

# To Serve and Protect

A REPORT ON POLICING IN VANCOUVER'S DOWNTOWN EASTSIDE



25 years ago:

Vancouver Sun, 1977

## **"City officers guilty of beating Mountie"**

RCMP Constable Barry Milewski testified that two Vancouver city police officers "punched and kicked him to the ground and hit him with a flashlight" when, in his capacity as an undercover agent, he was "walking to a drug dealing contact in Gastown." He did not identify himself as an RCMP officer when questioned by the city police, because of his undercover assignment.

The defence of the city police was that Constable Milewski, appearing to be merely a local resident, swore at them as he jaywalked across the street. City policeman Michael Carpenter, a former British amateur boxing champion, testified that he hit Milewski only once and that he had "no idea how Milewski received a series of bruises to his back and side."

This type of violence is not normally accepted in peace-time Canada and both Vancouver policemen were convicted. Would they have been convicted if their victim was not another policeman? The answer is unequivocally 'no.'

*From Peaceful Measures: Canada's way out of the war on drugs by Professor Bruce K. Alexander. University of Toronto Press.*

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# TO SERVE AND PROTECT

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# Executive Summary

The police occupy a uniquely powerful role in our society. As public servants sworn to serve and protect the interests of all citizens, they bear the heavy responsibility of enforcing the law in an impartial manner. And as peace officers authorized to carry weapons and use force in the course of their duties, they bear the equally heavy responsibility of exercising their powers within the limits of the rights and freedoms central to our democratic society.

Entitled *To Serve and Protect*, this report prepared by the Pivot Legal Society, examines whether the Vancouver Police Department (VPD) meets the high standard of conduct expected of our police force. It presents the results of a 9 month long research program in which sworn legal statements about interactions with the VPD were obtained from 50 separate individuals. These statements, carefully documented and sworn by lawyers, present the direct personal experiences and observations of each individual.

## **The results: evidence of systemic abuse of authority**

The results of this research are both startling and disturbing. Each of the 50 statements reports conduct by members of the VPD that meets the legal definition of abuse of authority. Beatings, torture, unlawful detention, illegal strip searches, illegal entry into homes, abusive language and unlawful confinement, these sworn statements paint an ugly picture of a police force that routinely abuses the legal rights of the very citizens it is sworn to protect.

## **Some of the worst examples of abuse of authority chronicled in this report include:**

**Infliction of torture:** Twelve of 50 statements report incidents in which members of the VPD used excessive and unjustified violence that meets the United Nations definition of torture. Six individuals report broken bones or teeth, and eight others describe incidents in which beatings took place after they had surrendered or were placed in handcuffs.

**Unreasonable use of force:** Thirty-six of the 50 statements report incidents in which members of the VPD used unreasonable force that exceeds their authority under the Criminal Code. In only eight of those cases were charges ever laid against the victim.

**Marching orders and starlight tours:** Seven of the 50 statements report incidents of individuals being told to "get out of town", having "no-go zones" imposed on them or being arbitrarily transported by paddy wagon to a different part of town. Each of these limits on personal mobility breaches the *Charter of Rights and Freedoms*, and can only lawfully be imposed by a court after a full and fair hearing. No hearings were ever held for these individuals; the police played judge and jury right on the street.

**Unlawful strip searches:** Seven of the 50 statements report incidents

of illegal strip searches where the police appear to have lacked any reasonable ground for subjecting the person to the humiliation of being stripped naked and probed. Each of these incidents exceeds the narrow limits put on strip searches by the Supreme Court of Canada. In one incident, the individual was left naked in public while the officers laughed.

**Harassment of observers:** Perhaps most chillingly, in seven cases citizens who stopped to bear witness to incidents were ordered to leave, and in several cases threatened with illegal confinement or assault if they did not obey. While those acts constitute breaches of those individuals' rights under the *Charter of Rights and Freedoms*, they also demonstrate a clear intention by VPD members to hide their abusive acts from public scrutiny.

These conclusions are only the most troubling highlights of this report. The full picture includes further sworn reports of incidents in which members of the VPD illegally confiscated money and possessions without charges, used profane and abusive language, and unlawfully entered homes without a warrant or reason to believe that a crime was being committed.

It is important to emphasize that, in the vast majority of reported incidents, the police never laid a criminal charge against any of their victims. Their actions therefore took place entirely outside the formal criminal justice system, and beyond the scrutiny of the courts.

The implications of a police force relying routinely on illegal acts to control a marginalized population reach far beyond the individual victims, and affect us collectively as a society. At the neighbourhood level, differential and abusive law enforcement practices inflict real and substantive health and psycho-social harms on the affected residents. And at a societal level, such practices inevitably corrode not only our faith in the integrity of the police force, but the moral authority of the police themselves.

## The recommendations: reform to obtain justice

The conclusions reached in this report are corroborated by research conducted by two additional independent agencies. In 2001, the Vancouver Injection Drug Users Study (VIDUS) and the Prostitution Alternatives Counseling Education Society (PACE) each surveyed intravenous drug users and sex trade workers in Vancouver regarding their interactions with police. Significant numbers of participants in each survey reported experiences of police abuse of authority. In the VIDUS study, 64% of participants reported being "jacked-up", or arbitrarily detained and searched, by police, and one in six reported being physically harmed.

Pivot Legal Society therefore strongly believes that a case for reform of the way in which policing is carried out and

### Action and leadership in both the VPD itself and City Hall are required to ensure that the routine abuses of authority documented here are brought to an end.

monitored in Vancouver has been established. Action and leadership by both the VPD itself and City Hall are required to ensure that the routine abuses of authority documented here are brought to an end. Some of the key recommendations for a plan of action to achieve that goal are:

Improved monitoring of enforcement actions: Most of the incidents examined in this report happened without any criminal charges being laid, and without any official records being produced. This lack of paperwork makes it more difficult for complainants to prove that an incident occurred, and easier for the police to deny or cover up the incident. At a minimum, the police should be required to report incidents of detention, searches and the use of force even if no charges are laid, and provide copies of police reports to individuals upon release from detention.

Improved access for complainants: The Police Complaints Commission procedure is both inaccessible and subject to bias. The

forms required to begin the complaints process are difficult to obtain and constitute a barrier for many drug-addicted and low-literacy residents of the Downtown Eastside. Police have been documented as unhelpful and, in some cases, obstructionist when asked for information on how to lay a complaint. And most importantly, under the Police Complaints Commission process the VPD is responsible for investigating complaints against its own officers. Pivot Legal Society therefore recommends that steps be taken to make the complaints procedure more accessible, and that all complaints raising concerns of potential criminal behaviour be investigated by an independent authority not subject to VPD control or oversight.

Call for a public inquiry: The information contained in this report, along with the VIDUS and PACE data, provides a credible basis for concern that police abuse of authority is systemic and widespread. A public inquiry, headed by an independent Commissioner with investigative and evidence gathering powers, is necessary to further examine these issues and make recommendations for change.

Many, but not all, of the victims of these incidents are residents of the Downtown Eastside, Canada's poorest postal code and a neighbourhood mired in a terrible public health emergency. But being poor is not a crime, and the fundamental rights stated in the *Charter of Rights and Freedoms* are granted to every person in Canada regardless of socio-economic status, disability or place of residence. In Canada, everyone is entitled to both the benefit and the burden of the law. The selective infliction of punishment on the most impoverished and marginalized members of our society corrodes that important democratic value, and fosters a system of police enforcement dependent on whim and prejudice, not the rule of law.

As Vancouver residents and Canadian citizens, we have the right to expect that our police force will serve and protect us regardless of race, colour or socio-economic status. A failure to act in the face of clear evidence that the VPD is not meeting that standard makes us all potential victims of a police force that views itself as above the law, and condones police practices that demean both the victims and the officers themselves. The Pivot Legal Society therefore calls on Police Chief Graham and the next mayor of Vancouver to implement the recommendations in this report, and begin building a more just society for the residents of Vancouver's Downtown Eastside.

#### Police Act Code of Professional Conduct Regulation

##### Statement of Core Values

- 3 This Code is to be interpreted as affirming that all police officers
- (a) accept the duty to act without favour or personal advantage,
  - (b) are committed to treating all persons or classes of persons equally, regardless of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or economic and social status, and
  - (c) agree to uphold rights and freedoms guaranteed or protected by law.

##### Abuse of authority

- 10 For the purposes of section 4 (1) (f), a police officer commits the disciplinary default of abuse of authority if the police officer
- (a) without good and sufficient cause arrests, detains or searches a person,
  - (b) uses unnecessary force on a person,
  - (c) while on duty, is discourteous or uncivil or uses profane, abusive or insulting language to a person including, without limitation, language that tends to demean or show disrespect to a person on the basis of that person's race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or economic and social status, or
  - (d) harasses, intimidates or retaliates against a person who makes a report about the conduct of an officer or submits a complaint under Part 9 of the Act.]



photo: Barry Calhoun

## **Context**

Vancouver's Downtown Eastside (DTES) is well recognized as the most impoverished urban neighbourhood in Canada. The area has garnered international attention due to the explosive HIV and overdose epidemics that have emerged among the area's approximately 5,000 injection drug users.<sup>1</sup> The neighbourhood is also characterized by a substantial over-representation of First Nations people.<sup>2</sup> The active sex trade in the area has only recently attracted increased attention among the public due to the disappearances or murders of more than 60 women who lived in this area.

These staggering rates of HIV, overdose, and violence forced health policy makers in 1998 to acknowledge that the neighbourhood is in the midst of a public health emergency. The primary response to this health emergency, however, has been to intensify law enforcement. This sad reality was highlighted in a recent Auditor General's report that recently estimated that 94% of the \$494 million spent on addressing illicit drug use in Canada is devoted to law enforcement efforts,<sup>3</sup> at the expense of interventions that have proven to be effective through scientific evaluation.<sup>4,5</sup>

Despite the vast expenditures on enforcement, there has been no observed benefit with regards to public order, illicit drug supply, or public health in Vancouver.<sup>6</sup> Instead, there is mounting scientific evidence that enforcement is having a highly negative

impact on Vancouver residents. For instance, the intense police pressure in the area has been previously associated with increased sharing of contaminated needles, and has been found to be a barrier to accessing syringe exchange programs and other services.<sup>7,8,9</sup> This finding is consistent with what has been observed in countless other settings, where intense enforcement efforts have been shown to exacerbate the problems stemming from illicit drug use.<sup>10,11,12,13</sup>

It has been well documented that over-reliance on criminal sanctions for illicit drug use has devastating and far-reaching consequences. In fact, a pattern that has been repeated throughout North America demonstrates that the "war" on drugs has resulted in a decline in civil liberties, illegal actions by police, and a disproportionately high number of ethnic minorities and marginalized populations becoming "collateral damage."<sup>10,11,12,13</sup> Of particular concern are the growing reports of police violence, with ethnic minorities and marginalized populations again being disproportionately affected.<sup>13,14,15,16</sup> Although the negative public health consequences of over-reliance on enforcement in Vancouver have been well described, this present research project was initiated to establish if concerns regarding police violence and other violations of civil liberties applied to Vancouver's Downtown Eastside.



photo: Barry Calhoun

## ***Affidavit Program Overview***

### **Research Method**

#### **Design**

During this study, qualitative methods were used to gather information on the experiences of individuals who have had interactions with members of the Vancouver Police Department. The research was designed by John Richardson, lawyer and Executive Director of Pivot Legal Society, in conjunction with an advisory team of lawyers and established researchers who volunteered their time to the project.

The Pivot Affidavit Program is inspired by Mahatma Gandhi, who in 1917 used affidavits to campaign for the right of peasant farmers in Bihar India to be free from oppression (see back cover).

#### **Recruitment**

Information about the Affidavit Program was publicized throughout the DTES through the distribution of information pamphlets, announcements at public events, and word of mouth. The distributed information described the program as an effort to gather stories of harassment or abuse of authority by persons in a position of power or authority, such as security guards, police, landlords, social service providers or medical institution officials. It was also publicized that affidavits would be taken at a number of venues, including the Pivot

office, the Vancouver Area Network of Drug Users office, and at an outdoor table on the corner of Main and Hastings Streets.

#### **Study Participants**

Individuals volunteered to participate in this program by showing up at one of the Affidavit Program sites, or by making a specific appointment with the research team. A purposive sampling strategy was employed where individuals who were prepared to generate in-depth descriptions of issues directly related to the research objectives were selected. Responses were collected from individuals who had been subject to abuse by persons in position of power or authority. This report focuses on the first 50 affidavits taken from individuals who reported being victims or witnesses of police misconduct by Vancouver Police Department officers.<sup>18</sup> None of the affidavits<sup>19</sup> that concern interactions with Vancouver Police were excluded from the analysis.

The affidavits report 50 incidences of police misconduct, based upon 22 witness statements and 39 victim statements, including three that are both witness and victim statements. Fourteen of the incident reports are based upon witness statements only, and contain no victim statement. Of the 39 victims who gave statements, 13 were homeless, and 16 belonged to visible minorities, including eight individuals of First Nations ancestry. Only 26 of those reporting being victims of police misconduct volunteered information about drug use (not including cannabis). Of these, it is noteworthy that 21 out of 26

reported that they use hard drugs and only five reported to be non-drug users. Eight of the 22 witnesses reported being drug users.

Forty-five of the incidents in this study occurred in the last year, and 39 incidents occurred within the last six months.

Women are under-represented in this study. Women living in the DTES are subject to extreme social marginalization due to the prevalence of exploitation, addiction, poverty and violence, and many expressed concern about that the high risks associated with giving an affidavit about police misconduct. The result is a shortage of female participants, which is a limitation of the study. For this reason, it is critical that further research focused on the experiences of women in this neighbourhood take place.

Participants were not compensated in any way for their participation, nor were they offered any other form of incentive (such as offers to pursue damages or further legal services).

## Data

The data produced by this study are legal evidence. An affidavit is a "written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation."<sup>20</sup> An "affiant" is someone who gives an affidavit. In British Columbia, lawyers have the authority to administer oaths and commission affidavits. Affidavits are admissible in courts of law as evidence upon which causes of action can be brought.

## Data Collection and Analysis

The affidavits are being taken on an ongoing basis by the Executive Director of the Pivot Legal Society, and a number of other volunteer lawyers on the research team who are accompanied by University of British Columbia law students. A standardized interview method was developed and applied to each interview. Special training was provided to the interviewers in order to ensure that the collection and drafting of the affidavits would be consistent and admissible as evidence in a court of law.

Individuals participated in a three-stage interview process lasting thirty minutes to one hour. Initially, participants recounted their experiences to the lawyer in an essentially unstructured manner. In the second stage, the participants retold their story as the lawyer drafted the affidavit while asking open and closed questions aimed at filling in missing details. In the third stage, the participant reviewed the text of the final affidavit and made corrections as necessary. Participants with low literacy had the affidavit read back to them. When the participant was satisfied that the words of the affidavit represented the truth of the incident, the affidavit was printed and sworn by a lawyer.

To ensure the validity of the data, the interviewers used an iterative process by first having the affiant recall the story, then writing and revising the affidavit, and finally conducting a review before the administration of an oath of truth.

Content analysis was used to examine patterns that emerged from the qualitative data. Two analysts made several coding passes of the transcripts. Having two persons independently analyze the same raw data set and then compare findings (triangulation of analysts) served as a bias check during data analysis.

On the first pass, an initial set of codes was applied to the text of each transcript and a coding framework that captured key analytic constructs was established. Subsequent passes were used to refine and expand code categories. Analyses were conducted by forming categories, establishing the boundaries of the categories, assigning data segments to categories, summarizing the content of each category, and examining negative evidence.

## Anonymity

The large majority of participants in this study have signed written consents allowing their name to be published. However, a number of legal issues arise out of the affidavits, including the possibility of claims for civil damages by those negatively affected by police misconduct. Until victims of misconduct have been contacted and advised of their legal situation and potential remedies, identifying information will be withheld from publication.

## Barriers

It is important to note that the affidavits presented in this study are only a small proportion of the stories of police misconduct that were reported to lawyers during the Affidavit Program. Many affiants faced substantial personal and social barriers to participating in the program. The impact of these barriers, combined with the fact that Pivot provided no incentives, meant that many individuals were willing to share their stories but were unwilling to have their stories documented in affidavit form. The following list describes some of the barriers that were described by affiants and those individuals who were unable to participate in the research:

- lack of time/too busy,
- fear of retribution from police officers who may target them as a result of the affidavit,
- time spent giving the affidavit could be better spent trying to get money to buy drugs,
- prefer to forget about the incident,
- felt they deserved police mistreatment as a consequence of their drug use,
- concern about the swearing information that could be being used to incriminate them,
- lack of faith in legal processes, and disbelief that reporting misconduct will lead to any redress, and
- belief that police will lie about the incident and that the affiant will not be believed because they are a drug addict and/or have a criminal record.

