



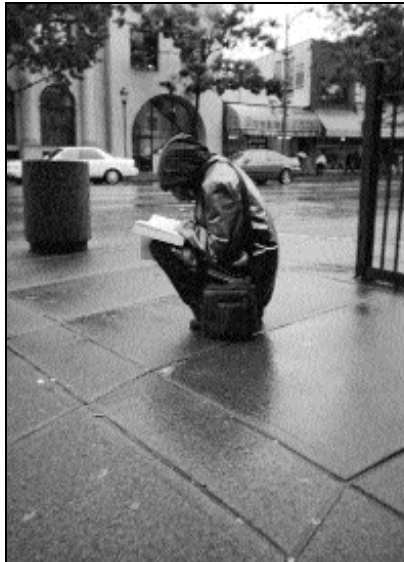
VOICES for DIGNITY:

A Call to End the Harms Caused by Canada's Sex Trade Laws

Pivot Legal Society Sex Work Subcommittee



 **PIVOT** Advancing the interests and improving the lives
of marginalized persons through law reform,
legal education, and strategic legal action.



Andrew Fiore photo.

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This project was made possible by the incredible energy of a large group of volunteers who helped develop the project, organize meetings, take affidavits and review the legal analysis.

Dedication

This project is dedicated to those who shared their voices and offered their energy and time to improve the collective experience of sex workers. To all of those who have not survived and to those who continue to live and work under the current conditions – we thank you for your courage and trust.

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EXECUTIVE SUMMARY

The sale of sexual services between consenting adults is legal under Canadian law.

However, the “bawdy-house” provision (s. 210 & 211), the “procuring” provision (s. 212) and the “communicating” provision (s. 213) make it very difficult to engage in prostitution without breaking the law. The result is that many sex workers face criminal consequences for engaging in what is an otherwise legal activity. This punitive legal system exacerbates the unequal social and economic position of sex workers in Canada.

Over the past several years, the public has become increasingly aware of the issue of violence against sex workers. With over sixty women missing from Vancouver’s Downtown Eastside, the trial of William Pickton and the charges against Donald Bakker, there is ample evidence to conclude that sex workers live and work in conditions of extreme violence and danger.

Many of the participants in this project confirmed this conclusion by describing incidents in which they were sexually assaulted, beaten, robbed and held hostage, and some described having narrowly escaped murder attempts.

Sex workers are in the best position to describe what it is like to work and live under the current social and legal framework and to recommend the ways in which their circumstances should be improved. In the form of affidavits, this report presents the expert opinions of sex workers and their experiences working within the current legal framework. The affidavits highlight many ways in which Canada’s sex trade laws worsen the already harmful conditions under which sex workers live, add to the stigma of their employment and social position, and support the inference that sex workers are less worthy of value than other members of society.

Given this evidence, it is argued that the laws violate the expression, liberty, security and equality provisions of the *Charter of Rights and Freedoms*. It is found that these violations

cannot be justified in a free and democratic society. This report puts forward the following recommendations for law reform:

- Section 210 of the *Criminal Code* (the bawdy-house provision) should be struck down in its entirety. By extension, s. 211 (which prohibits the transportation of anyone to a bawdy-house) should consequentially be repealed;
- Section 213 of the *Criminal Code* (the communicating provision) should be struck down in its entirety; and
- Section 212(1) and (3) of the *Criminal Code* (the procuring provision) should be struck down, with the exception of the international trafficking prohibitions found in s. 212(1)(f) and (g), which are not addressed in this analysis.

Ending the criminalization of the sex work is an essential step toward reducing the harms experienced by sex workers. However, the safety and well-being of sex workers will not be secured through criminal law reform alone.

Affiants also proposed a number of important policy changes. They emphasized that sex workers lack access to fundamental benefits and services. Poverty, inadequate housing, violence, poor health, addiction and law enforcement are major areas of concern. There is an urgent need for policy change in each of these areas as part of a comprehensive approach to improving the lives of sex workers and ensuring alternatives for those who wish to leave this occupation.

This report is unique in that the evidence and legal arguments are presented not to a court, but to the public and to parliament. The relief sought here is not a judicial remedy, but a strong call for systemic legal change. The affiants call for a new approach to providing choice and safety for all sex workers that recognizes their fundamental *Charter* rights and prioritizes their opinions and experiences in future law and policy reform.

PART 1: INTRODUCTION



Barry Calhoun photo.

The sale of sexual services between consenting adults is legal under Canadian law.¹ However, the Canadian government uses the criminal law to control specific aspects of sex work. The result is that many workers face criminal consequences for engaging in what is an otherwise legal activity.

The *Criminal Code of Canada* places a number of limitations on sex work, including the prohibition of bawdy-houses (s. 210 and s. 211), procuring (s. 212), and communicating for the purposes of prostitution (s. 213). In February 2003, Parliament approved a motion to review these laws and committed to holding parliamentary hearings where witnesses would present information on the impact of the laws.

Pivot Legal Society began looking into the legal issues around sex work and developed a project that formed the basis of this report. Pivot Legal Society is a non-profit organization that works to advance the interests and promote the human rights of marginalized persons in Vancouver's Downtown Eastside (DTES). The Pivot volunteers who produced this report include sex workers, lawyers, law students, activists and researchers.

This report contains front-line accounts from individuals who work under the highly regulated criminal law framework. It presents the expertise of sex workers to law and policy makers in order to ensure that the views of those most directly affected by the criminal law's application are taken into account. This report also advocates a position on prostitution law reform that is consistent with the principles

of the *Canadian Charter of Rights and Freedoms (Charter)*.² The following guiding principles for law reform are proposed:

- The opinions and experiences of sex workers must be given the utmost consideration in the evaluation of these laws;
- Law and policy makers must ensure that current and future laws conform to the guarantees enshrined in the *Charter*; and
- Policy analysis and law reform undertaken by the Canadian government must be gender-based, racially sensitive and conscious of socio-economic differences.³

The report is a summary of Pivot's submission to the federal government. It contains three major components:

1. Excerpts from 91 affidavits of sex workers. These excerpts represent key findings on each criminal law that affects sex work. The affidavits are "expert-opinion evidence" and would be presented as such in a parliamentary hearing or a court of law.⁴
2. A discussion of the key social themes raised in the affidavits. These themes indicate that measures other than

law reform are needed in order to ensure safety and security for sex workers in the DTES.

3. A legal analysis of the unconstitutionality of the criminal laws on the sex trade,⁵ founded on the expert evidence of sex workers who live and/or work in the DTES.⁶

Background

The DTES has the lowest per capita income of any region of the country.⁷ It is a neighbourhood with a high concentration of social problems, including poverty, disease and violence. Epidemics of drug overdose and HIV have developed among its population of approximately 4700 injection drug users.⁸ As a result, in 1997 health policy makers declared the neighbourhood was in the midst of a public health emergency. The emergency continues to this day.

Within this context of poverty, addiction and disease, the DTES is also home to a sizeable population of street-level sex workers.⁹ The sex trade in the DTES is characterized by disproportionate numbers of women, many of whom are Aboriginal, who are at high risk of poverty, violence and abuse. The severe reduction of B.C.'s social services and cuts to social assistance income continues to aggravate this situation, leaving growing numbers of disadvantaged women with the sex trade as one of their few options for income.¹⁰

Under the current legal conditions, sex workers experience extraordinarily high levels of violence. At the time this report was written, 63 women had been reported missing from the Downtown Eastside, more than half of whom were Aboriginal.¹¹ This epidemic of "missing women" is taking place across the country: large numbers of sex workers have been reported missing or found dead in other major cities.¹² At time of writing, Robert Pickton faced charges for the murders of over twenty sex workers from Vancouver's DTES. In January 2004, Donald Bakker was charged with sixteen counts of sexual assault, and is being investigated for sadistic sexual assaults against at least 50 sex workers.¹³ These publicized incidents represent the most visible manifestations of a widespread culture of violence against sex workers. For every woman who is missing or killed, many more have survived extreme violence while working in the sex trade.

Pretty well every woman has a story of a guy who has literally tried to kill them. [Affidavit 069 at para. 22]

The DTES is also the site of heavy policing and rigorous enforcement of the prostitution laws. From 1997 to 2002,

the number of prostitution-related incidents that the Vancouver Police Department investigated (ss. 210 – 213 of the *Criminal Code*) increased by almost 700 percent.¹⁴ Statistics Canada reported that in 2002, the annual rate of prostitution offences had increased 12 percent across the country.¹⁵ In comparison, Vancouver saw offences rise to 68 percent in the same period.¹⁶

In total I have been charged 5 times with communicating for the purposes of prostitution. I have been convicted 4 times and have an upcoming court date in September 2003. [Affidavit 001 at para. 11]


Given the active street-level sex trade, the rigorous enforcement of the prostitution laws, and the rates of violence against sex workers, Vancouver is an appropriate city within which to examine the effects of the current legal framework.

Focus on sex workers living in poverty

Although it is the most visible, the street-level sex trade is only a small part of the complex and multi-faceted sex industry in Canada.¹⁷ All aspects of the sex industry must be taken into consideration when contemplating law reform. Pivot has focused on sex workers who are also living in poverty. This report's focus on sex workers living in poverty is important for the following reasons:

- it provides an opportunity for some of the most marginalized sex workers to express their opinions on law reform, and to counter the assumption that they are invisible, voiceless or lacking personal agency; and
- street-level sex workers who live in poverty are extremely vulnerable to criminalization and bear the brunt of the current legal framework.

Low-income sex workers are particularly vulnerable to economic exploitation. They lose the ability to demand fair compensation for their services. While individuals working in this segment of the trade earn only enough to survive, this does not imply that the work that they do is of lesser value than the work done in other segments of the trade. The dramatically different social and economic conditions of these sex workers from individuals working in other areas of the sex trade are precisely the conditions that we argue can and must be changed. While the scope of Pivot's work is necessarily limited, the hope is that the views and experi-



ences of sex workers from all aspects of the industry are represented in other submissions to the federal government.

The Current Criminal Laws

This project focuses on the criminal laws relating to adult prostitution. This project was not designed to address the legal issues of sexually exploited children and youth, or the *Criminal Code* sections relating to international trafficking. Specifically, this project considers the following sections of the *Criminal Code*,

Keeping common bawdy-house

210. (1) Everyone who keeps a common bawdy-house is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.
- (2) Every one who
- (a) is an inmate of a common bawdy-house,
 - (b) is found, without lawful excuse, in a common bawdy-house, or
 - (c) as owner, landlord, lessor, tenant, occupier, agent or otherwise having charge or control of any place, knowingly permits the place or any part thereof to be let or used for the purposes of a common bawdy-house, is guilty of an offence punishable on summary conviction.
- (3) Where a person is convicted of an offence under subsection (1), the court shall cause a notice of the conviction to be served on the owner, landlord or lessor of the place in respect of which the person is convicted or his agent, and the notice shall contain a statement to the effect that it is being served pursuant to this section.
- (4) Where a person on whom a notice is served under subsection (3) fails forthwith to exercise any right he may have to determine the tenancy or right of occupation of the person so convicted, and thereafter any person is convicted of an offence under subsection (1) in respect of the same premises, the person on whom the notice was served shall be deemed to have committed an offence under subsection (1) unless he proves that he has taken all reasonable steps to prevent the recurrence of the offence.

Transporting person to bawdy-house

211. Every one who knowingly takes, transports, directs, or offers to take, transport or direct, any other person to a

common bawdy-house is guilty of an offence punishable on summary conviction.

Procuring

212. (1) Every one who

- (a) procures, attempts to procure or solicits a person to have illicit sexual intercourse with another person, whether in or out of Canada,
 - (b) inveigles or entices a person who is not a prostitute to a common bawdy-house for the purpose of illicit sexual intercourse or prostitution,
 - (c) knowingly conceals a person in a common bawdy-house,
 - (d) procures or attempts to procure a person to become, whether in or out of Canada, a prostitute,
 - (e) procures or attempts to procure a person to leave the usual place of abode of that person in Canada, if that place is not a common bawdy-house, with intent that the person may become an inmate or frequenter of a common bawdy-house, whether in or out of Canada,
 - (h) for the purposes of gain, exercises control, direction or influence over the movements of a person in such manner as to show that he is aiding, abetting or compelling that person to engage in or carry on prostitution with any person or generally,
 - (i) applies or administers to a person or causes that person to take any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower that person in order thereby to enable any person to have illicit sexual intercourse with that person, or
 - (j) lives wholly or in part on the avails of prostitution of another person, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.¹⁸
- (3) Evidence that a person lives with or is habitually in the company of a prostitute or lives in a common bawdy-house is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution, for the purposes of paragraph (1)(j) and subsections (2) and (2.1).

Offence in relation to prostitution

213. (1) Every person who in a public place or in any place open to public view
- (a) stops or attempts to stop any motor vehicle,
 - (b) impedes the free flow of pedestrian or vehicular traffic or ingress to or egress from premises adjacent to that place, or
 - (c) stops or attempts to stop any person or in any manner communicates or attempts to communicate with any person for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute is guilty of an offence punishable on summary conviction.
- (2) In this section, “public place” includes any place to which the public have access as of right or by invitation, express or implied, and any motor vehicle located in a public place or in any place open to public view.

Approach to Law Reform

1. Charter Principles

The legal analysis is based on the *Canadian Charter of Rights and Freedoms*. The *Charter* is the highest law in Canada. Every other Canadian law and all government action must comply with its terms. Laws that are inconsistent with the *Charter* can be declared unconstitutional, and can be struck down by a court of law. Sections 210-213 of the *Criminal Code* will be measured against the free expression rights, the right to life, liberty and security of the person, and equality rights guaranteed in the *Charter*. Pivot argues that these criminal laws fail to meet the required standards and are not justifiable in a free and democratic society.

2. Principles of Consultation, Participation and Affirmation of Choice

Pivot’s project has proceeded on the basic principle that all people are worthy of dignity and respect, and that their perspectives and experiences must form the cornerstone of any law reform that will disproportionately affect them. The dignity, empowerment and political participation of sex

workers are central to Pivot’s work, and their opinions are the foundation of the findings presented here. An underlying premise of this project is that difficult choices made under constrained conditions are still choices and, indeed, many of the sex workers that worked on this project felt insulted by the repeated accusation that they are not capable of making “real” choices.¹⁹ Furthermore, choosing to engage in sex work does not nullify the right of sex workers to contest the current conditions of their work, where they face violent attack, stigmatization, inequality and are treated as criminals. In fact, the voices of sex workers are essential to sex trade law reform. The affiants expressed critical and analytical opinions about the states of their lives and laws affecting them. They are in the best position to describe what it is like to work and live under the current social and legal framework. Legislators and the public must acknowledge this expertise.

