country, police disproportionately kill Indigenous and Black people.⁸ Indigenous people are 16 percent of those killed by police, but only 4.2 percent of the population. Black people are 8.6 percent of those killed by police, but only 2.9 percent of the population. Furthermore, 68 percent of people killed in police encounters were impacted by mental illness or substance use.⁹

BC has the shameful distinction of the country's highest rate of police-involved deaths.¹⁰ According to the BC Coroner's Office, 20 percent of those who died in encounters with police between 2013 and 2017 were Indigenous.¹¹ After the police killings of Tla-o-qui-aht members Chantel Moore in 2020 and Julian Jones in 2021, the Tla-o-qui-aht First Nation

⁷ Ryan Flanagan, "Why are Indigenous people in Canada so much more likely to be shot and killed by police?", *CTV News* (19 June 2020), online: <www.ctvnews.ca/canada/why-are-indigenous-people-in-canada-so-much-more-likely-to-be-shot-and-killed-by-police-1.4989864>.

⁸ Inayat Singh, "2020 already a particularly deadly year for people killed in police encounters, CBC research shows", *CBC News* (23 July 2020), online: <newsinteractives.cbc.ca/fatalpoliceencounters/>.

⁹ *Ibid.*

¹⁰ Yvette Brend, "B.C. has country's highest rate of police-involved deaths, groundbreaking CBC data reveals", *CBC News* (5 April 2018), online: <www.cbc.ca/news/canada/british-columbia/police-related-deaths-canada-bc-vancouver-boyd-edey-database-1.4603820>.

¹¹ BC Coroners Service Death Review Panel, "Police: a crucial component of B.C.'s mental health system" (4 June 2019), online: *Government of BC* <www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/death-review-panel/policeencountersdrp.pdf>.

issued a stinging statement: “Police have killed more Tla-o-qui-aht First Nation members than COVID has.”¹²

The provincial government needs to choose differently. Why do we assume that all social crisis must be solved through policing? Growing proportions of government budgets go into policing, with no legislated audits or evaluation. There is actually very little independent evidence that policing in BC actually works. In fact, reams of evidence suggest the opposite. Anti-violence organizations, mental health experts, and youth groups have all pointed out that police officers are not trained in supporting people in crisis. As noted in the examples below, police officers often wrongfully arrest survivors of domestic violence or escalate a situation where someone is in a mental health crisis.

Police should not be the first and only solution to varied social issues: ranging from mental health wellness and supporting youth in schools, to victim services for survivors and tackling racist hate. No one profession can be expected to respond to *and* have the skills to respond to such an array of life-altering issues. Further, we know now more than ever that Indigenous, Black, racialized, migrant, undocumented, sex worker, drug user, and homeless communities almost universally mistrust police. These communities are already criminalized by a matrix of criminal, child services, and immigration laws, yet we compel them to accept social supports in the forms of police wellness checks, police liaison officers in schools, police officers in social housing, police embedded in mental health teams, and police-side victim services— none of which they are trained to do nor the appropriate first responders for.

Community-based organizations are a vital part of our public safety but are thoroughly underfunded and under-resourced. Community-based support services save lives and are the pillars of our community that all levels of government should be funding. Upstream safety solutions mean investing in real safety by diverting police funding toward community-based organizations and solutions instead.

1. Gender-Based and Domestic Violence

A Globe and Mail investigation found that one in five reports of sexual assault in Canada were dismissed by police.¹³ In fact, since 2008, anti-violence organizations such as Battered Women Support Services are seeing a disturbing trend: an increasing number of women

¹² Ian Holliday, “First Nation mourning after member shot, killed by RCMP”, *CTV News* (3 March 2021), online: <vancouverisland.ctvnews.ca/first-nation-mourning-after-member-shot-killed-by-rcmp-1.5332461>.

¹³ Robyn Doolittle, “Why Police Dismiss 1 in 5 Sexual Assault Claims As Baseless”, *The Globe and Mail* (3 February 2017), online: <www.theglobeandmail.com/news/investigations/unfounded-sexual-assault-canada-main/article33891309/>.

who are wrongfully arrested for allegedly perpetrating domestic violence.¹⁴ Those arrested are disproportionately Black, Indigenous, women of colour, or immigrant women whose first language is not English.

In a women's safety audit specific to the Downtown Eastside of Vancouver, only 15 percent of women said they would go to the police if they felt unsafe.¹⁵ A Human Rights Watch study reports that Indigenous women and girls who call police for assistance are often met with "skepticism and victim-blaming, and that police often arrest victims of abuse for actions taken in self-defence."¹⁶ This has contributed to the disappearances and deaths of Indigenous women, girls, gender-diverse people, and sex workers. The provincial Missing Women Commission of Inquiry and the National Inquiry into Missing and Murdered Indigenous Women and Girls both highlight the complete neglect, failure, violence, and racism of police forces.

The very system that we assume is effectively protecting survivors of violence is often criminalizing them.

Recommendation 2.3: The BCCLA emphasizes that all existing recommendations and calls to action from the National Inquiry into Missing and Murdered Indigenous Women and Girls, provincial Missing Women Commission of Inquiry, Human Rights Watch's "Those Who Take Us Away," and the Downtown Eastside Women's Centre "Red Women Rising: Indigenous Women Survivors in Vancouver's Downtown Eastside" be implemented without delay.

Recommendation 2.4: The BCCLA supports the recommendation by Battered Women Support Services that there be a comprehensive provincial review of policing domestic violence and sexualized violence.

¹⁴ Harsha Walia, , Stewart Phillip and Angela Marie MacDougall, "The province must immediately commit to ending the harms inherent in policing", *Vancouver Sun* (23 April 2021), online: vancouversun.com/opinion/harsha-walia-stewart-phillip-and-angela-marie-macdougall-the-province-must-immediately-commit-to-ending-the-harms-inherent-in-policing.

¹⁵ Women's Coalition, "Getting to the Roots: Exploring Systemic Violence Against Women in the Downtown Eastside of Vancouver" (November 2014), online: *Downtown Eastside Women's Centre* <dewc.ca/wp-content/uploads/2019/05/Getting-to-the-Roots-final-Nov-2-2014.pdf>.

¹⁶ Letter from the Human Rights Watch to the Government of Canada on Police Abuse of Indigenous Women in Saskatchewan and Failures to Protect Indigenous Women from Violence (19 June 2017), online: www.hrw.org/news/2017/06/19/submission-government-canada-police-abuse-indigenous-women-saskatchewan-and.

2. HUB Model / Situation Tables

BC's Office of Crime Reduction and Gang Outreach (OCR-GO) leads efforts to create and enhance existing Situation Tables. Situation Tables (also known as HUBS) connect police officers to social service sectors in order to identify vulnerable people. While the HUB Model or Situation Tables are intended to support vulnerable women and youth, a media investigation showed that, even though the purpose of Situation Tables is to reduce police involvement, police in BC were the ones leading interventions on Indigenous and immigrant women and youth.¹⁷

Furthermore, sensitive personal information being shared between agencies and with law enforcement without consent likely constitutes an illegal breach of privacy. A key principle of privacy law is that personal information only be used by an agency for the purpose for which it was collected. Further, it should generally only be shared with another entity if the individual about whom it relates provides consent to that disclosure or disclosure is part of a shared service or program. We note that where there are exigent circumstances, privacy legislation enables personal information to be shared without the need to obtain such consent.

The BCCLA cautions that the disclosure of personal information without the knowledge and consent of an individual could be very detrimental to community relations and further hinder the willingness of vulnerable individuals to access public services. The ability to trust service providers with personal information is essential to their effectiveness.

Recommendation 2.5: The BCCLA recommends that the continuance of the provincial HUB Model / Situation Tables, especially the participation of police officers, be contingent on the production of empirical evidence as to whether it is more beneficial than detrimental.

Recommendation 2.6: The BCCLA recommends strict privacy guidelines and adherence to privacy laws in disclosure and sharing of sensitive personal information between agencies participating in the provincial HUB Model / Situation Tables.

¹⁷ Nathan Munn, "A Police Intervention Program in Canada Is Targeting Minors and Indigenous Women", *Vice* (18 January 2021), online: <www.vice.com/en/article/4adbgn/a-police-intervention-program-in-canada-is-targeting-minors-and-indigenous-women>.

3. Mental Health and Police

The Canadian Mental Health Association (CMHA) BC Division notes “police are, by default, becoming the informal ‘first responders’ of our mental health system.”¹⁸ According to Jonny Morris of CMHA-BC, “We see in data that there are general factors that show a driver that increases the likelihood of an encounter with police: being male; being racialized; being a Black, Indigenous or person of colour; living with bipolar disorder or manic symptoms, schizophrenia; homelessness; and unemployment. Systemic factors are driving some of these rates of police contact.”¹⁹ Approximately one in five interactions with police in Canada involves someone with a mental health or substance use problem.²⁰

Police are involved in mental health care in a number of ways, including: a) wellness checks in the form of street checks, b) wellness checks after a call for service to attend to someone in mental distress, or c) being part of mental health care teams.

Police wellness checks often have a tragically fatal impact, with police killings across Canada of overwhelmingly Indigenous, Black, immigrant and/or racialized people in mental health distress, including Ejaz Ahmed Choudhry, Kyaw Naing Din, Phuong Na (Tony) Du, Robert Dziekański, Regis Korchinski-Paquet, Chantel Moore, Ian Pryce, O’Brien Christopher Reid, and Naverone Woods. A CBC investigation reveals that since the year 2000, around 70 percent of police-involved fatalities in Canada have been of people in mental health or substance use crisis, or both.²¹

There are a number of policing and mental health treatment collaborations in BC. This includes pairing a mental health clinician with a police officer, such as Car 87 in Vancouver, Car 67 in Surrey, Fox 40 in Richmond, Car 60 in Prince George, and Car 40 in Kamloops. It also includes BC’s province-wide Assertive Community Treatment Program (ACT Teams), a

¹⁸ Judith Adelman, “Study in Blue and Grey: Police Intervention with People with Mental Illness” (2003), online: *Canadian Mental Health Association BC Association* <cmha.bc.ca/wp-content/uploads/2016/07/policereport.pdf>.

¹⁹ British Columbia, Legislative Assembly, Standing Committee on Reforming the Police Act, *Draft Report of Proceedings*, 42-1 (23 February 2021) at 9:40 (Jonny Morris), online: <www.leg.bc.ca/content/HansardCommittee/42nd1st/rpa/20210223am-PoliceActReform-Victoria-Blues.htm>.

²⁰ Jillian Boyce, Cristine Rotenberg & Maisie Karam, “Mental health and contact with police in Canada, 2012” (2 June 2015), online: *Statistics Canada* <www150.statcan.gc.ca/n1/pub/85-002-x/2015001/article/14176-eng.htm#a1>.

²¹ Katie Nicholson & Jacques Marcoux, “Most Canadians killed in police encounters since 2000 had mental health or substance abuse issues”, *CBC News* (4 April 2018), online: <www.cbc.ca/news/investigates/most-canadians-killed-in-police-encounters-since-2000-had-mental-health-or-substance-abuse-issues-1.4602916>.

mental health service delivery model that can include embedded police officers within the team. Dr. Craig Norris suggests that in BC “we've flipped it on the head, so crisis response partnerships that are used in BC *assume* that police are necessary. In other jurisdictions, it's the opposite. We assume it's a health response, and if they need police, they will ask for it.”²²

In this regard, BC stands out in comparison to other jurisdictions. In many other jurisdictions, such as the examples provided below, mental health teams do not necessarily involve police. Instead, fully resourced mental health paramedic services and civilian-led crisis teams are first responders.

The CAHOOTS program in Eugene, Oregon, USA, for example, provides 24/7 mobile crisis intervention and is dispatched through the Eugene police-fire-ambulance communications center. Each team consists of a medic (either a nurse or an EMT) and a crisis worker who has at least several years of experience in the mental health field. CAHOOTS provides immediate stabilization in case of urgent medical need or psychological crisis, assessment, information, referral, advocacy, and transportation to the next step in treatment. This model is now being expanded across cities in the US.²³

In Europe, the city of Stockholm in Sweden has an ambulance for mental health emergencies. The Psychiatric Emergency Response Team (PAM) has an ambulance dedicated to mental health care, with two mental health nurses and one paramedic responding to calls that police used to attend. A research study surveying patients who received care from PAM teams found that “The patients expressed that the PAM team created a safe environment and actively involved the patient in their care by creating an open and safe place for dialogue.”²⁴

Recommendation 2.7: The BCCLA recommends shifting from a criminalizing and stigmatizing approach to mental health that has defaulted to using police as first responders to mental health crisis in BC. Instead, the province should provide up-stream supports, engage in a comprehensive review of the *Mental Health Act*, and move toward mental

²² *Supra* note 19 at 11:05 a.m. (Dr. Craig Norris), online: <www.leg.bc.ca/content/HansardCommittee/42nd1st/rpa/20210223am-PoliceActReform-Victoria-Blues.htm>.

²³ Adam Climer & Brenton Gicker, “CAHOOTS: A Model for Prehospital Mental Health Crisis Intervention” (2021) 38:1 *Psychiatric Times*, online: <www.psychiatrictimes.com/view/cahoots-model-prehospital-mental-health-crisis-intervention>.

²⁴ Veronica Lindstrom, Lars Sturesson & Andreas Carlborg, “Patients' experiences of the caring on encounter with the psychiatric emergency response team in the emergency medical service – A qualitative interview study” (2020) 23:2, online: DOI: [10.1111/hex.13024](https://doi.org/10.1111/hex.13024)

health paramedic services and civilian and community-led crisis teams to support those in emergency mental health crisis.

De Facto Decriminalization Using the Police Act

Criminalization is the process by which broader socio-political conditions become illegal and considered a crime. Criminalization is not simply about one single law or even legal system but, rather, about multiple and often overlapping legal systems to oppress certain social conditions.

Systemic discrimination against racialized people in the criminal legal system includes: police street stops and other arbitrary police practices; disproportionate arrests of racialized and marginalized communities; unequal rates of pretrial detention and access to bail; disproportionate sentencing, such as mandatory minimums, which contribute to higher rates of imprisonment; and the often fatal impacts of failed policies such as drug prohibition and criminalization of sex work.