In some cases, affidavits were not taken from people who were not clear-headed due to recent drug use. However, the general experience was that those who were not in command of their faculties as a result of heroin or cocaine use did not come forward with their stories. The opposite was true for alcohol; impairment through alcohol was the prime reason for a Pivot lawyer refusing to take an affidavit.



This man was detained by the police for panhandling. He reported being driven to an isolated location and beaten.

photo: Barry Calhoun

## **The Law and Abuses of Authority**

The data gathered in this study have been categorized into a number of different legal categories. The main categories, discussed below, are each based upon a type of police misconduct or abuse of authority. Each category is then subdivided into Analysis, Law, and Case Studies.

- Analysis contains statistics relating to frequency of misconduct, and occasionally relationships between the category and other data in the set.
- Law contains an explanation of the legal and common law principles and precedents that were used to develop the category. Common law referred to includes the law of negligence and torts, and selected cases. A number of pieces of legislation are also referred to:

### *International*

*Universal Declaration of Human Rights*  
*United Nations Convention Against Torture*  
*International Covenant on Economic, Social, and Cultural Rights*

### *National*

*Criminal Code of Canada*  
*Canada Human Rights Act*  
*Canadian Charter of Rights & Freedoms (Constitution Act, 1982)*

### *Provincial*

*British Columbia Human Rights Code*  
*Police Act*  
*Police Act Professional Code of Conduct Regulation*  
*Police Act Use of Force Regulation*  
*Vancouver Charter*

Where specific sections of legislation are cited, the full text of the section can be found in the Appendix.

- Case Studies are excerpts from selected affidavits and provide examples of each category of police misconduct. Each excerpt is contextualized with an introduction and conclusion describing the events leading up to the incident and the outcome. They are displayed in raised text boxes along with commentary and analysis.

## **Torture Analysis:**

Twelve of the affidavits reported incidents meeting the legal definition of torture. Six reported broken bones or teeth, with others reporting head and brain injuries, flesh wounds and dog bites. It is worthy of note that in eight of those cases, severe pain or suffering was inflicted after a person surrendered or was placed in handcuffs.

## **Law:**

Under the *United Nations Convention Against Torture*, and section 269(1) of the *Criminal Code of Canada*, it is torture for a public official to intentionally inflict severe pain or suffering on someone:

- (a) to get information from them,
- (b) to punish them for an act the official suspects they have committed, or
- (c) for any reason based on discrimination of any kind.

If a public official consents to or acquiesces to such acts, that is also torture.

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**[ 1. ] Affidavit #7:** This individual was arrested and beaten, and taken to jail. He protested from his cell, demanding to know the charges against him. Police came to his cell(1)...

*I said "Why don't you charge me?" She said "Do you want more? Do you want to get beat up again?" I swore at her. I said "Go for it! Beat me up! Finish me!" The lady said "If that's what you want!" They opened the door and came in. They handcuffed my hands, and my ankles.(1) They forced onto my knees, and made me face the wall. The woman held my neck, and pushed my face into the wall. She held me very tight. The man held my hands, and lifted them up behind me. I couldn't move. I tried to turn around to see them, but the woman pushed my face further into the wall so I couldn't. They started punching me in the kidneys. I don't remember clearly everything they did.(2) They left me in the cell with my handcuffs and anklecuffs on. I was very weak, and I passed out. The next thing I remember, the paramedics were in the cell, giving me CPR. They pinched my ears very hard. I think it took me awhile to wake up. They told me not to move. paras. 13-17. Also see: Affidavit #27, para. 9,10*

(1) Confinement in a jail cell. (2) Further physical confinement. (3) The intentional infliction of severe suffering as punishment after a person has been handcuffed and secured in custody, constitutes torture.

The individual was taken to the hospital, where he was examined for head injuries and facial bruising. He was released without any charges being laid.

**[ 2. ] Affidavit #17:** A prominent director of a non-profit society in Vancouver was driving with a friend through the DTES, when they saw the police beating a man near Oppenheimer Park.

*...I saw two male police officers beating an unarmed man. They were in a doorway. A third female police officer stood next to them just outside the doorway, in a stance that suggested she was blocking his escape.(1) I saw one of the male officers hit the man repeatedly with a baton(2). I yelled to [my friend] that they were beating a man, and he pulled over and stopped. I saw the shorter of the two male officers punch the man repeatedly in the stomach with his fist while the other officer held him...(2) All during the beating, I never saw a man on the ground hit back, although he did repeatedly try to escape the beating.paras. 4-8*

(1) A person whose movement is physically restricted by police is confined and detained. (2) Torture.

A number of observers gathered to witness the beating were pepper-sprayed by police. [ Also see text box 1, 19, 43 ]

**[ 3. ] Affidavit #3:** This individual had been given a "starlight tour" by three officers to Kitsilano Beach. The man, having no where else to stay but the Gospel Mission, returned to the area, and was caught in an alley by the same three officers. [ continued from text box ? ]

*He turned me around, and slammed me up against the wall. The other two officers came up. They put handcuffs on me(1), and then they all started punching me.(2) They forced me onto my knees, and then they shoved me face first onto the ground. The police officers yelled at me "We told you not to come back! We told you!" They punched and kicked me in my head, and in my ribs. This went on for several minutes. Then one of them grabbed the hair on the back of my head, and slammed my face onto the ground. I passed out.(3) para. 12-14*

(1) Physical confinement. (2) Force after confinement is secured.(3) Torture.

The individual suffered a broken nose and bruising. No charges were laid.

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**[ 4. ] Affidavit #30:** This individual was walking along the sidewalk in the Granville mall when stopped by police:

*Two officers drove up beside me, and told me to come over to their car. I walked over. They asked me if I had any identification, and I said no. They asked what my name was, and I said "x." I didn't give them my real name because I knew there was a warrant out for my arrest - I had been arrested in 1997 for theft under \$5000...The female officer put the handcuffs on me.(1) The male officer told me not to lie to him again, and asked me once more what my name was. I told him the same name again(2). The male officer hit me in the nose with the base of his fist, like a hammer. It was very quick. I fell backward, and said "What the fuck was that for?" He came forward, and asked me what my name was again. "I'll hit you again if you lie to me," he said. I told them the same name again, [x]. He punched me again, the same way.(2) I went down on my knees and curled up. I finally gave him my adopted name. para 2-6*

(1) Physical confinement in police custody. (2) If a police officer has reason to believe that someone lawfully arrested has not provided their correct identity, they may bring the person to the police station for fingerprinting and verification. (3) The intentional infliction of severe pain and suffering by a public official as a means of extorting information constitutes torture.

The individual was dropped off by the police at St. Paul's emergency ward. He suffered a broken nose.

**[ 5. ] Affidavit #28:** Police entered this woman's apartment after the manager called the police to have them remove her boyfriend from the building. The boyfriend was not in the room, and she refused permission for them to enter:

*[The police officer] grabbed my left shoulder and right forearm very tightly with both hands, and started pushing me forcefully back into the room. I reacted to this instantly, and tried to bite his left forearm.(1) Before I had a chance to bite him very hard, I realized what I was doing. I stopped, and started apologizing. I told him that it was a natural reaction, and apologized again. The police officer pushed me over to the bed. He twisted my left arm behind my back, and pushed me face down into the bed. I think he was holding my hair with one of his hands.(2) He started twisting the knuckles of his clenched fist into my ear. When it hurt so much that I thought I was going to pass out, the knuckling stopped. Then it started it again. The stopping and starting of the knuckling happened four or five times. There must have been more than one officer doing it, because at one point both my ears were being knuckled, while my arm was still twisted behind my back. My right ear was knuckled the most.(3) Throughout the knuckling, I begged them continually to stop. The officers said nothing during the whole time. para. 8-11*

(1) A person is lawfully entitled to use as much force as necessary to remove trespassers who enter without lawful authority. Any counter-force by a trespasser is prima facie assault. (2) Physical restraint and confinement by police. (3) Torture.

The individual was handcuffed and made to lie on the floor outside her apartment. The police then allowed her boyfriend into the apartment to take what he wished. She was not arrested or charged.

**[ 6. ] Affidavit # 23:** This individual was arrested for failing to appear as a witness at the trial of his wife, for a charge of spousal assault laid against her. The police came to his apartment with a warrant for his arrest:

*I was in my underwear, as I had been sleeping. They let me put on some pants and a t-shirt, and then they handcuffed me.(1) They took me downstairs, and outside to the front of the building where a police car and a police wagon were waiting. A younger male officer was waiting there. The younger officer started to frisk me. As he frisked my leg, he purposely did a karate-like chop hard upwards, into my groin.(2) I said "Son of a bitch!" When I said that, he swung me around, and slammed me into the pavement. My head bounced off the ground, I thought I was going to break my neck. I hit the ground so hard that I lost my two of my back molars, one on the right and one on the left.(3) One officer stood on my ankles. It was very painful, because he was grinding his heel right into my ankles against the pavement. Another kneeled on the back of my neck, while he punched me in the ribs and twisted my arms up behind my back. The third kicked me several times in my face. I lost half of one of my front teeth(3) from the kicks to my face.(4)*

(1) Physical confinement in police custody. (2) Assault. (3) Injuries: loss of teeth. (4)Torture.

The charges against his wife were dropped when the individual threatened to make his complaint public.



photo: Barry Calhoun

## Unreasonable Use of Force

### Analysis:

In total, 36 affiants reported being victims of excessive police force. Twenty-seven people reported injuries, including seven broken bones or teeth, seven head injuries, and five flesh wounds. Other injuries included bruising, the effects of pepper-spray, dog bites, being knocked unconscious, and brain injury. In five cases, police or ambulances took people to hospital emergency wards.

### Law:

The *Police Act* Professional Code of Conduct, section 10(b), states that it is an abuse of authority for a police officer to use excessive force. 'Force' includes actual physical force, such as constraint or violence, as well as anything that causes people to be afraid to resist or freely exercise their will.<sup>21</sup>

Section 25(1) of the *Criminal Code* gives police officers the authority to use force in order to carry out their lawful duties, as long as they reasonably believe that force is necessary and they do not cause death or grievous bodily harm. 'Grievous bodily harm' has been judicially defined as meaning "serious hurt or pain."<sup>22</sup>

Sections 25(3)-(5) of the *Criminal Code* allow police officers to use force intended to cause death or grievous bodily harm in only three situations:

- (1) to protect someone from death or grievous bodily harm,
- (2) to complete the lawful arrest of someone who is fleeing, or
- (3) to capture someone who is escaping from a penitentiary.

The police are generally not allowed to use force unless there are grounds for the arrest and it is properly conducted. If an arrest has not been properly conducted, police are not allowed to use force - in fact, the citizen may lawfully use force to resist. Section 29 of the *Criminal Code* requires that a person be advised as to the reason for arrest in order for the arrest to be lawful. Where police officers detain and attempt to question a person but neither arrest the person nor give reasons for arresting him, the detention is unlawful and the officers are not acting in execution of their duty. As a result, they would not be justified in using force by virtue of section 25 of the *Criminal Code* and if they apprehend the person, the apprehension constitutes an assault entitling the person to lawfully resist.<sup>23</sup>

In all situations where force is authorized, the amount of force must be no more than the minimum necessary. A police officer that uses excessive force, or uses force without lawful authority, will be held criminally liable, under section 26 of the *Criminal Code*. In addition, a victim of excessive force can sue for financial damages for assault and battery.

# TO SERVE AND PROTECT

**[ 7. ] Affidavit # 40:** This individual was injecting heroin with his fiancée in a laneway:

*She had the needle in her arm and was just pushing the heroin in when two young police officers came up from behind a garbage bin. Without pausing, they pepper-sprayed [x] in the face. As they pepper-sprayed her, they said "No fixing in the alleys." They took the rig and broke it on ground. Then they turned and left. para. 3,4*

(1) Force not used as an incident to a lawful arrest is assault. Assault with pepper-spray constitutes aggravated assault.

**[ 8. ] Affidavit #19:** This individual was on his way home from grocery shopping in Chinatown with his wife. They were in an alley behind the First United Church and were speaking with some individuals who were trafficking drugs. His wife was offering them food and trying to persuade them to get off drugs when four police officers approached and began to question them:

*My wife was asking me what they were saying and I was about to tell her. She had her mouth full of food when she was grabbed by the Caucasian male officer who weighed approximately 250 pounds. He was standing beside her and grabbed her by her arms. The female officer grabbed her by the throat and I thought they were strangling her.(1) All four officers were grabbing her. She could not swallow her food. The heavy Caucasian officer that was holding her arm said "This is what is going to happen to you drug users."(2) I can't clearly remember which arm he was holding but he was holding her arm with both hands and broke it by placing one hand on her upper arm and one hand on her lower arm and snapping it at the elbow.(3) The other officer punched her in the ribs. They were holding her up but she was unconscious. para 7-9*

(1) Police officers may use a strangle-hold to prevent destruction of evidence. However, there must be extremely evidence that supports such force. Talking to drug users does not qualify. (2) "You drug users" have the same rights to security of the person as all other persons. (3) Deliberate application of excessive force causing serious injury.

The individual's wife was hospitalized for two days with a broken arm. The man and his wife were not arrested or charged with any offence

**[ 9. ] Affidavit #7:** This individual was walking through the DTES on his way home after drinking in the park. He was walking along the sidewalk in Chinatown when a police car pulled up:

*A voice from the police car said "stop there!" I stopped and turned around. Three male police officers got out of the car, and jumped on me...(1) One officer grabbed my left hand from behind, another grabbed my right hand. They twisted my arms behind my back, and I was slammed down onto the pavement, chest first.(2) Two of them held my arms and kept me down, while the other one kicked me in the chest and legs. He kicked me several times. One of the officer's knees was in my back. I tried to look up, but the officer who was holding my right arm pushed my head down to the pavement with his hand. Then he stood up, and put his foot on my face. He ground his heel in my face, very hard.(3) They asked me "Where are the drugs? Where is the cocaine? Where is the heroin?"(4) I kept telling them "Hey, what are you doing? I haven't done anything! I don't have a record, I haven't done anything." The officer kept his foot on my face while they handcuffed my hands....my face was bleeding on the pavement(5), para. 4-8*

(1) No opportunity was given for the individual to submit to the arrest. (2) Excessive force arrest. (3) Unreasonable use of force after arrest.(4) It was only at this point was there any communication as to the reason for the arrest. (5) Unnecessary force.

The individual was detained without an arrest or charge, and taken to jail.

# TO SERVE AND PROTECT

**[ 10. ] Affidavit #8:** This individual was an unwitting passenger in a stolen car. After a car chase, he and the driver ran to get away from the police. They were cornered in an alley, and surrendered:

*We both put our hands up.(1) The police came up to us. The one on the left walked up to [my friend], and kicked him in the balls. They started kicking and punching me, yelling "get down, get down!" and I fell to the ground into a puddle. They rained punches and kicks on us. I said "you got us, please stop!" They didn't stop, but just kept on kicking and punching. The two police officers that had been behind us came up. They joined in kicking and punching us. This went on for several minutes more. The kicks and punches came from all directions. I begged them to stop. I was lying face down, I didn't dare raise my head, the blows were coming from all directions. One of them gave me a huge kick in the balls from behind. (2) Another police vehicle came up. More police officers got out. They came over and said "well done!" They exchanged high-fives with the other police officers.(3) Then they got in some kicks and punches as well.(4) para. 6-9 Also see Affidavit #8, para. 3-5*

(1) Submission to arrest. (2) Unreasonable force constituting aggravated assault. (3) It is worthy of note that this is not the only case where "high fives" were exchanged after an excessive force arrest.(4) Continuation of assault.

The individual was arrested and taken to jail. He was later acquitted of accessory charges.

**[ 11. ] Affidavit #38:** A prominent activist in the DTES reported having observed the following events outside of his place of work.

*Seven of the twelve police officers were on top of an elderly man, about 60 years old. Three of them were sitting on the man's torso, one on each leg, and one on each arm.(1) While I watched, one officer who was standing up told the old man to put his hand behind his back so that he could be handcuffed. When he didn't, the officer kicked him twice in the ribs, yelling "Quit resisting arrest."(2) I found this to be quite disturbing, as it was clear that the man could not have moved even if he had wanted to. para. 4. Also see Affidavit #18*

(1) An individual so detained has no opportunity for resistance. (2) This is not the only case where the phrase "resisting arrest" was used to justify force after an individual was securely in custody.

The only evidence of a criminal offence that the witness saw the police find was a bottle of valium. The man was arrested, and taken away.

**[ 12. ] Affidavit #44:** Witnesses observed a plainclothes police officer jump on a young man waiting in a food line-up. One witness was close enough to witness the details of the struggle.

