
Submissions to the Special Committee on Reforming the *Police Act*

Meenakshi Manno

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PIVOT
LEGAL SOCIETY

Author

Meenakshi Manno
Pivot Legal Society

Layout & Design

Sozan Savehilaghi
Pivot Legal Society

Reviewers

Kit Rothschild
PACE Society

Magín Payet Scudellari
Defund 604 Network

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About Pivot Legal Society

Pivot Legal Society (“Pivot”) is a legal organization based in the Downtown Eastside of Vancouver, on unceded territories of the xʷməθkʷəy̓əm (Musqueam), səliłwətaʔ (Tsleil-Waututh) and Skwxwú7mesh (Squamish) Nations.

Pivot’s work is focused on four policy areas: ending homelessness, drug policy reform, sex workers’ rights, and police accountability. Pivot staff work in partnership with communities affected by poverty and social exclusion across Vancouver, British Columbia, and Canada to identify priorities and develop solutions to complex human rights issues. Our approach to campaigns includes strategic litigation, public legal education, public advocacy, and the use of social and conventional media. Pivot’s advocacy engages all levels of government, including provincial laws and policies. Our multidimensional approach to these policy areas includes, but is not limited to, challenging laws and policies that contribute to stigma and threaten the Charter rights of people who are criminalized for their social condition.

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Criminalization & Policing Campaign

Policing, and its impact on marginalized communities has constituted a core part of Pivot’s work since our organization was founded, nearly 20 years ago. Throughout our history, Pivot has worked to take direction from directly-impacted communities and make demands related to the role of police and oversight bodies. Over time, this work has shifted, and today the goals of the criminalization and policing campaign encompass a broad shift from law enforcement practices towards anti-stigma work, peer leadership, and inclusion strategies.

Pivot’s previous police accountability work includes representing individuals, families, First Nations, and organizations through the police complaints process, civil litigation, Coroner’s Inquests, and in human rights and constitutional matters. Legal representation has included pursuing civil action on behalf of individuals harmed by police conduct, including injury by Police Service Dogs, inappropriate and unethical conduct as first responders, and inappropriate care in municipal jail facilities. At present, Pivot continues to provide legal representation to a group of individuals who have filed complaints against two Vancouver Police Department alleging harassment, abuse of power, and retaliation.¹



Our Recommendations

Thank you for the opportunity to make these submissions on potential reforms to the *Police Act*, RSBC 1996 (the "*Police Act*"). We have five central recommendations for the reform of the *Police Act*, and we urge the Committee to endorse the following priorities:

- 1) Ensure access to police accountability.
- 2) Invest in access to justice.
- 3) Address the broad harms of criminalization.
- 4) Eradicate prohibitionist policing.
- 5) Enable communities to defund the police.

Approach to Reforms of the *Police Act*

As a legal advocacy organization, Pivot is attuned to how we leverage the colonial law to advance human rights on sovereign, unceded, and unsurrendered Indigenous territory across so-called Canada. Over the past two years, Pivot has undertaken several processes to scrutinize our work, including our campaign goals. Through this process, we have also reflected on how our past advocacy efforts may have promoted police legitimacy and "reformist reforms"² rather than abolitionist steps in policing. Our campaign goals do not excuse us from perpetuating anti-Black and anti-Indigenous racism, and we strive to centre the racist implications of policing in our work.³ We are committed to upholding principles and policy recommendations that reflect the importance of designing a world that no longer relies on policing and criminalization as the singular response to harm in our communities.

We advise law- and policy-makers, including members of the Special Committee reviewing the *Police Act*, to approach policy and legislative change through an intersectional lens, that reflects "multi-level interacting social locations, forces, factors and power structures that shape and influence human life and health."⁴ In terms of policing, reforms must curtail the role of police in "complex social issues," and eradicate systemic racism within police agencies. These changes, however, must reflect the realities of "layered policing," wherein police continue to take on roles in health care, harm reduction,

youth outreach, education, and other realms which enable inappropriate access to communities for purposes of surveillance, criminalization, and repression.⁵

Recommendation 1

Ensure access to police accountability mechanisms and address all barriers to existing processes.