While many laws that govern who is criminalized and how are enacted federally, such as the *Criminal Code of Canada*, there are mechanisms to achieve de-facto decriminalization of social condition using the provincial *Police Act*. In particular, our recommendations focus on pathways to achieve de facto decriminalization of (including but not limited to):

- simple drug possession
- public intoxication
- sex work
- homelessness and poverty
- immigration status, and
- Indigenous land defense

Recommendation 3.1: The BCCLA recommends that the *Police Act*, in particular section 2.1, be amended or new regulations be developed that prohibits all police forces in BC from using provincial or municipal resources toward enforcement of certain offenses that criminalize socio-political condition and disproportionately impact the health, safety and well-being of Indigenous, Black and racialized communities.

Such a harm reduction approach is consistent with the powers of the province. Pivot Legal Society's analysis establishes that, under the *Constitution Act*, the provinces have exclusive

powers to legislate the administration of justice in the province and the health of people in the province.²⁵

1. Decriminalization of Simple Drug Possession

In 2020, BC's Provincial Health Officer Dr. Bonnie Henry produced a special report titled "Stopping the Harm: Decriminalization of People Who Use Drugs in BC."²⁶ Her primary recommendation in the report was that the Province of BC use mechanisms in the *Police Act* to urgently move to decriminalize people who possess controlled substances for personal use:

But in the context of the continuing overdose crisis that is affecting families and communities across BC, the province cannot wait for action at the federal level. Immediate provincial action is warranted, and I recommend that the Province of BC urgently move to decriminalize people who possess controlled substances for personal use. This is an important additional step to stem the tide of unprecedented deaths. Decriminalization of people who use drugs can be achieved through two provincial mechanisms. The first option is to use provincial legislation (specifically, the *Police Act*) that allows the Minister of Public Safety and Solicitor General to set broad provincial priorities with respect to people who use drugs. This could include declaring a public health and harm reduction approach as a provincial priority to guide law enforcement in decriminalizing and de-stigmatizing people who use drugs. This type of approach would provide pathways for police to link people to health and social services, and would support the use of administrative penalties rather than criminal charges for simple possession. The second option is to develop a new regulation under the *Police Act* to include a provision that prevents any member of a police force in BC from expending resources on the enforcement of simple possession offences under Section 4(1) of the CDSA.

²⁵ Pivot Legal Society, "Practical Drug Decriminalization in British Columbia" (August 2019), online: Pivot Legal Society <d3n8a8pro7vhmx.cloudfront.net/pivotlegal/pages/3368/attachments/original/1568222569/De-facto_Drug_Decrim_in_BC_Pivot_Position_Paper_Aug_2019.pdf?1568222569>.

²⁶ British Columbia, Office of the Provincial Health Officer, "Stopping the Harm: Decriminalization of People who use Drugs in BC" (2019), online: *Government of BC* <www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/reports-publications/special-reports/stopping-the-harm-report.pdf>.

Recommendation 3.2: The BCCLA submits that Dr. Bonnie Henry's recommendations to use the *Police Act* as a mechanism of decriminalization of simple drug possession at the provincial level should be enacted.

Recommendation 3.3: The BCCLA recommends full decriminalization of simple drug possession. This means removing all criminal sanctions and other regulatory measures — such as administrative penalties, fines, drug seizures, involuntary treatment or coerced diversion programming — for the possession of substances for personal use. The BCCLA does not endorse any amendments to the *Police Act* that enable police to criminalize, sanction or prohibit drug use or simple drug possession.

2. Decriminalization of Public Intoxication:

The Davies Commission Inquiry into the Response of the Criminal Justice released its report "Alone and Cold" in 2011.²⁷ The Inquiry was struck to investigate and report on the circumstances of the tragic death of Frank Paul, a Mi'kmaq man who died of exposure and hypothermia after being dumped in an alley by officers of the Vancouver Police Department in 1998. The final report of the Inquiry made several recommendations, including a civilian-operated program for attending to chronic alcoholics who are incapacitated in a public place, a civilian-operated sobering centre, and an enhanced civilian-based detoxification program. However, as the United Native Nations and Union of BC Indian Chiefs have highlighted, these recommendations largely remain unfulfilled, especially in rural and remote communities where police continue to take people into custody for public intoxication.²⁸

Recommendation 3.4: The BCCLA echoes the long-standing recommending for civilian-operated program for attending to people who are chronically incapacitated in a public place, a civilian-operated sobering centre, and an enhanced civilian-based detoxification program to replace policing-involved responses to public intoxication.

²⁷ William H Davies, Q.C., "Alone and Cold: Inquiry into the Criminal Justice Branch Response" (19 May 2011), online: *Government of BC* <www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/inquiries/daviescommission-finalreport.pdf>.

²⁸ Travis Lupick, "Calls for sobering centres unanswered five years after Frank Paul report", *The Georgia Straight* (2 July 2014), online: <www.straight.com/news/676091/calls-sobering-centres-unanswered-five-years-after-frank-paul-report>.

3. Decriminalization of Sex Work:

In 2012, The Missing Women Commission of Inquiry released its final report, “Forsaken,” to examine the police investigations conducted between January 1997 and February 2002 into women reported missing from Vancouver’s Downtown Eastside.²⁹ One of the central recommendations of the report was “that all police forces in British Columbia (BC) consider developing and implementing guidelines on the model of the Vancouver Police Department’s Sex Work Enforcement Guidelines in consultation with women engaged in the sex trade in their jurisdiction.”

Recommendation 3.5: The BCCLA recommends that the new provincial sex work guidelines supported by Living in Community and adopted by the BC Association of Chiefs of Police in 2017 should be harmonized across jurisdictions and made binding. The Provincial Sex Work Enforcement Guidelines are intended to support safety and relationship building with sex workers across BC and to harmonize approaches in municipalities across BC.³⁰

4. Decriminalization of Homelessness and Poverty:

Recommendation 3.6: The BCCLA recommends that the provincial government co-develop, with Indigenous governments, provincial guidelines for the non-enforcement of criminal or bylaw offenses related to residing in tent cities and homeless encampments.

Pivot Legal Society is further calling for an end to the criminalization of poverty through an amendment to the *BC Human Rights Code* that would protect people on the basis of social condition and upstream social solutions such as affordable housing, adequate income and disability assistance, and safe supply.³¹

²⁹ The Honourable Wally T. Oppal, Q.C., “Forsaken: The Report of the Missing Women Commission of Inquiry Volume III” (15 November 2012), online: *Government of BC* <www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/inquiries/forsaken-vol_3.pdf>.

³⁰ Living in Community, “Reports” (2019), online: *Living in Community* <livingincommunity.ca/reports/>.

³¹ Letter from Pivot to BC’s Provincial Party Leaders re: Identifying Priorities for the BC Government (20 October 2020), online: *Pivot Legal Society* <https://www.pivotlegal.org/letter_to_provincial_leaders>.

5. Decriminalization of Immigration Status:

Data obtained through Access to Information shows that police officers across Canada call the Warrant Response Centre (WRC) of the Canada Border Services Agency (CBSA) more than 10,000 times every year. In the vast majority of cases, these calls are to conduct a “status check” to actively seek out information about someone’s immigration situation in encounters unrelated to immigration warrants.³² It is important to note that municipal police departments across Canada have no statutory or common law legal duty to seek out or disclose immigration status to federal officials.³³ Immigrant communities have been calling for Sanctuary City policies across Canada for a long time.

Recommendation 3.7: The BCCLA recommends that BC law require all policing agencies in BC to disclose any and all agreements they hold with other agencies.

Recommendation 3.8: The BCCLA recommends that the *Police Act* in BC be amended to include “Don’t Ask, Don’t Tell” regulations. “Don’t Ask” regulations in the *Police Act* would prevent police officers from inquiring into anyone’s immigration status during encounters with police, and “Don’t Tell” provisions would mandate that the police treat personal information as confidential and be restricted from communicating this information to federal immigration and border services agencies.

Currently, no such comprehensive guidelines exist across the province. The Vancouver Police Department has created guidelines to provide direction to officers to not ask about a victim’s, witness’s or complainant’s immigration status, nor communicate with CBSA regarding their immigration status, during the course of a police investigation, unless bona fide reasons exist.³⁴ However, these guidelines have not been audited to ensure they are being followed; the guidelines are limited to victims, witnesses, and complainants only; and the guidelines list of a numbers of reasons why VPD officers may continue to call CBSA. An audit of a similar policy in Toronto found that “Toronto police officers continue to practice racial profiling to inquire into Torontonians’ immigration status, in contravention of their own “Don’t Ask” commitment.”³⁵

³² David Moffette, “Immigration Status and Policing in Canada: current problems, activist strategies and abolitionist visions (2021) Citizenship Studies, online: DOI: [10.1080/13621025.2020.1859194](https://doi.org/10.1080/13621025.2020.1859194).

³³ Immigration Legal Committee “Police Services: Safe Access for All. Legal Arguments for a Complete “Don’t Ask, Don’t Tell” Policy” (May 2008), online: *OttWatch* <ottwatch.ca/meetings/file/433639>.

³⁴ Vancouver Police Department, “VPD Guidelines on Police Requests Related to Immigrant Status”, online: *Vancouver Police Department* <vpd.ca/police/assets/pdf/reports-policies/vpd-guidelines-on-requesting-immigration-status.pdf>.

³⁵ No One is Illegal – Toronto, “Often Asking, Always Telling: The Toronto Police Service and the Sanctuary City Policy” (November 2015), online: *Rabble* <rabble.ca/sites/rabble/files/often_asking_always_telling_-_kredits_dec_1.pdf>.

Recommendation 3.9: The BCCLA recommends that the *Police Act* be amended to explicitly direct the severance of any formal cooperation agreements between all police departments in BC and federal immigration enforcement agencies.

6. Decriminalization of Indigenous Land Defense:

The militarized policing raid on Wet'suwet'en territories in 2020 and the subsequent arrests in urban centers during Indigenous-led Wet'suwet'en Strong solidarity actions are one of the many examples of the ongoing criminalization of Indigenous land defenders. Such policing and enforcement operations act as a tool of continued colonial criminalization and violation of the province's legislation of the *Declaration on the Rights of Indigenous Peoples Act*.

In 2018, the United Nations Special Rapporteur on the Rights of Indigenous Peoples expressed grave concern "at the drastic increase in attacks and acts of violence against, criminalization of and threats aimed at indigenous peoples, particularly those arising in the context of large-scale projects involving extractive industries, agribusiness, infrastructure, hydroelectric dams and logging" around the world.³⁶ The Special Rapporteur further noted "the distinctive characteristics of attacks against and criminalization of indigenous peoples defending their rights under the United Nations Declaration on the Rights of Indigenous Peoples and under human rights treaties, with emphasis on violations occurring in the context of development projects."³⁷

One of the bluntest tools of criminalization against Indigenous land defenders in BC are legal injunctions. As researchers of "Injunctions by First Nations: Results of a National Study" found, it is "more often the case that injunctions are used against First Nations to circumvent their ability to assert Aboriginal rights/title and treaty rights in relation to Crown and corporate development and projects."³⁸

Recommendation 3.10: The BCCLA echoes the recommendation of the National Indigenous Justice Summit that all levels of government must recognize "the sui generis nature of

³⁶ United Nations Special Rapporteur on the Rights of Indigenous Peoples, "Report to Human Right Council – 2018. Attacks against criminalization of indigenous peoples defending their rights" (15 September 2018), online: *UNSR Victoria Tauli-Corpuz* <<http://unsr.vtaulicorpuz.org/?p=2610>>.

³⁷ *Ibid.*

³⁸ Marc Kruse & Carrie Robinson, "Injunctions By First Nations: Results Of A National Study" (14 November 2019), online: *Yellowhead Institute* <yellowheadinstitute.org/2019/11/14/injunctions-by-first-nations-results-of-a-national-study/>.

Indigenous protests relating to the potential of irreversible harm to Indigenous lands and waters in the context of unresolved Aboriginal and Treaty rights claims.”³⁹ We further recommend that the provincial government co-develop, with Indigenous governments, provincial guidelines for the non-enforcement of criminal charges against Indigenous land defenders and nations exercising Indigenous jurisdiction and law.

³⁹ National Indigenous Justice Summit, “Immediate Action Points” (2020), online: *Indigenous Bar Association* <indigenousbar.ca/national-indigenous-justice-summit/>.

Ending Police Street Checks in BC

Recommendation 4.1: The BCCLA recommends an immediate ban on police street checks in BC.

Recommendation 4.2: All historic street check data containing personal information should be purged.

Over 8,993 people⁴⁰ and 92 organizations,⁴¹ are calling for an immediate ban on police street checks.

These 92 organizations include a diverse range of community, environmental, faith, health, labour, legal, LGBTQ, student, and women's organizations including: Amnesty International Canada, Atira Women's Resource Society, Battered Women's Support Services, BC Association of Aboriginal Friendship Centres, BC Centre on Substance Use, BC Civil Liberties Association, BC Community Alliance, BC Federation of Labour, BC First Nations Justice Council, BC Government and Service Employees' Union, BC Health Coalition, BC Poverty Reduction Coalition, Black Lives Matter-Vancouver, British Columbia Federation of Students, Canadian Association of Elizabeth Fry Societies, Canadian HIV/AIDS Legal Network, Carnegie Community Action Project, Disability Alliance BC, Downtown Eastside Women's Centre, Federation of Asian Canadian Lawyers, Ending Violence Association of BC, First United Church Community Ministry Society, Graduate Student Society at SFU, Hogan's Alley Society, Hua Foundation, PACE Society, Pacific Association of First Nations Women, Pivot Legal Society, QMUNITY: BC's Queer Resource Centre, RainCity Housing, Rise Women's Legal Centre, Sex Workers United Against Violence Society, Sierra Club BC, South Asian Mental Health Alliance, WAVAW Rape Crisis Centre, West Coast Environmental Law Association, WISH Drop-In Centre Society, Union of BC Indian Chiefs, and YWCA Metro Vancouver.

⁴⁰ BC Civil Liberties Association (BCCLA), "Petition: Ban Police Street Checks" (2021), online: *BC Civil Liberties Association* <act.bccla.org/banstreetchecks>.