*I heard a scuffle and noises from behind me. I turned around and I saw a man in beige clothes spray a young man back and forth several times in the face with pepper spray.(1) The young man was about 18 or 19 years old, a kid really. They were about three feet away from the glass wall at the back of the bus stop. The man in the beige clothes grabbed the kid and forced him down to the ground, face down. He twisted both the kid's arms behind his back and put handcuffs on him.(2) The kid started screaming "ahhh," and the man in the beige clothes said "shuddup" and pushed the kid's face down into the pavement with elbow, hard, and pressed him down there. The kid moaned, and the man in beige clothes said "shaddup, or I'll push you harder," and leaned his weight down so that the kid's face was pressed nose down on the pavement to the point where he couldn't open his mouth. "Shaddup! I told you to shaddup! I'll keep on forcing it until you shaddup!" the man in the beige clothes yelled. (3) para. 2,3*

(1) Unreasonable use of force. (2) Once a person is handcuffed and prone, there is no longer any reasonable cause for physical force. (3) Police officers are not authorized to use force to stop a person from screaming.

An ambulance was called when it became clear that boy was having a seizure. The reason for the arrest is unknown.

# TO SERVE AND PROTECT



photo: Barry Calhoun

## Harassment of Observers

### Analysis

Seven of the affidavits reported harassment of observers, including threats of physical force and unlawful arrest.

### Law:

The right to freedom of movement is enshrined in section 7 of the *Charter* and Article 13(1) of the *Universal Declaration of Human Rights*. The Supreme Court of Canada has held that section 7 of the *Charter*

protects the right of individuals to be in public areas as they see fit. It is a violation of this right for officers to use their authority, without a lawful basis, to force people to move when they are observing police activity. Policing is a public service, and in a democratic society every person has the right to observe police activity as long as they are not obstructing the investigation or the enforcement of the law. It is not obstruction to witness an arrest.

Section 3(c) of the *Police Act* Code of Professional Conduct requires officers to respect the right of persons to observe police conduct.

# TO SERVE AND PROTECT

**[ 13. ] Affidavit #32:** This individual, a university graduate student, stopped his car to witness police beating a man in a doorway. Several people gathered to watch, calling out for the police to stop.

*At one point officer [x] made threatening motions towards the group with a canister of pepper spray.(1) He did not say anything. About a minute later, without warning or provocation, he sprayed us with the pepper spray.(2) [y] and I were among those hit. I managed to turn away and got most of the spray on the side of my neck, on my scalp and one hand. A number of people were hit in the face and one woman received a severe dose in the face and eyes.(3) I saw the woman afterwards, and her neck was drenched and much of her face stained with the orange-brown liquid...The young woman who was hit in the face and eyes began to cry. She bent over and collapsed to her knees...They did nothing to help her. para. 10-12*

(1) The threat to use physical force without authority is "intimidation" under the Criminal Code. (2) Assault on observers. (3) Pepper-spray can trigger fatal reactions in those sprayed. (4) The refusal to treat or allow treatment constitutes gross negligence.

The police refused to allow any of the witnesses to treat the woman who was pepper sprayed, and loudly tried to interfere with attempts to call an ambulance.(4)

**[ 14. ] Affidavit #6:** This individual, who suffers from incontinence, was given a bylaw ticket by police for urinating in an alleyway in the DTES. After a verbal altercation, the ticket turned into a physical take-down and arrest by the officer. Several passers-by stopped to watch or inquire about what was going on:

*While the officers were talking with me, a young aboriginal couple walked by. The man asked the officers what was going on over there. Officer [#] told them to keep moving, that this was police business, and if they refused to move on, they would be charged with harassment.(1) Reluctantly, the couple left... Just then, my friend from school [x] arrived on her scooter with a few other people from the Friendship Centre. The officers threatened to throw them in jail for harassment.(2) para.5, 8*

(1) Threat of unlawful arrest used to prevent observers from witnessing police conduct. (2) Threat of unlawful detention. Note that, under law, the only harassment in this scenario was by the police officer, against the observers. (3) Starlight tour.

The individual was put in a paddy wagon and driven to the corner of Broadway and Clark Streets, where he was released without charges.(3)

# TO SERVE AND PROTECT



photo: Barry Calhoun

## Verbal Misconduct

### Analysis:

Fifteen of the affidavits described incidents in which police officers used profane, derogatory, or racist language. Nine of those incidents also involved the use of excessive force.

### Law:

The position of authority that police officers wield in our society is based, in large part, upon the respect they receive from citizens. This respect is accorded to them in their capacity as officials carrying out a duty to uphold the law and ensure the security of all persons. This respect, however, goes

[ 15. ] Affidavit #46: This homeless individual was told to get out of town by police. He hid in a window ledge, and waited for them to leave.

*Just as I was starting to think it was ok when they came up again. One of them said "You stupid fuck(1), I told you to get out of Vancouver." [2] They let me leave, and I went up to Pender and Jackson, and hid out there for the rest of the night. para. 9*

(1) Profanity, derogatory comment. (2) Illegal order to leave Vancouver.

The individual was not arrested or charged with any offence.

[ 16. ] Affidavit #48: This student, a DTES resident, was walking home with two friends, and took a shortcut through an alley. The police stopped and searched through their pockets. He was found with a marijuana pipe:

*They told [x] and [y] to leave the alley.(1) [x] and [y] walked towards Gore Street and stopped at the end of the alley to watch. The police officers started circling me. They told me, "you are a no good piece of shit that is no good because you are a drug dealer." [2] para.6,7*

(1) Harassment of observers. (2) Profanity, derogatory comments. Note police belief that the detainee is "no good" because they (incorrectly) identified him as a drug dealer.

The police followed him to his apartment in order to verify his identity. He was released without charges.

# TO SERVE AND PROTECT

both ways. Police officers, in order to maintain this respect, must in turn treat all persons in a fair and professional manner. In order to maintain high standards of conduct among officers, the *Police Act* Professional Code of Conduct makes it an offence for officers to speak to members of the public in a discourteous manner. Section 10 of the Professional Code of Conduct states that a police officer commits a disciplinary default of abuse of authority if the officer uses language that falls below a professional standard, or which shows disrespect to someone on the basis of race, sex, mental disability or economic or social status.

## Discrimination

Section 10(c) of the Police Professional Conduct of Conduct makes it an offence for an officer to make racist remarks, or remarks tending to denigrate individuals on the basis of a physical or mental disability. Section 8 of the British Columbia Human Rights Code echoes this rule against discrimination by a person who is providing a public service, such as policing.

The *Canadian Human Rights Act* clearly defines substance addiction as a disability, stating that disability includes "dependence on alcohol or a drug." The courts have held that, for the purposes of the *Human Rights Act* and provincial human rights codes such as those of Ontario and British Columbia, drug dependence includes dependence on illegal drugs.<sup>24,25</sup>

**[ 17. ] Affidavit #7:** This Latino individual was walking down the street when a police car pulled up, and was forcibly arrested:

<p><i>A paddy wagon came. There were many people watching. They let me stand up. I asked the Chinese officer who was standing in front of me "Did I do something wrong? Are you going to charge me? Where are you taking me?(1)" He told me to "Shut up, you fucking Spanish."(2) para.10.</i></p>	<p>(1) All persons detained or arrested have a right to be informed promptly as to why. (2) Racist, profane comments.</p>
<p>The man was later released without any charges after being held overnight in jail. [Also see text boxes 1,19,43]</p>	

**[ 18. ] Affidavit #21:** This witness saw his friend, a First Nations man who suffers from seizures, fall to the ground on a sidewalk on Hastings Street:

<p><i>I saw someone go down to the ground in front of me. We walked a bit closer, and I saw that it was [x]. He was convulsing on the ground. Two male police officers were nearby, and they came up and were standing over [x]. I heard them say "Just a drunk Indian. Call the wagon."(1) They put a call in on their radio... They started to handcuff [x] while he was convulsing.(2) One of them had his knee in [x]'s back, and was pulling one arm behind him, while the other officer pulled the other arm. They were struggling, because [x] was convulsing pretty hard.(3) They got the handcuffs on. An ambulance came by, did a U-turn in the street and pulled up. The ambulance attendants got out, and talked to the police. They got them to take the handcuffs off.(4) part 2, para. 4-6</i></p>	<p>(1) Racist comment. (2) Racist stereotypes impaired the ability of police officers to evaluate and respond to the situation as a medical emergency. (3) Forcible arrest, where no reasonable ground for arrest existed. (4) If medical personnel had not appeared, [x] could have suffered serious injury from convulsing in handcuffs.</p>
<p>The witness rode with his friend to the hospital in the back of the ambulance.</p>	

**[ 19. ] Affidavit #3:** This Latino individual was standing at a bus stop on Granville Street speaking with some friends when several police officers approached him.

<p><i>They came up to me, and asked if they could speak to me. I said sure, why not? They asked me for my papers(1). I said I didn't have any with me, that I had lost them. I gave them my name, and I saw them run the information in their computer. They told me to get out of there(2). I told them that this was my town, that I should be able to stay. The East Indian officer said "No. This is my town." I said this is my town too, that I was a resident here. He said "No, you are not Canadian(3), motherfucker(4) " I said to him, "You are not Canadian either, look at your colour!" He got angry, and told me that he was born here. He said that this was his town, and that I had better get out. para. 6,7 Also see Affidavit #7, para. 10</i></p>	<p>(1) Jack-up" based upon appearance. (2) Illegal order to leave the area. (3) All residents of Canada, whether citizen or immigrant, have freedom of movement. (4) Profanity.</p>
<p>The individual was arrested, put in a paddy wagon, and driven to the Beaches where he was released without charges.</p>	



photo: Barry Calhoun

## Threats of Assault

### Analysis:

Seven affidavits reported threats of physical assault. None of the threats referred to lawful police force. In six cases, there were reasonable grounds for the person threatened to fear that the threat would be carried out. In those cases, the threats were made with a gun or after police had already used an unlawful degree of physical force.

### Law:

Police are not bound by the Marquess of Queensbury rules when attempting to obtain information from suspects.<sup>26</sup> That is to say, evidence obtained through trickery or deceit will not necessarily be ruled inadmissible at trial. However, a direct threat of unlawful physical

force<sup>27</sup> – whether to extract information, to prevent someone from doing something they are otherwise entitled to do, or for any other purpose – is illegal and a criminal offence under the *Criminal Code of Canada*.<sup>28</sup>

Under civil law, a convincing threat of assault is in itself an assault, entitling the victim to sue for financial compensation.

It is interesting to note that, although the British Columbia Police Code of Conduct forbids intimidation and harassment by police, it does not list "uttering threats" as a disciplinary default meriting disciplinary action. This contrasts with legislation in other provinces such as Quebec.

# TO SERVE AND PROTECT

[ 20. ] **Affidavit #20:** This individual was talking with friends while six officers detained an individual for jaywalking. They watched, and made jokes about the excessive police presence:

*The officers overheard us, and a couple of them laughed. A few however, was not amused, and one of them walked over to me and said "If this were Germany, the guy we have in custody would have his head cracked, and you would be next."(1) He walked away, and I said "Well, he just proved my point!" I made some more jokes, and another officer came over and said "We've had just about enough of your humour."(2) He warned me that, from now on he was going to be on watch for me, and every time he saw me he was going to take me down(3). para.5*

(1) Implied threat of force. (2) Freedom of speech includes the right to make jokes. (3) Threat of unreasonable, excessive force. (4) Arbitrary detention.

The officers detained the individual, and did a criminal record check(4). He was released when they found his record to be clear.

[ 21. ] **Affidavit #19:** This man's wife was beaten in an alley by police officers, after they apparently mistook her for a drug trafficker. They beat her unconscious, and broke her arm:

*I was hysterical. I was trying to pull them off her. I was yelling "stop this." They told everybody in the alley to leave the scene and they did(1) At first I refused to leave, but one officer reached for his gun and told me I had to go. The Asian officer said, "You are next."(2)...I ran... para. 10*

(1) Harassment of observers, right to freedom of movement infringed.(2) Threat of deadly force against an observer.

The man's wife was in hospital for two days. No charges were ever pressed.

[ 22. ] **Affidavit #10:** This individual was parked behind a public library in his vehicle. It was early in the evening and he was sleeping. Two officers approached the vehicle and began to question him and search his vehicle. He described himself as acquiescing to the search and then:

*Officer [#] told me that he was "tired of dealing with me." He gestured to the female police officer and said to me that I "had better tell her the truth."(1) He went back to his car and opened the trunk. He took out a big gun with hazard signs on it, I think it was a Taser. Officer [#] turned on the laser aiming device on the Taser and pointed it at my chest.(2) I looked down, and could see the red dot just over my heart. He said "Do you want to know how this feels?"(3) I said no, I didn't want to know. He said "that is a very smart answer." He asked me if I knew how much wattage the Taser had. I said no. He said 500 watts. para. 7,8*

(1) Interrogation. (2) Pointing a deadly weapon without lawful grounds is an assault, under the *Criminal Code*. (3) The threat of deadly force used to extort information.

The individual was later released without being arrested or charged.

[ 23. ] **Affidavit # 24:** This individual was an unwitting passenger in a stolen car. After a car chase, he and the driver ran to get away from the police. They were cornered in an alley, and surrendered. They were then beaten:

*Finally, a paddy wagon came up. The driver was a Chinese police officer, he was the only one that didn't hit us(1). The beating stopped, and they let us get up. They asked us, "do you have any sharps(2) on you? If we find any sharps on you, we'll fucking kill you."(3) I removed some unused rigs(2) from my jacket pocket and threw them on the ground. We emptied our pockets. During this time, they are pushing us around and manhandling us. para 10*

(1) Seven officers were present. (2) "Sharps" or "rigs" mean syringes. (3) Threat of deadly force.

The individual was later acquitted of accessory charges.



photo: Barry Calhoun

## Jack-ups

### Analysis

On the street, the term "jack-up" is used colloquially to refer to an arbitrary detention that does not lead to an arrest. Fourteen of the affiants reported being "jacked-up". Twenty-four reported reasonable detentions.

### Law:

Detention occurs when an individual's freedom of movement is restrained.<sup>29</sup> Detention can result from psychological as well as physical restraint. Psychological detention exists when the state assumes control over the movements of a person by a demand or direction, the demand or direction has significant legal consequences and the person reasonably believes that he or she has no choice but to comply. The courts have found that detention includes being stopped by police and asked for your identification.<sup>30</sup>

Sections 9 and 10 of the *Canadian Charter of Rights and Freedoms* state that people have the right to be free from arbitrary detention and imprisonment. This right is echoed in Article 9 of the Universal Declaration of Human Rights. Section 10 of the *Police Act* Professional Code of Conduct makes it a punishable abuse of authority for a police officer to detain or arrest a person without good and sufficient cause.

An arbitrary detention is when someone is stopped by police without reasonable grounds. "Reasonable grounds" are ones that can be clearly explained and justified to a third party, and must be based on specific

information related to a particular individual and offence. Criteria based upon stereotypes such as race and apparent income are discriminatory and not reasonable. Moreover, being in a certain neighbourhood – even a neighbourhood characterized by illegal drug use – does not create a "reasonable ground" for belief that a person has committed a criminal offence.<sup>31</sup>

Police officers do not have the right to detain persons or to use force for that purpose short of arrest. Where they attempt to question a citizen but do not make an arrest or give reasons for an arrest, then any detention is unlawful and the officers are not acting in the execution of their duties.<sup>32</sup>

Detentions are used by police primarily for the purpose of gathering information. It is a principle of fundamental justice, enshrined in section 7 of the *Charter*, that all individuals may reserve the right to silence during a detention. If a person is advised that they have broken the law, they must provide their name, address, and birth date. However, where there is no evidence of the commission of any offence, there is no obligation to identify oneself to a police officer.

After detention, police may only do a frisk or pat-down search for weapons that could be used to hurt someone. They cannot search for needle marks or drugs. Only after an arrest may police do a full search.

In civil law, an unlawful detention amounts to false imprisonment, entitling the person to sue for financial compensation.

# TO SERVE AND PROTECT

[ 24. ] **Affidavit #33:** This individual was on the corner of Main & Hastings Streets when he was stopped by police:

*They told me and four other people to get up against the wall. They said "Stop. Get up against the wall, you're getting checked out."(1) They searched me second. I gave the officer my Undertaking to Appear papers. I recognized the officer, he's arrested me a couple of times. He was a big guy, his badge number was [#]. The officer read my papers, and seemed quite angry at the sentence that I had been given. He said something about the fucking judges.(2) He didn't think I was given enough time(3). He said, "If I find a fucking(2) rig on you..." just as he reached for my front pocket. He pulled a rig out of my pocket.(4) As he did it, he wound up, and gave me a huge kick me in right shin.(5) para.1. Also see: Affidavit #14*

(1) Arbitrary detention based upon presence in a particular neighbourhood. (2) Profanity. (3) It is noteworthy that judges are targets of police resentment for sentencing practices. (4) Illegal search. (5) Assault.