Although enhanced police accountability measures will not resolve or eradicate the oppression people face when interacting with the police, as long as this institution exists, we must ensure every single instance of police misconduct is sanctioned. Based on Pivot’s work, we know that currently only a small fraction of complainants even access oversight bodies such as the Police Complaints Commission or the Civilian Review and Complaints Commission. Individual complainants often choose not to speak out against the police due to fear of stigma or further reprisal. In the 2018 report *Project Inclusion: Confronting Anti-Homeless Anti-Substance User Stigma*, researchers identified “experiences with harassment, displacement, threats, racism, and violence at the hands of police and policing institutions” across BC.⁶ Despite a high level of negative interactions with the police, most research participants shared that they had never reported formal complaints, as they did not feel that they would not be believed, and if they did successfully file a complaint they would be subject to intensified harassment.⁷

“The cops just creep up on you, like sneak up. The cops do whatever they want basically. They don’t follow the book or code of conduct. And that’s why some people have been trying to videotape things. But then they basically assault you and break your phone if they see it or they’ll harass you, just make life really hard on you if you try to expose them for what’s going on. You feel like they’re kind of more of a gang themselves. They’re more like—they’re just like they’re bullies, basically.” *Project Inclusion* Participant #313⁸

The abysmal state of police accountability reflects the ingrained nature of policing culture, including the ongoing provisions that allow police to investigate police. As Murphy and McKenna (2014) note,

There appears to be widespread consensus among police academics and policy-makers that there exist powerful and resistant police cultures that, among other things, can inhibit or prevent fair and impartial investigations by police of serious civilian complaints. As the organizational and occupational conditions that created police culture and that inform its

protective and insular character have not changed, most academic arguments assume that police culture is relatively permanent and not open to serious reform or progressive development.⁹

Additional barriers to police accountability, and public confidence in existing systems, include issues inherent to the two-tier complaint model between the RCMP and municipal police, lack of timely complaint- processing, limitations to effective and impactful discipline, and the lingering presence of “pockets of police resistance” to oversight, impeding cultural changes with police forces.¹⁰

Specific Recommendations

- 1) Harmonize police complaint processes between municipal police and RCMP, as recommended by Justice Wally Oppal.¹¹
- 2) Implement an immediate transition plan to create wholly civilian-staffed police accountability and oversight agencies, where investigators of misconduct or criminal conduct have no prior police experience.¹²
- 3) Mandate culturally responsive frameworks within civilian-led oversight bodies, specifically highlighting the unique needs of Black and Indigenous survivors of police violence.¹³
- 4) Endorse a decolonizing and anti-racist mandate for all police accountability and oversight agencies, with commensurate funding for Black, Indigenous, and other racialized individuals and organizations to ensure equitable access to complaint processes.¹⁴
- 5) Increased transparency and accountability through systemic investigations and methodical data collection.¹⁵

Recommendation 2

Invest in access to justice and ensure individuals, surviving family members, First Nations, and special interest groups have funding to access individual, systemic, service, and policy complaints.

While there are excellent legal clinics that undertake police complaints, including the Atira Women’s Society Legal Advocacy Program and the UBC Indigenous Legal Clinic, there is no dedicated funding to ensure legal representation for individuals who wish to pursue a complaint against the police complaints.

Pinette (2020) remarks on the confusing process. Her scholarship focuses on the process when there is a police-involved serious injury or death, but can be applied to overall accountability systems:

Currently, there is no coordinated, independent process available to assist affected families, or the public, to navigate the complicated legal network of agencies and laws in their attempt to find information and answers following a police-involved death. There is a complexity to understanding how to attain information. This is problematic, especially for those closely impacted by the death. An individual seeing information must research where to access information outside of the police institution, and identify the appropriate government agency and legislation that governs disclosure of information.¹⁶

If individuals do not meet the eligibility criteria for the limited programs available, they must lodge and pursue their complaint alone. For individuals who do not own a cell phone, computer, printer, or do not have consistent access to the internet, following through on a police complaint requires active support and mechanisms that do not rely on them reporting directly to the police.¹⁷ Individuals, surviving family members, First Nations, and special interest groups with relevant expertise must receive funding and independent support to wholly engage with the police complaint system and oversight bodies. Survivors of police violence are currently navigating a confusing, inaccessible system without necessary legal supports.

Specific Recommendations:

- 1) Dedicate legal aid funding for police complaint clinics, provide public legal education to help people navigate the process of bringing a lawsuit against a police officer or police force, and ensure representation for families and/or victims in instances of police-involved serious injury or death to facilitate full participation in Coroners' Inquests and civil actions.¹⁸
- 2) Dedicate legal aid funding for a clinic to support racialized people in making police complaints, through summary advice, short service, or full representation based on the needs of the individual and the nature of the complaint.¹⁹
- 3) Dedicate legal aid funding for family members during Independent Investigations Office investigations, Coroners' Inquests, or independent commissions of inquiry relating to incidents of death or serious harm that may have been the result of the actions of a police officer, whether on or off duty.²⁰
- 4) Ensure that victims, immediate family members, and witnesses can access community-based Victim Services programs, including benefits made available by the Crime Victim Assistance Act.²¹

Recommendation 3

Address the harms of criminalization, through an intersectional lens that views the harms of police policy, practice, and culture beyond the *Police Act*.