3. Harm Reduction Principle

This report’s conclusions reflect the principle of harm reduction. With respect to the criminal laws, affiants²⁰ demanded that immediate measures be undertaken to reduce harm to sex workers. As well, broad questions about the prostitution laws led many affiants to comment on parallel issues such as housing, income and access to social services. A true harm reduction approach requires that the underlying concerns of poverty and social inequality be addressed as part of the harm that sex workers experience. Pivot advocates harm reduction principles as a key point of unity among people who are concerned about the interests of sex workers.

Many sex workers have acted courageously in contributing to this report and have trusted Pivot to deliver their words to those who have the opportunity to create change. These are the voices of a population that has been systemically silenced, socially marginalized and physically isolated. Sex workers are robbed, harassed, abducted, assaulted, sexually assaulted, and their work is unfairly criminalized and continuously policed. It is time for the government and the public to hear their words and respect their wisdom, insight and courage.

PART 2: METHODS



Barry Calhoun photo.

This project was designed by a steering committee composed of women with experience in the sex trade, and women from legal and activist communities. The overall objective of the project was to gather the expert opinions of sex workers on the current criminal laws and their experiences living under those laws. Those opinions and experiences were then used to formulate a constitutional analysis of the current criminal laws.

Project Objectives and Design

Sex workers were asked to give statements in affidavit form. An affidavit is a legally sworn statement. This was chosen as the way to record and present participants' statements because they are clear concise statements, and will be accepted at parliamentary hearings as actual testimony. In effect, all affiants will become official "witnesses" when their affidavits are presented to parliamentary hearings.

Prior to drafting an affidavit, all affiants attended an information session led by Pivot volunteers. The information session involved a discussion of the following topics:

- the parliamentary hearings and the subcommittee's mandate;
- a basic review of the content of ss. 210, 211, 212, and 213 of the *Criminal Code*;
- details about the project and how the affidavits would be used; and
- information about confidentiality, compensation and consent.

Both information and affidavit sessions were held in loca-

tions that were intended to be safe and comfortable for participants. Sessions were typically conducted in women's-only spaces, with Pivot volunteers providing security at the entrance. Additional sessions were held at Boys 'R' Us, a service organization for male and transgendered sex workers.

Participants received a \$15 honorarium for contributing their expertise to the project. They were told that their affidavit was their personal statement on the law, that participants could put forward any opinion they wished, and could discuss whatever issues they felt were relevant to the law and their work in the sex trade.

Each affiant was asked by a Pivot volunteer to respond to the following questions:

- 1.If you were speaking to the people who are reviewing the communicating law, what would you say to them about this law? Can you describe an experience that you have had that has made you feel that way about that law?
- 2.If you were speaking to the people who are reviewing the bawdy-house law, what would you say to them about this law? Can you describe an experience that you have had that has made you feel that way about that law?

3.If you were speaking to the people who are reviewing the “procuring” or the “living off the avails” law, what would you say to them about this law? Can you describe an experience that you have had that has made you feel that way about that law?

Volunteers recorded the statement in affidavit format. In the final stage, all affidavits were made anonymous by blacking out personal information.

In addition to the collection of affidavits, consultation for this report included holding discussion groups on issues such as poverty, dignity and choice, and the accessibility of parliamentary hearings.²¹

Demographics

Participants were self-selected and therefore are not representative of sex workers in general, or even of street-level sex workers living in poverty. As a result, some demographic information about the sample can be drawn from the affidavits but cannot be taken as statistically significant. All participants were asked to give personal data about themselves in order to provide some background information and describe the extent of their experience in the sex trade. All information was voluntarily given and so the types of information disclosed vary across the sample. Ninety-one affidavits were gathered in total:²²

- 68 affiants were current sex workers
- 23 affiants were former sex workers
- years the sex trade varied from a few weeks to 47 years.
- 81 female and 10 male sex workers participated in the project. One affiant self-identified as transgendered
- the youngest participant was 22 years-old and the eldest was 62 years-old. Participants were fairly evenly distributed across all age groups
- 38 participants self-identified as being Aboriginal or Metis. 4 participants self-identified as being of African-Canadian heritage, and 16 described themselves as Caucasian

- all participants who disclosed their financial situation described living in poverty and working in the sex trade in order to meet basic subsistence needs
- all but seven participants currently lived or worked in the Downtown Eastside
- 30 participants did not complete high school, whereas 16 participants had attended some post-secondary trade school, college or university
- 52 participants described a history of drug use and 15 participants were currently on a prescription methadone program
- 22 participants self-identified as having a criminal record
- 9 participants disclosed their HIV positive status and 28 were hepatitis C positive. Eight participants self-identified as struggling with depression or mental health issues.

Limitations

This project focuses on the opinions and experiences of a self-selected sample of adult sex workers living in poverty and for the most part living and/or working in the DTES and should not be generalized to the sex worker population overall.

Project information and affidavit sessions were in English. Interpreters were not routinely available, although training on drafting affidavits was taken by service providers who serve non-English speaking sex workers. Interpretation services would have been made available had a request been made.

Affiants were not asked to state their gender and only two participants disclosed a transgendered status. One transgendered affiant was unable to complete an affidavit for health reasons. Therefore, it can only conclusively be said there was one transgendered affiant within this sample. This highlights a limitation of this research, since it is recognized that there is a significant number of transgendered sex workers in the DTES.

Time and budget constraints limited the number of affiants, and so we were unable to capture the voice of every person who was interested in contributing to the project.

PART 3: KEY FINDINGS



Barry Calhoun photos.

Findings On the Bawdy-House Law: With one exception, all affiants who addressed the bawdy-house law demanded it be repealed.²³ Some affiants also discussed how they would like bawdy-houses to be structured and managed, providing various opinions on this point. Some affiants advocated community-based, peer-run facilities, whereas others spoke of greater state involvement and regulation.

Build a house for us, so the girls can go to [sic]. Where the John's get screened. That's all I can say. That's my statement. Build a house. Build a house. [Affidavit 062 at para. 17]


In my opinion, the ability to work indoors is much needed in this community. If women could work indoors with each others' support, in a clean and organized environment, where johns are screened, the health and safety benefits would [be] great. It seems that the government does not want the sex trade to be visible, and does not want to pay attention to the needs of workers. [Affidavit 032 at para. 7]

I think that the bawdy-house law is bad. I have three regulars that come to my place and that is illegal but it shouldn't be. Working indoors is better than standing on the street. I have felt that my life was in danger three times in the past year. Each time that happened, I was standing on the street. I have never felt that my life was in danger when I have had dates in my own residence. [Affidavit 002 at paras. 7-8]

They should make a place for working girls to go. I would like it to be clean, with clean bed sheets in each room after each person used it. A place to clean up after. A place to

dispose of stuff. And a room that was totally private where you could do whatever you wanted and nobody bothered you. A place where you could spend as long as you needed. It would be important to not have cameras and that kind of heavy security. It would be good to have a front desk person or two people to watch out in case something happened. There could be a panic button in each room. A button that only the girls knew about and the johns didn't so that they could press it and tell someone if something had gone wrong. In this kind of hotel, I don't think you need a lot of other kinds of services, like health services and stuff, it would not feel the same. Your johns wouldn't want to go there because it would not be private. It would be better if it were like a hotel, you could check in and pay for your room time. It would be important that it was not too expensive because if it were, girls and johns could not afford to go there. [Affidavit 066 at paras. 8-10]

I think that the government should open legal brothels like in some European countries. If there were legal brothels health officials could keep track of girls who are working. I think that sex workers would be safer and healthier if they could work inside. [Affidavit 028 at para. 3]



Findings on the Procuring Law: The affiants who addressed this issue made two main points. They noted it was important to protect sex workers from exploitation, violence and extortion by pimps.

On the other hand, many also observed that certain activities captured by the law, such as providing referrals, spotting and providing a space for others to bring dates, should not be criminal. Affiants felt these parts of the procuring law limit their ability to create safer working conditions. They also acknowledged that, if the bawdy-house law is repealed, the procuring law would have to be amended since under s. 212 anyone who runs a bawdy-house can be arrested for procuring and living off the avails.

Procuring is okay as long as it's done by a woman — chicks before dicks. Sometimes I act as a pimp in my hotel. Men will ask for four blonds for example, and I'll set it up for them for money. I organized a girl for one man one night and a different girl for the next night... Other women and I watch and protect each other with payments of money and drugs. Many girls come to my room crying, I clean them up and give them medicine. Pimping should be done by women — a woman should run the show. I would take a percentage to look after their health (needles, band aids, etc.) and to provide condoms and lubricants. A percentage of the money should go into a health 'fund' — it should go back into the brothel. [Affidavit 006 at para. 4]


I have a hard time saying whether or not the laws against procuring and living off the avails are wrong. Some guys are there to protect the working women, and some abuse them. I think that no one should be charged with living off the avails unless they are also abusing or assaulting the prostitute. I think that procuring should still be illegal. There has to be a way to punish the people who exploit women in the sex trade. [Affidavit 010 at para. 6]

I believe that the procuring law is protective of sex workers. I think that in the case where a pimp takes 100% of the proceeds and then divides it up as he sees fit, it should be illegal. But in the case where it is a friend who helps you by providing a referral or letting you use their place, and in return you give \$20 to the friend when you made \$100, that would be ok. I have also met pimps who are really violent and take 100% of

the proceeds of girls' work and that is wrong. The law should be worded so that it captures that aspect of pimping, the violent and exploitive kind of pimping. The law should not criminalize those people who are taking a small proportion of the proceeds for providing a service, like letting her use their house or providing a referral. [Affidavit 078 at para. 19-20]

In terms of the procuring law, it depends on what the person is doing. If a person was there and actually providing a service, for example a person who provides you with a clean room or a person who spots for you, then its ok for those types of people to get paid by sex workers. If that person was providing referrals and stuff, that could also be worth paying for. But if that person is just exploiting women and not actually doing anything to help the women, then I don't think that it is right for them to be getting any money off of the women who are doing the work. I did not have a pimp when I worked and I can't understand why anyone would. [Affidavit 066 at paras. 14-15]

I think that the procuring law can be good. I think that people who convince people to enter the sex trade or convince people to see a sex worker should be charged with procuring. I think that the aspect of the procuring law that says that a person cannot make a referral is not very helpful. I prefer to be able to make a referral to my friend if she is more a client's type than I am, and if I make a referral to a friend, she usually will give me a small cut of the money that she makes. Generally, I think that besides the referral aspect of the law, the procuring law is good. [Affidavit 051 at para. 9]




Findings on the Communicating Law: With one exception, affiants who addressed the communicating law demanded it be repealed.²⁴ They criticized the law in a number of ways, identifying both its ineffectiveness and the dangerous conditions created by its enforcement.

I think that the communicating law is wrong. The decision to communicate is a decision between two adults. It is my business and it is outrageous that the government thinks that they can stick their noses into my business. The communicating law needs to be axed, it needs to be eliminated from the Criminal Code. They use the communicating law whenever they want to get working girls out of an area. I have been arrested over 20 times and only convicted once. Most of those arrests were by undercover officers. [Affidavit 065 at paras. 21-24]

I think that the communicating law is unfair. Girls have to make money and it puts girls at greater risk. Because of police, we end up moving to places that are darker and more secluded. It's more dangerous for girls. For example, we are forced to work in the industrial area at the foot of Victoria. It's really bad because it's so dark down there. [Affidavit 043 at para. 3]

The communicating law makes me worried because I do not have time to make sure that the car I get into is safe, and that the person is not dangerous. Three years ago I was working between Princess and the Raymur Projects. A car drove up to me and asked me if I was working, and I said, "Yes." He told me that he had the money to pay and I got into a car. He strangled me, threatened me, and sexually assaulted me, then left me on a corner close to the waterfront. If I had had more time, I may not have gotten into the car with him. [Affidavit 025 at para. 3]

I think that the communicating law is wrong. I think that you should be able to negotiate prices and terms. In fact, I think that people should be able to discuss whatever they want whether they are in public or not as long as nobody's actually doing anything obscene in public. [Affidavit 077 at para. 3]



A number of affiants specifically stated that they did not want their clients to be subject to prosecution for communicating for the purpose of prostitution. While they expressed a need for a strong police response to men who abuse or exploit sex workers, affiants stated that safe clients ought not be criminalized for purchasing services from sex workers.

I don't think women who sell sex are criminals and they should not be treated as such. Johns, or men who buy sex, should not be treated as criminals either. I believe that what people do behind closed doors is their own business. [Affidavit 016 at para. 14]

If I could have changed anything over the 30 years of my work, I would have provided all the women with a safe place to work. That is the most important aspect. Also, I would not have laws to embarrass the Johns, they are human too and they and their families should not suffer for their indiscretions (as long as nobody got hurt). Men who are bad dates are of course a different story. These men should be charged with assault, rape or kidnapping. [Affidavit 004 at para. 7]

It is important for me to know that my clients feel safe and that they are not going to be arrested. Clients are also fearful for their families and the stigma of being arrested. They should not suffer consequences for wanting to enjoy the company of someone of the opposite sex for a little while. Why is it ok for a man to walk into a doctor's office and receive services but its not ok to go and have an intimate and positive experience with a girl? There is so much stigma attached which is wrong. [Affidavit 082 at para. 18]

I don't think that girls should be treated like criminals. Many of them are just doing it for survival. I don't think that johns should get treated like criminals either. [Affidavit 002 at para. 14]

PART 4: KEY THEMES IN THE AFFIDAVITS



Beverley Ranger photos.

The safety and well-being of sex workers will not be secured through criminal law reform alone. Affiants emphasized that sex workers lack access to fundamental benefits and services available to other members of our society. Poverty, housing, violence, health, addiction and law enforcement were major areas of concern. There is an urgent need for policy change in each of these areas as part of a comprehensive approach to improving the lives of sex workers.