The individual was released without being arrested or charged.

[ 25. ] **Affidavit #26:** This individual reported being in the alleyway, behind the Carnegie Centre near Main & Hastings Streets.

*I was in the back alley behind the Carnegie Centre. There were about 10 to 12 people in the alley with me. Suddenly the cops came and blocked off the alley, with one car at one end and another car at another.(1) All together, there was about four or five police officers. One was a female officer. They made all of us stand against the wall and started searching us.(2) They let the females go with minimal search. They did not arrest any of us. At no point did they read us our rights.(3) para.2,3*

(1) Forcible confinement and illegal detention. (2) Arbitrary and illegal searches. Police must do an arrest to have lawful authority to do a full search. (3) Rights must be read in order for an arrest to be lawful.

The individual was released without being arrested or charged.

## Unlawful Arrests

### Analysis:

Sixteen people reported unlawful arrests. Of those, nine were arrested without reasonable grounds, four were arrested for a non-arrestable offence (eg. bylaw infraction), and three were arrested for what appear to be fabricated reasons. Six of those reporting unlawful arrests were jailed, and released without any charges.

### Law:

Section 495 of the *Criminal Code*, gives police officers the authority to arrest someone without a warrant when:

- (a) there is reasonable grounds to believe the person has committed or is about to commit an indictable offence,
- (b) a person is found committing a criminal offence, or
- (c) there are reasonable grounds to believe that there is a warrant out for a person's arrest.

An arrest occurs when a police officer tells a person that they are under arrest. If police must use physical force to detain a person as part of an arrest, as soon as the detention is secured, they must inform the person of the arrest and the reasons for the arrest.

Most arrests happen in the context of criminal offences. There are three types of criminal offence: "summary," "indictable," and "hybrid." Summary offences are tried by a Provincial Court judge alone, whereas indictable offences carry more serious penalties and allow the person to choose a jury trial in Superior Court. For hybrid offences, the Crown may proceed either summarily or by indictment.

The police power to arrest individuals without a warrant is generally available only when an individual has committed an indictable offence. Section 495 of the *Criminal Code* states that a person who has committed a summary or hybrid offence shall not be arrested without a warrant, unless there is a need to establish the person's identity, preserve evidence, or prevent a repetition of the offence. The power to arrest without a warrant does not apply to municipal or provincial offences, such as municipal bylaw infractions or *Motor Vehicle Act* offences.

Where the power to arrest exists, a police officer must have "reasonable grounds" before an arrest can be lawful. "Reasonable grounds" for arrests must meet the same test as reasonable grounds for detention. Like detentions, arrests cannot be based upon stereotypes and prejudice. If reasonable grounds do not exist, an arrest is unlawful.

As noted above, police have a duty to promptly inform someone why they are being detained and arrested. This duty is enshrined in section 29(2)(b) of the *Criminal Code*, and courts have found that an arrest that is not promptly followed by reasons for the arrest is a wrongful arrest, and amounts to false imprisonment.<sup>34</sup> Section 10(a) of the *Charter of Rights and Freedoms* requires that a detainee be informed of the reasons for their detention so they can make an informed choice whether to exercise the right to counsel, and whether to obtain advice about the extent of their jeopardy.

Under section 10(b) of the *Charter*, police have a constitutional duty to promptly inform a detainee of their right to a lawyer before beginning any interrogation aimed at finding evidence of a criminal offence. Once a detainee has said that they want to exercise the right to counsel, the police must provide them a reasonable opportunity to consult with a lawyer without delay, and further police questioning must come to a halt until that consultation occurs.<sup>35</sup>



photo: Barry Calhoun

# TO SERVE AND PROTECT

[ 26. ] **Affidavit #30:** This individual was stopped by police after jaywalking across the street in front of the Vancouver Police Department on Main Street:

*The police officer asked to see my identification. I had my social insurance card and my Carnegie Centre membership card. They ran my identification through their CPIC computer, and found no records on me. One police officer accused me of carrying false identification. He said that I must be carrying false identification, because they could find no criminal records on the identification I carried(1). He pulled my hair back to get a better look at my face, and they told me to pull up my shirt, and they looked for tattoos.(3) I said "Hey, I am who I say I am." They did not believe me. The Chinese officer ran my identification on the computer again. The police officer said that I could be charged with obstruction of an investigation(2), for not providing enough information. They arrested me, put handcuffs on me and led me into the police station. There, they fingerprinted and photographed me. para. 3-5 Also see Affidavit #6, para. 3-7 (bylaw Presumption of guilt: Also see Affidavit #30, #48 para.9*

(1) Stereotypes and presumption of guilt because of presence in a particular neighbourhood, which does not constitute a reasonable ground. (2) Threat of illegitimate arrest. (3) Invasive search carried out without lawful authority. Note: police do not have the power to arrest for a bylaw offence.

The individual was finally given a \$25 jaywalking ticket, and released.

[ 27. ] **Affidavit #27:** This individual stopped to watch two officers take down and handcuff a man on the sidewalk.

*I watched the incident. As I was watching, one of the officers looked at me and said "You. Get off the street or I'll throw you in fucking(1) jail."(2) The police officer was a white male, of average height, with short light brown hair. He was cleanshaven and in full dress police uniform. I looked at the Officer and told him to go fuck himself(3). I said that this is Canada, and I would do what I wanted, where I wanted, when I wanted and as long as I wasn't hurting anybody or breaking any rules there was nothing they could do about it.(4) The police officer replied "Oh, really?" and walked over to me. I was standing approximately 10 to 15 feet away, and he crossed that distance and grabbed my arm and put it behind my back.(5) I asked him why I was being arrested, and he said "for being drunk in a public place, or a nuisance. I'll think of something."(6) para. 5-8*

(1) Profanity. (2) Threat of unlawful arrest in order to compel someone unlawfully to leave a public place. (3) Citizens are not bound by the code of conduct applicable to officers on duty. (4) Correct. (5) Use of force prior to advisement of arrest. (6) Intention to fabricate grounds of arrest. Abuse of authority.

This man was taken to jail, where he suffered numerous injuries.



photo: Barry Calhoun

## Unlawful Searches

### **Body searches**

#### **Analysis:**

Seven of the affidavits report strip searches being conducted in circumstances where there is an apparent absence of reasonable and probable grounds. However, this may under represent the true extent of strip searches, as attempts to distinguish between body and strip searches were not made until later in the study. Communications between Pivot Legal Society and the Vancouver Police Department indicate that strip searches at the holding cells of the department are conducted on all prisoners as a matter of policy.

#### **Law:**

When the police have legally detained an individual for investigatory purposes, they may do a frisk or a "pat-down" for weapons. They may also search for drugs if they have reasonable grounds to believe a person is in possession.

The police may perform a search of the possessions, and a pat-down search of the body, of anyone that they have lawfully arrested. However, the courts have found that if a lawful arrest is not made, that body searches conducted without a warrant are presumed to be unreasonable. If a body search is conducted without a warrant, the onus is upon the police to prove that the search was justifiable in all the circumstances

before any evidence gained as a result of the search will be admitted in court.

Strip searches, which involve compelling a detainee to remove all of their clothes and submit to an inspection of body cavities, are a special category of body search due to their inherently degrading and traumatic nature. The Supreme Court of Canada has ruled that strip searches must not be carried out as a matter of routine policy, but only in particular circumstances where police have reasonable and probable grounds to believe an individual is concealing weapons or drugs on their person. The courts have ruled that even if a person is arrested for trafficking, that in itself does not create a reasonable ground for a strip search.

Due to their highly invasive nature, strip searches must be performed in a private, not public, space unless there are "exigent" circumstances that require otherwise. Such exigent circumstances will only be established where the police have reasonable and probable grounds to believe that it is necessary to conduct the search in the field rather than at the police station. Strip searches conducted in the field could only be justified where there is a demonstrated necessity and urgency to search for weapons or objects that could be used to threaten the safety of the accused, the arresting officers or other individuals. The police would also have to show why it would have been unsafe to wait and conduct the strip search at the police station rather than in the field.<sup>36</sup>

# TO SERVE AND PROTECT

**[ 28. ] Affidavit #15:** A young graffiti artist was arrested for mischief when he was caught spray-painting on a bridge. He submitted to the arrest, and was taken to jail:

*They told me to take off my hat, my belt, shoelaces, necklaces. I asked was this because I might hang myself, and they said yes. Then they told me to take out my piercings. I have five piercings; in my lower lip, in my tongue, in my nose, and one in each ear. It took about 10 minutes to take out the piercings. (1) The officers put the piercings in a plastic bag with the rest of my stuff. The officers told me to take off my shirt, which I did. Then they asked me to take off my pants, so I took off my shoes, and then my pants. Then I was told to take off my socks and underwear, which I did. I was then completely naked. I was told to open my mouth. They looked in my mouth, and made me lift up my tongue. (2) They told me to lift up my genitals, and they looked there. Then they told me to face the wall and bend over and spread my butt-cheeks (3). Then they told me to lift up my feet, and they looked at the bottoms of my feet. The officers told me to put my clothes back on. para. 9-11*

(1) Strip searches can be used only to find evidence and weapons. (2) Piercings are not weapons, and compelling people to remove them is an unjustifiable infringement of the security of the person. (3) There were no reasonable grounds to believe that this individual concealed either drugs or weapons under his tongue or in a body cavity

The young man was released with an undertaking to appear.

**[ 29. ] Affidavit #46:** This individual was directing crack buyers to sellers on the corner of Main & Hastings Streets when he was stopped by a police officer.

*They said "Put your hands up against the wall! What's your name?" I told them my name, [x]. They said, "Oh yeah, we've heard of you." I said, "No you haven't, I've never had any trouble down here." They started patting me down. He started taking my belt off(1). I said "Stop! I'm not wearing any underwear!" He said "Shaddup!" He took off my belt, and my pants fell down. I was naked from the waist down.(2) They started laughing at me. I went to pull them up, and they said "freeze! Hands against the wall."(3) I put my hands up against the wall. They took off my backpack and my outer shirt. They dumped all the contents of my backpack into a puddle, and threw my shirt on top.(4) My packpack contained rigs, books, textbooks, and my journal. para. 4-6*

(1) Note that no arrest has been made. A body search without a preceding arrest is unlawful. (2) Strip searches in public are presumptively illegal, due to their invasive and degrading nature. (3) Abuse of authority. (4) Intentional damage to personal property.

The individual was released, and ordered to "get out of town."



photo: Barry Calhoun

## **Warrantless Searches**

### **Analysis:**

Two affidavits describe a warrantless search of a dwelling-house. Two more describe the unreasonable search of a vehicle.

### **Law:**

In general, dwelling-houses (houses, apartments, and temporary residences) cannot be searched by a police officer unless that officer has obtained a search warrant from a judge or justice of the peace. However, section 487.11 of the *Criminal Code of Canada* allows peace officers to enter a dwelling-house if "the conditions for obtaining a warrant exist but by reason of exigent circumstances it would be impracticable to obtain a warrant."

There are only four types of "exigent circumstances" which could allow police officers to search a dwelling-house without a warrant. Police officers may enter a dwelling-house without a warrant only if they have reasonable grounds to believe that:

- (a) a person for whom a warrant has been issued is present in the building,<sup>37</sup>
- (b) entry into the dwelling-house is necessary to prevent imminent bodily harm or death to any person,
- (c) evidence related to the commission of an indictable offence is present in the dwelling-house and that entry is necessary to prevent the imminent loss or destruction of evidence,<sup>38</sup> or
- (d) a suspect that they are hotly pursuing is in the dwelling-house.<sup>39</sup>

If a police officer enters a dwelling-house without consent, a warrant or exigent circumstances, the entry constitutes trespass. Section 40 of the *Criminal Code* permits anyone in peaceable possession of a dwelling-house to use as much force as necessary to prevent any person from forcibly entering the dwelling-house without lawful authority. A trespasser who fights back against a householder and hurts them is deemed, under law, to have committed an assault without justification or provocation.

# TO SERVE AND PROTECT

**[ 30. ] Affidavit #28:** This woman's former boyfriend was yelling and shouting outside her door, demanding that she give him some belongings from the apartment they once shared. She refused to open the door, and the manager called the police to remove him. The police went to her apartment:

*I asked who it was. A male voice answered me, and said that it was the police. The voice asked me to open the door. I opened the door and two male uniformed police officers were standing there, one Caucasian and one Oriental. I asked them what I could do for them. The Caucasian police officer was standing in front, and he said he wanted to check to make sure there was no one else in the room. He said they wanted to make sure there was no threat to them if they should enter.(1) I opened the door wide, so that he could look over my shoulder and see that there was no one in the room.(2) He asked if he could come in. I told him that I had just woken up, that I had to go to the bathroom. I asked him to wait a few minutes.(3) He said "No." The police officer came into the room.(4) He said something to the effect that I was just a "no good drug user"(5) and that I shouldn't be sleeping during the day. para.6-8 Also see Affidavit #10,*

(1) A pretext to do a warrantless search: "officer safety." (2) This was a 10x12 ft room, and the interior could be seen from the doorway. (3) Denial of consent to conduct a warrantless search. (4) Illegal entry and trespass. (5) Derogatory comment.

The individual was subsequently beaten and handcuffed. She was released without charge.



photo: Barry Calhoun

## Unlawful Seizure of Property

### Analysis:

Six affiants reported property being seized without any arrest being made. Property seized included money, identification, medication, and drug paraphernalia (marijuana pipes). An additional four people reported drug paraphernalia (syringes and crack pipes) being destroyed with no arrest.

### Law:

The *Criminal Code* gives police the power to seize property in certain situations. In general, the police may only seize property which they have reasonable grounds to believe is connected to a crime. Section 17(2) of the *Universal Declaration of Human Rights* protects the right of all people not to have their property taken or withheld from them without a lawful basis.

Section 489.1 of the *Criminal Code* sets out the procedure that must be followed by police officers who seize money or property while on duty. If the property is not required for any investigative purposes, and there

is no doubt as to who owns the property, the officer must promptly return it to its rightful owner. If the property is needed for an investigation or there is doubt as to who rightfully owns it, the police officer must file a report and bring the property before a Justice, so that the Justice can decide whether or not it should be returned.

A police officer that fails to follow the correct procedure for handling seized property is guilty of corrupt practice, under the section 9(a) of the *Police Act Professional Code of Conduct*.

It goes without saying that, in order for property to be retained as evidence in an investigation, there must be an investigation. The purpose of an investigation is to find evidence leading to, or supporting, the laying of criminal charges. If an officer does not have reasonable grounds or intend to lay charges in connection with some offence, it is illegal to keep the property. Retaining seized property without lawful authority is theft, under section 322(1)(a) of the *Criminal Code*.

# TO SERVE AND PROTECT

**[ 31. ] Affidavit #11:** This individual, a known drug user, was stopped by police on the basis that he was not wearing a seatbelt. The police proceeded to search his body and vehicle. The police officers seized his keys, phone and \$740 worth of rent money, as well as a small amount of heroin (\$15 worth) that he confessed to having in his possession.

*A little bit earlier, however, the male officer had told me that he would give me my \$740(1) back if I gave them information about the shack where I went to buy my dope.(2) I told him that I'm a user and not a dealer, so how would I know about those things. I told him that they sold dope at the shack, but they replied, "We already know that." When the K9 unit left the male and female officers said everything was wrapped up. Worried about my rent money I asked them what where my chances of getting my money back. The lady officer said, "Zero. If you have a lawyer maybe six months."(3) Then they walked away. So I had to chase them, and it was at this point when the male officer gave me his badge number (PC [#]) and case number (#02-\*\*\*\*\*).(4) Also see para. 15*

(1) There was no arrest, and no reason to believe that the money was drug related. (2) Unlawful seizure and extortion. (3) False and misleading information by the police officer. (4) It is worthy of note that the individual had to insist on being given a record of the seizure.

No arrest was made, nor any charges forwarded to Crown Counsel. As a result of losing his rent money, he was forced to move in with his brother. The officer has, despite repeated requests, refused to release the funds.

**[ 32. ] Affidavit #12:** This individual, who suffers from chronic pain, ran out of Tylenol 3's. He had just bought 20 more Tylenol 3's on the corner of Main & Hastings when an officer approached and took the pills:

*The officer came back, and started patting me down and going through all my pockets.(1) He did not read me my rights, or tell me that I was under arrest. I had \$240 in my front pocket, and a \$100 bill in my back pocket. I had this money because I had played at the casino at Keefer and Main that morning, and then Keno at the Garlands drug store. I had started that morning with \$150, so it had it had been a good day. I play Keno whenever I can, every day if I have the money. When the officer saw the money he said "This is drug money."(2) He started counting it....He said "You're selling pills." I told him that I was buying, not selling pills. He didn't listen....he told me to go. I asked him to give me my money back. He said "If you want to get your money back get a lawyer. I'll see you in court."(3) He did not charge me, or give me any pieces of paper. I asked him for the case number, or a receipt. He didn't want to give me his card, but I kept bugging him. Finally, he gave me his business card, and wrote a case number on the back. (4) para. 7-10 Also see: Affidavit #29, paras. 5-7*

(1) Illegal search not incident to arrest. (2) Lack of reasonable grounds for assuming proceeds of crime. (3) False information by police officer as to procedures for obtaining seized property. (4) Another example of an individual having to insist on being given proof of property seizure.