⁴¹ Letter from the BCCLA to Mayor Kenney Stewart, Chair of Vancouver Police Board, Premier John Horgan, Mike Farnsworth, Ministry of Public Safety and Solicitor General, and Brenda Butterworth-Carr, Director of Police Services, calling for an Immediate Municipal and Provincial Ban on Police Street Checks (17 September 2020), online: *BC Civil Liberties Association* <bccla.org/wp-content/uploads/2020/09/Open-Letter-Ban-on-Street-Checks-September-2020.pdf>.

Vancouver City Council and Victoria City Council have also unanimously passed City Council motions calling on the Vancouver and Victoria/ Esquimalt Police Boards, respectively, to prioritize ending street checks.

1. What Is a Street Check?

A police street check is a discretionary police practice where police stop a person in public on the street, question them outside the context of an arrest or detention or police investigation, and often record their personal information in a database. Street checks are interchangeably referred to as carding or police stops. A street check can include recording of personal information upon observation of someone by the police, without any face-to-face contact between the person and officer.

Street checks also take the form of wellness checks. Police wellness checks disproportionately affect homeless people, sex workers, people who use drugs, and people in mental health distress. Police officers in full uniform and carrying a gun often conduct wellness checks, thus introducing a hierarchy of authority and threat of force. Such checks are an inappropriate means of providing care for people living in poverty and/or vulnerable circumstances due to gendered, colonial, and racial violence. In “Red Women Rising: Indigenous Women Survivors in the Downtown Eastside,” Indigenous women recount the experience of street checks, including wellness checks, along a continuum of police harassment and violence.⁴² The WISH Mobile Access Project (MAP) Van receives regular reports of police presence on strolls, and frequent stops and checks by police.⁴³

Even if someone is theoretically free to leave during a wellness check or street check (the police characterize street checks as “voluntary”), this is impracticable. Due to the inherent power imbalance between a police officer and a member of the public, people frequently believe they have no choice but to obey the police—especially when the person stopped is vulnerable, relies on public space to live, is Indigenous, Black, racialized, or has experienced state violence.

Indigenous and Black people are targeted by police street checks in BC. According to Chief Don Tom, Vice President of the Union of BC Indian Chiefs, “Indigenous people continue to

⁴² Carol Muree Martin & Harsha Walia, “Red Women Rising: Indigenous Women Survivors in the Downtown Eastside” (2019), online: *Downtown Eastside Women’s Center* <dewc.ca/wp-content/uploads/2019/03/MMIW-Report-Final-March-10-WEB.pdf>.

⁴³ “More than 70 organizations sign open letter calling for ban on police street checks in BC”, *CBC News* (8 July 2020), online: <www.cbc.ca/news/canada/british-columbia/street-check-open-letter-1.5640836>.

experience institutionalized discrimination in the justice system and a disproportionately high level of interaction with police, which is furthered by the practice of street checks. In an era of reconciliation, this is simply unacceptable.”⁴⁴ Lama Mugabo, Director of Hogan’s Alley Society, similarly states: “The issue of police street checks is fundamentally connected to anti-Black racism and police violence.”⁴⁵

Data from Abbotsford, Central Saanich, Nelson, New Westminster, Oak Bay, Port Moody, Saanich, Vancouver, and West Vancouver police departments reveal a decade of street checks targeting Indigenous, Black and racialized communities, with Indigenous women particularly over-represented in all departments’ data.⁴⁶ In West Vancouver in 2018, for example, Indigenous women represented 17.6 percent of street checked women, despite making up 0.6 percent of the population there. As Amnesty International states, “Bias and stereotyping play into the officers’ decisions of who to stop and why.”⁴⁷

2. Street Checks Have No Basis in Law

Several policing departments in BC vaguely assert that police have the “legal authority” to conduct street checks. It is our submission that this is incorrect.

We submit that street checks unjustifiably interfere with a person’s liberty interest. The Province of BC’s interim British Columbia Provincial Policing Standards define police stops as “any interaction between a police officer and a person that is more than a casual conversation and which impedes the person’s movement.”⁴⁸ Since the Province of BC defines a street check as impeding a person’s movement, street checks interfere with the *Charter* right to individual liberty.

⁴⁴ BCCLA, News Release, “Civil Liberties and Human Rights Complainants Oppose VPD Street Check Recommendations; Disagree with Key Findings of Street Check Review” (18 February 2020), online: <bccla.org/news/2020/02/civil-liberties-and-human-rights-complainants-oppose-vpd-street-check-recommendations-disagree-with-key-findings-of-street-check-review/>.

⁴⁵ BCCLA, News Release, “Organizations Call on Mayor Kennedy Stewart to Implement Immediate Ban on Racist Police Street Checks in Vancouver” (11 June 2020), online: <bccla.org/news/2020/06/organizations-call-on-mayor-kennedy-stewart-to-implement-immediate-ban-on-racist-police-street-checks-in-vancouver/>.

⁴⁶ Stephen Harrison, “B.C. police departments disproportionately street check Indigenous and Black people” (16 December 2019), online (blog): *Need More Spikes* <www.needsmorespikes.com/blog/bc-street-checks/>.

⁴⁷ Amnesty International, “Carding and anti-Black racism in Canada” (23 August 2019), online: *Amnesty International* <www.amnesty.ca/blog/carding-and-anti-black-racism-canada>.

⁴⁸ British Columbia, Ministry of the Attorney General, *BC Provincial Policing Standards 6.2 Police Stops: Foreword* (15 January 2020), online: <www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/police/standards/6-2-foreword-police-stops.pdf>.

People in Canada have the right to move freely without fear of unjustified state intervention. Section 9 of the *Canadian Charter of Rights and Freedoms* states “Everyone has the right not to be arbitrarily detained or imprisoned.” Where police conduct interferes with individual liberty, law must authorize the conduct.⁴⁹ The police are legally authorized to stop people for the purposes of effecting an investigative detention and/or an arrest, or to identify the driver of a vehicle. However, there is no law that allows police to conduct a street check, which is a police practice outside of an investigation detention, arrest or *Motor Vehicle Act* stop.

There are two main legal sources for police powers in Canada: i) statutes and ii) the common law (determined by the courts).

There is no applicable provincial or federal statute authorizing street checks for any police force in BC. The *Police Act* includes a broad list of police duties such as maintaining law and order and preventing crime.⁵⁰ However, it does not explicitly authorize information-gathering practices like street checks. There is also no applicable regulation governing this police practice.

Street checks are also not authorized at common law. The three common law police duties are “preserving the peace, preventing crime, and protecting life and property.” Police actions that interfere with individual liberty are permitted at common law *if* the police can prove that they are ancillary to the fulfillment of recognized police duties. Importantly, the ancillary powers doctrine does not give police *carte blanche* to do whatever they think is necessary to fulfill their duties.

The Supreme Court of Canada has consistently interpreted these common law policing powers with a strict test set out in *R v. Waterfield*,⁵¹ and with the onus always resting on the state.⁵²

In a case where the Ontario police arrested someone who was acting lawfully in order to prevent an apprehended breach of the peace by others, the Supreme Court of Canada found

⁴⁹ *R v Simpson*, 1993 CanLII 3379 (ON CA)

⁵⁰ Section 34(2) of the *Police Act* [RSBC] c. 367, states, “The municipal police department, under the chief constable's direction, must perform the duties and functions respecting the preservation of peace, the prevention of crime and offences against the law and the administration of justice assigned to it or generally to peace officers by the chief constable, under the director's standards or under this Act or any other enactment.

⁵¹ *R v. Waterfield*, [1963] 3 A11 E.R. 659.

⁵² *Dedman v The Queen*, [1985] 2 S.C.R.; ; *Cloutier v Langlois*, [1990] 1 S.C.R. 158; *R v Godoy*, [1990] 1 S.C.R. 311; *R v Mann*, 2004 SCC 52; *R v Kang-Brown*, 2008 SCC 18; *R v MacDonald*, 2014 SCC 3; and *R v Fleming*, 2019 SCC 45.

“[a] drastic power such as this that involves substantial interference with the liberty of law-abiding individuals would not be reasonably necessary for the fulfillment of the police duties of preserving the peace, preventing crime, and protecting life and property.”⁵³ The Supreme Court of Canada further stated: “[a]n intrusion of liberty should be a measure of last resort. To conclude otherwise would be generally to sanction actions that infringe the freedom of individuals significantly as long as they are effective. That is a recipe for a police state not a free and democratic society.”⁵⁴

In another case, the Supreme Court of Canada found an interaction involving, in essence, a street check, constituted arbitrary psychological detention. The Court held “detention exists in situations where a reasonable person in the accused’s shoes would feel obligated to comply with a police direction or demand and that they are not free to leave. Most citizens, after all, will not precisely know the limits of police authority and may, depending on the circumstances, perceive even a routine interaction with the police as demanding a sense of obligation to comply with every request.”⁵⁵ The Court also judicially recognized that racial context was an important part of determining whether a reasonable person would believe they had no choice but to comply with a police demand for information. The power imbalance between the police and the public, particularly in the context of racialized communities, warrants the understanding that voluntariness does not exist for many people. Psychological detention occurs where an individual or a reasonable person would conclude that they had no choice but to comply with a police officer.

An independent legal opinion on street checks commissioned by the Nova Scotia Human Rights Commission found that a police power to record street checks is not reasonably necessary for the fulfillment of the relevant common law police duties. The legal opinion by Michael J. MacDonald and Jennifer Taylor concluded: “the common law does not empower the police to conduct street checks, because they are not reasonably necessary. They are therefore illegal.”⁵⁶

We respectfully submit that it seems that the Province is well aware that street checks are a form of detention not authorized by law. The Province, instead, justifies this practice by claiming that it is “voluntary”. Section 9 of the British Columbia Provincial Policing Standards recognizes that street checks are supposed to be voluntary because there is no lawful

⁵³ *R v Fleming*, 2019 SCC 45 (“*Fleming*”) at para 7.

⁵⁴ *Ibid* at para 98.

⁵⁵ *R. v. Le*, 2019 SCC 34 at para 26.

⁵⁶ Michael J. MacDonald & Jennifer Taylor, “Nova Scotia Street Checks Report” (15 October 2019), online: *Halifax: NS Human Rights Commission*, 2019, <humanrights.novascotia.ca/sites/default/files/editor-uploads/independent_legal_opinion_on_street_checks.pdf>.

authority to effect them: “Written policy establishes that police interactions with a person where there is no lawful authority to detain or arrest the person are voluntary (emphasis added).”⁵⁷ However, slapping ‘voluntary’ on a street check policy does not change the fact that it is experienced as intimidating, threatening, and a form of detention.

Limiting police interactions with the public is necessary to maintain a free and democratic society. Moreover, it is in the best interests of the public to have certainty when it comes to police initiated interactions. There is no acceptable reason for armed officers to stop members of the public without the lawful authority to do so.

3. Inadequacy of Provincial Standards on Police Stops

In 2020, the Province of BC adopted interim “Standards on Police Stops.”⁵⁸ While these new policing standards inform the police practice of police stops and street checks, they do not impose a positive duty on police officers to tell a person being street checked that they do not have to provide their personal information. Importantly, the standards do not prohibit street checks.

We submit that the new provincial policing standards normalize the practice of street checks, despite there being no legal basis to do so. Regulating an otherwise illegal and racist practice through a policy is still harmful. Therefore, we recommend that the Province of BC completely end the practice of police street checks.

4. Fundamental Failures of Police Board Governance over Street Checks in Vancouver

Below we detail BCCLA's 3-year long experience attempting to work through the existing system of police accountability and police complaint mechanisms on the issue of street checks. We submit that this example is a crucial window into the utter failure of the Vancouver Police Board and the Province of BC in tackling and adequately resolving the pressing issue of racial discrimination against Black and Indigenous people in police street checks. It also reveals the systemic failures of the police complaints process, and police governance and oversight bodies. It bears emphasizing that if the BCCLA has faced these

⁵⁷ British Columbia, Ministry of the Attorney General, *BC Provincial Policing Standards 6.2 Police Stops* (15 January 2020), online: <www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/police/standards/6-2-foreword-police-stops.pdf>.

⁵⁸ *Ibid.*

kinds of hurdles, then the Special Committee must consider what the experience of the average person dealing with these systems would be.

a) Making a Policy Complaint

On May 24, 2018, the Vancouver Police Department (VPD) released data on street checks from 2008 to 2017 based on a Freedom of Information request. According to the data, 15 percent of all street checks conducted were of Indigenous people, despite representing approximately 2 percent of the population of Vancouver. Furthermore, over 4 percent of street checks conducted were of Black people, despite representing less than 1 percent of the population.

The data strongly suggested that street checks are conducted in a racist and discriminatory manner, contrary to the Charter of Rights and Freedoms and B.C.'s Human Rights Code. In June 2014, the BCCLA and Union of BC Indian Chiefs (UBCIC) launched a joint Policy Complaint with the Office of the Police Complaint Commissioner based on the VPD data.⁵⁹ The BCCLA and UBCIC complaint called for an immediate investigation of the significant racial disparity revealed in the VPD's practice of street checks. The complaint also called for the Vancouver Police Board to initiate an independent study that would analyze the released VPD street check data, the efficacy of street checks as a policing tool, the impact of street checks on Indigenous, Black and racialized people, as well as policy development on the collection of personal information resulting from police checks.

Elaine Durocher, Métis grandmother and board member of Downtown Eastside Women's Center, spoke in support of BCCLA and UBCIC's Policy Complaint. She said, "We experience the racist practice of VPD street checks every day in the Downtown Eastside. As Indigenous people and people of colour living in poverty, we are routinely stopped by the police on every block – from our home, to the food lineup, to our volunteer work – for no reason other than to question and intimidate us. For Indigenous women surviving colonial gendered violence, which is the subject of the national inquiry currently underway, street checks are yet one more way that we are over-policed and under-protected on our own lands."⁶⁰

⁵⁹ Letter from the BCCLA and the Union of British Columbia Indian Chiefs (UBCIC) to the Office of the Police Complaints Commissioner re: Policy Complaint Concerning Street Checks by the Vancouver Police Department (14 June 2018), online: *BC Civil Liberties Association* <bccla.org/wp-content/uploads/2018/06/UBCIC-BCCLA-OPCC-Complaint-re-Street-Checks-Jun-14-2018-Approved-1.pdf; <https://bccla.org/wp-content/uploads/2018/07/2018-07-12-OPCC-Complaint-Amendment.pdf>>.