Theme 1: Poverty

Poverty is overwhelmingly common among the affiants. Most of our affiants struggle to survive in restricted financial circumstances. For this group, sex work is a means of economic survival. Numerous affiants stated they entered the sex trade, or remained in it, as a matter of financial necessity.²⁵


Inadequate Social Assistance

Many affiants stated that they worked in the sex trade because of inadequate social assistance. In 2002, social assistance rates in B.C. for a single employable person without dependants amounted to only \$6,461 annually (\$538.42/month). This was 34 percent of the low-income cut off (LICO) figure of \$19,256 (\$1604.67/month). The LICO figures are Statistics Canada's estimates of the income levels below which people are forced to spend almost all their income on food, shelter and clothing.²⁶ Social assistance rates for other categories of recipients

ranged from 50 to 57 percent of the relevant LICO amounts. For example, a single parent with one child is expected to survive on \$13,706 annually.²⁷ The Social Planning and Research Council of British Columbia estimates that 2002 benefit levels were only enough to cover 45 percent of the minimum living costs of a single person on social assistance.²⁸

This work is really important to me financially. Those of us getting cut off services are having a hard time. It's truly a financial need. We're only getting a little to survive on and we're lucky to even get it, to pay bills or to get food in the house. Sometimes I'm able to make enough to meet my needs. Sometimes it's good, but sometimes it isn't.... [Affidavit 046 at paras. 8-9]

I started working in the sex trade because I could not get by on social assistance and I was always running out of food. [Affidavit 002 at para. 2]



The current reduced level of social assistance in British Columbia means that even those in receipt of such payments are compelled to find other means of earning money to survive. Social assistance recipients usually cannot, without other sources of income, afford to maintain a telephone or pay for public transportation. This drastically limits their opportunities to pursue alternatives.

Welfare Ineligibility and Elimination of Exemptions

Restricting social assistance eligibility affects the number of people who will need to rely on sex work as their main source of survival-level income.²⁹ Recent changes in B.C. include:

1. Terminating the benefits of people deemed “employable” when they have received benefits for a total of two years out of a five-year period (the 2-of-5 rule). People in other categories can experience reductions in their benefits after the two-year limit.
2. Elimination of earnings exemptions. Single recipients without dependants were previously allowed to keep earnings of up to \$100/month, others were permitted to retain \$200/month, and certain categories of recipients were permitted an additional 24 percent of earnings above those amounts. Thus, most sources of income from conventional employment will now be less attractive to social assistance recipients. Sex work or other cash-based means of getting money will be more attractive by comparison.
3. Elimination of child support exemptions. This change will increase the economic disadvantages of single parents in receipt of social assistance, the large majority of whom are single mothers.
4. The three-week wait. The introduction of a three-week waiting period for applicants means the need for emergency cash will increase the number of people who engage in sex work to meet their basic needs.
5. The two-year work force history requirement. Those over 19 who have not been out of the family home for two years will be denied social assistance. The B.C. Institute Against Family Violence anticipates increased poverty and participation in prostitution for young women trying to escape violence at home.³⁰

Women's Poverty

Welfare cutbacks are particularly harmful to women and

members of disadvantaged groups. Women in British Columbia have higher rates of poverty than men, and Aboriginal women are particularly hard hit. As well, women with children are far more likely than men to rely on social assistance. Of the entire income assistance caseload, 33.6 percent are single parent families, of which 88.5 percent are families led by women. For these single mothers, the new reductions in rates combined with the cancellation of family maintenance and earnings exemptions mean that some benefits will drop as much as \$351 per month.³¹

Consequences of Poverty

Affiants described suffering depression and anxiety due to lack of funds.³²

Parents who are impoverished are many times more likely to have their children removed on the grounds of neglect, because they simply cannot pay for the necessities of life. Social assistance does not provide enough to pay for proper shelter, clothing and food for children.³³ In a January 2002 interview, the Minister for Children and Family Development said 65 percent of children apprehended by the Ministry are from single-parent families on social assistance.³⁴ Apprehensions of Aboriginal children are disproportionately high. While only 8 percent of B.C. children are Aboriginal, Aboriginal children are 40 percent of children in care.³⁵ Due to the threat of removal, single parents on social assistance face a difficult choice – if they don't seek other income sources, such as sex work, their children may be apprehended, but their participation in the sex trade itself increases the risk of child apprehension. Parents in the sex trade face stigmatization as criminals and unfit parents, or permanent loss of social assistance entitlement due to a conviction for social assistance fraud.³⁶

As the number of sex workers in the DTES increases and competition drives down the price for sexual services, income from a single date with a client decreases: (as low as \$5-\$20 in the DTES, according to a discussion group held during the project). This increases pressure on sex workers to work more often and to take dates with clients they might otherwise refuse. The quasi-criminal status of prostitution makes it virtually impossible for sex workers to negotiate compensation for their services. If they are robbed of their earnings, they may be unwilling to report the offence. To do so would make them vulnerable to criminal prosecution and investigations for social assistance fraud.

Conclusion on Poverty and Inadequate Social Assistance

It is imperative that governments ensure all members of our society have a basic, adequate standard of living. This means providing income assistance that reflects actual needs, including sufficient support for children. Both federal and provincial governments must work to provide educational and childcare programs to facilitate women's participation in the workforce and assist sex workers who want to exit the trade.



Kevin McGarragan photo.

Theme 2: Housing

Sex workers who live in poverty, like all people with low incomes, find it hard to secure safe, comfortable and affordable housing. Canadian laws applicable to the sex trade make inadequate housing an even greater problem.

Inadequate Housing

Some sex workers are homeless. Many others live in single room occupancy hotels (SROs) in the DTES and have reported to researchers that they experience more victimization in such living situations than they would elsewhere. Eighty-five percent of the sex workers surveyed for the federal Department of Justice did not believe they had adequate housing.³⁷

Paying Rent

In light of the poverty levels discussed above, paying for rent in Vancouver, and specifically in the DTES, can present a serious problem for a sex worker. This is particularly so when a sex worker has children living with her and is in need of more space and a safer environment than a single person might require. As one affiant noted:

I would ask the government for more funding for housing for us, and more money on the cheque so we don't have

to risk our lives for the rest. Women are trying to get money for food. The housing is really bad — we need more of that. Look at the people living in tents. They don't want them at Victory Square, they don't want them at Woodward's. But we really need it. It's terrible.
[Affidavits 046 at para. 11]

"Suspect Tenants"

In the eyes of landlords who fear prosecution, the bawdy-house law makes sex workers "suspect tenants". The potential for legal problems means that, at times, landlords refuse to rent to someone they think may be a sex worker. A low-income sex worker is unlikely to have any real recourse against a landlord who refuses them accommodation or evicts them on this basis.

Guest Fees

In many DTES hotels, the imposition of "guest fees" for visitors is an apparent attempt to limit prostitution from the hotels. The effect is that women are forced to work at street level and are denied the right to receive friends and family in their home if the visitors cannot pay the \$10-\$20 fee. Police will sometimes use an SRO's guest registry to keep track of sex workers:

Police come to my door at all hours of the night. They check the register at the front desk of my hotel to see how many guests I have had during the day or at night. I have to pay a ten-dollar guest fee to bring anyone into my room. The police come to check if I still have company who I have registered to bring into my room. They also ask me what is happening if I have not had anyone registered in my room. [Affidavit 033 at para. 6]

Roommates and "Living Off the Avails"

The law with respect to living off the avails of prostitution potentially exposes roommates to prosecution if a sex worker's earnings pay for rent and household expenses. Case law has established that such an arrangement is only criminal if "parasitic,"³⁸ but the interpretation of that word depends on the court's view of the facts in each case.

Conclusion on Housing

Decent affordable housing is a prerequisite for safety, health, and well-being. Sex workers living in poverty, who are struggling with multiple challenges every day, are especially in need of adequate housing.



Barry Calhoun photo.

Theme 3: Violence

On the street it is unsafe. People can be hurt. I was cut across my stomach. I had a man and he took me into a car and had his way with me. Then he beat me up and slit me in the stomach and threw me out. I have a huge scar now. I am lucky because I could have been really hurt... [Affidavit 073 at para. 14]

Affiants were not asked directly whether they had been the victims of violence in the course of their work and yet, when discussing their experiences, a large number of participants volunteered details about *at least* one incident of physical violence.³⁹ Many described multiple violent incidents.⁴⁰ Overall, the affiants reported that they had experienced sexual assaults, beatings, being robbed or held hostage, and murder attempts. In short, the affidavits document a pattern of violence against sex workers perpetrated by strangers, clients, acquaintances and police.

Consequences of Ongoing Violence

sex workers deal with the physical consequences of violence and also with the psychological repercussions of knowing their lives are at risk every time they go to work:

I walk in fear. I always walk in fear. [Affidavit 062 at para. 16]

It is difficult to go out during the day. It is sometimes scary to leave during the day because I feel like there is someone watching me. I feel this is not any way to live. [Affidavit 033 at para. 07]

Documenting Violence Against Sex workers

Over the past several years, the issue of violence against sex


workers has entered the public consciousness, mainly with respect to the missing and murdered women in Vancouver and other Canadian cities. Awareness of violence survived by sex workers is also developing in light of the highly publicized arrest of a man alleged to have videotaped his sexual assaults on sex workers.⁴¹

Surveys of sex workers in Vancouver and Victoria report that up to two-thirds of respondents have been the victim of a physical and/or sexual assault while working.⁴²

In or about the summer of 1999, I was having two beers at the bar at about 1:00 p.m. with a potential date who told me his name was Tom. At about 5:00 p.m., I woke up in a hotel about one block away from the bar. My pants were partly off and my pubic hair was shaved off. I had no recollection of what happened in the intervening four hours and presumed that I was a victim of a drug rape. I went to the hospital and contacted the police. The police refused to believe me at first and then they blamed me for the incident. [Affidavit 061 at paras. 6-7]

One time, I was working and this ... man picked me up. We had our date and he said he didn't have any money and so we went to the bank machine. He still said he had no money. He wanted to have sex again in all sorts of ways that I did not want to. He was aggressive and I was not able to get away until after he did all sorts of nasty things to me. That is why I think that working indoors would be safer. I never reported it to the police. I never thought to. I just wanted to get it out of my mind. I am not sure if I would ever report a bad date. I am too embarrassed and scared of the cops. I have heard too many nasty things about the police. [Affidavit 002 at paras. 9-10]

Four years ago, a man took me to Strathcona Park in a car and made me take all my clothes off. He hit me. He threw me out of the car with nothing on. I was screaming, for about thirty minutes, but nobody heard me. Someone eventually phoned the police and they came. I went to the hospital and the police made a record of what happened to me. The police gave me a business card and told me to phone them. I didn't phone them right away. I was stopped on the street by police a long time later and was told that one police officer wanted to talk to me. They wrote down his name and his number.



When I did phone he told me to phone back because he was busy. He told me to phone back in a week or two. I didn't phone back. I feel like I wasn't important enough, like they forgot about me or something. [Affidavit 018 at paras. 9-13]

Violence is Increased by the Current Legal Conditions of Sex Work

Violence against women is a problem of global significance and concern, and sex workers experience this phenomenon to an exceptional degree. However, it is commonly assumed that violence perpetrated against sex workers is an inevitable consequence of engaging in the sex trade. Many affiants were quick to challenge this assumption. They believed the existing legal structure contributes to and in some cases creates the conditions that make violence a regular occurrence in their lives. Affiants explained how specific sections of the *Criminal Code* create dangerous conditions for sex workers.

Consequences of the Criminal Code

The law prohibiting “communicating” for the purposes of selling sex was identified as being responsible for unsafe working practices adopted by sex workers in their efforts to avoid prosecution. For instance, many affiants reported selling sex in dimly lit and isolated areas and many reported getting into vehicles too quickly and without having the opportunity to assess the potential for violence.⁴³

Working girls end up going into hiding places just to stay away from the harassment of the police. That's dangerous; girls are getting killed out there. A lot of girls go with their dates down to beach areas and wooded areas in order to keep away from police and it's dangerous because they don't know if the john will bring you back. There is nobody there to keep an eye out for you. [Affidavit 037 paras. 13-14]

A number of affiants specified that they did not want clients to be subject to prosecution for communicating for the purposes of prostitution.⁴⁴ Enforcing the communicating law against clients could lead to the same result as criminalizing sex workers themselves. Whether police are targeting sex workers or their clients, it is an obvious inference that sex workers will have to engage in unsafe practices in order to avoid law enforcement. Affiants were also clear that they

want violent clients to be rigorously prosecuted under the assault and sexual assault provisions of the *Criminal Code*.

It bothers me that the women in the sex trade are always harassed but the johns never get any trouble from the police. There is a lack of concern for the women down here. The Missing Women is an example of that. There is a lack of protection for women in the sex trade and situations like the Missing Women are allowed to happen. [Affidavit 060 at para. 10]

Many affiants also discussed the way the bawdy-house law prohibits them from working indoors and forces them to work in isolation:

There are numerous ways that being able to go to a bawdy house to work would make sex work safer. Four years ago, I was with a client, and we had to go to the Track, which is at Alexander St. and Hawks St. The client began to get forceful with me, grabbing me and pushing me. I told him that I had had enough, and he did not listen to me. He took the money that he had paid me back, and refused to use a condom while having intercourse with me. If I had gone to a bawdy house instead, where the environment may have been better monitored, someone else could have been nearby, or I could have alerted someone to the situation, and not have been placed at such risk. [Affidavit 020 at para. 5]

Affiants also described the difficult relationship that many sex workers have with the police. As will be discussed in more depth in Theme 6: Law Enforcement, many affiants made it clear that a general distrust of police exists among sex workers. The following affiants described how they feel about police forces in Vancouver and elsewhere in Canada:

I feel I cannot count on the police for protection. My experience is that they believe that when you are a sex worker, you are not deserving of protection. They don't seem to understand that it is very difficult to exit the sex trade, especially when you are poor and living in the Downtown Eastside. [Affidavit 016 at para. 12]

I was hitch hiking in the DTES a few weeks ago and a police officer stopped me and asked me what I was doing. I told him I was looking for a boyfriend. The

police officer responded very rudely and was verbally abusive to me. The police officer grabbed me roughly by my breast and told me to go home. I felt emotionally and sexually harassed by the police officer. After awhile [sic] he let me go and I went directly to a bus stop and went home. I was angry that there was not a safe environment where I could work without being harassed by the police. [Affidavit 012 at para. 3]

He told me I was under arrest. Then I was taken to the police station, was put in cell and asked by the police officer who arrested me to show him my chest. He said, "lift up your top." I told him no. When he [was] writing up the arrest report he kept commenting and antagonizing me about the size of my chest. This made me feel very uncomfortable. [Affidavit 026 at para. 4]

I had a cop say that I could give him a blow job instead of being charged. I told him to "fuck off." He didn't charge me. [Affidavit 084 at para. 9]

I spoke to a female police officer and she said I could file a complaint [about another officer's conduct]. She told me that a lot of Vancouver police officers abuse their power and authority. I never ended up filing a complaint. I knew it would not make any difference if I filed a complaint. [Affidavit 053 at para. 5]

Many sex workers are unwilling to report violent incidents to police for fear of being disbelieved or discounted because of their occupation or even of being prosecuted for prostitution-related offences.