No arrest was made, nor any charges forwarded to Crown Counsel. After intervention by a lawyer, the officer returned the money.



photo: Barry Calhoun

## Marching Orders

### Analysis:

Four affiants reported being ordered to leave town or go to another neighbourhood. None were arrested.

### Law:

Freedom of movement is a fundamental right enshrined both in *Universal Declaration of Human Rights*, Article 13(1), and in the *Charter of Rights and Freedoms*, section 7.

Everyone has the right to be present and move in public areas free from any interference by police officers. This right may be constrained by release or bail conditions which require persons to stay outside cer-

tain clearly defined geographical areas (referred to as "red-zoning"). People can also be prevented from entering such areas as crime scenes and disaster areas. However, aside from such restrictions, persons have the freedom to be present in any neighbourhood they wish, and any attempt by police to compel them to leave a certain area is unlawful.

A person need not be physically forced to leave an area for their freedom of movement to be violated. If a police officer tells someone to leave an area, and if that person – intimidated by authority – does not believe that they have a choice, then their freedom of movement has been violated.<sup>40</sup>

# TO SERVE AND PROTECT

**[ 33. ] Affidavit #10:** This individual was known to the police as a heroin user. He was parked in his car talking to a friend when a police car pulled in front of the vehicle. They searched both individuals and the car:

<p><i>Officer [x] said that he didn't want to see me around the area anymore. The female officer told me to go to Calgary, or to Burnaby or to Coquitlam(1)...The heavyset police officer then leaned on my car and said that I was not allowed to be anywhere on Main street between Knight and Fraser or between 33rd Avenue and Marine Drive.(2) He said that, if the police saw me in these areas that they would tow my car.(3) para. 14. Also see para.5</i></p>	<p>(1) Everyone has the right to live anywhere they want, and it is an abuse to use police authority to suggest otherwise. (2) Police do not have the right to arbitrarily impose area restrictions. (3) Threat to unlawfully seize property.</p>
<p>The officers departed without arresting or charging the individual, leaving the car in disarray as a result of the search.</p>	

**[ 34. ] Affidavit #46:** This individual was detained after police witnessed him steering buyers to drug dealers. He was searched: [ also see text box 1 ]

<p><i>They searched through all my stuff. When they saw that I didn't have any drugs on me, they told me to "get out of Vancouver."(1) I told them that the buses had stopped running, and I had no way of getting back to Coquitlam. They said "We don't care. Walk to Coquitlam. If we catch you inside Vancouver again, we're arresting you."(2) They let me pull up my pants. I picked up all my stuff out of the puddle, and walked to the Royal Bank across the street. para.6,7 Also see: Affidavit #33, para.5</i></p>	<p>(1) Officers do not have legal authority to order people to "leave town." (2) Threat of arrest without lawful authority.</p>
<p>The individual was released without charges.</p>	

## Starlight Tours

### Analysis:

A "starlight tour" occurs when a person is detained or arrested, placed in a paddy wagon, driven to another location and dropped off. Three affiants reported being taken on a starlight tour.

### Law:

It is a criminal offence under section 279(2) of the *Criminal Code* for a police officer to forcibly seize, handcuff, or place a person in the confinement of a paddy wagon without lawful authority. Such lawful authority can only arise when a lawful arrest has been made. That is, in order for a forcible confinement to be lawful, there must be lawful arrest - a mere investigative detention does not provide a legal basis for a confinement or the use of force. Police officers are not justified in

using force generally to carry out their duty to investigate crimes, short of arrest.<sup>41</sup>

All arrests made on reasonable and probable grounds are expected to lead to the laying of charges, unless there is new information that supports the innocence of the arrestee. The exception to this is arrest for "breach of the peace." A person suspected of breaching the peace may be taken into custody for a short time and then released without charge. If a police officer arrests a person for something besides breach of the peace, and then releases them without laying charges, it raises the presumption that there were no reasonable grounds for the initial arrest. If there are no reasonable grounds for an arrest, it is an unlawful arrest, and any subsequent confinement is illegal.

Unlawful imprisonment is a closely related cause of action. A person who is unlawfully confined may sue for monetary damages under this cause of action.

**[ 35. ] Affidavit #46:** This homeless individual was talking to some friends, waiting for the Mission shelter to open when he was approached by several police officers. They stopped and interrogated him, but he had no charges. Then:

<p><i>They said that they would call a paddy wagon, and send me to the Beach. I protested, and said that I didn't want to go to the Beach, that I had to get into the Mission. They said that was too bad. They put me in handcuffs. They searched me.(1) They cut my belt with a knife, took my shoes off, and cut my shoelaces with their knife.(2) People were watching. A paddy wagon came about 20 to 30 minutes later, and they put me in it.(3) They told me that they didn't want to see me around anymore, or next time they would send me even farther away.(4) para. 9</i></p>	<p>(1) Note that no arrest has been made. (2) Destruction of personal property. (3) Unlawful confinement. (4) Threat of further illegal detentions and transport.(5) Unlawful detention and transport.</p>
<p>The individual was driven to Kitsilano Beach and dropped off.(5) He walked back Downtown using the alleys, and got a room at the Mission.</p>	



photo: Barry Calhoun

## Unlawful Detentions

### Analysis:

Six affiants reported being held in the Vancouver jail without reasonable grounds and without charges being pressed.

### The Law

Section 497.1 of the *Criminal Code* requires an arresting police officer to give a person appearance papers and release them from custody as soon as practical after the arrest unless the officer reasonably believes that it is necessary to keep the person in order to:

- (a) establish their identity,
- (b) secure evidence,
- (c) prevent future offences,
- (d) ensure the safety of a victim or witness, and
- (e) ensure they will appear in court when there is reason to believe they will not attend.

When an arresting officer delivers a person in custody to the officer in charge (usually at the jail) that supervising officer also has a similar obligation to release the person, under section 498(1) of the *Criminal Code*, unless they have reasonable grounds to keep them in custody for any one of the above five reasons.

The *Criminal Code* protects officers from criminal charges if they fail to release prisoners from custody when there is no reason to keep them.<sup>42</sup> However, it does not protect police from claims for civil damages arising from false imprisonment, assault, and mental suffering. Persons with civil claims against police can bring legal actions for financial compensation.

# TO SERVE AND PROTECT

**[ 36. ] Affidavit #35:** This individual was arrested after an argument with a police officer about the officer's refusal to charge another individual with abuse of an animal. He was forcibly arrested:

*I arrived at the jail, the sheriffs took me in custody. They took my wallet, running shoes, and my cigarettes. They did not take my picture or my fingerprints.(1) They put in a cell with two other people. I stayed for 10 or 15 minutes, and then they put me in a cell by myself. I was there for about four hours. They returned my belongings, and released me. They didn't give any papers. I asked the sheriff at the counter for some paperwork to prove that I had been in jail, but the sheriff refused. (2) para. 24*

(1) The fact that the sheriffs did not process this individual gives rise to the concern that there is no record of his having been held.(2) The refusal to provide any records gives rise to a presumption that the individual was detained illegally.

The individual suffered a fractured rib as a result of the force used in the police take-down. He was not charged with any offence.

**[ 37. ] Affidavit 27:** This man was arrested after observing police arrest a man on the street.

*I fell asleep several times in the cell. I was quite cold. After about one hour, I yelled out that I wanted to see a lawyer. A voice outside the cell said that I didn't need a lawyer.(1) I was released from the drunk holding cell at approximately 4:30am.(2) I was given my bag and told to go. I was given no reason for my arrest.(3) para. 11*

(1) Right to counsel denied. (2) No charges were pressed and no record provided of the detention. (3) Everyone has the right, upon arrest or detention, to be informed as to the reasons.

The individual was later diagnosed with multiple contusions and swelling to his face, wrists, shins and ankles as a result of the beating he received in jail.

**[ 38. ] Affidavit 9:** This individual was arrested after police witnessed a drug transaction. No evidence of an offence was found. He was forcibly arrested, and knocked unconscious:

*They drove me to the station where I was strip-searched. They kept me for 5 hours, and then let me go. The next day, I saw two police officers interrogating a female sex trade worker. I watched from about 2 or 3 yards away. They turned around, and asked me who I was. I told them. They ran my name.(1) I asked them what I had been charged with the day before. They told me that there was no record of my having been charged or detained.(2) para. 9,10*

(1) Harassment and interrogation of observers. (2) No record was made of his five-hour detention in the city jail.

The individual was later diagnosed with multiple contusions and swelling to his face, wrists, shins and ankles as a result of the beating he received in jail.



photo: Barry Calhoun

## **Lack of Medical Treatment in Jail**

### **Analysis:**

Five people report being denied access to medical treatment or their medications while in the Vancouver jail.

### **The Law**

Police who arrest and detain people have a special relationship, under law, with their captives. By assuming control over their body and freedom, police inherit the responsibility to care for the welfare and health of those who are in their custody. This special relationship creates an obligation to act if a failure to act would result in harm to a person.

Failure by police to provide necessary and appropriate medical attention to a captive is negligence under law, and any injuries that result due

to a failure to treat are the responsibility of the captor. Someone who is injured through police failure to provide medical treatment can sue for financial damages as compensation for the pain, mental suffering, and injury that results.

Failing to act when a person has a duty to act is also a criminal offence. Under section 219(1) of the *Criminal Code*, anyone who shows wanton or reckless disregard in omitting to do something that is his or her duty to do is criminally negligent. Criminal sentences of up to 10 years can be imposed if a person suffers bodily harm as a result of criminal negligence.

# TO SERVE AND PROTECT

**[ 40. ] Affidavit #8:** This individual was attacked by a police dog during his arrest for theft late Sunday night. He suffered extensive wounds from dog bites:

The police read me my rights and then an ambulance showed up. The paramedics put a temporary dressing on my wounds and said that I needed to get stitches, but they didn't take me to the hospital.(1) Instead, the police wagon came and took me to the city jail. I was held in jail until Monday, July 15, 2002, at 6:00pm, when I was released without bail on my own recognition.(2) I was charged with theft from an auto and given a court summons. No one treated my wounds while I was in the jail even though my arm was bleeding profusely and swelling.(3) By the time I was released on Monday my arm was in such bad shape that I went to the emergency room at St. Paul's hospital. The doctor there told me I needed antibiotics immediately because I had a raging infection. Affidavit #8, para.8,9

(1) It is problematic that paramedics would allow police to imprison a seriously injured individual. (2) No treatment for approximately 18 hours after the dog attack. (3) Jailhouse nurses are required to check on all inmates.

This individual was unable to pay to fill his antibiotic prescription. He returned to the hospital when the wound abscessed, and received an injection of antibiotics.

**[ 39. ] Affidavit #31:** This individual was hurt during an arrest by sheriffs for making too much noise. He was taken to the jail:

They fingerprinted me and took me to speak to a nurse. She took my blood pressure and asked me about my medical health, so I told her my pre-existing conditions.(1) She did not treat me for my injuries.(2) I was put in the holding cell. The police gave me a bag of lunch and said it was lunch time, so it must have been around noon or so. I had been telling the guards all along that I needed my anxiety medications because I have to take them at certain times-morning, midday, and evening-but they ignored me.(3) When the nurse came to our cell at 8pm, she asked if we needed anything, and I told her that I needed something for the murdering pain in my arm and that I also needed my prescribed daily medications.(4) She asked me how long I had been in the cell, and when I told her, she turned her nose in the air, waived her hand dismissively, and said that I hadn't been there long enough and walked away. She did not give me my anxiety medications.(5) para. 10-12

(1) Nurse is made aware of medical condition requiring medication. (2) Lack of treatment for twisted arm. (3) Again, need for medication communicated. (4) Request for medication made again. (5) Refusal to provide medication.

The individual was charged with creating a disturbance and released at 11pm.



photo: Barry Calhoun

## **The Complaints Process**

Section 8 of the *Universal Declaration of Human Rights* states that everyone has the right to an effective remedy against police misconduct. Persons in British Columbia who wish to seek a remedy about the misconduct of a police officer have several alternatives. If a person wishes to press criminal charges, they may go before a justice of the peace, and swear what is called an "information," which lays out the details of the charge and requests an investigation. If a person wishes to proceed with a civil claim for financial compensation, they may file a claim in Small Claims Court – or, if the damages exceed \$10,000, in Supreme Court. However, most cases of police misconduct are dealt with through the official complaints process set out in the *Police Act*.

The British Columbia *Police Act* allows any person to make a complaint against a municipal police officer, or against a municipal police force. Complaints may be submitted to the Police Complaint Commissioner, the Police Board, or a senior officer of the police department. Initial complaints may be made orally or in writing, but eventually a written complaint must be submitted. If necessary, whoever receives the complaint must assist the complainant in completing their written complaint.

When a complaint is sent to the Commissioner, it can be resolved informally or summarily dismissed. If a complaint is not dealt with in either of those two ways, it will be sent to the original police department for investigation. That is, if a complaint is made to the Complaints Commission about a Vancouver Police Department officer, the Vancouver Police Department is given the complaint and asked to investigate. The *Police Act* allows the police department to resolve complaints informally, or if the complainant wishes, the results of the investigation

are presented to the Police Complaints Commissioner for a decision.

There has been much debate about whether it is fair or effective for police departments to investigate themselves. In order to ensure that the public has confidence in such a process, police departments are required to show extreme diligence when investigating their own officers. The Office of the Police Complaint Commissioner has issued ethical guidelines for the conduct of such investigations:

Therefore in any investigation, the interest of the Department or of the police officer under investigation, while indeed legitimate, must be considered through the special lens of fiduciary obligation and public trust. Among other things, this means that the Department must pursue alleged flaws or infractions even within its own structure fearlessly and assiduously. Only in that way will public trust be satisfied.<sup>44</sup>

Despite these clear guidelines, it is widely accepted that pressures of loyalty between police officers can seriously undermine the objectivity of internal investigations. In "*Police Culture and the 'Code of Silence,'*" commissioned by the Office of the Police Complaints Commission, John Westwood, Ph.D., a 13 year veteran of the complaints process with the B.C. Civil Liberties Association, wrote:

I have no experience with internal investigations when the matter arises internally, but I have attended many interviews with civilian complainants. I have never met an internal investigator who is biased in favour of a civilian complainant, though I have met a few who apparently view their job as assuaging the complainant while taking the officer's statement at face value. Nor have I assisted in a complaint where police witnesses support the complainant's account of events in opposition to the accused officer's account. However, when an officer's statement conflicts with a civilian complainant's, in the absence of strong evidence to the contrary the officer's account of the incident is normally accepted. I would hope that another officer's testimony would constitute strong evidence to the contrary.<sup>44</sup>

# TO SERVE AND PROTECT

**[ 41. ] Affidavit #4:** This individual was thrown against a wall and heavily bruised when he refused to allow police officers to enter his apartment without a warrant. He complained to the Vancouver Police Department:

I then phoned Internal Affairs and left a message for them to phone me...at 3:15 Sergeant [x] phoned me and asked me what happened. I told him, and asked that the police officers apologize for their actions. Sergeant [x] informed me that officers do not have to apologize for carrying out their duties.(1) Furthermore, he stated, by refusing to let the officers in my room, I was actually obstructing the officers from doing their duty. I said that that was a lie. Sergeant [x] then said if I was going to call the officers liars that he would hang up on me.(2) I then inquired why they could say that I was a liar but not the other way around. He then reiterated that if I was going to continue questioning the integrity of the officers than the conversation was going to come to a halt.(3) I said fair enough, that I would not deal with him anymore and I hung up. para. 11, 12	(1) Police officers can be disciplined for using excessive force to carry out their duties.(2) Police complaint investigators are obliged to accept all complaints.(3) Police complaints, by their very nature, often call into question the truthfulness and integrity of officers.
No complaint was ever made.	

**[ 42. ] Affidavit #4:** This individual was accused of selling Tylenol 3's when the police found 20 Tylenols in his pocket. They took the \$340 that he won gambling. He was not arrested or charged.

The first thing Monday morning, I called VPD internal affairs, at (604) 717-2760. I spoke with a man, I don't remember his name. I explained what had happened. The internal affairs officer told me that I was not going to get the money back, that he believed the police officer(1) that I was dealing drugs.(2) para.11	(1) Again, the response that a complaint that contradicts statements of officers will not be accepted.(2) This individual was not arrested or charged with any offence, and the seizure of property was therefore presumptively unlawful. No evidence existed that the individual was dealing drugs.
No complaint was ever made.	