⁶⁰ BCCLA, News Release, "Civil liberties and First Nations groups launch complaint on discriminatory police stops; call for investigation" (14 June 2018), online: <bccla.org/news/2018/06/release-civil-liberties-and-first-nations-groups-launch-complaint-on-discriminatory-police-stops-call-for-investigation/>.

b) Advocating Against Police Self-Investigation

In July 2018, the Vancouver Police Board informed the BCCLA and UBCIC that the VPD would be conducting the investigation into the Complaint and that “the Department investigates all Service and Policy complaints.” The VPD brought forward their report “Understanding Street Checks” which contained 6 recommendations approved by the Vancouver Police Board.

The BCCLA and UBCIC wrote to the Vancouver Police Board explaining why, in our view, VPD self-investigation in relation to street checks is problematic: “[W]e are highly troubled by the lack of independence, and the lack of the appearance of independence, of the VPD’s investigation and reporting on its own practices in this case. Given the public interest in a review of this matter that appears independent and is independent in fact, it is clear to us that the VPD must not be the only body to conduct an investigation in relation to this Complaint.”⁶¹

c) Challenging an External Review Run by Former Police Officer

The Vancouver Police Board hired Pyxis Consulting, run by a former Edmonton police superintendent, to conduct an external review of police street checks in Vancouver. The Pyxis-authored Vancouver Police Board Street Check Review was released to the public in February 2020. The Vancouver Police Board accepted the findings of the Report, which concluded, “the available data and information could neither confirm nor deny police racism.”⁶²

The report assumed and concluded that street checks are valuable and non-discriminatory, despite the lack of any evidence in the review to support the claim. The review itself provided clear evidence that police are arbitrarily stopping people without lawful authority, including people who were “walking in the rain,” “walking a dog on a church lawn,” “standing on a street corner,” or simply “a clean couple in a poor hotel.”⁶³ The report also referenced the use of police street checks to document and collect information about the whereabouts of individuals “known” to police outside of an active investigation. This is not a legally

⁶¹ Letter from the BCCLA to Mayor Greg Robertson, Chair Vancouver Police Board re: Methodology of investigation of Service or Policy Complaint (17 July 2018), online: *BC Civil Liberties Association* <bccla.org/wp-content/uploads/2018/07/2018-07-17-UBCIC-BCCLA-Letter-to-Van-Police-Board-re-methodology-Street-Checks.pdf>.

⁶² Ruth Montgomery et al, “Vancouver Police Board Street Check Review” (17 December 2019), online: *BC Civil Liberties Association* <bccla.org/wp-content/uploads/2020/02/VPD-Street-Checks-Final-Report-17-Dec-2019.pdf>.

⁶³ *Ibid.*

justifiable reason to stop and question an individual and collect or record their personal information. It also suggests that over-policing and pretext policing are occurring. The BCCLA, UBCIC, and Black Lives Matter-Vancouver issued a statement expressing concerns with four key components of the Pyxis-authored Street Check Review Report.⁶⁴

In January 2020, the Vancouver Police Board concluded BCCLA's and UBCIC's policy complaint, citing recommendations from the Pyxis-authored Street Check Review Report and the new VPD street check policy. The BCCLA and UBCIC asserted that there were serious problems with both the Pyxis Report and the new VPD street check policy, and asked the Office of the Police Complaints Commissioner to review the Vancouver Police Board's decision. We argued that the Vancouver Police Board relied on the Pyxis-authored Vancouver Police Board Street Check Review Report's recommendations, VPD's implementation of a purportedly provincially compliant street check policy, and its continued oversight function to monitor the annual audit of street check data as reasons for concluding the complaint. We argued that these actions were insufficient and did not get at the core of our original Policy Complaint.

d) Revelations of Disturbing VPD Conduct during Street Checks Review

The BCCLA and UBCIC received two shocking letters from Police Complaint Commissioner Clayton Pecknold.

In June 2020, Commissioner Pecknold revealed a Vancouver Police Professional Standards (VPD-PSS) investigation was ordered on December 19, 2019 into disturbing and inappropriate conduct and comments about racialized and vulnerable people from two Vancouver police officers witnessed by Pyxis contractors while conducting research for the Vancouver Police Board Street Check Review.⁶⁵ Pyxis researchers stated that during two separate VPD ride-alongs, one officer made a number of "inappropriate, racially insensitive comments" and another made "inappropriate comments about vulnerable and marginalized people, had anger issues, and was overly terse and extremely rude to a member of the public." One of the Pyxis researchers self-identified as a member of a racialized community. The Commissioner asserted that if the conduct was substantiated, it would constitute misconduct.

⁶⁴ BCCLA, News Release, "Civil Liberties and Human Rights Complainants Oppose VPD Street Check Recommendations; Disagree with Key Findings of Street Check Review" (18 February 2020), online: bccla.org/news/2020/02/civil-liberties-and-human-rights-complainants-oppose-vpd-street-check-recommendations-disagree-with-key-findings-of-street-check-review/.

⁶⁵ Letter from the Office of the Police Complaint Commissioner to UBCIC and the BCCLA re: VPD Service or Policy Complaint (5 June 2020), online: *BC Civil Liberties Association* <[https://bccla.org/wp-content/uploads/2020/06/2020-06-05-PCC-Letter-to-UBCIC-BCCLA .pdf](https://bccla.org/wp-content/uploads/2020/06/2020-06-05-PCC-Letter-to-UBCIC-BCCLA.pdf)>.

Even more shocking, these allegations were included in a draft of the Pyxis-authored Vancouver Police Board Street Check Review, but were missing from the final public report; the report that the Vancouver Police Board had accepted. It was deeply troubling to us that this extremely relevant section — detailing racist and inappropriate comments by VPD officers even as they were under observation — had been removed. The deleted paragraph was directly relevant to the Pyxis Street Check Review Report and were at the very core of the concerns in BCCLA and UBCIC’s Policy Complaint.

In July 2020, Commissioner Pecknold issued a follow-up letter outlining the conclusion of the investigation.⁶⁶ VPD-PSS interviewed VPD officers and Police Board members and attempted to interview eight Pyxis researchers. All Pyxis researchers declined to be interviewed or provide documentation in relation to the investigation and claimed that all field notes had been destroyed. As a result, a Notice of Discontinuance was issued since the investigator was unable to identify the two VPD officers. It was unbelievable to us that two VPD officers, who were part of two out of twelve VPD ride-along excursions as part of a formal street check review, could not be identified.

The BCCLA and UBCIC wrote to the Vancouver Police Board requesting further information regarding the deletion of this information from the final report and the disclosure of any field notes or other ancillary materials prepared by Pyxis for the Vancouver Police Board.⁶⁷

e) Shocking Revelations of VPD Interference in External Review of Street Checks

In November 2020, we found out—through media reports and not the Vancouver Police Board—how the relevant paragraph came to be censored from the final report of the Pyxis-authored Vancouver Police Board Street Check Review. The Vancouver Sun reported that the Vancouver Police Board Street Checks Review Committee had decided to release an interim draft of the report to the VPD.⁶⁸ Deputy Chief Howard Chow then had “lengthy discussions” with a Pyxis researcher about the section in question, and Chow then speaking to the Vancouver Police Board Street Checks Review Committee about the “variety of

⁶⁶ Letter from the Office of the Police Complaint Commissioner to the UBCIC and the BCCLA re: VPD Service or Policy Complaint (30 July 2020), online: *BC Civil Liberties Association* <bccla.org/wp-content/uploads/2020/08/2020-07-30-follow-up-letter-UBCIC.pdf>.

⁶⁷ Letter from the UBCIC and the BCCLA to the Vancouver Police Board re: Street Checks VPD Service or Policy Complaint (24 June 2020), online: *BC Civil Liberties Association* <bccla.org/wp-content/uploads/2020/06/BCCLA-UBCIC-letter-to-Vancouver-Police-Board-Requesting-Information-June-24-2020.pdf>.

⁶⁸ Dan Fumano, “Exclusive: Internal police board emails raise questions about review of VPD street checks”, *The Vancouver Sun* (20 November 2020), online: <vancouversun.com/news/local-news/exclusive-internal-police-board-emails-raise-questions-about-review-of-vpd-street-checks>.

reasons” for the removal of the paragraph. This section was subsequently removed from the final public report, and the Vancouver Police Board subcommittee was informed of the significant erasure.

The substance of the deleted paragraph, the involvement of at least one senior VPD officer in discussions regarding editing out a paragraph relating to officers’ inappropriate and racially insensitive comments, as well as the discrepancy in the draft and final report versions all raised alarming concerns about the objectivity, methodology, and findings of the Pyxis-authored Vancouver Police Board Street Check Review.

f) Provincial ‘Review of the Review’

In December 2020, the provincial Director of Police Services appointed David Loukidelis, BC’s former Privacy Commissioner, to conduct a review under section 42 of the *Police Act*.⁶⁹ The review is investigating the Vancouver Police Board’s response to BCCLA and UBCIC’s service and policy complaint, the Vancouver Police Board’s role in service and policy complaints generally, and the Vancouver Police Board Board’s level of independence from the VPD. The review will also make recommendations to improve the Vancouver Police Board’s governance capabilities. The Director of Police Services also initiated a second study pursuant to s. 42 of the *Police Act* to conduct an analysis of the processes employed by the Vancouver Police Board to conduct the Street Checks Review, including the selection and retention of the contractor. These investigations are currently underway.

In February 2021, the BCCLA and UBCIC again wrote to the Vancouver Police Board. We highlighted the public trust at stake in light of the information about the deleted paragraph that contained information that is directly relevant to the nature of the street check review. We called on the Vancouver Police Board to: review its prior decision to accept the findings of the Pyxis-authored Vancouver Police Board Street Checks Review report, and to re-assess its decision to conclude our street checks Policy Complaint.⁷⁰ We also raised serious concerns about the Vancouver Police Board’s governance capabilities and the lack of independence from the VPD. It is our view that the actions of the Vancouver Police Board violated their obligation to provide impartial civilian oversight of the Vancouver Police Department and to govern with independence, integrity, and be accountable to the community.

⁶⁹ Mike Howell, “Former B.C. privacy commissioner to lead review of police ‘street check’ study”, *Vancouver is Awesome* (17 December 2020), online: <www.vancouverisawesome.com/vancouver-news/former-bc-privacy-commissioner-to-lead-review-of-police-street-check-study-3192885>.

⁷⁰ Letter from UBCIC and BCCLA to the Vancouver Police Board re: VPD Service or Policy Complaint (12 February 2021), online: *BC Civil Liberties Association* <bccla.org/wp-content/uploads/2021/02/Vancouver-Police-Board-re-Pyxis-Report-and-Complaint-Closure.pdf>.

Addressing Massive Gaps in Surveillance Technologies & Privacy Protections

Police agencies must be transparent with the public and with privacy commissioners about their use of technologies, including those that utilize algorithmic decision-making. This is crucial for oversight and accountability purposes and to support a healthy democracy.

A current deficiency of the *Police Act* (and provincial privacy legislation) is the gap in binding rules to govern law enforcement use of equipment and software that has the capacity to compromise our fundamental rights and freedoms. Aside from the Director's standards for video surveillance recording in police building and body worn cameras – which are not binding on individual police officers – there is a vacuum in provincial law to protect people's human rights in BC.

For example, we know that the RCMP in BC and the Vancouver Police Department use drones, but there are no provincial rules to clarify to the public why the drones were procured, how they are used by police, or what recourse individuals have if police drones have collected information about them.⁷¹

In February 2021, four privacy commissioners – including British Columbia's – released an unequivocal report on the illegal practices of Clearview AI and how 48 law enforcement agencies ran thousands of searches using Clearview AI's facial recognition software database.⁷² In April 2021, the Vancouver Police Department disclosed to their board – pursuant to a policy complaint – that an officer had used the facial recognition technology despite no formal approval or policy having been made about the technology.⁷³ This recent

⁷¹ Rafferty Baker, "Thermal-imaging drone footage of police response to shooting at homeless camp raises privacy concerns" *CBC News* (20 October 2020), online: <www.cbc.ca/news/canada/british-columbia/vancouver-police-thermal-imaging-drone-oppenheimer-park-shooting-1.5768875>.

⁷² Canada, "Joint investigation of Clearview AI, Inc. by the Office of the Privacy Commissioner of Canada (2 February 2021), online: *Office of the Privacy Commissioner of Canada* <www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2021/pipeda-2021-001/>.

⁷³ *Service or Policy Complaint #2021-001 Response to Facial Recognition Report* (Vancouver: Vancouver Police Department, 2021), online: *Vancouver Police Board*

controversy highlights the rapidly expanding terrain of policing technologies with no regulation or oversight and with significant Charter, privacy, and constitutional implications.

The illegal use of Clearview AI by law enforcement agencies across the country also highlights the dangerous and growing tension between consent-based privacy rights for individuals, and existing and emerging mechanisms for governments to surreptitiously gather information about citizens from private third parties, such as social media behemoths like Facebook.⁷⁴

The use of these tools by law enforcement has implications for important human rights such as the fundamental *Charter* freedoms of association, expression, and peaceful assembly. The government must impose strict requirements to ensure that law enforcement agencies consider and protect constitutional rights and freedoms prior to procuring or using any kind of surveillance technology, including algorithmic technology. We therefore urge this committee to make the following clear recommendations to reform policing and privacy laws to bring BC legislation in line with domestic and international human rights law:

Recommendation 5.1: The BCCLA recommends the immediate implementation of select recommendations from “To Surveil and Predict A Human Rights Analysis of Algorithmic Policing in Canada” to

- Make reliability, necessity, and proportionality prerequisite conditions for the use of algorithmic policing technologies, and moratoriums should be placed on every algorithmic policing technology that does not meet these established prerequisites.⁷⁵
- Expressly regulate the retention and destruction of biometric data by law enforcement authorities⁷⁶
- Require law enforcement bodies to obtain prior judicial authorization in order to deploy algorithmic surveillance technology at public gatherings and in online environments.⁷⁷

vancouverpoliceboard.ca/police/policeboard/agenda/2021/0415/SP-5-2-2104C03-SP-Complaint-Facial-Recognition.pdf.