I have never gone to the police for help. With all of these prostitution laws, they would probably just look down on me. They might even charge me. The law impacts my relationship with the police. [Affidavit 037 at para. 11]

I have tried to report bad dates to the Vancouver Police Department a few times. Each time, the response was that it was likely my fault because I am a working girl. One time they went and got my jacket from a client who had held it, but other than that they have never really helped me. [Affidavit 065 at para. 27]

Unwillingness to report violent incidents to police or to make complaints about police abuse renders sex workers even more vulnerable to predatory violence.

Conclusion on Violence

The correlation between criminalization of sex work and the violence experienced by sex workers is very strong.

Criminalization of prostitution-related activities devalues sex workers and places them in unacceptably dangerous situations. Ending the criminalization of sex work is an important first step in affirming that sex workers deserve safe working conditions and the same right to public protection from violence as other members of our society.




Barry Calhoun photo.

Theme 4: Health

Low-income sex workers are a population whose health status falls well below the Canadian average.⁴⁵ Many participants have complex medical histories, including struggles with chronic illnesses.⁴⁶

I was originally put on the streets by my brother when I was 15 years old, to support his drug habit. I soon became addicted to drugs myself. I have been clean from drugs and alcohol now for two and a half years. As a result of my involvement in the sex trade, I have hepatitis C and post-traumatic stress and anxiety disorder. I was diagnosed with bi-polar disorder and depression a year ago. Over the past 20 years I have frequently been suicidal. I avoid many of the areas I used to work in so that I can stay clean and mentally healthy. Unfortunately, I still need to work in the sex trade, and can't avoid all the areas. [Affidavit 076 at para. 2]

Sex workers also experience barriers to accessing health



services and maintaining an adequate standard of health.

Poverty and Health

Income level is arguably the primary determinant of health.⁴⁷ People with low income, women and Aboriginal people experience worse health than other Canadians.⁴⁸ The disproportionate number of impoverished women, and specifically Aboriginal women, working in the street-level sex trade is a crucial consideration for health policy makers and service providers. A study that addressed the healthcare needs and priorities of women living in the DTES concluded their primary health concerns were basic survival needs such as nutrition, housing, safety, drinking water and sanitation.⁴⁹

Communicable Diseases

According to some affiants, the sex trade laws affect the spread of communicable diseases.⁵⁰ This is consistent with the position of the Canadian HIV/AIDS Legal Network, which identifies criminalization as contributing to the oppression of sex workers and impeding the fight against HIV/AIDS.⁵¹ Poverty, crowded housing, homelessness, poor nutrition and hygiene, chronic illness and drug use also put residents of the DTES at risk for communicable diseases, including HIV/AIDS and hepatitis C. Communicable diseases are acquired primarily through injection drug use, unprotected sexual contact and childbirth.⁵² For female sex workers who are also injection drug users (IDUs), these factors are compounded.

Drug Use and Communicable Diseases

Injection drug use is a greater determining factor in acquiring HIV than is sex work itself. Female sex workers who inject drugs are more likely to acquire a disease such as hepatitis C or HIV than those who do not.⁵³ It appears the majority of sex workers who have acquired HIV through sexual contact contracted it through unprotected sex with male IDUs who are mostly non-paying, intimate partners rather than clients.⁵⁴

Sex Work and Communicable Disease Prevention

While the exchange of money or drugs for sex does not increase the risk of HIV infection, this does not mean sex workers are not at risk of contracting sexually transmitted diseases (STDs) from clients. The affiants indicated that the availability of condoms was an integral part of their ability

to take care of their health.⁵⁵ Condoms, though vital, are not a foolproof way to eliminate the risk of communicable disease. Clients who do not wish to use condoms represent a significant problem for sex workers.

Sometimes guys will pay more for a blow job if I let them have it without a condom. In those cases, I make them pay more and then I keep the condom in my mouth and slip it on with my mouth. I pretend I am chewing gum and then they never know the condom is on until I am done. Sometimes they cum before I can get the condom on. [Affidavit 001 at para. 15]

Many sex workers are not in a position to refuse clients' requests to work without a condom due to financial need and their vulnerability to violence and coercion, which are worsened by current sex trade laws. Some affiants proposed that working indoors would protect them from being compelled to have sex without a condom.⁵⁶

On the street, I am more likely to contract a sexually transmitted disease. I am more likely to get raped or have a date that is not willing to use a condom. You wouldn't believe how many guys try to go with no condoms, and at such a low price, it's disgusting. If I worked indoors, I would be much safer. [Affidavit 082 at para. 6]

That perspective is supported by studies showing that in countries where the sex trade is regulated through legal brothels, women are able to take greater precautions against the transmission of STDs by inspecting their clients before sexual activity and enforcing the use of condoms or other safe-sex paraphernalia.⁵⁷

Many affiants expressed the belief that the availability of regular check-ups and access to information about STDs would benefit them and their clients, and that this would be more viable in a brothel setting or in a specialized health clinic.⁵⁸

I always go for regular checkups to make sure I am healthy. All girls should be able to go for regular checkups to make sure they are healthy. [Affidavit 014 at para. 11]

Some participants suggested testing clients as a way to protect sex workers, since sex workers are more at risk of

contracting disease than actually passing it on through sexual contact.⁵⁹ Notably, participants emphasized that privacy considerations were paramount for testing of both sex workers and clients.

The Canadian HIV/AIDS Legal Network highlights some of the troubling aspects of compulsory state intervention in sex workers' health. They argue that coercive measures against sex workers such as mandatory HIV testing are discriminatory and counterproductive.⁶⁰

Mental Health Issues

Being treated with dignity is fundamental to mental health. Dangers resulting from the criminal laws, stigma, poor living conditions and depressed socio-economic status together appear to have a deleterious effect on the mental health of sex workers.⁶¹ Affiants reported experiencing fear, stress, an inability to let down their guard, and emotional and sexual difficulty in maintaining intimate relationships.

Their reports are consistent with studies on sex workers' mental health, which document high rates of psychological problems such as depression, anxiety and eating disorders, and post-traumatic stress disorder.⁶² Post-traumatic stress disorder is the result of "extreme traumatic stressors involving direct personal experience of an event that involves actual or threatened death or serious injury; or other threat to one's personal integrity."⁶³ This makes sense in light of affiants' descriptions of violence experienced at the hands of clients, other sex workers and the police, and in some cases, in intimate or familial relationships.

One participant advised that sex workers with severe mental illnesses face compounded vulnerability with respect to their clients, other sex workers and police who see them as lacking credibility. The prevalence of people with severe mental illness in the survival sex trade has increased with the ongoing release of patients from mental health institutions.⁶⁴

Several affiants expressed the need for emotional support and appropriate mental health services.⁶⁵ The need for mental health care sensitive to the needs of current and former sex workers is clear.

Nurses are needed who have experience with addiction and empathy, and counselors too. A lot of girls are crying and I find they talk to me. I don't mind it but after a while it becomes too much, especially if you aren't experienced. I took a program and all but it's still hard. There needs to be people who want to be there. [Affidavit 070 at para. 9]

Accessible Healthcare

Sex workers in need of healthcare may find it difficult to access services. Many participants believed that health service providers discriminate against sex workers.⁶⁶ Discussion group participants used words like "humiliated" and "stigmatized" to describe their experience of the healthcare system. Some affiants have hidden the fact they are sex workers from health service providers for fear of being judged, treated rudely, or not having their health concerns taken seriously, thus compromising their access to quality healthcare.⁶⁷

Society has always looked down on working women. You can't tell anybody about it. You can't tell the doctor or the police. You should be able to tell doctors so you are medically safe and the police so you can be protected physically. [Affidavit 069 at para. 23]

Often, the fact that an individual was a sex worker was unrelated to the health issue for which she or he was seeking care. However, many affiants felt their status as sex workers resulted in substandard or inappropriate healthcare.⁶⁸

I once had endocarditis, an infection in the lining of the heart. The doctor told my brother that I had a yeast infection because I was promiscuous. He said I was probably having sex for drugs because I was a known drug user. He said it in the waiting room in front of everyone at the Burnaby General. They were looking in the wrong area of my body and I almost died because I was misdiagnosed. [Affidavit 084 at para. 19]

Several participants described experiences with hospital staff who assumed they were drug addicted because they worked in the sex trade.⁶⁹ In some cases this led to the further assumption that their pain was due to drug withdrawal or they were falsifying pain to get drugs. As a result, they were refused pain medication even when the need was clearly indicated.⁷⁰

Another affiant described how discrimination is compounded when sex workers are Aboriginal:

At the hospitals they always ask me if I am an alcoholic or a drug addict because I am Native. They also ask if I am a prostitute. At the clinics too when they see my needle marks or when I say that I drink they right away

want me to go to detox and counseling. They put prostitutes, drug addicts and alcoholics all in one character. They assume you do all of this. They want to do blood tests, TB tests, syphilis and gonorrhea [sic] tests. I feel really unhealthy and degraded. They didn't even ask if I was having sex without condoms. Sometimes they do these tests without even asking or letting you know. They make a lot of assumptions. When I complained about my stomach they right away thought it was because of alcohol, they don't know how much I drink. When they smell alcohol, they automatically think you were drinking all night. [Affidavit 19 at para. 18]

One discussion group participant felt that sex workers are treated poorly in every medical facility with the exception of the AIDS ward. She questioned why they must acquire AIDS in order to receive adequate health services and respectful treatment.

Many affiants suggested that they would be better able to access healthcare services and conduct their work in a healthy manner in a brothel setting.⁷¹

The women can be taken care of better, both mentally and physically. The women will also be better informed about issues such as STDs and they will be in a supportive environment. There will also be better hygiene, for example when you're finished one date, you can take a shower before going to the next. [Affidavit 038 at para. 6]

Conclusion on Health

Affiants were clear about the requirements, in addition to law reform, for achieving equitable health status. Social and economic policies and programs must be aimed at the core health determinants and needs of sex workers. These include health services that are free of discrimination, sensitive to the experiences of sex workers and respectful of measures they take to make themselves healthier.



Kevin Filuch photo.

Theme 5: Addiction

Many sex workers described being doubly criminalized: for working in the sex trade and for illicit drug use. For many sex workers, entry into the trade is a result of their addiction. Over half of the participants disclosed a history of drug use and made strong statements on the needs and rights of people struggling with addictions.⁷²

Addressing Stereotypes about Addiction and Sex Work

Despite common stereotypes, not all sex workers are drug users. The project was conducted in the DTES, where there is a large population of people with addictions. In 2000, it was estimated that there were 4700 IDUs in this neighbourhood, which is a substantial proportion of the overall estimate of 12,000 IDUs for the Greater Vancouver region.⁷³ Eighty percent of female IDUs surveyed in Vancouver reported being active in the sex trade at some point during their lives.⁷⁴ Therefore, the rate of addiction among the participants in this project cannot be taken as representative of the rate among sex workers overall.

Patterns of Drug Use

Alcohol, heroin and cocaine are the drugs used most often by sex workers in the DTES. The latter two are most frequently consumed via injection.⁷⁵ However, there has been an increasing trend toward cocaine and crack cocaine use, which is associated with increased health risks. Whether smoked or injected, cocaine and crack require more frequent use than heroin and have therefore been associated with entry into sex work as well as unsafe sex practices.⁷⁶

Interaction Between Addiction and the Sex Trade

The high cost of a crack cocaine habit will affect how many dates a sex worker must accept to meet the cost of her

addiction.⁷⁷ Fluctuations in supply and demand also play a role in the level of violence experienced by sex workers. As prices go up, some sex workers become more desperate to earn income and competition for dates increases.⁷⁸ As a result, sex workers are left at the mercy of customers, pimps and drug dealers and are not always able to take precautionary measures to avoid violence and STDs.⁷⁹ Research has demonstrated that the elevated vulnerability associated with this cycle of crack cocaine use is also associated with the spread of HIV.⁸⁰

Approaches to Addiction

In 1997, in response to high rates of overdose and HIV transmission, a public health emergency was declared in Vancouver's DTES. The emergency is particularly acute for women and Aboriginal people. HIV incidence rates among female IDUs in Vancouver are about 40 percent higher than those of male IDUs.⁸¹ Aboriginal IDUs are becoming HIV positive at twice the rate of non-Aboriginal IDUs.⁸²

Despite the wealth of scientific and public health evidence demonstrating the ineffectiveness of reliance on enforcement, the primary response to the health and social emergency has been to intensify law enforcement. A recent Auditor General's report estimated that 94 percent of the \$494 million spent on addressing illicit drug-use in Canada is devoted to law enforcement efforts.⁸³ At the same time, federal and provincial health policy-makers have been slow to respond⁸⁴ to the fact a range of health interventions have proven to be effective through scientific evaluation.⁸⁵ Some action has been taken in Vancouver, precipitated by the "Four Pillar Approach" adopted by the previous city council. On September 15, 2003, Vancouver became the first North American city to open a sanctioned supervised injection facility. "Insite" is currently supervising between 400 – 500 injections per day.⁸⁶

Voices of Experience

Sex workers with addictions have needs that are distinct from the broader population of people with addictions. Affiants made a number of concrete recommendations for changes to Vancouver's current approach to assisting persons with addictions. Several participants discussed their need for accessible drug treatment programs that were sensitive to their particular needs as female sex workers.

In the safe house, I would put in one or two of those

floors of this nice high tower building as a treatment area for the women, with female doctors there sometimes during the week. The way I see it, the women would be so comfortable and safe-feeling in this home, that they would be determined to get into the seventh and eighth floor to deal with their habits and get into other parts of their life. That is what I would like to see in that building. [Affidavit 042 at para. 11]

Another affiant described her need for access to treatment and professional support appropriate to sex workers with major trauma issues and histories of abuse.

My life is wrecked by the memories that I carry with me of my childhood sexual abuse. I carry it with me and it will be with me for the rest of my life. I am hanging on to my sanity — what's left of it. I really want to get off this merry-go-around [sic] but there are not enough support or services available. There should be greater access to treatment centers. There is no real encouragement from the community to leave the trade. I need to feel that there's hope. It needs to be recognized that most sex-trade workers have been sexually abused, that they are hurting, and that they most likely have addictions. We are not in the sex trade for the fun of it. Therefore there should be a lot more support services for us, such as counselors and treatment centers. We need experts to help us heal. [Affidavit 080 at para. 7]

Several affiants mentioned the need for women-only spaces, including injection facilities and health services.