**[ 43. ] Affidavit #7:** This individual was beaten during his arrest, and during his stay in jail. He was hospitalized. Afterwards:

... I went to the police station at 222 Main Street to make a complaint. I talked to the lady at the front desk. I asked her if I could make a complaint. At first she said yes, that this was the right place. She asked me to explain what happened. When I told her that my complaint was about the police, she said that I should call 911(1). I asked her for the papers to lay a complaint, and she refused to give me them to me.(2) She told me again that I should call 911. para.23	(1) 911 does not accept police complaints. The duty of the clerk was to refer the individual to a senior officer.(2) The Vancouver Police Department has a duty to provide access to complaint forms.
No complaint was ever made.	

**[ 44. ] Affidavit #36:** This individual and a co-worker witnessed an incident of police brutality against three female sex trade workers:

[x] sent a formal complaint letter to the Chief Constable Bruce Chambers the same day. A copy of this letter is attached as Exhibit "A" to this, my affidavit. [x] received a response letter about two weeks later, acknowledging receipt of the complaint, and stating that an investigation would take place. As far as I know, there was never received any follow-up by the Vancouver Police Department to the incident.(1) para.8,9	(1) Under the Police Act, complainants must receive notice of the outcome of any investigation they initiate.

## Reliability of the Evidence

There are four main factors which support the credibility of the affidavits relied upon in this report:

1. Lack of incentives: Except for the free coffee available to all visitors of the Pivot office, no consideration of any kind was offered to any person as an incentive to provide an affidavit. In particular, it was made clear to all affiants who asked that Pivot would not undertake to represent any individual in claims for damages.
2. Supporting evidence: Twenty-nine of the documented instances of misconduct are substantiated by corroborating medical records, witness statements, or other supporting documentation. Six more provide names of witnesses, and 19 provide the badge numbers of officers or case numbers.
3. Oath of truth: All affiants were required to swear or affirm that the contents of their affidavit are true. It should be noted that there is no reason to believe that drug users, when access to drugs is not an issue, lie more than any other person. In fact, affiants were extremely frank in the information they provided, with 13 providing incriminating evidence of offences for which they have not been charged, and 21 of the 26 who provided information on drug use admitting to being current or former hard drug users.
4. Corroborating research data: The case studies documented in this affidavit report are merely examples of police misconduct of marginalized persons. The pervasiveness of police violence in the DTES has been documented in two other data sources.

## The PACE Report

In 2001, the Prostitution Alternatives Counseling Education Society (PACE) commissioned a study examining the frequency of violence against women in the Downtown Eastside and the effectiveness of the police response to that violence. The study involved interviews and surveys that were administered to 183 women involved in the street-level sex trade. The results were reported in the publication entitled, *"Violence Against Women in Vancouver's Street Level Sex Trade and the Police Response."*<sup>44a</sup>

The findings demonstrated that sex trade workers experience extremely high levels of abuse and violence from a number of sources. The majority of abuse was suffered at the hands of "bad dates." However, the women also reported significant levels of police misconduct and violence. According to the study, sex trade workers reported misconduct by the Vancouver police during the preceding year as follows:

Police Misconduct	Frequency
Robbery	8.2%
Physical threats	6%
Threats with a weapon	6.4%
Assault without a weapon	9%
Assault with a weapon	9%
Sexual assault with a weapon	7.9%
Attempted murder	6%

## The VIDUS Data

The Vancouver Injection Drug User Study (VIDUS), sponsored by the B.C. Centre for Excellence in HIV/AIDS, is a multi-year investigation of an open cohort of over 1,500 injection drug users, most of whom live in the DTES of Vancouver. The project began in May 1996, and has been the leading study providing information about HIV incidence and prevalence among injection drug users over time. In December of 2001, the study began looking at the link between health and human rights, and asked the participants a number of questions relating to interactions with police. The results suggest that abuse and violence by Vancouver police against drug users is prevalent.

Of the 703 participants who provided responses to the police questions, 35% were female, 63% male and 2% transgendered. Participants responded with reports of police misconduct within the previous six months as follows:

Police Misconduct	Frequency
"Jack up"	64%
Seizure of possessions, including drug paraphernalia, money, identification and prescription medication	42%
Infliction of physical harm	16.5%

The cumulative results of PACE and VIDUS data strongly indicate that police misconduct towards drug users and sex trade workers in the DTES is commonplace. If the VIDUS data is an accurate depiction of the rates of police violence against the mixed male and female population, approximately 825 drug users have experienced pain and suffering at the hands of Vancouver police in the last six months.

## Impacts

### Health

Vancouver has been the unfortunate location of a real-life natural experiment on how not to deal with illicit drug use. From a health perspective we are witness to an explosive outbreak of HIV, hepatitis C, serious bacterial infections, and overdose. Although the city has in place a program whereby drug users can obtain clean syringes and turn in used ones, the use of law enforcement has overwhelmed all public health interventions.

The right to the highest attainable standard of physical and mental health, the right to housing, the right to medical care, and the right to employment are just some of the "positive" rights stated in the *International Covenant on Economic, Social, and Cultural Rights* to which Canada is a signatory. In the case of illegal drug use, many of these rights are essentially ignored, as society continues to pursue a policy that punishes the people who are addicted to illicit drugs and in turn makes the problem worse for society.

There are a number of specific examples where both intended and unintended adverse health outcomes occur as a result of a law enforcement response to illegal drug use. These are:

1. Direct physical harm has been observed during interactions with police officers. Arrests for drug trafficking and possession may be particularly violent and chaotic.<sup>45</sup>
2. People feel forced to use their drugs in unsafe ways in order to avoid arrest. For example, injections performed on the street are often rushed, which increases risk of overdose. This results in missed veins and poor sterile technique.<sup>46</sup>

3. In order to avoid arrest, many individuals do not venture out of their rooms unless absolutely necessary. They may be reluctant to visit the needle exchange and decide to re-use needles or borrow dirty needles from others. They may also delay seeking medical attention or picking up prescribed medications.<sup>47</sup>
4. After being released from jail, there is often very poor coordination with social services and other supports. Injection drug use often occurs within hours after release, and overdose at this time is common due to a reduced tolerance to usual doses.<sup>48</sup>
5. Police presence causes dealers and users to find hidden locations to conduct their activities and pushes this population further into the margins. The opportunities for treatment are seriously compromised in this environment.<sup>49</sup>
6. Because drugs are prohibited, their quality and potency are not regulated. This leads directly to outbreaks of overdoses when highly potent drugs hit the streets. It also leads to infections from contaminated product.<sup>50</sup>

## Economic

Abuses of police authority have economic consequences. Violations of human rights abuses can be costly, not only in terms of the emergency health costs associated with treating cuts and bruises, head injuries and broken bones, but also in terms of civil liability.

The affidavits in this report describe potential tort causes of action including battery, assault, false imprisonment, infliction of mental suffering, harassment, trespass, detainment and conversion. These causes of action, if brought successfully before a court of law, give rise to cost awards. A number of the affidavits describe situations in which compensation awards would not only be significant, but which also raise the possibility of punitive damages. The court awards punitive damages when it feels compelled to penalize the behaviour that gave rise to the cause of action and to discourage similar behaviour in the future.

Drug addicts and marginalized persons have traditionally lacked access to the civil justice system. Lawyers are expensive, and many marginalized persons who suffer at the hands of police do not have the knowledge or resources necessary to bring forward a lawsuit for financial damages on their own behalf. However, it is not sound financial planning to rely upon such inequities as a defence for police misconduct, for these structural barriers to the justice system can be overcome, and the financial awards for police misconduct can be substantial:

In *Campbell v. Hudyma*,<sup>52</sup> police wrongly arrested a woman on a tip that someone matching her description was selling drugs on the sidewalk. She was searched, and syringes but no drugs were found. The court found that the police failed to inform the woman as to the reasons for her arrest, and that the arrest was therefore unlawful. Damages for an illegal arrest lasting 15 to 20 minutes were \$2,200.

In *Stewart c. Dugas*,<sup>53</sup> police officers went to the plaintiff's house to conduct an inquiry. The plaintiff homeowner told them her name but was arrested when she refused to produce identity papers. She was not given time to change out of her night-gown. Police officers used force during her arrest. The court found that the arrest was illegal, abusive and unjustified. The woman was awarded \$10,000.

In *Nolan v. Toronto (Metropolitan) Police Force*,<sup>54</sup> police arrested and detained overnight a First Nations man they believed had an outstanding warrant. The court found that the officers had reasonable grounds for the arrest, but also found that if they had checked the records carefully, they would have realized they had the wrong person. The court awarded \$5,000 for false imprisonment and mental suffering, and a further \$5,000 in punitive damages for a total of \$10,000.

In *MacCormack v. Halifax (City) Police*,<sup>55</sup> police wrongly arrested a man matching a suspect's description. The man was held for six hours and released. He suffered mental anguish as a result of the arrest. The court found that the man had been falsely imprisoned, and awarded general damages of \$12,000.

In *Rosario v. Canada*<sup>56</sup> police let loose an attack dog after a man, a suspect in a drunk driving accident, put his hands up and surrendered to police. The man suffered bites to the shoulder, and some scarring. The court found that the police had committed an assault, and awarded damages of \$15,000.

In *Servant v. Bonhomme*<sup>57</sup> the police mistakenly arrested a man, believing that he had breached a recognizance. The plaintiff was injured during the arrest and brought action for damages for false arrest, assault and negligence. The court found the officer did not have reasonable grounds to believe that the plaintiff contravened a recognizance and that the arrest was unlawful. The court found that the officer's actions constituted assault and awarded general damages of \$5,000 for false arrest, \$12,500 for assault and special damages of \$625.

Most claims of action in these affidavits fall in the under \$10,000 range, although some could amount to significantly more. For claims under \$10,000, individuals do not need a lawyer to coordinate their claim, but can register a Small Claims Court claim and appear on their own behalf. In such cases, witness statements or medical evidence is enough to establish a *prima facie* case. For those who cannot afford court fees, a simple application for fee waiver removes the most significant financial obstacle. Simple education and minimal legal support, therefore, is all that is required to enable poor and marginalized people to make successful civil claims for damages.

The legal costs in defending small claims actions can be significant for an institutional defendant such as the City of Vancouver or the Vancouver Police Department. Institutions must be represented by legal counsel, and the legal and staff resources necessary to prepare legal arguments, documents and evidence and arrange witnesses can cost from \$5,000 to \$20,000 per trial.

A responsible financial approach for a municipality to take, therefore, is one that addresses concerns about human rights abuses proactively and effectively. Unaddressed concerns about abuse of police authority not only create issues of negligence, but also create uncertain liabilities which undermine financial planning and compromise funding for important projects. Responsible social behaviour makes economic sense.

## Recommendations for Systemic Change

### 1. Monitoring

An outstanding characteristic of much of the police misconduct documented in this report is "institutional invisibility." That is to say, many abuses of authority operate below the radar screen of official record-keeping and documentation. The consequence of this situation is that the extent of the problem cannot be evaluated or measured unless individuals make complaints – something that is not currently happening.

The most obvious need is to monitor for excessive police force. Of the 36 police interactions documented here which reported excessive force, only eight proceeded to the laying of charges. In the remaining 28 cases, those arrested were released without charges, many without any explanation as to the reason for their arrest. It is a concern that individuals who experience unlawful levels of force are not dealt with inside the system, but are quietly released as a matter of practice. This raises the further, more worrying concern that illegal force is used systemically by the police.

Under section 12 of the *Police Act* Use of Force Regulation, each police department is required to submit to the Ministry of Attorney General yearly statistics on the use of force by its officers. However, if individual instances of force are not effectively documented, this information will have little value.

#### Recommendation 1: Mandatory Reporting of Force

*All officers who use force should be required to file a report documenting the reason for and extent of the force. These reports should be made publicly available (with identifying information).*

Of the 32 affidavits that report an arrest, charges were laid against only seven, with five unknowns. This raises a concern that Vancouver Police routinely use their authority to arrest people, when in fact no reasonable grounds for arrest exist. However, the true extent of this problem cannot be assessed, because in most cases it is clear that no record of the arrest has been made, and so a follow-up evaluation cannot be done.

The same concern holds true for "starlight tours." None of the three affiants who were arrested, confined to a paddy wagon, and driven to a different location in the city were charged. They were provided with no documentation of their detention, and there is nothing to suggest that the police kept records of the illegal detention.

"Institutional invisibility" is most concerning in the case of detention in the city jail. Fourteen of the affiants reported being held in jail for periods ranging from several hours to overnight. However, only nine of those were charged with any offence. Five were released without receiving any paperwork or record of their arrest, and in four of those cases, requests to speak with a lawyer or receive records were directly refused. This raises the concern that overnight detention without lawful cause is a punishment routinely meted out by Vancouver Police Department officers. However, without institution documentation, it is impossible to gauge the extent of the problem.

#### Recommendation 2: Documentation of Detentions

*A receipt should be given to all individuals who have been confined in paddy wagons or detained in jail. A copy of all receipts be filed with the records department, and be made publicly available.*

It is currently the policy of the Vancouver Police Department to refuse access to any police reports made in connection with an arrest if the person is not charged, even when the person requests it and even when that person was held in jail as a result of the information contained in the report.

This lack of transparency is an obstacle to addressing concerns about systemic misconduct.

#### Recommendation 3: Access to Police Reports

*A copy of the police report used as the basis for arresting and detaining a person in jail should be provided to that person on their leaving jail, regardless of whether charges were approved by Crown Counsel or not.*

### 2. Access

The experience of the Pivot Affidavit Program is a testimony to the difficulties in reaching an extremely marginalized population of drug users for the purpose of reporting cases of police misconduct. Despite extensive grassroots outreach and education, and point-of-service access by the VANDU needle exchange, most people reporting misconduct elected not to make a statement. The program was a clear failure in reaching drug-addicted women, who are the most marginalized population in the DTES.

The current process for filing a police complaint is in four parts, and begins with filling out an official form. This form is not available at the Vancouver Police Station, but can only be obtained via the Internet or from the Office of the Police Complaints Commission (OPCC), located on the 9th floor of an office building in the heart of Vancouver's business district.

In only one of the 50 cases of misconduct detailed in this report has someone reported successfully completing this first stage of the complaint process.

#### Recommendation 4: Complaints Outreach

*The Office of the Police Complaints Commission should invest resources to create community-based outreach programs designed to collect complaints from persons whose access is compromised by drug addiction, mental illness, low literacy or extreme social marginalization.*

Providing effective access to complaint procedures is best addressed by identifying points of institutional contact where complaints can be received from marginalized persons. In the case of drug users, such points of contact are rare. However, one particularly appropriate point of contact that is under the jurisdiction of the City of Vancouver is the jailhouse. The jail is a particularly suitable forum for receiving complaints, as events and evidence are fresh, and it would obviate the need for marginalized people to initiate contact with the complaints processes.

#### Recommendation 5: Complaints Intake at the Jailhouse

*The City of Vancouver and the OPCC should fund and establish a 24-hour "complaint intake" position to operate out of the Vancouver jailhouse. Staff filling this position would report directly to the Police Complaint Commission. The duties of the position would include interviewing all detainees, in a private area, and recording basic arrest information such as:*

- elementary protocols of the arrest (reading of rights, searches),
- any force used during the arrest, and any resulting injuries,
- any medical conditions requiring attention, and
- any property seized during the arrest.

*Although obvious instances of police misconduct identified through these interviews should trigger an investigation, the primary purpose of recording this information should be to record information. Interview records should be filed, with police reports, for the purpose of:*

- public review (with identifying information removed), and
- "professional conduct audits," detailed further in Recommendation 7.

### 3. Investigations

The mandate of the OPCC is to investigate and punish disciplinary defaults on the part of police officers. In order to achieve this mandate, the Commission has a number of remedies at its disposal. These remedies, however, are limited to penalties related to the employment and status of police officers.

In 2000 and 2001, a total of 755 complaints were received by the OPCC, with 321 reported against the VPD (42.5%). In the same period, 794 complaints were concluded, 334 against the VPD (42%).