⁷⁴ Bryan Carney, “RCMP Confirms It Bought a Tool that ‘Unlocks’ Hidden Facebook Friends, *The Tyee* (23 November 2020), online <thetyee.ca/News/2020/11/23/RCMP-Confirms-Tool-Unlocks-Hidden-Facebook-Friends/>.

⁷⁵ Kate Robertson, Cynthia Khoo & Yolanda Song, “To Surveil and Protect: A Human Rights Analysis of Algorithmic Policing in Canada” (University of Toronto: 2020), at 154, online: *Citizen Lab* <citizenlab.ca/wp-content/uploads/2020/09/To-Surveil-and-Predict.pdf>.

⁷⁶ *Ibid* at 155.

⁷⁷ *Ibid* at 157.

- Place moratoriums on law enforcement agencies' use of technology that relies on algorithmic processing of historic, mass police data sets, pending comprehensive review.⁷⁸
- Establish a blanket prohibition against relying on algorithmic predictions to justify interference with individual liberty.⁷⁹

Recommendation 5.2: Enhance democratic oversight by imposing strict preconditions on the use of privacy-invasive technology (including privacy impact assessments, public consultation, and approval by an oversight body).

- Require law enforcement agencies to prepare Privacy Impact Assessments about any proposed use of technology that could impact privacy in BC. Require such public bodies to consult with the Office of the Information and Privacy Commissioner in preparing the Privacy Impact assessments. Make the privacy impact assessment publicly available (e.g. publish it online at the very least).
- Prohibit municipal police agencies from procuring or using any such technology until: (a) there has been a public consultation period and the public has access to the privacy impact assessment, (b) the police board has reviewed and considered public input, and (c) the police board has approved the use of the proposed technology, but only in accordance with applicable BC law.
 - There is no equivalent civilian oversight body like a police board that applies to the RCMP in the province, so we propose the same model as above but with BC's Director of Police Services substituting for the role of the police board.

Recommendation 5.3: The BCCLA recommends a strict prohibition on private entities from disclosing any personal information that they have collected from individuals to law enforcement bodies unless:

- (iv) exigent circumstances exist,
- (v) the individual about whom the information is about has clearly consented to the private entity sharing the information with law enforcement. As a safeguard, the request for consent from the individual must be in plain language to best ensure they understand the agreement.
- (vi) judicial authorization has been granted to law enforcement to collect the personal information about an individual from the third-party company (and vice versa).

⁷⁸ *Ibid* at 159.

⁷⁹ *Ibid* at 161.

Recommendation 5.4: The BCCLA recommends the immediate suspension of any existing data-sharing arrangements between law enforcement bodies and third parties for which there has been no privacy analysis, public scrutiny or consultation, nor any democratic oversight. For example, Barwatch and Restaurant Watch programs are operational in BC and yet the agreements between the police and private operators are secret, raising fundamental questions of democratic oversight and undermining fundamental rights and freedoms.

Recommendation 5.5: The BCCLA recommends strengthening the standards that apply to body worn cameras. The BCCLA does not support the use of body worn cameras for police due to their privacy-invasive nature and the lack of evidence that they prevent harms in policing.⁸⁰ We recommend that the current standards that apply to body worn cameras⁸¹ be strengthened and that any policing agency already deploying them should suspend their use until they have undertaken the measures outlined directly above (i.e. Privacy Impact Assessment, public consultation and Police board/Director of Police Services approval). The current standards lack the following safeguards that we recommend:

- Requiring that cameras be deactivated upon request from victims and from residents during warrantless searches.
- Cameras must not be used for political spying (e.g., recording of protests).
- Officers must not be allowed to review footage before submitting written notes.
- Clear disciplinary measures must be in place for any officer violating the rules for body worn cameras.
- Body worn cameras must not be used in conjunction with any form of facial recognition technology.
- Prohibit policing agencies from maintaining control over recordings collected by body worn cameras. An impartial and civilian third party (e.g. police oversight body, BC Human Rights Commissioner) must be the gatekeeper and ensure it is only accessed, used, and destroyed in accordance with the law.
- Maintain video records for a long enough period of time to address any complaints arising from the content of the video.

⁸⁰ Amanda Ripley, "A Big Test of Police Body Cameras Defies Expectations," New York Times, October 20, 2017, online: <https://www.nytimes.com/2017/10/20/upshot/a-big-test-of-police-body-cameras-defies-expectations.html>

⁸¹ British Columbia, Ministry of the Attorney General, *BC Provincial Policing Standards 4.2.1. Body Worn Cameras* (1 July 2019), online: <www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/police/standards/4-2-1-body-worn-cameras-equipment.pdf>.

Recommendation 5.6: The BCCLA recommends that any police agency already deploying body worn cameras in BC must suspend their use until they have undertaken specific measures (i.e. Privacy Impact Assessment, public consultation and Police board/Director of Police Services approval).

Restricting Police Use of Force

In December 2019 British Columbians, indeed Canadians, were shocked when the Guardian newspaper revealed: commanders of the Royal Canadian Mounted Police argued for “lethal overwatch” and instructed officers to use “use as much violence toward the gate as you want” as part of a militarized raid on the ancestral unceded lands of the Wet’suwet’en nation.⁸² The reality is that most police officers in British Columbia are trained to use force that is intended or likely to cause death, and are authorized by legislation to use violence that ends a life.

The CBC deadly force database reports that from 2000 to June 2020 police use of force killed 555 people in Canada, with a startling 113 people killed in British Columbia, the majority from gunfire. The number of police involved deaths is higher still, as the database does not include “in-custody deaths, self-inflicted wounds as a result of suicide or attempts to evade police, or accidental police-caused deaths (such as a traffic accident).”⁸³ CBC researchers have highlighted disturbing consistent national trends from nearly two decades of data including:

- “The number of cases has continued to rise over the past 20 years, even when corrected for population growth.”
- “Indigenous people form 16 per cent of the deaths but only 4.21 per cent of the population (annualized over 20 years), and Black people form 8.63 per cent of deaths and only 2.92 per cent of the population. In about a quarter of cases, CBC researchers were unable to confirm the race of the person killed, as the information was not available in media reports, official reviews or other sources.”
- “The CBC data found that 68 per cent of people killed in police encounters were suffering with some kind of mental illness, addiction or both.”⁸⁴

It is not possible to paint a comprehensive picture of the breadth of state sanctioned police violence and excessive or unlawful use of force in British Columbia due to inadequate

⁸² Jaskiran Dhillon in Wet’suwet’en territory & Will Parrish, “Exclusive: Canada police prepared to shoot Indigenous activists, documents show”, *The Guardian* (20 December 2019), online: <www.theguardian.com/world/2019/dec/20/canada-indigenous-land-defenders-police-documents>.

⁸³ Inayat Sing, “2020 already a particularly deadly year for people killed in police encounters, CBC research shows”, *CBC News* (23 July 2020), online: <newsinteractives.cbc.ca/fatalpoliceencounters/>.

⁸⁴ *Ibid.*

reporting and lack of publicly available data. The information that is available paints a disturbing picture of widespread use of police violence, weapons, and racism in the unacceptably high rates of police violence experienced by Indigenous and Black persons, and people with mental illness and substance users. Akwasi Owusu-Bempah, a professor at the University of Toronto who studies the role of race in the criminal justice system and in policing, attributes the imbalance to systemic issues. “I think we need to have a conversation about the value of Black and Indigenous life in our country,” Owusu-Bempah said.”⁸⁵

The Independent Investigation Office of British Columbia [the “IIO”] is tasked with investigating police-involved serious harm or death. The IIO reports that in 2019/20 they received 242 notifications of incidents, and started 193 new investigations; a 52 percent increase over the previous year.⁸⁶ The IIO mandate to investigate police use of force is inadequate and severely limited for many reasons, including the definition of what constitutes serious harm.⁸⁷ Incidents of police use of violence in BC far exceed the numbers captured by IIO reporting and investigations. The following sampling of statistics reported by the BC Police Services adds a few more details to the picture and some insight into the breadth and range of types and frequency of weapon use. Unfortunately, the BC Police services data does not indicate the gravity of the injuries, demographics of the victim/subjects, or any analysis of whether the use of the weapon was reasonable or necessary and consistent with provincial standards.

Type of Weapon	Number of People (2019)
Extended range impact weapons (eg. beanbag shotgun)	103 people ⁸⁸
Oleoresin Capsicum Spray (eg. pepper spray)	218 people ⁸⁹
Conducted Energy weapon (eg. tazer)	289 people ⁹⁰
Baton	68 people ⁹¹
Intermediate weapon use total	1037 people ⁹²
Police Dog Bites (civilians subject and non subject)	300 people ⁹³

⁸⁵ *Ibid.*

⁸⁶ https://iio.bc.ca/app/uploads/sites/472/2020/09/IIO-Annual-Report_2019-2020.pdf

⁸⁷ See section below on “Strengthening Police Oversight and Supporting Impacted People”, page 59.

⁸⁸ “Intermediate Weapon Use by Police, 2012-2019” (2020), online: *Government of British Columbia* <www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/police/publications/statistics/bc-police-intermediate-weapon-report.pdf>

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ “Police Service Dogs” (2020), online: *Government of BC* <www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/police/publications/statistics/2019_bcpps_k9_data.pdf>.

These statistics are part of the picture. Yet, for each number there is an individual who has experienced police violence: an individual who is hit with a police baton resulting in deep tissue bruises, stitches, black eyes or broken bones; an individual who cannot breath or see, who may feel their skin burning because of police pepper spray; an individual that has skin, fascia, muscle or tendons torn by a police dog bite.

In 2014, Pivot Legal Society shared the story of Andrew Rowe who reported:

excessive force being used by police service dogs. Rowe lost his left ear and part of his hearing after a police dog attacked his head while he was on the ground. Rowe had already been arrested for shoplifting and maintains that officers released the dog on him on purpose. "I will have these scars and injuries for the rest of my life, and every three to five years I will need surgery just to try and maintain what little hearing I have left," says Rowe, who has recovered from problems with addiction and now operates his own business. "I think everyone deserves a second chance, and if the officers could see who I am now they never would have set that dog on me."⁹⁴

In July of 2017, Dale Culver, a 35-year-old Wet'suwet'en man, was approached by an RCMP officer responding to a call about someone allegedly casing cars in a parking lot. BCCLA understands, based on reports, that the RCMP saw Mr Culver hours after the call had been made, and had no information that he was connected to any suspicious activity when they began to question him. Cell phone footage and photos apparently related to the incident appear to show a large number of officers pinning a subject to the ground. According to the RCMP and the Independent Investigations Office, the officers also used pepper spray on Mr Culver during a struggle before putting him in a police vehicle. According to an RCMP statement, Mr Culver appeared to have trouble breathing. He was apparently taken out of the police car after an ambulance arrived, but he immediately collapsed and was pronounced dead shortly thereafter in a hospital.

Chief Namoks of the Tsayu clan of the Wet'suwet'en, Mr. Culver's home Nation, stated, "Dale Culver should not have died that night. We need to get to the bottom of why he

⁹⁴ "Kevin Hollett, "New report from Pivot Legal Society finds unregulated use of police dogs in B.C. causing serious and unnecessary injury" (June 2014), online (blog): *PIVOT Legal Society* <www.pivotlegal.org/new_report_from_pivot_legal_society_finds_unregulated_use_of_police_dogs_in_b_c_causing_serious_and_unnecessary_injury

wound up dead at the hands of the Prince George RCMP, and of the allegations that officers told witnesses to delete their cell phone video evidence of the incident.”⁹⁵ “There’s no repercussion and not to mention that, but there’s no repercussions for what’s done and what they do. So what’s going to happen to the cops that killed my dad?” a frustrated Lily Speed-Namox asked.⁹⁶ After three years of investigation, the IIO recommended to crown prosecutors in 2020 that two RCMP officers be charged in relation to use of force, and two officer charged with obstruction of justice.⁹⁷

We urge the committee to bravely engage in a foundational paradigm shift in their analysis of state sanctioned police use of force. Refrain from accepting the premise that police discretion to kill, inflict serious harm, and use a wide range of weapons should be ordinary. We need to interrogate the role of the police in our communities, and the legitimacy and toll of a system that permits lethal force and life-altering violence to be inflicted on residents of British Columbia. We must reimagine community safety through a framework that prioritizes human lives, rights, and dignity.

Recommendation 6.1: The BCCLA recommends that the *Police Act*, regulations, and provincial standards be amended to strictly restrict use of lethal force.

1. Language is powerful

The BCCLA calls for the deliberate selection of language when discussing police violence to uphold the humanity and dignity of individuals involved, and to avoid minimizing, dehumanizing, obfuscating and normalizing police violence. Passive language minimizes the very real human cost of violent policing. For example, a “police-involved shooting” or “use of force in a police encounter” is language that obfuscates the deliberately violent acts of police officers on civilian bodies and minimizes who did what to whom. The police shot someone and killed a British Columbian; a person. We must restore the dignity of those police interact with and exercise force upon.

Governments and the criminal legal system frequently use terminology that is incorrectly

⁹⁵ BC Civil Liberties Association, News Release, “Complaint filed against RCMP for alleged evidence destruction and use of force in police-involved death of First Nations man in Prince George” (16 January 2018), online: <<https://bccla.org/news/2018/01/complaint-filed-rcmp-alleged-evidence-destruction-use-force-police-involved-death-first-nations-man-prince-george/>>

⁹⁶ Lee Wilson, “Families of men who died in RCMP custody still searching for answers”, *APTN News*, February 5, 2021, online: <www.aptnnews.ca/investigates/aptn-investigates-death-in-custody-part-1>.

⁹⁷ Lee Wilson, “Families of men who died in RCMP custody still searching for answers” *APTN News* (5 February 2021), online: <www.aptnnews.ca/investigates/aptn-investigates-death-in-custody-part-1>.

passive or neutral when discussing violence. Scholars Wade and Coates discuss the consequences of obscuring violent acts in legislation, noting that inappropriate descriptions of violence result in both the erasure of the harm the victim experienced and their resistance to violence and also the perpetrator responsibility is minimized. Scholars Wade and Coates report that judges who accurately portray the perpetrator as active agents are significantly more likely to order longer sentences.⁹⁸ How an act of police violence or use of force is described serves to alter perceptions of the violent act by reducing the harm attributed to the victim/subject and lessening the responsibility of the perpetrator/police.