The women have to put the condoms and the rigs somewhere. And have somewhere safe for them to fix and feel a little better about themselves. [Affidavit 067 at para. 7]

Conclusion on Addiction

Many parallels can be drawn between the criminalization of prostitution and drug use. Both have been treated as social vices and in both cases, criminal laws have been used as the primary mechanism of social control. As a result, both sex workers and drug users have been the victims of punitive systems that do not, in fact, address their needs. In reality, criminalization does nothing more than drive sex workers and drug users into more harmful, dangerous and marginalized circumstances. For this reason, harm reduction princi-

ples are consistent with an end to criminalization and a more effective and compassionate approach for both sex work and illicit drug use.



Barry Calhoun photo.

Theme 6: Law Enforcement

Prostitution laws lead directly to the policing, arrest, conviction and sometimes, the imprisonment of sex workers. There are also less obvious consequences resulting from the enforcement of the *Criminal Code*'s sex trade laws. This discussion provides an overview of law enforcement as experienced by the affiants.

The Focus of Law Enforcement on the Street-Level Sex Trade

While law enforcement affects all sex workers, those involved in the street-level sex trade suffer the ramifications in a particular way. This is because their public presence puts them in conflict with neighbourhood groups and makes them easy targets for police sting operations.

Of the three laws that are the subject of this report – communicating for the purposes (s. 213), procuring (s. 212), and the bawdy-house law (s. 210) – arrests and convictions for “communicating” are the most frequent. Statistics provided by the Vancouver Police Department show over 90 percent of sex-trade related offences in a given year are for violations of s. 213.⁸⁷ Due to the quasi-legality of escort services and massage-parlours, the bulk of those arrests involve people engaging in the street-level sex trade.

Police enforcement of s. 213 is often used to control the street-level sex trade in an attempt to reduce its visibility and relocate sex workers. The affiants described incidents that they felt indicated disproportionate and selective enforcement by police officers.⁸⁸

The police came around a lot and told me to move across

to the North side of Hastings Street. I always moved but then I would go back to the area where I wasn't supposed to be, on the South side of Hastings. That's because my regulars were there and they expected to find me there. I also moved back to the South side because there were more lights and it felt safer. The cops didn't want us on South side of Hastings Street because it's residential. [Affidavit 001 at para. 7]

I don't know why they were picking on me. I asked a lot of other girls if they had been told to get off Gore. No other girls had been told to move. The other girls said it might have been because I don't have a criminal record and they wanted to have a record of me. [Affidavit 047 at para. 8]

Enforced Locations and Hours

Affiants repeatedly described police dictating hours and locations where sex workers could work.

When I worked on Broadway, near Main about ten years ago, I was told by the police that there were times and places where I could work. If I worked at other times, like even a minute before midnight, I was told that I'd be busted. I was told to stay off Broadway itself. Generally, the police left me alone. They were good, unless there was a crackdown. [Affidavit 045 at para. 4]

Any perceived community benefits of such an approach are negligible – sex workers may no longer work in a specified area or at a certain time, but enforcement does not reduce the overall number of sex workers on the street.

For every girl that gets arrested and taken off the street, there is another girl to replace her. For every trick that gets arrested, there is another one to replace him. It just goes in circles. [Affidavit 001 at para. 3]

Sex workers generally avoid prosecution by working in dark, isolated, non-residential areas and being inconspicuous in other ways, such as working alone rather than in groups. This puts sex workers at greater risk of violence.

Tagging

Affiants reported being “tagged” or catalogued by the police, who took their pictures without consent, or made them

show identification when they had not broken any law.⁸⁹

I used to work at Gore just off Hastings. About a month ago, I was stopped by two undercover officers. They were in a car. They stopped me, asked me for ID, and ran my name. When they ran my name, nothing came up. They took a Polaroid of me. They did not ask me for permission, they just told me to stand up against the wall and move towards the light. They did not tell me what the Polaroid was for. I did not ask them because I was afraid. [Affidavit 047 at para. 6]

This type of discretionary interaction was documented throughout the affidavits.

Undercover Sting Operations

Arrests are often pre-organized. Affiants' descriptions of police sting operations follow a common pattern. In the course of a sting a police officer poses as a customer, drives up to a sex worker and enquires about prices. If the sex worker asks whether the officer is a member of the police, the officer will generally deny that he is. When the sex worker gets into his car or agrees to provide services, other police officers approach and make an arrest for communicating for the purpose of prostitution.⁹⁰

Harassment by Police

Affiants reported that once they were tagged, arrested or otherwise identified as a prostitute, police harassment often followed. In some instances this harassment took place when they were not working.⁹¹

Because I am tagged police will stop me because they assume I am working. I have not been charged yet because they haven't been able to prove it. [Affidavit 038 at para. 5]

On one occasion, just over a month ago, I was working on Kingsway near Nanaimo. I needed to use the washroom and so I went to the Petro Canada Gas Station. I am a regular customer at the store there and so the attendant gave me the key. A police car pulled up really fast as I was going into the service station. A police sergeant got out of the car and came into the store. His badge number was [#]. He said to the attendant who had given me the key, "Why are you letting prostitutes use the bath-

room. Prostitutes aren't allowed to use the washroom here." I went into the washroom and used it anyway. When I came out the police sergeant was gone. I didn't go back for three weeks to use that washroom. [Affidavit 028 at paras. 7-10]

Another affiant described her decision to make a career change once police confrontations on Hastings Street became frequent.


I have had to find alternate work. Instead, I am working for a drug trafficker and I am trafficking in cocaine. I sell cocaine for him. This puts me at risk of getting busted for trafficking. This is not something that I wanted to get into. But I had to because I need to get by and since I can't make money in prostitution, this is my other alternative. [Affidavit 047 at para. 10]

Crackdowns

Police presence and enforcement levels during any given period directly affect the number of arrests under the sex trade laws.⁹² As mentioned above, because many of the affiants have addiction issues, they experience double criminalization during periods of heavy enforcement.

On April 7, 2003 the Vancouver Police Department initiated an aggressive campaign, called the City-Wide Enforcement Team (CET), with the aim of displacing the drug market from the DTES. The CET continues at the time of publication of this report and, although no official evaluation research has been completed, there is mounting local and international evidence that intense enforcement efforts exacerbate the health and social problems stemming from illicit drug use.⁹³ Since April, the number of arrests of sex workers for prostitution-related offences has also risen.⁹⁴ Affiants reported that periods of increased police presence drives clients away and forces sex workers to work in unsafe locations.⁹⁵

The police are constantly harassing working girls. Clients won't approach you when the police are around. Girls have to move all the time. I always have to watch out for the police when I'm working. I have to keep moving and sometimes lose dates because, when the police are around, my clients are too scared to let me in the car. [Affidavit 028 at para. 6]



Fear and Distrust

Criminalization of the sex trade exposes sex workers to police abuse. While two affiants described positive relationships with police⁹⁶ and three affiants stated they had police officers as clients,⁹⁷ the majority of those who spoke about this issue described incidents of verbal abuse,⁹⁸ physical abuse⁹⁹ and sexual assault¹⁰⁰ at the hands of police officers. Nearly all affiants who discussed their relationship with police were fearful.

Sex workers' fear of police, whether it is fear of being arrested, assaulted or abused has grave consequences. Sex workers go to great lengths to avoid interactions with police, including working in industrial and remote locations. Affiants also stated repeatedly that they would not report sexual assaults or assaults to police for fear of reprisal, facing discrimination or being tagged.¹⁰¹ Those affiants who did attempt to report incidents to law enforcement stated that little or nothing was done in response. Affiants described being insulted, ridiculed and treated dismissively when reporting incidents.¹⁰²

In 1998-99 I went missing for a few days. My boyfriend went to the police to report me missing. The police officer took down my description. When my boyfriend told him I was a prostitute, the officer put his pen down and told him there was nothing he could do. [Affidavit 26 at para. 10]

When I was about 23 or 24 years old, I was raped by someone I met in my work and I told the police. The police told me to go home and sober up and then to come back the next day and tell them about it, to file a complaint then. I was really upset about this. It made me very mad because they didn't do anything about it. The next day I woke up and showered and changed and I just stayed home and felt really bad because the police just shrugged me off. I believe this happened because I was native. They said to me that they had heard all this before and it was nothing new to them. I said this was the first time this ever happened to me. My sister said I should go to the hospital and get checked, but I just went home and stayed home and I never went out for about two or three weeks. The police seemed not to care about anything like that. They could at least have written some of the details down, or told me to go to the hospital and be checked out so that there would be something down on

file in case I wanted to lay charges. Instead they made me feel like it was nothing. They should have picked him up and held him until I could get there. They should have kept him until I went there to lay charges. [Affidavit 039 at paras. 5-7]

There is a man on the bad date sheet, named Randy, who sets fire to the girls with lighter fluid and they know what he looks like and his tattoos, and they can't find him. Yeah right. They aren't trying. They figure hookers are dirt, they treat us worse than dirt. They could have found the Pickton guy way sooner. Every time this happens to girls you never hear it in the papers. And they never get caught except for this pig farmer guy. They had to do something because people were getting too pissed off. No one was saying anything about it before. [Affidavit 084 at para. 14]

A girl ID'd a fellow and the cops still haven't picked him up. If they rob us, the cops don't care. All they see is a working girl. We're not second-class citizens. [Affidavit 070 at para. 10]

I was raped three times. I told the police but they said they couldn't help because I was gay. I think that police attitudes toward homosexuals and especially male prostitutes are awful. The police drive by sex workers in Boystown and shout obscenities. They're supposed to protect us but they degrade us and mistreat us. [Affidavit 077 at para. 5]

Many sex workers described having a difficult relationship with the police because their addiction placed them more firmly in the category of "criminal", pinpointing the interaction between addiction and fear of police. The following took place in a DTES alleyway in January 2003:

I was smoking a rock with my male friend. A male officer came up to me on his bicycle. Another officer showed up a few minutes after. My male friend was urinating in the alley. The police officer came up to us and said, "Smoking crack on my turf? Don't you dare smoke crack on my turf." He pushed my pipe out of my hand. I was wearing a dress. He pushed me down on the ground and made me lie in the pool of urine. He asked me for my name and ran my name in his computer. He

stepped on my pipe and my rock and then let me go. The front of my dress was soaked in urine. I felt really low and like piece of dirt. It made me feel like I used to feel when my husband would beat on me, gave me really low self-esteem. I don't feel like I can go to the police for help. I am afraid of them. [Affidavit 030 at paras. 15-18]

Arbitrary crackdowns, barriers to reporting assaults, and police indifference or discriminatory treatment reinforce a perception that sex workers are disposable and not deserving of equal protection. This also increases the level of violence they experience in their work.

Spotting and Safety

To avoid assaults, some sex workers employ spotters. “Spotting” occurs when sex workers have a person to record their clients’ licence plate numbers and vehicle models as a safety precaution.¹⁰³

...I felt safe because my boyfriend would park across the street. He would spot for me from his car. He would record license plates numbers. He would also follow the car that I got into if that car seemed out of control. I never had a bad date when I was working there. [Affidavit 001 at para. 6]

Many affiants felt police enforcement interfered with their ability to make use of a spotter. This is another way in which law enforcement heightens the risks faced by street-level sex workers.

Enforcement and Exiting

When the law is punitive towards sex workers, it also fails to facilitate their choice to leave the sex trade. Exiting the sex trade poses unique difficulties and in many cases requires the assistance of service providers on a number of levels. A

criminal record adds to this difficulty, makes it harder to find and maintain other employment and can effectively trap a sex worker in the sex trade.¹⁰⁴

It is a hinderance [sic] to have a criminal record when looking for work in certain fields. They judge you and don't consider the fact that you haven't been in trouble for a long time. In Edmonton I got a job with a cleaning company. Something had gone missing from the boss's house. Because of my criminal record they assumed it was me and I lost my job. They found what was missing later and I never got an apology for it and they didn't give me my job back. [Affidavit 026 at para. 12]

Exiting the sex trade is notoriously difficult for sex workers who face obstacles to employment, such as lack of education, housing, health problems and poverty.

Conclusion on Law Enforcement

Sex workers are in great need of police protection as a result of their currently dangerous working conditions. Instead, sex workers attempt to avoid interactions with police for fear of enforcement, abuse or lack of respect. The focus of police resources on enforcement of the prostitution laws fails to meet sex workers’ need for protection.

Conclusion on Key Themes

In this part, key social themes as understood and experienced by the affiants have been highlighted. Perhaps the most critical aspect of the poverty, housing, violence, health, addiction and enforcement themes is the interplay between them. None of these issues can be understood in isolation. They make up the complex web of circumstances that low-income sex workers contend with every day. In order to adopt a perspective on law reform that takes the interests of sex workers into account, it is critical to understand the complicated and subtle ways these issues affect them.

PART 5: CONSTITUTIONAL ARGUMENTS



Barry Calhoun photo.

On their own, the affidavits provide ample reason to repeal many of the Criminal Code's provisions on prostitution. When the affidavits are accepted as evidence of violations of sex workers' constitutional rights, however, law reform becomes imperative. The following sections are summaries of legal arguments supported by legal research, social science and the affidavits.¹⁰⁵

Introduction to Constitutional Arguments

It is Pivot's view that the human rights of sex workers must be vigorously defended in all levels of court using legal reasoning that recognizes the intersecting violations of constitutional guarantees to freedom of expression, equality and the right to life, liberty and security of the person.

The Supreme Court of Canada has ruled that the criminal laws on prostitution are constitutional, but it is now clear that the decision in the 1990 *Prostitution Reference*¹⁰⁶ must be revisited. The current criminal laws have been in force for almost twenty years. Given the extensive developments in *Charter* analysis during this time, and in light of new evidence of harm experienced by sex workers under the current criminal legislation, these laws can no longer be viewed as constitutionally sound.


SECTION 2(B): FREEDOM OF EXPRESSION

Section 2(b) of the *Canadian Charter of Rights and Freedoms* guarantees to everyone "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication." The Supreme Court of Canada has ruled that s. 213(1)(c) of the *Criminal Code of Canada*, which prohibits communication for the purposes of prostitution, violates freedom of expression.¹⁰⁷ The affidavits set out the scope of this rights violation.