Penalties imposed on officers during that period were as follows:

Disciplinary Action	Frequency
Advice as to future conduct	28
Verbal reprimand	26
Written reprimand	21
Training	3
Counseling	5
Apology ordered	6
Reduction in rank	3
Suspension (from 1 - 5 days)	10
Reassignment	3
Managerial Advice	13
Order for financial reparation by officer	1
Dismissal	1

These disciplinary measures are essentially employment penalties, as can be seen from the fact that the ultimate penalty is dismissal. The Complaints Commission does not have the jurisdiction to impose criminal sanctions against officers. Where allegations of a criminal nature are alleged by a complainant, section 50(3)(g) of the Police Act states that the Commissioner may refer the allegations to Crown Counsel, for possible criminal prosecution. If a complaint is not referred, egregious and criminal misconduct such as unlawful detention or assault will be treated as a mere administrative default. The following case illustrates this point:

In OPCC file #1179 (01/08/02), two officers entered a grocery store in an apparent search for liquor. When the owner attempted to call his lawyer, one officer physically attacked him. The incident was recorded on the video surveillance camera, which showed the officer committing illegal search and seizure, using unnecessary force, etc. The officer was penalized with a three-day suspension, and was required to take an anger management course and be re-certified in use of force training.

The maximum criminal penalty for the theft and assault described in this case is seven years in jail.

The *Criminal Code* provides no immunity to police officers who break the law without lawful excuse. Police officers who intentionally act outside their lawful authority are liable for criminal prosecution in the same manner as any private citizen. Despite this, however, the procedures for complaints under the *Police Act* effectively creates a shield for a police department that does not wish to sanction its officers with criminal charges.

There are processes that can lead to criminal charges against officers, but there is a weak link that undermines the whole process. Individuals wishing to press criminal charges against a VPD officer have few options besides the OPCC. Without an order from the Commissioner, the RCMP and other municipal police departments lack the jurisdiction to undertake an independent investigation. Although a person may appear before a Justice and swear a statement, the policy of

Crown Counsel in Vancouver is to forward any such statements back to the VPD for internal investigation. Crown Counsel will not proceed to approve a charge without a supporting police report from the Vancouver Police Department.

The onus, then, is left to the VPD to proceed with criminal charges against its members, if it so chooses. Whether the VPD exercises this responsibility in a fair and objective manner is not yet known; the VPD has refused to provide Pivot Legal Society with any information relating to criminal charges laid against officers. However, the affidavits detailed in this report, and the Commission paper *Police Culture & the "Code of Silence,"*<sup>44</sup> indicate there is a considerable bias against allowing complaints against police officers.

The Police Complaints Commissioner has the power, under section 55.1(2) of the *Police Act*, to require that a complaint against a police officer be investigated by itself or an external police department when the Commissioner considers an external investigation to be necessary to preserve public confidence in the complaint process.

Given the grave nature of criminal offences and the contradiction inherent in institutions investigating themselves, it is the position of Pivot Legal Society that public confidence in the complaints process requires the external investigation of all allegations of criminality on the part of Vancouver police officers.

#### Recommendation 6: External Investigations for All Criminal Offences

*The Police Complaints Commissioner should implement a policy whereby all complaints that allege offences of a criminal nature by Vancouver Police Department officers are automatically directed to an independent, respected external agency for investigation. When the investigation is completed, the record and results should be made public.*

The documentation proposals set out in Recommendations 1, 2, 3 and 5 have two purposes. First, they would allow institutional monitoring for systemic abuse of authority. Second, they would create the framework of information necessary to conduct effective investigations of specific misconduct complaints. Recommendations 1, 2, 3, and 5 are a package, and together they would allow a more thorough type of investigation: the professional conduct audit.

#### Recommendation 7: Professional Conduct Audits

*When a complaint against an officer is made in relation to an alleged disciplinary default, the Complaints Commission should undertake an audit of the jailhouse records created under Recommendation 5 and other performance and arrest documentation relating to the officer. If an audit of records reveals other allegations of misconduct, then those incidents as well as the incident in question should be investigated.*

## Call for a Public Inquiry

The affidavits in this report create grounds for serious concern about the gravity and extent of abuses of authority by Vancouver Police Department officers against marginalized persons. The data provided in the VIDUS and PACE studies suggest that misconduct against marginalized persons in the DTES is widespread. However, the true nature of the problem cannot be assessed without more information. The affidavits suggest certain lines of inquiry that could be used to gauge the extent of misconduct:

- an audit of all property and money retained by VPD officers as a result of arrests, and a review of all property reports submitted under section 489.1 of the *Criminal Code*,
- an audit of all ambulance calls to VPD holding cells, and of all medical records of jailhouse medical staff,
- an audit of all St. Paul's Hospital emergency records that contain statements alleging assault by police,
- an audit of complaints lodged against VPD officers that contain allegations of a criminal nature,
- an audit of all complaints investigated and dismissed by internal investigation officers,
- an audit of all jailhouse detention records, and
- interviews with nurses, doctors, jail guards, police officers and outreach workers.

Investigating documents is a necessary line of inquiry. However, the true extent of police misconduct cannot be measured without greater reporting of complaints against the police by marginalized people. Here the model of Gandhi's Bihar campaign is once again useful. In Bihar, peasant farmers lined up to see Gandhi and his lawyers because of the reputation and esteem with which Gandhi was held. People were confident that making their concerns known to Gandhi would result in justice and change.

We do not have a Gandhi. However, we have the modern equivalent: a Commissioner of Public Inquiry. Under section 50(3)(f) of the *Police Act*, the Police Complaint Commissioner can recommend that the Attorney General appoint a Commissioner of Public Inquiry if there is an issue with ramifications so serious or so widespread that a Public Inquiry is necessary in the public interest. The Federal Minister of Justice also has the power to order a Public Inquiry.

The Commissioner of a Public Inquiry, usually a public figure of respect and stature such as retired judge, has broad powers of investigation. A Commissioner:

- has access to and can remain in every part of any provincial public office or institution,
- may examine all documents and records belonging to those offices and institutions,
- may require any person to attend as a witness and answer questions under oath,
- may require any person to produce any documents in their control that are related to the inquiry, and
- may imprison for contempt any person that interferes with the inquiry.

Experience from the Pivot Affidavit Program shows that some of the major impediments to filing complaints faced by marginalized persons are:

- fear of retribution from police officers who may target them as a result of the affidavit,
- belief that drug users deserve police mistreatment,
- lack of faith in legal processes, and disbelief that reporting misconduct will lead to any redress, and
- belief that police will lie about the incident, and that the affiant will not be believed because they are a drug addict and/or have a criminal record.

The stature and public respect accorded to a Commissioner of Public Inquiry would go far towards addressing these impediments.

A Public Inquiry is more than simply an effective tool of investigation in this case. It is a legal obligation. The evidence of torture by state officials documented in this report elevates this matter into the realm of international law. Section 12 of the United Nation *Convention Against Torture*, to which Canada is a signatory, states:

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

It is shocking to realize the gravity of the evidence documented in this report. However, once the implications of that evidence are grasped, there is not only a legal, but also an ethical obligation to act.

## Recommendation 9: A Public Inquiry

*A Commission of Public Inquiry should be convened, and a Commissioner appointed, for the purpose of investigating the nature and extent of misconduct by the Vancouver Police Department against marginalized persons in the Downtown Eastside of Vancouver.*

## ***Final Reflection***

As stated above, Pivot Legal Society believes that the troubling record of police misconduct documented in these pages requires policy reform to ensure that citizens do not fall victim to police abuse of authority. But we cannot make the mistake of assuming that such reforms will magically cure the problem, nor can we fairly point the finger only at the VPD and place the full responsibility for change in its lap.

Drug users and police officers are both responding to a larger social policy context that reinforces their mutual roles as victims and aggressors or, viewed from the perspective of the police, law breakers and law enforcers. It is our decision as a society to criminalize drug addiction, rather than understand and treat those behaviours as medical and social issues, that ultimately forces both sides of the equation into an endless dehumanizing cycle of criminalized behaviour, arrest, incarceration, release, and further criminalized behaviour. And until we change the way we deal with drug use, we will not have a real opportunity to heal this wounding cycle.

Studies indicate that up to 30% of residents of the Downtown Eastside are drug users, and that with drug use comes the attendant challenges of poverty and ill health. Imagine the challenge of compassionately serving these citizens as a police officer, when the laws you are instructed to enforce make criminals of many of the poor, sick people you see on the street. And imagine the frustration of seeing those same "criminals" back on the street after serving time, with no perceptible change in their condition or behaviour. It would be difficult to maintain a respectful relationship with that community.

We need only look to the United States for proof positive that a criminalized approach to drug use is an abject failure. Criminalization imposes obvious economic costs on society through the justice and prison systems, but the social costs run much deeper and wider than that. They include the break-up of households as parents are incarcerated, the entrenchment of poverty, and escalating health care costs as the symptoms, rather than root causes, of addiction are treated.

As an alternative, we can choose to reject this bankrupt model, and follow the successful model applied throughout many European countries, including Switzerland, Holland, and Germany, where addiction is accepted as a health problem that can be successfully addressed as a medical and social issue. If this model can be replicated in Canada, these changes would create the utilitarian benefit of substantially reducing the overall social and economic costs of drug use. But perhaps more importantly, they would permit both marginalized persons and the police to reclaim their dignity, by leaving behind the failed system that requires them to see each other as enemies.

# TO SERVE AND PROTECT

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## Footnotes

1. Strathdee SA, Patrick DM, Currie SL, et al. *Needle exchange is not enough: lessons from the Vancouver injecting drug use study*. AIDS 1997;11(8):F59-65.
2. Statistics Canada. Population Census of Canada. 1996.
3. 2001 Report of the Auditor General of Canada Chapter 11- Illicit Drugs: The Federal Government's Role. Office of the Auditor General of Canada. Available: [http://www.oag-bvg.gc.ca/domino/reports.nsf/html/01menu\\_e.html](http://www.oag-bvg.gc.ca/domino/reports.nsf/html/01menu_e.html). Accessed January, 2002.
4. Reh, J. Gschwend, P. Steffen, T. Gutzwiller, F. et al. *Feasibility, safety, and efficacy of injectable heroin prescription for refractory opioid addicts: a follow-up study*. Lancet 2001;358(9291):1417-23.
5. Dolan, K. Kimber, J. Fry, C. et al. *Drug consumption facilities in Europe and the establishment of supervised injecting centres in Australia*. Drug and Alcohol Review 2000; 19:337-46.
6. Wood E, Tyndall MW, Spittal PM, et al. *Unsafe injection practices in a cohort of injection drug users in Vancouver: could safer injecting rooms help?* CMAJ 2001;165(4):405-10.
7. Wood E, Tyndall MW, Spittal P, et al. *Needle exchange and difficulty with needle access during an ongoing HIV epidemic*. International J Drug Policy 2002;13(2):95-102.
8. *supra*, footnote 6
9. O'Shaughnessy MV, Montaner JS, Strathdee S, Schechter MT. *Deadly public policy*. Int Conf AIDS 1998;12:982.
10. Oscapella, E. (1995). *How Canadian laws and policies on "illegal" drugs contribute to the spread of HIV infection and hepatitis B and C*. [online]. Canadian Foundation for Drug Policy. Available: <http://www.cfdp.ca>. (February, 2002).
11. Bluthenthal, R.N., Lorvick, J., Kral, A.H., et al., "Collateral damage in the war on drugs: HIV risk behaviours among injection drug users," International Journal of Drug Policy, v. 10, (1999), pp. 25-38.
12. Sudbury J. Celling. *Black bodies: black women in the global prison industrial complex*. Feminist Review 2002(70):57-74.
13. Small D. *The war on drugs is a war on racial justice*. Social Research 2001;68(3):896-903.
14. Arthur JA, Case CE. *Race, Class and Support For Police Use of Force*. Crime Law and Social Change 1994;21(2):167-182.
15. Dix C. *Police violence: Rising epidemic raising resistance*. Black Scholar 1997;27(1):59-62.
16. Dunham J. *The New Untouchables - How America Sanctions Police Violence*. Library Journal 1994;119(16):96-96.
17. Morgan & Krueger, 1998
18. Note: In Affidavit #22, it is unclear whether the officers involved were VPD or Burnaby RCMP. However, as the affidavit raises issues consistent with other affidavits, it has been included pending further investigation.
19. Note: some "affidavits" contain more than one affidavit, as 8 witnesses provided corroborating affidavits for same incidents. In one case two affidavits describing the same incident were evaluated separately, due to multiple issues.
20. Black's Law Dictionary 6th edition, 1996, West Publishing Co.
21. Black's Law Dictionary, 6th Edition, 1996, West Publishing Co.
22. *Bottrell v. R.* (1981), 22 C.R. (3d) 271, 60 C.C.C. (2d) 211 (B.C.C.A.)
23. *R. v. O'Donnell* (1982), 3 C.C.C. (3d) 333 (N.S.C.A.)
24. *Toronto Dominion Bank v. Canadian Human Rights Commission* (1998), 163 D.L.R. (4th) 193 (FCA) at paras. 15, 16
25. *Entrop v. Imperial Oil Ltd.*, [2000] O.J. 2689 (Ont. CA), 50 O.R. (3d) 18, at para 89
26. *R. v. Alward*, [1978] 1 S.C.R. 559, *R. v. Reyat*, [1993] B.C.J. No. 622 B.C.C.A., *R. v. Jackson*, [1977], 34 C.C.C.2d 35 B.C.C.A., *R. v. Oickle*, [2000] 2 S.C.R. 3, *The King v. White*, [1908] 15 C.C.C. 30
27. Lawful force is used when necessary to prevent an indictable offence or to catch a suspect in pursuit. Lawful force is no more than what is necessary to accomplish the objective.
28. *Criminal Code of Canada*. s.423(1)(a) (Intimidation), CCC. s.346(1) (Extortion), C.C.C. Section 264.1 (1)(a) (Uttering Threats)
29. *R. v. Ancelet* (1986), 70 A.R. 263 (C.A.)
30. *R. v. T.A.V.* (2001) 100 Alta. L.R. (3d) 34 (Alta.C.A.)
31. In *R. v. Simpson*, (1993), 79 C.C.C. (3d) 482 (Ont. C.A.). the Ontario Court of Appeal found it was a Charter violation for the police to detain for questioning an individual who had entered and left a residence suspected to be a "crack house."
32. *R. v. O'Donnell* (1882), 3 C.C.C. (3d) 333 (N.S.C.A.)
33. *Warner v. Riddiford* (1858), 4 C.B.N.S. 180, 140 E.R. 1052
34. *Campbell v. Hudyma* (1985), 42 Alta. L.R. (2d) 59 (C.A.)
35. *R. v. Prosper* (1994), 33 C.R. (4th) 85, 92 C.C.C. (3d) 353 (S.C.C.), *R. v. Manninen* (1987), 58 C.R. (3d) 97, 34 C.C.C. (3d) 385 (S.C.C.), *R. v. Bartle* (1994), 92 C.C.C. (3d) 289 (S.C.C.)
36. *R. v. Golden*, [2001] S.C.J. No. 81 (S.C.C.), (2001) 159 C.C.C. (3d) 449
37. *Criminal Code of Canada*, section 529(1)
38. *Criminal Code of Canada*, section 529.3
39. *R. v. Feeney*, [1997] 2 S.C.R. 13, 115 c.C.C. (3d) 129 (S.C.C.)
40. *R. v. Metcalfe* (1983), 10 C.C.C. (3d) 114 (B.C.C.A.)
41. *R. v. Cluett* (1985), 21 C.C.C. (3d) 318 (S.C.C.)
42. *Criminal Code of Canada*. s.489(1)(3), 497.1(3)
43. Police Act, s.52
44. *Ethical Obligations of Police Departments in the Investigation of Police Conduct*, E. W. Kluge, [www.opcc.bc.ca](http://www.opcc.bc.ca), (Accessed October 2002.)
- 44a. Leonard Cler-Cunningham, *Violence Against Women in Vancouver's Street Level Sex Trade and the Police Response*, 2001.
45. Dunham J. *The New Untouchables - How America Sanctions Police Violence*. Library Journal 1994;119(16):96-96.
46. Wood E, Tyndall MW, Spittal PM, et al. *Unsafe injection practices in a cohort of injection drug users in Vancouver: could safer injecting rooms help?* CMAJ 2001;165(4):405-10.
47. *supra*, footnote 44.
48. O'Shaughnessy MV, Montaner JS, Strathdee S, Schechter MT. *Deadly public policy*. Int Conf AIDS 1998;12:982.
49. *supra*, footnote 46
50. Peaceful Measures. *Canada's way out of the war on drugs*. Bruce K. Alexander. University of Toronto Press.
51. *Campbell v. Hudyma*, (1986) 2 W.W.R. 444 (Alta. C.A.)
52. *Stewart c. Dugas* (1991), [1992] R.R.A. 268 (C.S. Qué.)
53. *Nolan v. Toronto* (Metropolitan) Police Force [1996] O.J. No. 1764
54. *MacCormack v. Halifax* (City) Police Department [1999] N.S.J. No. 463
55. *Rosario v. Canada* (Royal Canadian Mounted Police) [2000] B.C.J. No. 242
56. *Servant v. Bonhomme* (1997), 1997 CarswellOnt 5848 (Ont. Gen. Div.)

