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To Whom it May Concern:

RE: Vancouver Police Department COVID-19 Response in DTES

We write with urgency regarding the Vancouver Police Department's response to COVID-19 as it concerns the Downtown Eastside (DTES) community.

In the last two weeks, Pivot has received an influx of complaints from DTES residents that the VPD is over-policing the DTES neighbourhood and directly jeopardizing residents' health, livelihood, and security. As there are now two simultaneous public health emergencies in B.C., **we are asking the VPD to cease all practices that undermine public health and safety in all low-income communities in the City of Vancouver.**

It is well-established that policing incites fear (of arrest & detention) and thusly drives certain activities dangerously underground.¹ This is common in neighbourhoods with long-standing histories of police (mis)conduct and in which many residents live in public space, work in informal street-based economies, and rely on the illicit drug market. Even before COVID-19, VPD policing practices in the DTES were widely criticized for undermining public health and infringing rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the B.C. *Human Rights Code*.

For instance, VPD policing during the opioid crisis has been shown to jeopardize access to vital emergency health and harm reduction services.² Police enforcement of simple possession has, for decades, pushed drug

¹ Collins et al, "Policing space in the overdose crisis: A rapid ethnographic study of the impact of law enforcement practices on the effectiveness of overdose prevention sites" (International Journal of Drug Policy (Nov 2019) Vol 73, pages 199-207), available at: <https://www.sciencedirect.com/science/article/pii/S0955395919302361>

² A 2019 study by the B.C. Centre on Substance Use found, for instance, that: "despite OPS serving as safer environments to consume drugs amid an overdose crisis, drug-scene policing practices (e.g. neighbourhood sweeps, foot patrol) created barriers to engagement for many participants [drug users in the DTES], reinforcing their structural vulnerability and increasing their risk of drug related harm." See: <https://www.sciencedirect.com/science/article/pii/S0955395919302361>

users into isolation and compromised their harm reduction efforts.³ The VPD's long-standing practice of surveilling sex workers and harassing their clients continues to displace sex workers and interfere with their ability to earn an income and take safety precautions.⁴ All of these actions are inconsistent with s. 7 of the *Charter*, which guarantees the rights to life, liberty, and security of the person, and in turn protects against actions that interfere with healthcare access,⁵ increase the risk of death and disease,⁶ and prevent people from safeguarding their own health and safety.⁷ Insofar as police practices (including street stops, "wellness checks," and detentions) tend to be disproportionately used against poor, Indigenous, and racialized communities,⁸ they are also inconsistent with the right to equality guaranteed by s. 15 of the *Charter* and B.C. *Human Rights Code* protections against discrimination.

Policing that exacerbates the public health harms of COVID-19 is inexcusable. We call on the VPD to undertake the following:

1. Cease the Over-Policing of People Who Use Drugs (PWUD)

- Create a formal 'de facto' decriminalization policy⁹ in the City of Vancouver with respect to the offences of simple possession and possession for the purposes of trafficking;
- Create a formal "bubble zone" policy preventing police interference around all harm reduction services including overdose prevention sites (OPS) and supervised consumption sites (SCS);
- Create a formal policy that prevents officers from interfering with harm reduction, including a directive to cease the practice of confiscating new or used harm reduction equipment.

The B.C. Centre for Disease Control has stressed the importance of harm reduction during COVID-19, advising PWUD to continue using OPS and SCS and to "buddy up" when using drugs.¹⁰ As before, PWUD are relying on a largely unregulated supply of drugs, but amid the pandemic, they are also seeing a rapid withdrawal of harm reduction resources; a diminishing drug supply; and the looming risk of withdrawal due to supply chain interruption.

PWUD are adapting to a new landscape of gaps in health- and harm reduction services. They may also be purchasing larger quantities of substances while they have the means to do so, based on concerns about an interrupted drug supply and obligations to perform social distancing.

VPD practices have been proven to drive drug use underground, imperilling access to harm reduction and undermining the efficacy of those services. As threats to the health and safety of PWUD reaches an all-time

³ *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 [PHS] at para 10.

⁴ My Work Should Not Cost Me My Life (2014), available at: http://d3n8a8pro7vhm.cloudfront.net/pivotlegal/pages/615/attachments/original/1401811234/My_Work_Should_Not_Cost_Me_My_Life.pdf?1401811234

⁵ PHS at para 91.

⁶ PHS at para 136.

⁷ *Canada (Attorney General) v Bedford*, 2013 SCC 72 at para 60.

⁸ <https://vancouver.ca/police/assets/pdf/foi/2018/vpd-street-check-data-2008-2017-by-gender-and-ethnicity-fields.pdf>
See also: *R v Le*, 2019 SCC 34 at para 97.

⁹ Practical Drug Decriminalization in British Columbia (2019), available at http://www.pivotlegal.org/practical_drug_decriminalization_in_british_columbia

¹⁰ <http://www.bccdc.ca/Health-Info-Site/Documents/COVID19-harm-reduction.pdf>

high, fear of police interference cannot be the reason why people are prevented from engaging in critical harm reduction measures.

2. Minimize the Policing of Informal Economies

- Cease criminalization and police disruption of informal economies, including adult consensual sex work; street-based drug sales; and street vending and panhandling;
- Commit to the City of Vancouver's Sex Work Response Guidelines¹¹ and ensure all VPD officers respond to sex workers in a manner that prioritizes their safety, health, and right to work in adult consensual sex work.