I think the communicating law should be changed. When I am working in prostitution, I am just expressing myself and it is not a criminal act. [Affidavit 030 at para. 3]

When a girl is "communicating" she can take some time to check the guy out and decide if she thinks he is safe. A girl will pay attention to whether the guy is nice. She can also figure out what kind of sexual services he is looking for and decide if she is into it. He may pay more for different sexual acts and then a girl can decide if she is interested. [Affidavit 014 at paras. 4-5]

[T]he communication law is a problem because you



cannot talk to anyone on the street. You have to watch everything you do and say. When I worked in the sex trade I had to watch everything I did and said. I sometimes had to be careful, not to look people in the face or say hello for fear of being charged. This made me feel isolated. It is unsafe because you have to be secretive and no one knows where you are and what you are doing. [Affidavit 029 at paras. 5-7]

Prostitution isn't illegal, they gave us a little, but they made it illegal to communicate in any form. How are you supposed to get a customer if you can't communicate? They gave us a little bit but hung us with it. For example, a couple of years ago I was arrested for soliciting, and one of the things brought up was how I communicated. Supposedly, my breaking-the-law was by eye contact. He drove by, I looked and he pulled over. The law means I can't look at anybody. The justice

system can twist everything you do or say to fit into that law for their benefit. [Affidavit 013 at paras. 3-4]

I don't believe that "communication for the purposes of prostitution" should be a criminal offence. I believe that any private conversation between two people is legitimate no matter where it takes place. I don't think what is spoken about between two people should be criminal. People can discuss anything else if they're outside and not be criminally charged. [Affidavit 009 at para. 4]

Previously, the Court concluded that this violation was saved by s. 1 of the *Charter*, and the law was upheld on that basis. Following the discussion of two further rights violations, a re-examination of any justification under s. 1 will show that recent legal and evidentiary developments dictate a result divergent from the Supreme Court of Canada's 1990 decision.



SECTION 7: THE RIGHT TO LIFE, LIBERTY AND SECURITY OF THE PERSON

Section 7 of the *Canadian Charter of Rights and Freedoms* guarantees every person in Canada the right to life, liberty and security of the person. Laws that create exceptions to these guarantees are only permitted when the deprivation of the right is in accordance with the principles of fundamental justice. When faced with s. 7 challenges, courts ask:

- 1) Is there a real or imminent deprivation of life, liberty, security of the person, or a combination of these three interests?
- 2) What principles of fundamental justice are relevant? If there is a deprivation of life, liberty or security of the person, is it in accordance with the relevant principles of fundamental justice?¹⁰⁸

Canada's sex trade laws violate the life, liberty and security of sex workers in a manner that is inconsistent with the principles of fundamental justice.

(1) Deprivation of Life, Liberty, and Security of the Person

The right to life is the most basic and fundamental right we enjoy.

When girls work on the street they aren't safe. Girls don't use the buddy system and don't record the license plate numbers for their friends because if they wait on the streets they could get arrested. [Affidavit 02 at para. 4]

At least sixty-three women have gone missing from the DTES since 1978, and at the time this report was written, the remains of over 20 women had been discovered at a Port Coquitlam farm. The murder and assault rate of sex workers who work indoors is significantly lower than that of those working at street level.¹⁰⁹ This fact illustrates how the dangers created by the laws drive women to work outside and in remote locations. Criminalization of sex work has created a situation in which some of society's most vulnerable members risk their lives to meet basic needs.

The right to liberty ensures that people will not be sent to jail unless imprisonment is in accordance with the principles of fundamental justice. Each section of the prostitution laws (bawdy-house, procuring and communication) carries the possibility of imprisonment and thus all three laws have

the potential to deprive a sex worker of liberty.

The female police officer pushed me up against a doorway structure next to the shop I was trying to enter. She said that she was arresting me for solicitation. I spent 60 days in prison as a result. I had not been trying to solicit the gentleman that I had been talking to. [Affidavit 048 at paras. 4-5]

The right to liberty also ensures people have sufficient personal autonomy to live their own lives and to make decisions of fundamental personal importance. One's profession is a matter of dignity and independence. For many sex workers, prostitution is the only viable means to achieve a measure of independence. The inability to make this choice without being criminalized invokes a liberty interest.

The right to security of the person includes physical safety, personal autonomy, psychological integrity, human dignity, and material and economic well-being. These interests are all affected by ss. 210 and 213 because, in the current context, it is near impossible to work legally in the sex trade. To avoid being charged under the bawdy-house provision, many sex workers work at street level. To avoid being arrested for "communicating," many sex workers go to dark, deserted areas where they are at greater risk of assault, sexual assault, extortion and robbery. Because their lives are criminalized many are fearful of reporting such incidents to the police. The current laws create extremely hazardous working conditions.

I continually move around because when I stand still, I am more likely to get busted by police. I end up working in dark locations, like by the Drake Hotel. These spots are dark and there are less police. I feel more fear when I am working in these dark hidden locations. I am afraid of getting jumped by other girls or weird men. [Affidavit 030 at para. 5]

Sex trade laws prohibit people from making personal decisions about their own bodies, which is a fundamental aspect of the right of security of the person.¹¹⁰ While low-income sex workers have to make decisions within a constrained set of circumstances, such as poverty, a punitive social assistance system, inadequate education and, sometimes, drug addiction, their decision to engage in the sex trade is a personal and reasonable determination of what is in their best interest.

I am 35 years old. I currently work in the sex trade in order to have enough money to feed myself and buy cigarettes. I do this because I don't like to take charity. I like to be able to take care of myself I have been involved in the sex trade, off and on, for the last 20 years. [Affidavit 076 at para. 2]

If the sexual act is between two consensual adults, where the woman is willing to do what the man wants in exchange for something — how is it any different from what married people do? People shouldn't push their morals on others. [Affidavit 021 at para. 10]

I think that the communicating law is not supportive of the street girls. I think that girls have a right to make money and they are adults. They have a right to make money and decide what to do with their bodies. No one should take that right away from them as long as they are not hurting anybody. [Affidavit 049 at para. 3]

Placing criminal sanctions on an individual's ability to meet basic needs while simultaneously restricting what she may do with her body amounts to state imposition of psychological stress, which is an important factor in Supreme Court of Canada decisions on s. 7.¹¹¹ Furthermore, a restriction on consensual sexual contact between adult partners in a private setting must be seen as a profound interference with an individual's physical and psychological integrity, which are both interests protected by s. 7.¹¹²

(2) Relevant Principles of Fundamental Justice

The principles of fundamental justice relevant to these deprivations state that laws must not be overbroad, arbitrary or manifestly unfair.¹¹³ Canada's sex trade laws have all of these deficiencies.

Section 213, the communicating law, captures activities that have no connection to the law's purpose of preventing the nuisance-related aspects of prostitution. A discreet public communication is illegal if it is for the purposes of prostitution, whereas noisy and intrusive communication for any other purpose is lawful. As a factual matter, communication for the purpose of prostitution often occurs at night, frequently in a vehicle or at a secluded location. This cannot be characterized as a nuisance, yet sex workers are frequently

arrested in these situations.

The bawdy-house prohibition under s. 210 also captures behaviour wholly unconnected to the government purpose of preventing nuisance. Working indoors is discreet and does not create a public nuisance. If the state's objective is to prevent nuisance, it should engage more relevant and less overbroad *Criminal Code* provisions.¹¹⁴

Although the procuring law under s. 212 appears to be aimed at preventing coercive or violent pimping, certain subsections of s. 212 have the capacity to capture activities that are not coercive and could potentially increase safety for sex workers. For example, spotting for a sex worker, or providing an indoor venue to work are useful safety measures. These activities could be captured by s. 212.

The use of extortion and assault provisions in the *Criminal Code* is a more appropriate way to deal with coercive and violent pimps. Using general provisions like these has less potential to stigmatize or criminalize the victim of the offence for her or his involvement in the sex trade. Because s. 212 has the potential to capture harmless and even beneficial activities, it can be said to be overbroad. The deprivation of the liberty interest that it creates cannot be said to accord with the principle of fundamental justice that a law must not be overbroad.

Sections 210 and 213 are arbitrary because they violate fundamental rights without consequent benefit to society. There is no balance between the interests of the state in preventing nuisance with the rights of sex workers to life, liberty and security of the person. Instead, the laws create an environment in which sex workers are vulnerable to violence, exploitation and degradation.

The sex trade laws are 'manifestly unfair' because they are not necessary to prevent nuisance, and result in additional risks to sex trade workers. When taken together, the laws create a situation where there is no legal and safe way to engage in selling sex, even though the prostitution itself is technically legal.

The rights protected by s. 7 are some of the most fundamental in the *Charter*. Many sex workers live with poverty, stigmatization and abuse. Any law that exacerbates this merely to alleviate nuisance violates the *Charter*. The discussion of s. 1 of the *Charter* asks whether the violation can be justified in a free and democratic society. It is argued that it cannot and therefore, the law must be repealed.



SECTION 15: THE RIGHT TO EQUALITY

Section 15 of the *Canadian Charter of Rights and Freedoms* prohibits discrimination and guarantees every person in Canada equality before and under the law, including Canada's criminal laws. If a criminal law violates equality rights, it will be struck down unless it can be justified in a free and democratic society.

To decide whether a law violates s. 15, Canadian courts consider the *Law* Test, from *Law v. Canada*, which asks:¹¹⁵

1. Does the law treat a group differently than others, because it imposes a burden, or withholds a benefit from that group?
2. Is the group treated differently on the basis of protected grounds, such as one's sex, race, religion, etc.; and
3. Is the differential treatment discrimination, because the law fails to take account of the group's disadvantage, needs, circumstances, or human dignity?

When the *Law* Test is applied to Canada's sex trade laws it is apparent that these laws violate the equality rights of sex workers.

(1) Treating Sex Workers Differently

Sex workers are singled out by Canada's criminal laws on prostitution. This burden falls especially harshly on low-income sex workers who have fewer resources to conduct their work discreetly and may have previous interactions with the justice system.

The consequences of a prostitution conviction are particularly severe for low-income sex workers who may not have money to pay fines and could face incarceration, whose children may be apprehended by the state, or who may lose their housing. These repercussions stand in stark contrast to "John School" diversion programs for clients.

This affected me because social services found out about my charge and came and apprehended my daughter.
[Affidavit 030 at para. 11]

I lost my daughter to the government because I am a prostitute. She was healthy and happy, but the Ministry of Child and Family Services apprehended her because I am a sex worker. [Affidavit 052 at para. 8]

Getting caught communicating for the purposes of selling

or buying sex can screw up peoples' names because they are then known to be a hooker. Police officers that come across me, know me as a street worker. It is scary because even if I am just waiting somewhere, not working, officers will come up to me and ask me if I am working.
[Affidavit 025 at para. 2]

(2) Different Treatment on the Basis of Protected Grounds


Section 15 protects individuals from discrimination on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability, and sexual orientation. The affiants fall under the protection of s. 15 because of the common characteristics present in the group, including sex, disability and race.¹¹⁶ The vast majority of the affiants are women. Many have serious illnesses, including drug addiction, HIV/AIDS and/or hepatitis C. As well, there is a dramatic overrepresentation of Aboriginal people in the affiant group. The presence of these characteristics mean that criminalization of the affiants attracts s. 15 scrutiny. The intersection of these characteristics is also a strong indication that the characteristic of working in the sex trade could be deemed a ground analogous to others listed in s. 15. In this way, simply being a sex worker would attract *Charter* protection for one's equality rights.

(3) Discrimination

Canada's current sex trade laws place a disproportionate burden on a group of previously disadvantaged people. Sex workers experience violence, stigma, social and economic marginalization, state intervention, a lack of access to social services and punitive criminal sanctions. The existence of poorly compensated sex work *per se* is a disturbing manifestation of women's economic inequality in Canada.

All laws should fit the actual needs, capacities and circumstances of those affected. The sex trade laws, however, do not correspond with the actual needs, capacities and circumstances of sex workers. Instead of criminalization, sex workers need protection from harm, access to safe work places, housing, social assistance, education and employment options, and an elimination of barriers to health, policing and social services. Currently, the circumstances created by these laws put them in harm's way.

Getting in a car is dangerous because once you are in the car with the doors locked, you are at risk. And then once



you get to a parking lot, you are in great danger because you are so isolated. If you look at the bad date lists, they often state that the incidents happened in a car and a parking lot. [Affidavit 081 at para. 7]

The criminal laws governing the sex trade limit the capacities of sex workers to conduct their personal lives, take part in non-criminalized work, and make decisions about their futures. The state infringes on sex workers' human dignity interests through provision of inadequate healthcare, criminalization of livelihood, and the deprivation of full social citizenship. The overall effect is a loss of sense of dignity in their lives and their work, which the affiants both described and resisted.

I want to talk about how the cops treat women when they take us in. They assume we are doing this for the drugs. Sure we are. But we also do it for food, shelter and clothing... They treated me like I was shit and made me feel like I had no worth on this earth... Why can't they make me feel like I was person, instead of like a piece of trash? [Affidavit 036 at paras. 3-4]

The laws relating to prostitution need to be improved. Sex trade workers have value, and are currently treated like trash. The laws should be focused on helping the sex workers instead of making them feel like criminals. The laws should be made fairer, because the laws as they are now just make sex workers feel ashamed and put down. [Affidavit 048 at para. 11]

In summary, the differential treatment experienced by the affiants constitutes discrimination. It imposes a burden, reinforces negative stereotypes and promotes a view that sex workers are less worthy than others of recognition and value as human beings and members of Canadian society.

I just want to be treated like everybody else. It's just a job, except it has more risks. If I don't do it then someone else will do it. If I speak now then maybe it will be safer for someone else. There's always going to be working girls. [Affidavit 070 at para. 13]

The equality rights of sex workers are violated by the current criminal laws. It is argued now that this violation cannot be justified under s. 1 of the *Charter*.



SECTION 1: THESE VIOLATIONS OF SEX TRADE WORKERS' RIGHTS CANNOT BE JUSTIFIED

Section 1 of the *Charter* provides that violations of constitutional rights may be justified under certain circumstances. If a law violates a *Charter* right, the courts will uphold the law if two conditions are met:

1. The objective of the legislation is pressing and substantial; and
2. The means chosen to achieve the legislative objective are reasonable and demonstrably justifiable in a free and democratic society.

The law must satisfy three conditions under the second step in order to demonstrate the proportionality of the means chosen and the objective of the legislation:

- (a) The chosen measures must be logically or rationally connected to the problem they are designed to solve;
- (b) The law must only violate the *Charter* right in the most reasonably minimal way;
- (c) The positive effects of the law must outweigh the negative effects.

A law will be deemed unconstitutional if it fails at any stage of this test. The ways in which the sex trade laws breach the *Charter* are outlined in the discussion above. An application of this test shows that these infringements cannot be justified under s. 1. This is a different outcome than the one reached in the 1990 *Prostitution Reference*.

(1) The Objective of the Legislation

A law that violates *Charter* rights must have an important purpose. The central objective behind the criminal laws targeting sex workers is the prevention of nuisance. Preventing nuisance is not a sufficiently pressing and substantial objective when considered against the harms experienced by sex workers. Sections 210 and 213 would be likely to fail this step of the test.