Terms such as “police-involved shooting” when combined with terms like “subject known to police” shift focus to the victim/subject as authors of their own demise, rather than focusing on the role of the state sanctioned violence and death. Police killings are not inevitabilities; governments and the public must shift our acceptance of police killing as ordinary and non-controversial.

Recommendation 6.2: The BCCLA recommends that the *Police Act*, regulations, standards, and policies be amended to remove passive language that obscures violent police actions.

2. Documenting and disclosing police use of force

To ensure accountable, transparent, democratic governance of police services in British Columbia, the Province must create a structure of record keeping and comprehensive public reporting on police use of force. The lack of complete and accessible reporting of police violence is a key failing and is unacceptable.

Currently, public information on police use of force is extremely limited and scattered across multiple agencies including the IIO, OPCC, CRCC, reports to municipal police boards, reports by provincial police services, and news stories. The urgent need for a centralized accessible database has been highlighted by Canadian national news media; both CTV and CBC have created useful but incomplete databases of people killed by Canadian police.⁹⁹ CBC stresses the crucial need to “create a picture of who is dying in police encounters” emphasizing the need to understand more than the statistics of weapon use, but to see the

⁹⁸ Coates, L., & Wade, A. (2004). “Telling it like it isn’t: Obscuring perpetrator responsibility for violence,” *Discourse and Society*, 15, 499–526.

⁹⁹ Ryan Flanagan, “What we know about the last 100 people shot and killed by police in Canada”, *CTV News* (19 June 2020), online: <https://www.ctvnews.ca/canada/what-we-know-about-the-last-100-people-shot-and-killed-by-police-in-canada-1.4989794> >

specific individual human cost of police violence.¹⁰⁰ Both CBC and CTV strive to collect information respecting age, gender, ethnicity or race, role of mental illness, role of substance use, location of incident, police service involved, type of violence used, and status of investigation.

The need for disaggregated policing data is crucial for assuring democratic police governance and real accountability measures that respect civil liberties and human rights. This issue is dealt with in depth by British Columbia's Office of the Human Rights Commissioners report "Disaggregated demographic data collection in British Columbia: The grandmother perspective."¹⁰¹ Further, the National Inquiry into Murdered and Missing Indigenous Women and Girls stressed the importance of disaggregated data for Inuit, Métis First Nations, and 2SLGBTQQIA folks:

The 2017 Human Rights Watch submission to the Government of Canada "Police Abuse of Indigenous Women in Saskatchewan and Failures to Protect Indigenous Women from Violence" recommended the collection and public availability of accurate and comprehensive race- and gender-disaggregated data that includes an ethnicity variable on violence against Indigenous women, as well as on use of force, police stops, and searches, with the guidance of Indigenous women leaders and in cooperation with Indigenous community organizations and the National Centre for Missing Persons and Unidentified Remains (NCMPUR). Human Rights Watch's *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada*, made a similar recommendation. [...]

Within the National Inquiry's hearings, we received over 100 recommendations focused on disaggregated data, through the testimony of witnesses in Part 1 of our hearings, who cited the need to collect data, including disaggregated data, as a necessary way to define the true scope and parameters of the

¹⁰⁰ Inayat Singh, "2020 already a particularly deadly year for people killed in police encounters, CBC research shows", *CBC News* (23 July 2020), online: <newsinteractives.cbc.ca/fatalpoliceencounters/>.

¹⁰¹ *Disaggregated demographic data collection in British Columbia: The grandmother perspective*, (BC: Office of the Human Rights Commissioner, 2020), online: <bchumanrights.ca/wp-content/uploads/BCOHRC_Sept2020_Disaggregated-Data-Report_FINAL.pdf>.

crisis, as well as to understand the distinguishing issues between groups and distinct geographical needs and experiences.

The aggregation of data can oversimplify the picture and flatten necessary dimensions of analysis. Collectively, witnesses cited how appropriate data collection and dissemination has to be informed by Indigenous knowledge, definitions, and experiences, within a distinctions-based approach.¹⁰²

Recommendation 6.3: The BCCLA recommends that the Province, in consultation with Indigenous nations and vulnerable communities, overhaul existing police structures to create comprehensive public reporting on police use of force in British Columbia.

Recommendation 6.4: The BCCLA recommends that public reporting on use of force must prioritize clear accessible language that upholds the human dignity of individuals involved. At a minimum, this must include disaggregated data (race, ethnicity, gender identity, age, location etc.), type of force or weapon used, if the individual was killed or seriously harmed, police service involved, and if investigated by an oversight body.

3. Restrict the use and accessibility of weapons

As discussed in detail in the section on community safety, British Columbia needs to move away from an understanding of public safety that privileges a discretionary police use of force model to a holistic community based safety model. The province must urgently act to disrupt systemic racism in the police by addressing the normalization of state sanctioned police violence against Indigenous, Black, and racialized communities. In this new reimagined model, the province needs to ensure that all services uphold humanity, dignity, and the lives of all of those they encounter. Use of police violence, including restraints and weapons, needs to be restricted and strictly controlled.

The BCCLA is calling for a fundamental shift in the delivery of policing in this province. Therefore, our submissions will not engage with details of weapon classification in a system that must change. Rather, the BCCLA is calling for the government, in conversation with Indigenous nations and the public, to re-examine the foundational principles that allows police use of force, including weapons. This work must pay particular attention to the lived

¹⁰² *The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, vol 1 (Ottawa: 2019), at 529 & 531, online: <<https://www.mmiwg-ffada.ca/final-report/>>.

experience of police violence and the expertise of specific communities including Indigenous, Black and immigrant communities, and drug users and sex workers etc.

We have selected a few examples to highlight the need for re-examination of police use of weapons and restraint techniques employed by the police. In a 2014, Pivot Legal Society highlighted the very human toll and health consequences of using police dogs as weapons. “Unlike other police impact weapons such as fists and batons, police dogs are unique in their tendency to inflict devastating and permanent injury,” says Douglas King, lawyer and author of the report. “We should not be viewing them as friendly ambassadors of policing, but as potentially deadly weapons.”¹⁰³ Pivot questioned the deployment of canine units, the discretion in use of dogs as weapons, and the failure of police forces to document and report police dogs bites.

Turning to the continued use of teargas, the BCCLA points to over two decades of international human rights advocacy urging states to restrict or eliminate its use. This includes the 1997 Chemical Weapons Convention,¹⁰⁴ the Office Of The United Nations High Commissioner For Human Rights, the 2020 United Nations Human Rights Guidance On Less-Lethal Weapons In Law Enforcement, and Amnesty International’s examination of the misuses of tear gas, noting:

There is a growing consensus amongst legal experts that some uses of tear gas can constitute torture or other ill-treatment. [...] Amnesty International have documented numerous cases of severe pain or suffering caused by teargas use, such as severe burning, suffocation and long term breathing problems, as well as instances in which its use is clearly punitive. With this in mind our conclusion is that in these instances the use of tear gas constitute torture under international law.¹⁰⁵

Further, recent public outcries against police violence targeted at Black Lives Matter protestors resulted in several US cities having temporarily banned the use of tear gas, as well

¹⁰³ Douglas King, “Moving to Minimum Force: Police dogs + public safety in British Columbia” (2014) *PIVOT Legal Society*, online: d3n8a8pro7vhmx.cloudfront.net/pivotlegal/pages/648/attachments/original/1403740129/Moving_to_Minimum_Force.pdf?1403740129.
https://d3n8a8pro7vhmx.cloudfront.net/pivotlegal/pages/648/attachments/original/1403740129/Moving_to_Minimum_Force.pdf?1403740129

¹⁰⁴ Chemical Weapons Convention” (2021), online: *Organization for the Prohibition of Chemical Weapons*, www.opcw.org/chemical-weapons-convention.

¹⁰⁵ “TEAR GAS: AN INVESTIGATION, What it is, how it is abused and why you should care”, online: *Amnesty International* <[teargas.amnesty.org/#top](https://www.amnesty.org/en/teargas)>.

as bans of export of tear gas to Hong Kong by the United States and United Kingdom.¹⁰⁶ In keeping with these measures and in response to policing of a BLM gathering in Montréal, Member of Parliament Matthew Green sponsored a petition in the House of Commons calling for a national ban on tear gas.¹⁰⁷

These examples serve to highlight the need to deconstruct and fully re-examine use of weapon models that sanction state violence.

Recommendation 6.5: The BCCLA supports the immediate action plan of the National Indigenous Justice summit to implement a multi-pronged Indigenous de-escalation strategy:

- A no-carry policy in Indigenous communities, or in urban areas with large Indigenous populations, and on calls involving Indigenous identified individuals as a first response,
- Vigorous and ongoing Indigenous trauma-informed de-escalation training and teams for Police, which include Indigenous Peoples and mental health professionals.¹⁰⁸

Recommendation 6.6: The BCCLA recommends that the *Police Act* create a new model for public safety that de-centers use of force from the provision of police services.

Recommendation 6.7: The BCCLA recommends that the government, in partnership with Indigenous nations and vulnerable communities, undertake a public review of all firearms, weapons, use of force techniques, and, further, restrains weapon-types used by police services in British Columbia with the goal of significantly disarming and restricting police authority to use force.

Recommendation 6.8: The BCCLA recommends the elimination of the use of neck restraints and full-body restraint devices.

Recommendation 6.9: The BCCLA supports recommendations that all levels of government in Canada must ban the use of tear gas.¹⁰⁹

¹⁰⁶ Liu Zhen, "US tear gas sale ban for Hong Kong draws sarcastic response from China" *South China Morning Post* (11 September 2019), online: <www.scmp.com/news/china/diplomacy/article/3026782/us-tear-gas-sale-ban-hong-kong-draws-sarcastic-response-china >; Daniel Beekman, "Daniel Beekman, "Seattle City Council bans police use of tear gas and chokeholds as protests for Black lives continue", *The Seattle Times* (15 June 2020), online: <www.seattletimes.com/seattle-news/politics/seattle-city-council-bans-police-use-of-tear-gas-and-chokeholds-as-protests-for-black-lives-continue>.

¹⁰⁷ "Petition to the House of Commons – Public Safety (2020), online: *Government of Canada* <<https://petitions.ourcommons.ca/en/Petition/Details?Petition=e-2656>>.

¹⁰⁸ National Indigenous Justice Summit, "Immediate Action Points" (2020), online: *Indigenous Bar Association* <indigenousbar.ca/national-indigenous-justice-summit/>.

¹⁰⁹ Natasha Williams, Maija Fiorante, Vincent Wong, International Human Rights Program (Faculty of Law, University of Toronto) "The Problematic Legality of Tear Gas Under International Human Rights Law,"

Strengthen Police Oversight and Support Impacted People

The police accountability mechanisms available to the public in BC need to be vastly overhauled.

Recommendation 7.1: To enhance the protection of human rights for all in BC, all police in BC should fall under a single oversight body that is truly independent and civilian, investigates criminal conduct against police officers and refers charges to a special prosecutor, investigates and make binding decisions regarding policy and misconduct complaints, and is transparent and involves victims in review processes.

Recommendation 7.2: The oversight body must be developed in full partnership and with the full co-operation and consent of Indigenous peoples, including centering Indigenous conceptions of justice.

We remind the special legislative committee of the call by the National Indigenous Justice Summit for an Indigenous-led police oversight body with broad investigative powers.¹¹⁰

We further remind you of the important Call for Justice from the Commission of Inquiry into Missing and Murdered Indigenous Women and Girls:

5.7 We call upon federal and provincial governments to establish robust and well-funded

Indigenous civilian police oversight bodies (or branches within established reputable civilian oversight bodies within a jurisdiction) in all jurisdictions, which must include representation of Indigenous women, girls, and 2SLGBTQQIA people, inclusive of diverse Indigenous cultural backgrounds, with the power to:

- i Observe and oversee investigations in relation to police negligence or misconduct, including but not limited to rape and other sexual offences.
- ii Observe and oversee investigations of cases involving Indigenous Peoples.

2020, Online: <https://ihrp.law.utoronto.ca/sites/default/files/media/Legality%20of%20Teargas%20-%20Aug25%20V2.pdf>

¹¹⁰ National Indigenous Justice Summit, "Immediate Action Points" (2020), online: *Indigenous Bar Association* <indigenousbar.ca/national-indigenous-justice-summit/>.

iii Publicly report on police progress in addressing findings and recommendations at least annually.¹¹¹

We expand on the first overarching recommendation and also propose minimal interim measures below.

1. Single Oversight Body

It is ineffective and confusing to have three oversight bodies with varying levels of independence and legal authorities for policing in BC.¹¹² These current bodies are the Office of the Police Complaints Commissioner, the Independent Investigations Office of BC, and the Civilian Review and Complaints Commission.

A key challenge for many is simply trying to ascertain which body to complain to, what procedures are used, how to participate in the investigation and when to expect a resolution. Friends and families of those harmed or killed in police-involved incidents, as well as witnesses to the incidents, frequently approach our organization for support in navigating the various processes and understanding of what to expect from the various state actors involved.

In addition to the challenges that we hear directly from the BC community, academic research has concluded that 69 percent of people interviewed about oversight in BC identified the distinct police complaint systems that apply to RCMP and municipal police “as one of the greatest challenges facing police oversight and accountability in the province.”¹¹³ The study reveals that the “issues raised ranged from the ease of access for public complaints (the RCMP system was viewed as difficult to access), differences in the level of oversight and accountability, and variations in how discipline in the two systems was meted out.”¹¹⁴

We recognize that the RCMP are currently subject to the *RCMP Act's* complaint procedures, which may seem like a constitutional or legal barrier to BC imposing better oversight models on the RCMP. We respectfully remind BC legislators that British Columbia and Canada

¹¹¹ *The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, vol 1(a)&(b) (Ottawa: 2019), online: <<https://www.mmiwg-ffada.ca/final-report/>>.

¹¹² These are in addition to municipal police boards which also add to the complexity of oversight and review bodies.