## APPENDIX

### British Columbia Human Rights Code

RSBC 1996 c.210

#### Discrimination in accommodation, service and facility

8

- (1) A person must not, without a bona fide and reasonable justification,
- (a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or
  - (b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex or sexual orientation of that person or class of persons.

### Canadian Human Rights Act

R.S. 1985, c. H-6

#### Definitions

s.25

"disability" means any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug.

### Charter of Rights & Freedoms

Constitution Act, 1982

7. Everyone has the right to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
8. Everyone has the right to be secure against unreasonable search or seizure.
9. Everyone has the right not to be arbitrarily detained or imprisoned.
10. Everyone has the right on arrest or detention
- (a) to be informed promptly of the reasons therefor;
  - (b) to retain and instruct counsel without delay and to be informed of that right; and
  - (c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

### Criminal Code of Canada

RSC, 1985, c. C-46

#### Protection of persons acting under authority

25. (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law
- (a) as a private person,
  - (b) as a peace officer or public officer,
  - (c) in aid of a peace officer or public officer, or
  - (d) by virtue of his office, is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.
- (2) Where a person is required or authorized by law to execute a process or to carry out a sentence, that person or any person who assists him is, if that person acts in good faith, justified in executing the process or in carrying out the sentence notwithstanding that the process or sentence is defective or that it was issued or imposed without jurisdiction or in excess of jurisdiction.
- (3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

- (a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;
- (b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant
- (c) the person to be arrested takes flight to avoid arrest;
- (d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and
- (e) the flight cannot be prevented by reasonable means in a less violent manner.

(5) A peace officer is justified in using force that is intended or is likely to cause death or grievous bodily harm against an inmate who is escaping from a penitentiary within the meaning of subsection 2(1) of the Corrections and Conditional Release Act, if

- (a) the peace officer believes on reasonable grounds that any of the inmates of the penitentiary poses a threat of death or grievous bodily harm to the peace officer or any other person; and
- (b) the escape cannot be prevented by reasonable means in a less violent manner.

### Excessive force

26

Every one who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess.

### Duty of person arresting

29(2)(b)

It is the duty of every one who arrests a person, whether with or without a warrant, to give notice to that person, where it is feasible to do so, of the reason for the arrest.

### Criminal negligence

219

- (1) Every one is criminally negligent who
- (a) in doing anything, or
  - (b) in omitting to do anything that it is his duty to do, shows wanton or reckless disregard for the lives or safety of other persons.

Definition of "duty"

- (2) For the purposes of this section, "duty" means a duty imposed by law.

### Torture

269.1 (1)

Every official, or every person acting at the instigation of or with the consent or acquiescence of an official, who inflicts torture on any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

"torture" means any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person

- (a) for a purpose including
  - (i) obtaining from the person or from a third person information or a statement,
  - (ii) punishing the person for an act that the person or a third person has committed or is suspected of having committed, and
  - (iii) intimidating or coercing the person or a third person, or
- (b) for any reason based on discrimination of any kind, but does not include any act or omission arising only from, inherent

in or incidental to lawful sanctions.

## **Forcible confinement**

279(2)

Every one who, without lawful authority, confines, imprisons or forcibly seizes another person is guilty of

- (a) an indictable offence and liable to imprisonment for a term not exceeding ten years; or
- (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

## **Theft**

322(1)(a)

Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour or right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property in it.

## **Forcible confinement**

279(2)

Every one who, without lawful authority, confines, imprisons or forcibly seizes another person is guilty of

- (a) an indictable offence and liable to imprisonment for a term not exceeding ten years; or
- (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

## **Where warrant not necessary**

487.11

A peace officer, or a public officer who has been appointed or designated to administer or enforce any federal or provincial law and whose duties include the enforcement of this or any other Act of Parliament, may, in the course of his or her duties, exercise any of the powers described in subsection 487(1) or 492.1(1) without a warrant if the conditions for obtaining a warrant exist but by reason of exigent circumstances it would be impracticable to obtain a warrant.

## **Restitution of property or report by a peace officer**

489.1(1)

Subject to this or any other Act of Parliament, where a peace officer has seized anything under a warrant issued under his Act or under s.487.11 or 489 or otherwise in the execution of duties under this or any other Act of Parliament, the peace officer shall, as soon as is practicable,

- (a) where the peace officer is satisfied,
  - (i) that there is no dispute as to who is lawfully entitled to possession of the thing seized, and
  - (ii) that the continued detention of the thing seized is not required for the purposes of any investigation or a preliminary inquiry, trial or other proceeding, return the thing seized, on being issued a receipt therefore, to the person lawfully entitled to its possession and report to the justice who issued the warrant or some other justice for the same territorial division or, if no warrant was issued, a justice having jurisdiction in respect of the matter, that he has done so; or
- (b) where the peace officer is not satisfied as described in subparagraphs (a)(i) and (ii),
  - (i) bring the thing seized before the justice referred to in paragraph (a) or
  - (ii) report to the justice that he has seized the thing and is

detaining it or causing it to be detained to be dealt with by the justice in accordance with subsection 490(1).

## **Arrest without warrant**

495(1)

A peace officer may arrest without a warrant

- (a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence,
- (b) a person whom he finds committing a criminal offence, or
- (c) a person in respect of whom he has reasonable grounds to believe that a warrant or arrest or committal...is in force within the territorial jurisdiction in which the person is found.

Limitation

- (2) A peace officer shall not arrest a person without warrant for
  - (a) an indictable offence mentioned in section 553,
  - (b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction, or
  - (c) an offence punishable on summary conviction, in any case where
  - (d) he believes on reasonable grounds that the public interest, having regard to all the circumstances including the need to
    - (i) establish the identity of the person,
    - (ii) secure or preserve evidence of or relating to the offence, or
    - (iii) prevent the continuation or repetition of the offence or the commission of another offence, may be satisfied without so arresting the person, and
  - (e) he has no reasonable grounds to believe that, if he does not so arrest the person, the person will fail to attend court in order to be dealt with according to law.

Consequences of arrest without warrant

- (3) Notwithstanding subsection (2), a peace officer acting under subsection (1) is deemed to be acting lawfully and in the execution of his duty for the purposes of
  - (a) any proceedings under this or any other Act of Parliament; and
  - (b) any other proceedings, unless in any such proceedings it is alleged and established by the person making the allegation that the peace officer did not comply with the requirements of subsection (2).

## **Issue of appearance notice by peace officer**

496

Where, by virtue of subsection 495(2), a peace officer does not arrest a person, he may issue an appearance notice to the person if the offence is

- (a) an indictable offence mentioned in section 553;
- (b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction; or
- (c) an offence punishable on summary conviction.

## **Release from custody by officer in charge**

498. (1) Subject to subsection (1.1), if a person who has been arrested without warrant by a peace officer is taken into custody, or if a person who has been arrested without warrant and delivered to a peace officer under subsection 494(3) or placed in the custody of a peace officer under subsection 163.5(3) of the Customs Act is detained in custody under subsection 503(1) for an offence described in paragraph 496(a), (b) or (c), or any other offence that is punishable by imprisonment for five years or less, and has not been taken before a justice or released from custody under any other provision of this Part, the officer in charge or another peace officer shall, as soon as practicable,

- (a) release the person with the intention of compelling their appearance by way of summons;
- (b) release the person on their giving a promise to appear;

- (c) release the person on the person's entering into a recognizance before the officer in charge or another peace officer without sureties in an amount not exceeding \$500 that the officer directs, but without deposit of money or other valuable security; or
- (d) if the person is not ordinarily resident in the province in which the person is in custody or does not ordinarily reside within 200 kilometres of the place in which the person is in custody, release the person on the person's entering into a recognizance before the officer in charge or another peace officer without sureties in an amount not exceeding \$500 that the officer directs and, if the officer so directs, on depositing with the officer a sum of money or other valuable security not exceeding in amount or value \$500, that the officer directs.

#### Exception

(1.1) The officer in charge or the peace officer shall not release a person under subsection (1) if the officer in charge or peace officer believes, on reasonable grounds,

- (a) that it is necessary in the public interest that the person be detained in custody or that the matter of their release from custody be dealt with under another provision of this Part, having regard to all the circumstances including the need to
  - (i) establish the identity of the person,
  - (ii) secure or preserve evidence of or relating to the offence,
  - (iii) prevent the continuation or repetition of the offence or the commission of another offence, or
  - (iv) ensure the safety and security of any victim of or witness to the offence; or
- (b) that, if the person is released from custody, the person will fail to attend court in order to be dealt with according to law.

#### Including authorization to enter in warrant of arrest

529. (1)

A warrant to arrest or apprehend a person issued by a judge or justice under this or any other Act of Parliament may authorize a peace officer, subject to subsection (2), to enter a dwelling-house described in the warrant for the purpose of arresting or apprehending the person if the judge or justice is satisfied by information on oath in writing that there are reasonable grounds to believe that the person is or will be present in the dwelling-house.

#### Authority to enter dwelling without warrant

529.3

(1) Without limiting or restricting any power a peace officer may have to enter a dwelling-house under this or any other Act or law, the peace officer may enter the dwelling-house for the purpose of arresting or apprehending a person, without a warrant referred to in section 529 or 529.1 authorizing the entry, if the peace officer has reasonable grounds to believe that the person is present in the dwelling-house, and the conditions for obtaining a warrant under section 529.1 exist but by reason of exigent circumstances it would be impracticable to obtain a warrant.

#### Exigent circumstances

- (2) For the purposes of subsection (1), exigent circumstances include circumstances in which the peace officer
  - (a) has reasonable grounds to suspect that entry into the dwelling-house is necessary to prevent imminent bodily harm or death to any person; or
  - (b) has reasonable grounds to believe that evidence relating to the commission of an indictable offence is present in the dwelling-house and that entry into the dwelling-house is necessary to prevent the imminent loss or imminent destruction of the evidence.

## Police Act

RSBC 1996 c.367

### Powers and duties of police complaint commissioner

50

- (1) The police complaint commissioner is to oversee the handling of complaints.
- (3) Without limiting subsection (1), the police complaint commissioner may do any of the following:
  - (f) make recommendations to the Attorney General for a public inquiry under the Inquiry Act if there are reasonable grounds to believe that
    - (i) the issues in respect of which the inquiry is recommended are so serious or so widespread that an inquiry is necessary in the public interest,
    - (ii) an investigation conducted under this Part, even if followed by a public hearing, would be too limited in scope, and
    - (iii) powers granted under the Inquiry Act are needed;
  - (g) refer to Crown counsel a complaint, or one or more of the allegations in a complaint, for possible criminal prosecution.

### Submission of complaints

52 (1) A person may make a complaint under this Part

- (a) against a municipal constable,
  - (b) against a chief constable or deputy chief constable, and
  - (c) about a municipal police department.
- (2) The person may submit the complaint referred to in subsection (1) to any of the following:
- (a) the police complaint commissioner;
  - (b) the discipline authority;
  - (c) the senior constable of the municipal police department with which the respondent, if any, is employed or about which the complaint is made, who is on duty at the time that the complaint is submitted.
- (3) If a complaint is submitted to a person referred to in subsection (2) (b) or (c), the person receiving the complaint must
- (a) provide the person submitting the complaint with any assistance that person requires in submitting the complaint,
  - (b) advise the person submitting the complaint that the complaint may also be submitted to the police complaint commissioner, and
  - (c) provide any other information or advice to the person submitting the complaint that may be required under the guidelines prepared by the police complaint commissioner under section 50 (3) (d).
- (4) A complaint under this Part may initially be submitted orally or in writing but, before the complaint may be processed under Division 4 or 5, the complaint must be committed to writing in the prescribed form and that record of complaint must be lodged with one or more of the persons referred to in subsection (2) of this section.
- (5) A person who receives a complaint under subsection (2) must, as required, assist the person submitting the complaint in completing a record of complaint.

### External investigation of public trust complaints

55.1

- (1) The discipline authority must refer an investigation into a public trust complaint to another municipal police department or to the commissioner if
  - (a) the discipline authority considers an external investigation is necessary in order to preserve public confidence in the complaint process, or
  - (b) the police complaint commissioner so orders.
- (2) On application by a complainant or a respondent or on the police complaint commissioner's own motion, the police complaint commis-

sioner may make an order under subsection (1) (b) if the police complaint commissioner considers that an external investigation is necessary in the public interest.

## **Police Act Code of Professional Conduct Regulation**

*B.C. Reg. 205/98*

### **Statement of Core Values**

- 3 This Code is to be interpreted as affirming that all police officers
- (d) accept the duty to act without favour or personal advantage,
  - (e) are committed to treating all persons or classes of persons equally, regardless of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or economic and social status, and
  - (f) agree to uphold rights and freedoms guaranteed or protected by law.

### **Disciplinary defaults**

- 4 (1) In this Code, "disciplinary default" means
- (a) discreditable conduct,
  - (b) neglect of duty,
  - (c) deceit,
  - (d) improper disclosure of information,
  - (e) corrupt practice,
  - (f) abuse of authority,
  - (g) improper use and care of firearms,
  - (h) damage to police property,
  - (i) misuse of intoxicating liquor or drugs in a manner prejudicial to duty,
  - (j) conduct constituting an offence,
  - (k) being a party to a disciplinary default, or
  - (l) improper off-duty conduct.
- (2) It is a breach of this Code to commit, or to attempt to commit, a disciplinary default referred to in subsection (1)

### **Corrupt Practice**

- 9 For the purposes of section 4 (1) (e), a police officer commits the disciplinary default of corrupt practice if
- (a) the police officer fails to properly account for, or to make a prompt and true return of, any money or property received by the police officer in the course of duty,
  - (b) the police officer agrees to be under a pecuniary or other obligation to any person in a manner that might affect the proper performance of the duties of the police officer, or
  - (c) for personal gain or for purposes unrelated to the performance of his or her duties as a police officer, the police officer
    - (i) uses authority or position as a member of a municipal police department, or
    - (ii) uses any equipment or facilities of a municipal police department or a police force.

### **Abuse of authority**

- 10 For the purposes of section 4 (1)
- (f), a police officer commits the disciplinary default of abuse of authority if the police officer
  - (e) without good and sufficient cause arrests, detains or searches a person,
  - (f) uses unnecessary force on a person,
  - (g) while on duty, is discourteous or uncivil or uses profane, abusive or insulting language to a person including, without limitation, language that tends to demean or show disrespect to a person on the basis of that person's race, colour, ancestry, place of origin,

political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or economic and social status, or

- (h) harasses, intimidates or retaliates against a person who makes a report about the conduct of an officer or submits a complaint under Part 9 of the Act.

## **Police Act Use of Force Regulation**

*B.C. Reg. 203/98*

### **Use of force reporting**

12 A police force must submit to the director at the end of each calendar year, and at any time on the request of the director, a statistical report containing the information about use of force by the police force requested by the director.

## **United Nations Convention Against Torture**

### **Part 1, Article 1(1)**

For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

## **Universal Declaration of Human Rights**

### **Article 5**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### **Article 8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

### **Article 9.**

No one shall be subjected to arbitrary arrest, detention or exile.

### **Article 17 (2)**

No one shall be arbitrarily deprived of his property.

### **Article 13(1)**

Everyone has the right to freedom of movement and residence within the borders of each State.

## **Vancouver Charter**

*SBC 1953 c.55*

### **Enforcement of laws**

481. Notwithstanding anything to the contrary contained in this or any other Act, but subject to the Justice Administration Act and the Police Act, it is the duty of the city to bear the expense necessary to

- (c) generally maintain law and order in the city;
- (d) provide an office for the police department in the city and provide premises as a place of detention; and
- (e) provide for the care and custody of persons held in those places of detention.

# TO SERVE AND PROTECT



Gandhi's famous Bihar Campaign inspires the Pivot Affidavit Program. In 1917, an Indian peasant farmer journeyed from the Bihar province to see Gandhi and ask his help. The farmer explained how he and other farmers in his district were unfairly treated by their landlords, who forced the farmers to devote part of their land and labour to growing indigo, as a tithe. This practice was called "sharecropping." If a farmer refused to pay the tithe, the landlords would use their power in various ways to force him or her. Often, the actions of the landlords were illegal, but the farmers did not have money to hire lawyers to go to court and protect their rights.

Gandhi, accompanied by volunteer lawyers, traveled to the Bihar province and spent months collecting thousands of sworn statements from the farmers. These affidavits described the many injustices the farmers had suffered as a result of the unfair tax. The British government was so embarrassed by the mounting evidence of exploitation, poverty and violence that it quickly banned sharecropping.

The Bihar Campaign was used as a model for Pivot's Affidavit Program because of strong similarities between the two situations. In both Bihar and the Downtown Eastside;

- individuals lack the social status or financial resources to obtain legal assistance, and
- individuals have complaints concerning misconduct by persons in positions of power and authority.

photo: Barry Calhoun