On the basis of the evidence, the only pressing and substantial purpose behind a legitimate sex trade law would be the prevention of violence against sex workers and the prohibition of coercion or extortion against them.

These men [referring to bad dates] should be charged with assault, rape or kidnapping; laws available under

the Criminal Code. [Affidavit 004 at para. 7]

In contrast to ss. 210 and 213, s. 212 of the *Criminal Code* appears to have this pressing and substantial purpose: preventing the exploitation of sex workers. Section 212 would pass the step of having an important objective, but it is noteworthy that the *Criminal Code* already has provisions that can accomplish these objectives without repeating s. 212's flaws.

(2) Proportionality Is There a Rational Connection Between the Laws and Their Purpose?

This stage asks whether the law in question contains measures that are logically connected to the problem they intend to address. The courts have found that laws based on irrational considerations, that are arbitrary, unfair, or poorly designed will fail this stage of the test.¹¹⁸

The communication law (s. 213) in particular is based on irrational considerations and is arbitrary and unfair.¹¹⁹ It prohibits public communication with no requirement that the conversation be noisy, harmful, or obscene. This means that a sex worker can be arrested under s. 213 for reasons not rationally connected to the harms the laws were created to address. An arrest can occur for talking or making eye contact in a public place, or for performing a transaction that causes little nuisance. Any offence to public morals could be avoided by allowing sex workers to work indoors. However, this too is criminalized.

Poorly designed laws catch activities they are not meant to (over-inclusive) or fail to catch activities they are meant to (under-inclusive). This is the case with the criminal laws regulating the sex trade. They capture many acts unrelated to nuisance. They fail to include acts of street nuisance that are actually obtrusive, noisy or destructive to neighbourhoods, though that is their supposed purpose.

Section 212, procuring, would fail at this point as well. Clearly it was intended to protect sex workers but the limits it places on referrals, spotting, and living in some intimate relationships make it overbroad and unconstitutional in its effect.

I believe that there should be a law against living off the avails and against procuring because there are some really bad people out there who abuse and exploit workers, and it gives police a way to protect those

workers. But I don't think these laws should be used to harass and criminalize sex workers and their friends and families. [Affidavit 045 at para. 8]

Are the Rights of Sex Trade Workers Minimally Impaired By the Law?

The sex trade laws seriously impair the *Charter* rights of sex workers.¹²⁰ These laws capture a wide range of everyday activities that would not be considered criminal in another context, they limit sex workers' access to social and police services, and they foster discrimination against sex workers. The criminalization of consensual sexual activity is a drastic measure and shows no concern for those affected by the result. This is especially clear given the violence that sex workers suffer in large part because of the ways they must work to avoid arrest.

Are the Harms in Proportion With the Benefits?

The criminal laws create a climate in which sex workers are exposed to physical and sexual violence. These harmful effects are unjustified in a free and democratic society. The laws do not create any positive effects to counterbalance this.¹²¹ In other words, in a cost-benefit analysis, the costs are simply too great.

The limitations placed on the *Charter* rights of sex workers by the criminal law cannot be justified under s. 1.

Conclusion on Constitutional Arguments

Courts called upon to deal with unconstitutional laws have the power to strike down all or a portion of a particular law.¹²² They may also give other appropriate and just remedies, including declarations, damages and injunctions.¹²³ Courts are more likely to strike down the entirety of a law that lacks a pressing and substantial objective, such as the communicating law or the bawdy-house law. Where a pressing and substantial objective does exist, courts will tend to fix the law, keeping the useful parts and removing the violating parts.¹²⁴ The logical conclusion of the constitutional analysis here is to:

- repeal the bawdy-house law (s. 210) in its entirety. By extension, s. 211 would become unnecessary and should also be struck down;
- repeal the communicating law (s. 213) in its entirety;
- repeal s. 212 (apart from the trafficking provisions, 212(1)(f) and (g) and the provisions relating to sexual exploitation of children in 212(2), (2.1), and (4), which we have not addressed here). Make use of s. 346 (the *Criminal Code* extortion provision), ss. 265-269 (the assault provisions) and ss. 271-273.1 (the sexual assault provisions) to accomplish the pressing and substantial objectives formerly served by s. 212.

PART 6: CALL TO ACTION



Roland Koke photo.

Striking down the prostitution laws is a critical step, but is not exhaustive of the actions required to remedy the disadvantage and marginalization experienced by sex workers in Canada.

The affidavits and legal arguments emphasize the need for legal, social and economic change. This report has highlighted not only the need for improved services and safer working conditions for those who engage in sex work, but also the need for social services and economic reform to ensure alternatives for those who wish to leave this occupation. To thoroughly address the issue, law and policy-makers must:

- end the criminalization of the sex trade. This is an essential step toward reducing the harms experienced by sex workers while they are engaging in their occupation. The criminal laws also bar sex workers from full access to Canada's social agencies, such as healthcare, affordable housing programs, income assistance, and police protection;
- ensure that any other legislation relating to the sex trade does not create a quasi-criminal or punitive regime through the use of fines or penalties;
- consult with sex workers. Consistently and meaningfully involve sex workers in decision-making about the laws and policies that affect their lives. Create accessible and welcoming spaces, and compensate them for their expertise;
- ensure that all future legislation relating to the sex trade contains a directive declaring that the human rights of sex workers is a guiding interpretive principle;
- accord explicit protection to sex workers in the *Canadian Human Rights Act* and provincial human rights codes, and provide adequate legal aid for human rights cases;

- re-allocate policing resources from prostitution law enforcement to specialized services for sex workers who have been victims of crime and violence;
- direct funding toward the economic supports for sex workers and women living in poverty, recognizing that inadequate income levels may be a major factor in the decision to engage in sex work. This includes earmarked and adequate transfer payments from the federal government to the provinces and territories through the Canada Social Transfer. This also includes providing an adequate standard of living through provincial and territorial financial assistance programs. Recognizing the deeply personal choice involved in engaging in sex work, prohibit provincial social assistance programs from compelling recipients to engage in sex work rather than continuing to receive benefits;
- end discriminatory practices by public authorities, including healthcare workers and police.
- fund public education campaigns that promote sex workers' social citizenship and human rights.

This report is unique in that the evidence and legal arguments are presented not to a court at this time, but to the public and to Parliament. This is an opportunity to prioritize sex workers' human rights and to repeal a series of unconstitutional laws. We extend thanks on behalf of our working group and the affiants for your careful consideration of the arguments, and most importantly, the evidence.

ENDNOTES

¹Adult is defined by the *Criminal Code of Canada* as a person over the age of 18. *Criminal Code*, R.S.C. 1985, c. C-46, s. 212(4) [*Criminal Code*].

²*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [Charter]. The Charter is part of the Canadian constitution and has been in force since 1982 (with the equality section coming into effect in 1985). For two decades, governments in Canada have been aware that they must guarantee certain rights and freedoms to Canadians, and that these rights and freedoms can be enforced by a court of law.

³This is consistent with the commitment of the Government of Canada, which, in 1995, adopted a policy requiring the application of gender-based analysis in the policy development process. Under this policy all federal departments and agencies are required to take into account their differing impacts on women and men when analyzing policies and legislation. See Status of Women Canada, *Gender-Based Analysis: A Guide for Policy Making* (Ottawa: Status of Women Canada, 1998).

⁴Complete affidavits are available at Pivot's web site: <<http://www.pivotlegal.org>>.

⁵Complete legal arguments are available at Pivot's web site: <<http://www.pivotlegal.org>>.

⁶Seven affiants had left the DTEs and were working in the Westside of Vancouver's downtown district.

⁷The Downtown Eastside is reported to have the lowest per capita income of any postal code in Canada. Government of Canada, Statistics Canada, *Population Census of Canada*, 1996.

⁸S.A. Strathdee *et al.*, "Needle Exchange Is Not Enough: Lessons From The Vancouver Injecting Drug Use Study" (1997) 11(8) AIDS at fn. 59.

⁹Other areas of the sex industry include: the "high-track" street level trade, massage parlours, escort agencies, exotic dancers and phone sex workers. The street-level sex trade is also sometimes referred to as the "low-track". The use of the term "sex trade" is neither meant to be pejorative nor to be understood in contradistinction to the term "profession".

¹⁰Pivot acknowledges that some of the terminology used in this report is problematic. Inevitably, the written word can only approximate what it is meant to describe. We urge our readers to look past the terms we have chosen to use to the very important and clear message of this report.

¹¹Turtle Island Native Network, "Healing & Wellness," online: Turtle Island Native Network <<http://www.turtleisland.org/news/nwac.htm>>.

¹²J. Thompson "Edmonton's Murdered Women" (2004) CBC News Online, online: CBC News Homepage <http://www.cbc.ca/news/background/edmonton_murders/index.html> (last modified: 18 November 2003).

¹³J. Lee & W. Boei "Man Suspected of Raping and Torturing 51 Women" *The Vancouver Sun* (17 January 2003) A1.

¹⁴Planning Research and Audit Section, *Vancouver Police Annual Statistical Report 2002* (Vancouver: Vancouver Police Department, 2002) [VPD Stats 2002]. The Vancouver Police Department's statistics are affected by two factors: rates of reporting by the public and the variable levels of enforcement (depending on allocations of police resources or the decision to crack down on particular types of offences). Therefore, increases in particular offences may be attributable in part to these factors. See *VPD Stats 2002* at 10.

¹⁵Statistics Canada, *Juristat: Canadian Crime Statistics*, 2002, vol. 23, no. 5 (Ottawa: Statistics Canada, 2002).

¹⁶Planning Research and Audit Section, *Vancouver Police Annual Statistical Report 2001* (Vancouver: Vancouver Police Department, 2001).

¹⁷The street-level sex trade comprises less than 20 percent of the sex industry. C. Benoit & A. Millar, *Dispelling Myths and Understanding Realities: Working Conditions, Health Status, and Exiting Experiences of Sex Workers* (Victoria: Prostitutes Empowerment, Education and Resource Society, 2001), online: University of Victoria Homepage <<http://web.uvic.ca/~cbenoit/papers/DispMyths.pdf>> [*Dispelling Myths*].

¹⁸The omitted provisions in this section deal with trafficking. None of the affiants identified themselves as internationally trafficked women or put forward opinions about the laws on international trafficking.

¹⁹This was a repeated theme in a discussion group held on the topic of choice and dignity.

²⁰An affiant is a person who swears an affidavit.

²¹Results of the discussion group on poverty were submitted to the Federal Standing Committee on Finance. Results of the accessibility discussion group were submitted to the Subcommittee on Solicitation Laws. In the text that follows, discussion group responses are occasionally mentioned, and are indicated as such, so as not to be confused with responses in legally sworn affidavits.

²²Three additional affidavits have been excluded because those affiants were not current or former sex workers.

²³Affidavit 087 at para. 6. This affiant spoke about the laws generally, not the bawdy-house law in particular.

²⁴Affidavit 087 at para. 6. This person spoke about the laws generally, not the communicating law in particular.

²⁵Affidavits 002, 006, 015, 027, 030, 045, 046, 047, 049, 052, 066, 068, 069, 070, 074, 076, 082, 084.

²⁶D.P. Ross, K.J. Scott and J. Peter Smith, *The Canadian Fact Book on Poverty* (Ottawa:

Canadian Council on Social Development, 2000).

²⁷National Council of Welfare, *Welfare Incomes*, 2002 (Ottawa: National Welfare Council, 2003), online: <http://www.ncwcnbes.net/htmldocument/reportwelfinc02/Welfare2002.htm#_Toc500047787>.

²⁸A. Long and M. Goldberg, *Falling Farther Behind: A Comparison of Living Costs and Employment and Assistance Rates in British Columbia* (Vancouver: Social Planning and Research Council of British Columbia, 2003).

²⁹S. Klein & A. Long, *A Bad Time to be Poor: An Analysis of British Columbia's New Welfare Policies* (Vancouver: Canadian Centre for Policy Alternatives, 2003).

³⁰Research Advisory on the Provincial Cuts and Violence Against Women, "Social Assistance and Other Social Programs: Anticipated Impact on Women who Experience Violence" (2002) online: British Columbia Institute Against Family Violence, (last modified: 10 April 2002).

³¹B.C. CEDAW Group, *British Columbia Moves Backwards on Women's Equality: Submission of the B.C. CEDAW Group to the United Nations Committee on the Elimination of Discrimination Against Women on the occasion of the Committee's review of Canada's 5th Report* (Ottawa: B.C. CEDAW Group, 2003), online: PovNet Homepage <<http://www.povnet.org/downloads/CEDAW/cedaw.htm>> (last modified: 7 May 2003). [CEDAW].

³²Affidavit 082 at para.11.

³³B.C. CEDAW Group, above; See also K.J. Swift, *Manufacturing Bad Mothers*, (Toronto: University of Toronto Press, 1995).

³⁴Ministry of Children and Family Development, online: Government of British Columbia Homepage <http://www.mcf.gov.bc.ca/media_site/breaking_news_hogg_jan18.htm> (accessed: 16 January 2004).

³⁵Ministry of Children and Family Development, online: Government of British Columbia Homepage <http://www.mcf.gov.bc.ca/media_site/vc_aboriginal.htm> (accessed: 16 January 2004).

³⁶*Employment and Assistance Act*, S.B.C. 2002, c. 40, s.15(1).

³⁷J. Lowman and L. Fraser, *Violence Against Persons Who Prostitute: The Experience in British Columbia* (Ottawa: Department of Justice Research, Statistics and Evaluation Directorate Policy Sector, 1995).

³⁸*R. v. Grilo* (1991), 2 O.R. (3d) 514, 64 C.C.C. (3d) 53 (C.A.); *R. v. Celebrity Enterprises Ltd.* (1977), 41 C.C.C. (2d) 540, [1978] 2 W.W.R. 562 (B.C.C.A.); *R. v. Downey*, [1992] 2 S.C.R. 10, 90 D.L.R. (4th) 449.

³⁹Affidavits 002, 018, 020, 022, 023, 024, 032, 040, 046, 059, 060, 062, 073, 085.

⁴⁰Affidavits 001, 025, 027, 043, 055, 056, 061, 083.

⁴¹J. Lee & W. Boei "Man Suspected of Raping and Torturing 51 Women" *The Vancouver Sun* (17 January 2003) A1.

⁴²*Dispelling Myths*, above.

S. Currie, N. Laliberte, S. Bird, N. Rosa & S. Sprung, *Assessing the Violence Against Street-Involved Women in the Downtown Eastside/Strathcona Community*, Mimeo, 1995. [Assessing the Violence]

L. Cler-Cunningham & C. Christensen, "Violence against women in Vancouver's street level sex trade and the police response (Vancouver: Pace Society, 2003), online: PACE Society Homepage <<http://www.pace-society.ca>> (accessed: 1 October 2003). [Pace Report]

⁴³Affidavit 025 at para. 3.