¹¹³ Ste Krista Stelkia, “An Exploratory Study on Police Oversight in British Columbia: The Dynamics of Accountability for Royal Canadian Mounted Police and Municipal Police” (2020) 10:1 SAGE, online: <doi.org/10.1177/2158244019899088>.

¹¹⁴ *Ibid.*

arrived at an intergovernmental agreement to subject the RCMP to the jurisdiction of the IIO, whose legal authorities derive squarely from the *Police Act*.

If the government of BC cannot negotiate the application of provincial oversight laws to RCMP members through a Federal-Provincial agreement, we recommend that the province (i) lobby the Federal government to improve the standards embedded in the *RCMP Act* so that they are equivalent to or stronger than those in the *Police Act*, or (ii) choose not to contract provincial policing to a federal policing entity.

2. Civilian, Independent, and Representative of Diversity

The oversight agency must be led by an officer of the legislature, to ensure independence from police and government. The civilian director of the body should be appointed by a special legislative committee. This agency's powers should be articulated in law distinct from the *Police Act* to emphasize its independence.¹¹⁵ In order for its legislative objective not to be undermined, sufficient public funds must be available to the body to enable it to perform its investigative and oversight functions.

The composition of the oversight body must be truly civilian – no retired police (no matter the jurisdiction), seconded police, or anyone who has previously worked in law enforcement bodies such as the Canadian Border Services Agency. According to the latest data we could find about the IIO, of the 28 investigative positions that are filled, 50 percent are former police officers (14 percent).¹¹⁶ We were disappointed that the *Police Act* was amended to temporarily enable former BC police officers to be appointed as IIO investigators.¹¹⁷

More generally, the body should be representative of BC's diverse population. According to a Canadian Press investigation, most independent investigators staffing policing oversight bodies in Canada are white men who are former police officers.¹¹⁸

¹¹⁵ *Report of the Independent Police Oversight Review* (Ontario: Queen's Printer for Ontario, 2017), online: <www.attorneygeneral.jus.gov.on.ca/english/about/pubs/police_oversight_review/>.

¹¹⁶ Independent Investigations Office of BC, "FAQs" (2019), online: *Independent Investigations Office of BC* <<https://iiobc.ca/faqs/>>.

¹¹⁷ Jennifer Saltman, "Cop watchdog can now hire ex-B.C. officers to vacancies, with Police Act changes", *Vancouver Sun* (30 April 2019), online: <vancouversun.com/news/local-news/cop-watchdog-can-now-hire-ex-b-c-officers-to-fill-vacancies-with-police-act-changes>.

¹¹⁸ Kelly Geraldine Malone, "'Totally unacceptable': Majority of independent investigators are white men, former police officers", *The Globe and Mail* (19 June 2020), online: <www.theglobeandmail.com/canada/article-totally-unacceptable-majority-of-independent-investigators-are/>.

Recommendation 7.1.1: Ensure the oversight body is led by an officer of the legislature, has its own statute, and that all members are civilian and reflect the diversity of BC's population.

3. Adequate Authorities

Primary legislation needs to provide the oversight body and its investigators with the full range of powers to enable them to conduct fair, independent, and effective investigations into any police wrongdoing, from misconduct to criminal actions (both on and off duty). The oversight body must also be able to initiate an investigation for public interest reasons. Current models of police investigating police in this province needs to end unconditionally.

The oversight body must have the power to initiate its own investigations as well as investigate complaints from the public. In the absence of a complaint, if a police officer may have committed a criminal offence or behaved in a manner which amounts to misconduct, other public sector actors must be able to direct the matter to the oversight body.

The body must also be able to make final and binding decisions about misconduct complaints. The definition of misconduct must also be revised to incorporate the necessary lens of systemic racism, sexism, homophobia, transphobia, ableism, and classism. For misconduct complaints, the body should also have the power to informally resolve, or seek mediation of a complaint, but only with the consent of the complainant and oversight by the civilian body.

The body must have the power to investigate all incidents where a person suffers *any* physical harm in an incident involving police. The current "serious harm" threshold for IIO investigations is too high and does not foster public trust in accountability or in policing. For example, a person whose nose and/or jaw is broken by police during an interrogation would not have the benefit of an IIO investigation. It is simply unacceptable to leave any kind violence subject to internal police investigations.

Police must have a clear duty to cooperate with the body's investigations and must be obligated to provide access to any material and documentation. It has been challenging for the IIO to investigate at times due to the lack of cooperation by police,¹¹⁹ and the IIO even

¹¹⁹ Bethany Lindsay, "Vancouver police cannot refuse to be questioned by IIO investigators, judge rules", *CBC News* (18 October 2018), online: <https://www.cbc.ca/news/canada/british-columbia/vancouver-police-cannot-refuse-to-be-questioned-by-iio-investigators-judge-rules-1.4868722>.

had to take the Vancouver Police Department to court to ensure cooperation.¹²⁰ Failure to cooperate with an investigation should be an offense for subject and witness officers. The information obtained during an investigation should not be barred from being used in other proceedings.

We also support the IIO's request to work with a special prosecution service.¹²¹ We recommend that the proposed civilian oversight body have this same mechanism. Referring recommended charges to Crown Counsel causes undue delays. Enabling the civilian body to access special prosecutors also removes any real or perceived bias that the Crown prosecution service may have due to their reliance on police testimony for the success of other cases.

It would be extremely valuable to empower the oversight body to provide an indirect review of police conduct in criminal cases. We understand that in 2012 in BC, if a judge criticized the truthfulness of a witness' evidence or testimony, "the prosecutor should report it to a senior Crown attorney. The prosecutor should also recommend to the police force that it investigate alleged misconduct. Many of the officers were not disciplined for their courtroom conduct."¹²² We do not know if this system still exists. Our concern is that prosecutors often rely on police testimony to build their cases, which may compromise their objectivity. We therefore recommend that the oversight body have a mandate to initiate investigations upon review of a court decision where the judge criticized the truthfulness of a witness' evidence or testimony.

Recommendation 7.1.2: Provide the oversight body and its investigators with the full range of powers to enable them to conduct fair, independent, and effective investigations into any police wrongdoing, from misconduct to criminal actions (both on and off duty).

Recommendation 7.1.3: The oversight body must have access to a special prosecution service to safeguard independence and impartiality when approving charges.

¹²⁰ Simon Little, "B.C.'s top court rules officers can't set conditions on interviews with police watchdog", Global News (7 January 2020), online: <globalnews.ca/news/6378088/bc-top-court-officers-interviews-police-watchdog/>.

¹²¹ British Columbia, Legislative Assembly, Standing Committee on Reforming the Police Act, *Draft Report of Proceedings*, 42-1 (8 February 2021) at 11:45 (Independent Investigations Office), online: <www.leg.bc.ca/documents-data/committees-transcripts/20210208am-PoliceActReform-Victoria-Blues>.

¹²² David Bruser, "Star gets action: Crown must now report police who lie", Toronto Star (26 October 2012), online: <www.thestar.com/news/canada/2012/10/26/star_gets_action_crown_must_now_report_police_who_lie.html>.

Recommendation 7.1.4: Empower the oversight body to initiate investigations upon review of a court decision where the judge criticized the truthfulness of a witness officers' evidence or testimony.

4. Enhanced Transparency

A substantial overhaul of the law is needed to provide more information to the public about police accountability. Given the imbalance of power between police agencies and the communities they police, the public interest requires a rebalancing of the privacy rights currently afforded to police officers.

We recommend that the oversight body be required to publicly disclose whether a complaint has been filed against an officer and whether an investigation is underway. Any findings of misconduct or laying of charges against a police officer needs to be made available in a public registry and kept up to date.

If the body orders that a public hearing will be held for any matter, only information protected by solicitor/client privilege should be kept private.

The oversight body should be mandated to collect demographic data, including gender, age, race, religion, ethnicity, mental health status, disability, and Indigenous status of complainants and other affected parties to align with international best practices and much of the public sector in Canada.¹²³ This aggregated data should be made available to the public at least annually.

Recommendation 7.1.5: We recommend that the oversight body be required to publicly disclose whether a complaint has been filed against an officer and whether an investigation is underway.

Recommendation 7.1.6: Any findings of misconduct or laying of charges against a police officer needs to be made available in a public registry and kept up to date.

Recommendation 7.1.7: The oversight body should be mandated to collect demographic data, including gender, age, race, religion, ethnicity, mental health status, disability, and Indigenous status of complainants and other affected parties to align with international best

¹²³ *Report of the Independent Police Oversight Review* (Ontario: Queen's Printer for Ontario, 2017), s 11.100, online: <www.attorneygeneral.jus.gov.on.ca/english/about/pubs/police_oversight_review/>.

practices and much of the public sector in Canada. This aggregated data should be made available to the public at least annually.

5. Participation of Impacted Person(s)

People and communities impacted by negative interactions with police do not receive any state support and have extremely disproportionate power vis-à-vis policing institutions. Many are traumatized by the incident and have little trust in police and accountability mechanisms. Many fear retaliations by the very officer(s) or agency they complain about.

We want to note the importance of whistleblowers to police accountability. These whistleblowers must also be able to access the same supports as other impacted persons.

We recommend that victim support, counselling and legal representation be available to ensure the complainant or other impacted person's wellbeing and ensure that their wellbeing is essentially safeguarded. We echo the calls by Pivot Legal Society that the province must guarantee legal aid funding for police complainants and other affected persons as well as for civil action in court and for filing human rights cases against the police at the BC Human Rights Tribunal.¹²⁴

Recommendation 7.1.8: The BCCLA recommends that victim support, counselling, and legal representation be available to ensure the complainant or other impacted person's wellbeing is essentially safeguarded.

6. Expand Scope of Oversight to Fill Gaps

There are several types of enforcement officers and other public employees that are not currently subject to transparent complaint procedures that we strongly recommend bringing under the purview of the proposed oversight body (or at the very least the existing ones):

- Conservation officers have powers of arrest, power to use force against people, the authority to enter private property and the power to possess and use a firearm. Complaints against them by members of the public are subject only to internal review, and with little transparency.¹²⁵ We recommend subjecting conservation officers to the same single oversight body that we are recommending for police.

¹²⁴ For specific recommendations that we endorse, see pages 7-8 of Pivot Legal Society's Submission.

¹²⁵ Internal discipline is governed by the Special Provincial Constable Complaint Procedure Regulation.

- Reserve constables of the RCMP and civilian employees of the RCMP
- Bylaw officers have significant authorities to interpret and enforce laws
- Jail guards and “all persons who play an important role regarding the treatment of those in police custody”¹²⁶

We are also deeply concerned about the absence of independent police oversight with respect to railway police. These police officers have the exact same powers as every police officer in Canada. Although railway police are empowered by the *Railway and Safety Act*, citizens of BC ought to be able to make a complaint about the conduct of railway police should a situation arise in BC that warrants an independent scrutiny. Private railway corporations should not have sole control over the accountability of their officers.

Recommendation 7.1.9: Expand the scope of the police oversight body to apply to these enforcement officers and public employees that support police officers in BC: conservation officers, RCMP reserve constables, civilian employees of the RCMP, bylaw officers, jail guards and anyone who plays an important role regarding the treatment of those in police custody.

Recommendation 7.1.10: Enable people in BC to access the oversight body to complain about the conduct of railway police.

Minimal Interim Measures Needed

Recommendation 7.3: Acknowledging that it will take time to fully engage with Indigenous people and ensure their participation and consent in the new oversight model for BC, we recommend that the following reforms should be enacted without delay:

- **Subject all public employees with police-like powers** (e.g. the conservation officer service) or employees who handle people in police detention **to OPCC and IIO oversight**
- **Fully civilianize the IIO** with no investigators having a past law enforcement background, including in police, border services or security agencies (no matter the jurisdiction)

¹²⁶ British Columbia, Legislative Assembly, Standing Committee on Reforming the Police Act, *Draft Report of Proceedings*, 42-1 (8 February 2021) at 11:45 (Independent Investigations Office), online: <www.leg.bc.ca/documents-data/committees-transcripts/20210208am-PoliceActReform-Victoria-Blues>.

- **Make the findings of police oversight bodies are binding, enforceable, and publicly available**
- **End the CRCC and OPCC practice of “informal dispute resolution”** between complainants and police officers (with no oversight) that is inattentive to the gross power imbalance.
- **Enable the OPCC to initiate their own investigations or hearings**
- **Shift all investigations of police misconduct directly to the OPCC**
- **Incorporate principles of Indigenous conceptions of justice** into oversight bodies and mechanisms
- **Expand the mandate of the IIO to include sexual assault and gendered violence by police officers** (echoing long-standing call of Justice for Girls). The legislative framework for the IIO to investigate some or all suspected criminal activity by police officers already exists, but no criminal laws have been prescribed as within the mandate of IIO investigation. We recommend moving this mechanism to primary legislation and enabling the IIO to investigate any criminal activity by police officers (either on or off duty).
- **Require Police Forces to Provide Subject Officers’ Notes to the IIO:** enacting this requirement would drastically improve the IIO’s ability to fully investigate complaints. It would also make the work of policing more transparent in the eyes of the public.
- **Gather More Data Directly from Affected Persons:** To the extent that the IIO already interacts with Affected Persons (AP’s), more effort should be made to gather demographic data on racial and gender identity of complainants. Increased involvement with APs, including satisfaction surveys similar, could increase transparency and help the IIO identify areas of potential improvement.
- **Cooperate More Closely with Other Oversight Bodies:** Evidence of types of misconduct falling outside of the IIO’s mandate should continue to be reported to the appropriate complaint agency (e.g., OPCC or CRCC). The organization’s protocol for such situations should be published and referral statistics should be included in Annual reports.

- **Report More Consistently on the Outcome of Cases Referred to Crown Counsel:** Aside from the Annual Report,¹²⁷ all reporting by the IIO is at the discretion of the CCD.¹²⁸ Current reporting on whether charges are laid or not is inconsistent, and the outcome of cases that go to trial are not provided by the IIO. Technically, any civilian could seek out the results of a case through public records. As a practical matter, this seems unlikely to happen too often. Providing such information on the IIO website would allow British Columbians to more clearly see the IIO's role in justice being done, and decide for themselves how effective the oversight body is at uncovering misconduct.