The informal economy includes sex work, drug dealing, panhandling, and street vending. It is a crucial source of income generation for people experiencing homelessness, or using substances, or who are otherwise excluded from the formal workforce.¹² Since the onset of COVID-19, this economy has been devastated. Sex workers have reported a decline in business and may face a spike in violence from clientele taking advantage of demand scarcity.¹³ Street-level dealers have reported a rapidly evaporating and increasingly toxic drug supply.¹⁴ DTES street vending sites have been forced to close.¹⁵

As illicit markets are 'drying up,' B.C.'s income assistance program is simultaneously being overwhelmed with requests, and numerous DTES services are shuttering.¹⁶ While policing informal economies has always had the effect of driving them underground and exposing workers to harm, this is especially true in today's climate of desperation. It is critical that police limit interference with the survival economy to avoid driving people into further physical and economic precarity.

3. Cease the Over-Policing of Unsheltered People

- Cease disruptions to the daily activities of people who shelter in public space (i.e. sidewalks, storefronts, city parks), including the seizure and disposal of personal belongings, and any other activities that could result in the displacement of people who are sheltering in public space;
- Cease disruptions to the daily activities of people who live in their vehicles, including cars, vans, motorhomes, and RVs;
- Cease stigmatizing approaches to public health, including loudspeaker-style announcements about social distancing amplified from police cars;

¹¹ <https://vancouver.ca/files/cov/sex-work-response-guidelines.pdf>

¹² Project Inclusion (2018), available online: <https://d3n8a8pro7vhmx.cloudfront.net/pivotlegal/pages/1986/attachments/original/1543969275/project-inclusion-digital.pdf?1543969275> at p 45.

¹³ <https://thetyee.ca/News/2020/03/27/How-COVID-19-Hurting-Sex-Workers/>

¹⁴ <https://thetyee.ca/News/2020/03/24/Drugs-COVID19-Coronavirus-Poisoned-Downtown-Eastside-Consumption/>

¹⁵ <https://thetyee.ca/News/2020/03/20/Downtown-Eastside-Ticking-Time-Tomb-Coronavirus-COVID19/>

¹⁶ <https://www.cbc.ca/news/canada/british-columbia/cheque-day-dtes-covid-vancouver-1.5510241>

- Provide clear, trauma-informed protocol on how the VPD is attending any emergency calls related to family violence, including intimate partner violence and child welfare calls, which could lead to the removal of an individual from their home.

An Interim Guidance policy issued by the Centers for Disease Control and Prevention advises cities to not clear homeless encampments during community spread of COVID-19 unless individual housing units are available, as “clearing encampments can cause people to disperse throughout the community and break connections with services providers. This increases the potential for infectious disease spread.”¹⁷

It is virtually impossible for unsheltered communities to abide by government directions to self-isolate. Frequent handwashing, sanitizing, and cleaning is similarly untenable absent the provision of supplies with which to do so. This is a time of great risk for low-income communities – whether they are living in tent cities, cars, shelters, or couch surfing. Even people who are technically housed may feel unsafe in their homes, for example, if they must co-quarantine with an abuser, and they are making difficult choices about survival.

Given the significant risk of community spread among communities who cannot self-isolate, the VPD must avoid partaking in displacement efforts that could further transmission. That numerous Courts have found routine displacement to invoke psychological distress contrary to s. 7 of the *Charter*¹⁸ is all the more reason to cease the practice, as people are now navigating multiple crises under tremendous stress.

4. Minimize Contact with the Criminal Justice System

- Work with the Ministry of Public Safety & Solicitor General and community-based organizations to reduce the number of people awaiting trial in remand or preventative detention in pretrial and provincial correctional institutions;
- Align VPD policy with Sanctuary City Principles,¹⁹ by identifying CBSA-free zones and ensuring no municipal resources are utilized to support CBSA investigations or activities;
- Undertake all possible measures to prevent any time spent in custody, including the following:
 - Cease enforcement of all administrative offences (i.e. breaches of bail conditions);
 - Announce a moratorium on street stops and police-imposed area restrictions (or ‘red zones’);
 - Release individuals under the most minimally restrictive conditions available;
 - Work with child welfare agencies to prevent youth from being taken into custody.
- Provide COVID-19 Protocols for Vancouver Jail;
- Provide COVID-19 Protocols for the detention and transport of individuals to VPD and non-VPD facilities (ex. Vancouver Detox & Sobering Unit, emergency mental health units).

Since the onset of COVID-19, Courts have identified that incarceration, which amounts to effective mass congregation, is inconsistent with the social distancing and isolation practices being advised under the current

¹⁷ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/unsheltered-homelessness.html>

¹⁸ *Abbotsford (City) v Shantz*, 2015 BCSC 1909 at paras 209 & 219.

¹⁹ <http://www.sanctuarycityvan.com/sanctuary-city-principles/>

public health emergency. Courts have favoured release over incarceration in recognition that the pandemic “is bound to increase day to day hardship in prison and the general risk to the welfare of prison inmates.”²⁰

As the World Health Organization has already noted: “Prisons are not healthy places. Communicable diseases are frequently transmitted among prisoners...[and] unhealthy conditions such as overcrowding and poor hygiene are common in many prisons.”²¹

Correctional facilities and immigration detention centres are high-risk sites of contagion that cannot respond to a pandemic. Wherever possible, it is vitally important to ease over-reliance on incarceration to protect the welfare of incarcerated individuals, prison staff, and the broader community.

Conclusion

We implore the VPD to undertake evidence-based responses to public health crises and cease enforcement activities that jeopardize access to health, safety, and dignity. We thank you for your consideration and will follow up shortly.

Sincerely,

Pivot Legal Society

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²⁰ *R v Kandhai*, 2020 ONSC 1611 at para 7; see also *R v JS*, 2020 ONSC 1710 at paras 19-20.

²¹ Prisons and Health (2014), <https://apps.who.int/iris/bitstream/handle/10665/128603/PrisonandHealth.pdf;jsessionid=D196B9957E6FFCED2A6CD3218EED1BA2?sequence=1>