⁴⁴Affidavits 002, 016, 004, 082, 038, 047, 076.

⁴⁵Freedom from violence, housing and appropriate responses to addiction represent basic prerequisites for health and are discussed in other subsections of this report.

⁴⁶Affidavits reporting health problems, including HIV, hepatitis C, depression, or other conditions: 002, 003, 004, 010, 013, 015, 019, 021, 023, 026, 032, 035, 036, 037, 043, 047, 049, 050, 051, 052, 054, 057, 059, 061, 069, 070, 071, 072, 073, 074, 075, 076, 080, 081, 084, 085, 092.

⁴⁷J.W. Frank, "Why 'Population Health'?" (1995) 86(3) Canadian Journal of Public Health 162. See also J.W. Frank & J.F. Mustard, "The Determinants of Health from a Historical Perspective" (1994) 123(4) *Daedalus* 1; M.C. Wolfson, "Determinants of a Healthy Populace" in S.M. Davis, ed., *Healthy Populace Healthy Policy: Medicare Toward the Year 2000* (Kingston: Queen's University, 1990); I.C. Green, (1990). "National Health and Welfare" in S.M. Davis, ed., *Healthy Populace Healthy Policy: Medicare Toward the Year 2000* (Kingston: Queen's University, 1990); A. Crichton, D. Hsu & S. Tsang, *Canada's Health Care System: Its Funding and Organization* (Revised) (Ottawa: CHA Press, 1994); and N.P. Roos & C.A. Mustard "Variation in Health and Health Care Use by Socioeconomic Status in Winnipeg, Canada: Does the System Work Well? Yes and No" (1997) 75(1) *The Milbank Quarterly* 89 [*Canada's Health Care System*].

⁴⁸*Canada's Health Care System*, above.

⁴⁹*Canada's Health Care System*, above, and P. Grescoe, "A Nation's Disgrace" in Coburn, D'Arcy, Torrence and New Eds., *Health and Canadian Society: Sociological Perspectives* (Markham, Ont: Fitzhenry and Whiteside, 1987) at 109.

⁵⁰Core Women Care. *The Place to Start: Women's Health Care Priorities in Vancouver's Downtown Eastside* (Core Women Care, 1995).

⁵⁰Affidavits 084 and 051.

⁵¹K. K. Bastow, "Prostitution and HIV/AIDS" (1995) 2(2) HIV/AIDS Policy & Law Newsletter, online: Canadian HIV/AIDS Legal Network Homepage <<http://www.aidslaw.ca>> (accessed: 1 September 2003) [Prostitution and HIV/AIDS].

⁵²Health Canada, online: <www.hc-sc.gc.ca>.

⁵³L. Jackson, A. Highcrest, R. Coates, "Varied potential risks of HIV infection among prostitutes." (1992) 35(3) *Social Science of Medicine* 281; S. Tortu, H. McCoy, M. Beardsley, S. Deren, C. McCoy, "Predictors of HIV infection among women drug users in New York and Miami" (1998) 27(2) *Women and Health* 191 [Predictors]; M. Weeks, M. Grier, N. Romero-Daza, M. Puglis-Vasquez, M. Singer, "Streets, drugs and the economy of sex in the age of AIDS" (1998) 27(2) *Women and Health* 205; L. Rosenblum, W. Darrow, J. Witte, J. Cohen, J. French, P. Gill, J. Potterat, K. Sikes, R. Reich, S. Hadler, "Sexual practices in the transmission of hepatitis B virus and prevalence of hepatitis delta virus infection in female prostitutes in the United States" (1992) 267(18) *Journal of the American Medical Association* 2477.

⁵⁴Prostitution and HIV/AIDS, above. L. Jackson & A. Highcrest, "Female Prostitutes in North America: What are their Risks of HIV Infection?" in L. Sheer, C. Hankins and L. Bennett eds., *AIDS as a Gender Issue* (London: Taylor and Francis, 1996) [Female Prostitutes]; P.M. Spittal, K.J.P. Craib, E. Wood, N. Laliberte, K. Li, M.W. Tyndall, M.V. O'Shaughnessey & M.T. Schechter, "Risk factors for elevated HIV incidence rates among female injection drug users in Vancouver" (2002) 166 (7) Canadian Medical Association Journal [Risk Factors]. See also Predictors, above.

⁵⁵See Affidavit 001 at para. 15, Affidavit 002 at para. 3, Affidavit 039 at para. 9, Affidavit 074 at para. 8.

⁵⁶Affidavit 001 at para. 15, Affidavit 067 at para. 4, Affidavit 074 at para. 8, Affidavit 082 at para. 5.

⁵⁷M. Pyett, and B. Haste, "Risk practices for HIV infection and other STDs amongst female prostitutes working in legalized brothels", (1996) 8(1) *AIDS Care* 85; A. Albert, *Brothel: Mustang Ranch and its Women* (New York: Random House, 2001).

⁵⁸Affidavit 003 at paras. 8 and 13, Affidavit 004 at para. 6, Affidavit 006 at para. 3, Affidavit 007 at para. 5, Affidavit 014 at para. 11, Affidavit 015 at para. 8, Affidavit 028 at para. 3, Affidavit 038 at para. 6, Affidavit 039 at para. 9, Affidavit 056 at para. 15, Affidavit 063 at para. 6, Affidavit 066 at para. 11, Affidavit 070 at para. 7, Affidavit 076 at para. 5.

⁵⁹Affidavit 065 at para. 14. See also Prostitution and HIV/AIDS, Predictors, Female Prostitutes, and Risk Factors, above.

⁶⁰Prostitution and HIV/AIDS, above.

⁶¹See Dispelling Myths, above.

⁶²See Dispelling Myths, above.

⁶³M. Farley & H. Barkan, "Prostitution, violence against women and posttraumatic stress disorder" (1998) 27(3) *Women & Health* 37.

⁶⁴*Core Women Care*, above.

⁶⁵Affidavit 038 at para. 6, Affidavit 063 at para. 6, Affidavit 070 at para. 10.

⁶⁶Affidavits 003, 019, 070, 073.

⁶⁷See also Affidavit 073 at para. 15.

⁶⁸Affidavit 056 at para. 16, Affidavit 081 at paras. 18 and 19.

⁶⁹Affidavit 081 at para. 19.

⁷⁰This was documented in the discussion group on choice/dignity.

⁷¹Affidavit 003 at para. 13, Affidavit 024 at para. 7, Affidavit 056 at para. 15, Affidavit 063 at para. 6, Affidavit 070 at para. 7.

⁷²Fifty participants described a history of drug use and an additional 14 participants were currently on a prescription Methadone program.

⁷³M.T. Schechter & M.V. O'Shaughnessy, "Distribution of Injection Drug Users in the Lower Mainland," (2000) 42(2) B.C. Medical Journal [IDU Distribution].

⁷⁴PACE Report, above. See also *IDU Distribution*, above, which estimated there was 4700 IDUs in this neighbourhood, a substantial proportion of the overall estimate of 12,000 IDUs for the Greater Vancouver region.

⁷⁵*Assessing the Violence*, above. *Violence Against Persons Who Prostitute*, above.

⁷⁶R.E. Booth, C.F. Kwiatkowski, and D.D. Chitwood, "Sex related HIV risk behaviours: differential risks among injection drug users, crack smokers, and injection drug users who smoke crack" (2000) 58(3) *Drug and Alcohol Dependence* 219 [Risk Behaviours].

⁷⁷L. Maher, "Hidden in the light: Occupational norms among crack-using street-level sex workers" (1996) 26(1) *Journal of Drug Issues* 143.

⁷⁸M. Forney, J. Inciardi & D. Lockwood, "Exchanging sex for crack-cocaine: A comparison of women from rural and urban communities" (1992) 17(2) *Journal of Community Health* 73.

⁷⁹Predictors, above.

⁸⁰Risk Behaviours, above. See also B.R. Edlin, K.L. Irwin, S. Faruque, C.B. McCoy, C. Word, Y. Serrano, J.A. Inciardi, B.P. Bowser, R.F. Schilling, S.D. Holmberg, "Intersecting epidemics – crack cocaine use and HIV infection among inner-city young adults. Multicenter Crack Cocaine and HIV Infection Study Team" (1994) 331(21) *N. Engl. J. Med.* 1422.

⁸¹See Risk Factors, above.

⁸²*Ibid.*

⁸³Report of the Auditor General of Canada, *Chapter 11 – Illicit Drugs: The Federal*

Government's Role (Ottawa: Auditor General of Canada, 2001) online: Officer of the Auditor General Homepage <http://www.oag-bvg.gc.ca/dominio/reports.nsf/html/01menu_e.html> (accessed January 2003).

⁸⁴E. Wood, T. Kerr, P. M. Spittal, M. W. Tyndall, M.V. O'Shaughnessy & M.T. Schechter, "The healthcare and fiscal costs of the illicit drug use epidemic: The impact of conventional drug control strategies, and the potential of a comprehensive approach" (2003) 45(3) *BC Medical Journal* 128.

⁸⁵J. Reh, P. Gschwend, T. Steffen, F. Gutzwiller *et al.*, "Feasibility, safety, and efficacy of injectable heroin prescription for refractory opioid addicts: a follow-up study" (2001) 358(9291) *Lancet* 1417; See also K. Dolan, J. Kimber, C. Fry *et al.*, "Drug consumption facilities in Europe and the establishment of supervised injecting centres in Australia" (2000) 19 *Drug and Alcohol Review* 337.

⁸⁶Vancouver Coastal Health, online: <http://www.vch.ca/sis/site_statistics.htm>.

⁸⁷Planning, Research and Audit Section, Statistical Reports, online: Vancouver Police Department Homepage <<http://www.city.vancouver.bc.ca/police/Planning/stats.html>> (last modified: 29 December 2003).

⁸⁸Affidavits 001, 028, 030, 033, 037, 038, 045, 047, 058, 065, 066, 082, 084.

⁸⁹Affidavits 006, 008, 018, 029, 038, 040, 043, 047, 071.

⁹⁰Affidavits 001, 003, 015, 017, 018, 021, 026, 030, 031, 034, 045, 047, 051, 052, 059, 076, 081, 085.

⁹¹Affidavits 002, 009, 012, 016, 025, 033, 036, 038, 048, 071, 081.

⁹²*VPD Stats 2002*, above at note 11.

⁹³R.N. Bluthenthal *et al.*, "Collateral damage in the war on drugs: HIV risk behaviours among injection drug users" (1999) 10 *Int'l J. of Drug Policy* 25; J. Sudbury, "Celling black bodies: Black women in the global prison industrial complex," (2002) 70 *Feminist Review* 57; D. Small, "The war on drugs is a war on racial justice," (2001) 68(3) *Social Research* 896; E. Wood *et al.*, "Needle exchange and difficulty with needle access during an ongoing HIV epidemic," (2002) 13(2) *Int'l J. Drug Policy* 95.

⁹⁴Planning Research and Audit Section, *Vancouver Police Quarterly Statistical Report April - June 2003* (Vancouver: Vancouver Police Department, 2003).

⁹⁵Affidavit 049, 028, 030, 034.

⁹⁶Affidavits 006 and 008.

⁹⁷Affidavits 057, 074, 084.

⁹⁸Affidavits 002, 012, 016, 024, 053, 061, 072, 083.

⁹⁹Affidavits 010, 012, 030, 033, 043, 053, 061, 072, 080, 081, 083, 084.

¹⁰⁰Affidavits 010, 026, 061, 084.

¹⁰¹Affidavits 002, 026, 028, 034, 037, 043, 047, 056, 057, 066, 070, 084.

¹⁰²Affidavits 001, 018, 039, 054, 057, 059, 060, 061, 062, 065, 066, 070, 073, 075, 081, 082, 084.

¹⁰³Affidavits 001, 019, 028, 030, 034, 037, 046, 059, 067, 071, 075, 083.

¹⁰⁴Affidavits 026, 066, 070.

¹⁰⁵These arguments are posted at <<http://www.pivotallegal.org>>.

¹⁰⁶*Re Reference Section 193 & 195.1(1)(c) of the Criminal Code (Man.)*, [1990] 1 S.C.R. 1123 [Prostitution Reference], *R. v. Skinner*, [1990] 1 S.C.R. 1235, [1990] S.C.J. No. 51 [Skinner].

¹⁰⁷*Prostitution Reference* and *Skinner*, above.

¹⁰⁸*R. v. White*, [1999] 2 S.C.R. 417 at para. 3, *Blencoe v. B.C. (Human Rights Commission)*, [2000] 2 S.C.R. 307.

¹⁰⁹J. Lowman & L. Fraser. *Violence Against Persons Who Prostitute: The Experience in British Columbia (Technical Report No. TR1996-14e)* (Ottawa: Department of Justice Canada, 1996) at 71.

¹¹⁰*R. v. Rodriguez*, [1993] 3 S.C.R. 519, *R. v. Morgentaler*, [1988] 1 S.C.R. 30.

¹¹¹*New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46 at paras. 60-61, *Mills v. The Queen*, [1986] 1 S.C.R. 863 at 919-920.

¹¹²See *Morgentaler*, above.

¹¹³*R. v. Heywood*, [1994] 3 S.C.R. 761. See also *Morgentaler* and *Rodriguez*, above.

¹¹⁴For example, s. 175(1) makes causing a disturbance and other nuisance-related activities offences punishable on summary conviction.

¹¹⁵*Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497.

¹¹⁶While a single affiant may have only one or two personal characteristics that attract section 15 protection (i.e. she is an Aboriginal woman, but does not have a disability), our discussion is framed as the broadest group claim that could be advanced. Among the affiants, all of these characteristics are overwhelmingly represented.

¹¹⁷See *Prostitution Reference*, above.

¹¹⁸*RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C. R. 199 at para. 153 [RJR-Macdonald], and *Oakes* at para. 70.

¹¹⁹See section 7 discussion.

¹²⁰*RJR-Macdonald* at para. 160. *Sauve v. Canada (Chief Electoral Officer)*, [2002] 3 S.C.R. 519 at para 160.

¹²¹*Dagenais v. Canadian Broadcasting Corporation*, [1994] 3 S.C.R. 835.

¹²²Section 52(1) of the *Constitution Act, 1982*, above.

¹²³Section 24 of the *Charter*, above.

¹²⁴This is a very short summary of the Supreme Court of Canada's guidance on the issue of constitutional remedies, given in *Schachter v. Canada*, [1992] 2 S.C.R. 679.



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