Bring Police-related Entities Influencing Policy and Procuring Equipment under Appropriate Oversight

In our work on police accountability, privacy and democracy, we have learned of at least three entities that have great influence on policing laws, policies, and the procurement of equipment that are not subject to relevant oversight laws.

We strongly urge law reform to ensure that police foundations such as the Vancouver Police Foundation, and associations of chiefs of police are brought under appropriate laws to enhance transparency and democracy.

The BC Association of Chiefs of Police (BCACP) and the BC Association of Municipal Chiefs of Police (BCAMCP) are made up of chiefs of police. These associations develop and lobby for policy and law reform in many areas, including with respect to police standards and services, and yet they lack transparency because they are not subject to access to information legislation.

As an example of their influence on public policy, the BC policing standards currently incorporate through reference rules developed behind the closed doors of these associations.¹²⁹

The public has no means of accessing the information that is developed and maintained by these associations. It is in the public interest to expand access to information legislation to

¹²⁷ *Police Act* [RSBC] c. 367, s. 38.12.

¹²⁸ *Ibid*, s. 38.121.

¹²⁹ British Columbia, Ministry of the Attorney General, *BC Provincial Policing Standards* (12 March 2021), D13 – Tactical Operations, see specifically, D13.2.1, online: <www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/police/standards/provincial-policing-standards.pdf>.

cover these associations of police chiefs, as they are currently configured to do an extensive amount of work with respect to their public role as police. For a more extensive discussion of this point, see BC's Information and Privacy Commissioner's recommendation that the provincial law be reformed after finding that the decision-making process of such associations "should, as a matter of public policy, be transparent, and transparency flows from access."¹³⁰

Recommendation 7.4: Ensure that documents and records produced and in the custody of associations of chiefs of police that relate to their public police functions fall within the scope of access to information legislation. Prescribe the BCACP and BCAMP as public bodies to Schedule 2 of the *Freedom of Information and Protection of Privacy Act*.

With respect to societies incorporated to fundraise for policing equipment and programs in BC, we are only aware of the existence of one in BC: the Vancouver Police Foundation. A media story from last year shed light on the activities of this charity, "whose current 'corporate partners' include LNG Canada, Royal Bank of Canada and real estate companies, has given the city's police more than \$3 million dollars in the last five years, paying for a patrol boat, night-vision binoculars, and a drone program."¹³¹

The BCCLA is extremely concerned that this foundation may have either directly or indirectly thwarted democratic oversight of police programs and budgets. The fact that individuals and corporations can donate to the foundation while remaining secret further raises massive issues with accountability as well as the spectre of conflicts of interest. It is unacceptable for an entity that can fund an armoured vehicle and a \$500,000 SWAT mobile command truck for the Vancouver police¹³² to fall outside of policing and transparency laws.

Recommendation 7.5: Prohibit private donations to policing services in the province, either directly or indirectly through charity foundations.

¹³⁰ Letter from the Office of the Information and Privacy Commissioner for British Columbia to the Hon. Andrew Wilkinson, Minister of Technology Innovation and Citizens' Services re: Designation of BC Association of Chiefs of Police and the BC Association of Municipal Chiefs of Police under the *Freedom of Information and Protection of Privacy Act* (2014), at 5, online: <www.oipc.bc.ca/public-comments/1627>.

¹³¹ Martin Lukacs & Tim Groves, "Private Firms Pour Millions into Militarizing the Police via Charities", *The Tyee* (24 August 2020), online: <<https://thetyee.ca/News/2020/08/24/Private-Firms-Pour-Millions-Militarizing-Police/>>.

¹³² *Ibid.*

Recommendation 7.6: Prescribe the Vancouver Police Foundation as a public body to Schedule 2 of the *Freedom of Information and Protection of Privacy Act*.

Enhance Civilian Oversight of Policing Standards and Management

The Director of Police Service has a key role in the management of policing in BC, setting key standards such as those related to the use of force and unbiased policing, and has the authority to evaluate compliance with the standards, conduct studies concerning policing, law enforcement and crime prevention, and inquire into and report to the minister on matters regarding crime and its investigation and control, and policing and law enforcement.

As far as the BCCLA understands, no civilian has ever been appointed to this vital position of authority. To enhance independence and impartiality, we recommend that the position be restricted to people who have never worked in law enforcement.

Recommendation 7.7: To enhance civilian oversight of policing in BC, restrict the eligibility of people who can be appointed as the Director of Police Services to those who are truly “civilian” and who have never worked for a law enforcement agency, either in Canada or elsewhere.

Miscellaneous

1. Public Inquiries, Coroner's Inquests and Other Systemic Reviews

These processes of independent scrutiny of police conduct are seen as a “gold standard” and shed light on the systemic issues that result in perceived police misconduct. The recommendations of these bodies are not binding on any department or public body. Often the lessons that are learned do not lead to any action and are often forgotten or ignored.

Recommendation 8.1: Require Director of Police Services to (i) maintain a public registry of all recommendations from reviews relating to BC policing, and (ii) at least once a year provide a registry update to (a) confirm which recommendations have been implemented and how, and (b) the reasons for not implementing other recommendations.

2. Democratizing Enforcement of Bylaws and Restricting Potential for Pretext Policing

Bylaw enforcement is used by police as a pretext to investigate and criminalize people in a discriminatory fashion. A publicized case of this was when Desmond Cole was stopped by police and asked to provide information about himself because he was in violation of a bylaw that prevents smoking in parks (he was on a sidewalk at the time).¹³³

The Vancouver Police Board Street Checks Report provides evidence of how frequently people's liberty and privacy are compromised by police for the purpose of bylaw enforcement: the report revealed that over 40 percent of street checks reviewed by the consulting firm were conducted under the pretext of a bylaw stop.¹³⁴ The obvious concern with police stopping people under the guise of bylaw enforcement is that it is used as a pretext to criminalize the person; police can run the person's name through their database to investigate other unrelated matters, and can easily use their discretion to file criminal charges for obstruction.¹³⁵

¹³³ Laura Kane, “Anti-carding activist Desmond Cole stopped by police in Vancouver”, *CTV News* (15 November 2018), online: <bc.ctvnews.ca/anti-carding-activist-desmond-cole-stopped-by-police-in-vancouver-1.4178555>.

¹³⁴ Ruth Montgomery et al, “Vancouver Police Board Street Check Review” (17 December 2019), online: *Vancouver Police Board* <vancouverpoliceboard.ca/police/policeboard/agenda/2020/0220/SP-3-3.pdf>.

¹³⁵ Matthew Black, “Charge against ‘marginalized’ man dropped after judge says criminal check was unlawful”, *CTV News* (10 October 2019), online: <edmonton.ctvnews.ca/charge-against-marginalized-man-dropped-after-judge-says-criminal-check-was-unlawful-1.4633527?cache=%3FclipId%3D89926>.

The *Police Act* provides that all police in BC have the authority to enforce bylaws, even though there are other enforcement officers employed by governments to enforce local bylaws as well as provincial laws related to smoking and drinking. Rather than assume that police should have this authority all over the province, we recommend that provincial law enable local governments to decide whether they want local policing services to enforce municipal bylaws.

Recommendation 8.2: Enable communities to decide for themselves whether police officers should enforce bylaws in their area. Remove the default authority in the *Police Act* and enable local governments to enable or rescind authority for their regions.

3. Accessible Police Policies/Procedures

It is rare for someone in BC to know *how* the police in their area operate. Although guidelines and procedures do not have the force of law, they theoretically govern how police interpret their responsibilities and legal authorities and can be extremely helpful to the public in discerning that to expect from police in various contexts.

We are only aware of one policing agency in BC that is transparent with their community about the procedures that their officers follow: the Vancouver Police Department's Regulations and Procedures Manual is online and kept up to date.¹³⁶ Although it is not perfectly comprehensive, having this information available to the public on the internet enhances public scrutiny and keeps the public informed about current practices by their local agency.

Director's policing standards are an insufficient tool to use to require agencies to do this. For example, over a year after the provincial standard on police stops came into effect, explicitly requiring that police stop policies "are available to the public on the police force's website,"¹³⁷ many police departments still have not complied.

¹³⁶ Vancouver Police Department, "Regulations & Procedures Manual," online:

<https://vpd.ca/police/organization/planning-research-audit/regulations-procedures-manual.html>

¹³⁷ British Columbia, Ministry of the Attorney General, *BC Provincial Policing Standards: Promotion of Unbiased Policing*, (15 January 2020), online: <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/police/standards/6-2-1-police-stops.pdf>. Section (14): "Policies and procedures are consistent with these BC Provincial Policing Standards, are filed with the Director of Police Services, and are available to the public on the police force's website."

Recommendation 8.3: Require policing agencies in BC to maintain up to date procedures on their website for the public to access.

4. Adjusting Civil Forfeiture Law to Mitigate Harm

There are other provincial laws besides the *Police Act* that are closely linked to law enforcement practices and how police use discretion. The applications of these laws have an enormous impact on people and could also involve systemic racism. One of these laws is the *Civil Forfeiture Act*.

The BCCLA has opposed civil forfeiture since it was introduced in BC in 2006. The law allows the government to take property tied to unlawful activity while avoiding the procedural protections afforded to individuals in the criminal justice system (including the presumption of innocence). It is much easier for the government to take people's property through civil forfeiture than criminal forfeiture, and there is a serious risk that it has become a dumping ground for bad criminal law cases.

Recommendation 8.4: Repeal the presumptions in the *Civil Forfeiture Act* that make it easier for the Civil Forfeiture Office to prove their case.¹³⁸

Administrative forfeiture, which was introduced in 2011, has even fewer safeguards to protect people. It allows the Civil Forfeiture Office to make a forfeiture claim for property worth under \$75,000 by simply providing notice of the claim to the owner. If the owner does not challenge the claim in time, the property is forfeited.

Recommendation 8.5: Abolish administrative forfeiture.

The government usually provides the following reasons for pursuing civil and administrative forfeitures: taking the profit out of crime, deterring unlawful activity, and compensating victims. However, the *Civil Forfeiture Act* does not just deal with crime (its scope is not limited to criminal offences), or profitable crime.

¹³⁸ See ss. 19.03 ad 19.04 of the *Civil Forfeiture Act*.

Recommendation 8.6: Limit civil forfeiture to the proceeds of crime (not the instruments) and amend the Act so that it targets organized crime as opposed to all unlawful activity.

There is no empirical evidence that our civil forfeiture regime is deterring illegal activity. Plus, most of the assets obtained from civil forfeiture do not go to victims – they mostly go back to the state via the civil forfeiture office and police. This is very concerning to the BCCLA, as researchers have shown that self-funding models can create perverse incentives for public authorities to use civil forfeiture laws to benefit their bottom lines rather than to combat crime.

Recommendation 8.7: End the self-funding model and fund the Civil Forfeiture Office through general revenue.

There are serious access to justice issues with the civil forfeiture regime. Most forfeitures are not challenged in court because there is no legal aid for civil forfeiture, assets secured by a preservation order during the legal proceedings cannot be used for legal expenses, and the cost of hiring lawyer is usually higher than the value of the assets seized. We note that civil forfeiture can also impact innocent third parties whose property was used by someone else to commit the alleged illegal act.

Recommendation 8.8: Provide legal assistance to anyone facing forfeiture under the *Civil Forfeiture Act*.

The BCCLA is concerned that civil forfeiture is having a disproportionate impact on poor and marginalized communities in BC. Significant research in the United States has shown that “low-income individuals and communities of color are hit hardest” by civil forfeiture programs.¹³⁹ There is a worrying lack of research on the impact of civil forfeiture on poor and racialized communities in Canada.¹⁴⁰

We are further concerned about racial disparity in the application of *Civil Forfeiture Act* because most of the referrals that the Civil Forfeiture Office receives are drug related.

¹³⁹ Rebecca Vallas et al., “Forfeiting the American Dream: How Civil Asset Forfeiture Exacerbates Hardship for Low-income Communities and Communities of Color” (April 2016), online: *American Progress* <cdn.americanprogress.org/wp-content/uploads/2016/04/01060039/CivilAssetForfeiture-reportv2.pdf?_ga=2.8223354.977788911.1611620777-1913739743.1611620777> at p 2; Louis Rulli, “Seizing Family Homes from the Innocent: Can the Eighth Amendment Protect Minorities and the Poor from Excessive Punishment in Civil Forfeiture?” (2017) 19 U. PA. J. CONST. L. 1111

¹⁴⁰ *Commission of Inquiry into Money Laundering in British Columbia*, Proceedings at Hearing (14 December 2020), at 151-152, online : <cullencommission.ca/data/transcripts/Transcript%20December%202014,%202020.pdf>

Considering that recent data shows that Black and Indigenous people are dramatically overrepresented in drug charges recommended by Vancouver police,¹⁴¹ it is reasonable to question whether this discriminatory law enforcement carries over into the civil forfeiture realm.

Recommendation 8.9: Authorize the collection of race-based and disaggregated data about the people whose property is taken through civil forfeiture, in accordance with the guidance from the BC Human Rights Commission's "Disaggregated demographic data collection in British Columbia: The grandmother perspective."¹⁴²

The relationship between the Civil Forfeiture Office and police also troubles the BCCLA. We are aware that some CFO staff members have been "seconded" to work out of RCMP and VPD offices. There is also a lot of information sharing between the Civil Forfeiture Office and police. The BC Supreme Court raised constitutional concerns about the proximity of this relationship in a 2019 decision.¹⁴³

Recommendation 8.10: Enhance the impartiality of the Civil Forfeiture Office by restricting staff from being embedded with police and/or working out of police agencies in BC.

¹⁴¹ Dan Fumano, « New figures reveal the racial disparity in vancouver drug charges », Vancouver Sun (7 August 2020), online: <vancouversun.com/news/local-news/racial-disparity-in-vancouver-drug-charges-data-shows>.

¹⁴² *Disaggregated demographic data collection in British Columbia: The grandmother perspective*, (BC: Office of the Human Rights Commissioner, 2020), online: <bchumanrights.ca/wp-content/uploads/BCOHRC_Sept2020_Disaggregated-Data-Report_FINAL.pdf>.

¹⁴³ *Angel Acres Recreation and Festival Property Ltd. v. British Columbia (Attorney General)*, 2019 BCSC 1421, paras. 158-159.