Across all campaign areas at Pivot, we hear from communities across BC about how police forces throughout the province target people who use drugs, people who rely on public space, and people working in informal and criminalized economies such as sex work are subject to oppressive policing practices. We are also aware of the role of systemic racism, which has an enduring impact on Black and Indigenous communities in BC, including land and water defenders who are subject to discriminatory policing while on their sovereign territory.

As Stelkia (2020) observes, “there needs to be explicit focus on addressing the very systems and structures that uphold and protect the perpetrators of colonial violence” to address the root causes of police brutality and injustice.²²

Through Pivot’s work and expertise, we understand the diverse systems of criminalization underpin the experience of “feeling policed,” including the deployment of private security guards and bylaw officers. The spectrum of criminalization exerts control through formal systems, such as the court system, and legislation such as the *Criminal Code of Canada R.S.C. 1985* and the *Controlled Drugs and Substances Act S.C. 1996*. Criminalization also extends into informal mechanisms, such as tools for managing private, hybrid, and public spaces and non-codified practices that control individual conduct and label certain individuals and communities as undesirable, and thereby subject to surveillance, intimidation, coercion, and violent behaviour. Through our ongoing rights-based training with directly-impacted communities, such as drug user unions or people who rely on public space, we routinely hear about how systems of criminalization function in tandem, cycling people through carceral systems.

To address the broad harms of criminalization, law- and policy-makers must make recommendations that extend beyond the *Police Act* or risk a siloed and ineffective approach to eradicating stigma and bias. This approach to addressing criminalization emphasizes the need for systemic change, beyond the siloed review of legislation.

Specific Recommendations:

- 1) Issue an immediate moratorium on the use of Street Stops. Prohibiting street stops is the only constitutional response to an otherwise illegal policing practice that continues to target Black, Indigenous, and poor people.²³
- 2) Direct police to cease interference with Indigenous ceremonies and follow Elder-established protocol.²⁴
- 3) Initiate an immediate anti-racist audit of all gang-related policing in BC, including a review of the Combined Forces Special Enforcement Unit of British Columbia, in recognition that Black, Indigenous, and other People of Colour are inappropriately classified as gang members by law enforcement.²⁵
- 4) Direct police officers to cease the practice of recommending that charges be brought against people engaged in protests and civil disobedience.²⁶
- 5) Direct police forces to cease enforcement of sex work-related offences, namely those found to be unconstitutional in 2013, including Communication, Material Benefit, and Procuring.²⁷
- 6) Direct police forces to cease over-policing unsheltered people living in public space and cease the enforcement of charges for sleeping and camping in public space, and through the displacement of tent cities.²⁸
- 7) Direct police forces to cease confiscating personal belongings from people who rely on public space, including necessities of life such as shelter, clothing, medication, and important personal items. In situations where confiscation is unavoidable, police forces must be directed to issue receipts for belongings and cash, with clear instructions on how to get them back.²⁹

Recommendation 4

Eradicate Prohibitionist Policing and end the War on Drugs

Pivot endorses the full decriminalization of drug possession and recognizes that this is a life-saving measure in the context of the drug policy crisis that has created a contaminated drug supply, also known as the opioid-related overdose deaths public health emergency.³⁰ The 2019 Provincial Health Officer Special Report *Stopping the Harm: Decriminalization of People Who Use Drugs in BC* called on the Minister of Public Safety and Solicitor General to take immediate action, and Dr. Bonnie Henry identified two approaches that were available to the provincial government. Although Minister Farnworth has failed to take action on the recommendations to-date, we hope that the Special Committee will recognize the life-saving potential of *de facto* decriminalization, which the province has the power to enact. In a province where 7,705 deaths due to illicit drug toxicity have been

recorded over the last 10 years,³¹ decriminalization of drug possession, expansion of peer-led harm reduction, and safe supply are evidence-based initiatives that will save lives.

In a joint statement released by Pivot and the Vancouver Area Network of Drug Users, authors advise that “unlock[ing] the benefits of decriminalization (and end the harms of prohibition) [require that] penalties and sanctions of all kinds must be abolished with respect to simple possession.”³²

Pivot opposes amendments to decriminalization that introduce administrative or other consequences for drug possession, including police acting as referral sources for people or participating in diversion programming.³³ Treating substance use as a matter of criminality is an outdated and harmful approach, and governments at every level must continue to adapt laws, policies, and practices to reflect public health aims and to mitigate the harms of harsh drug laws and aggressive law enforcement, neither of which are relevant or evidence-based goals or objectives during a public health emergency. As the contaminated drug supply continues to ravage communities of people who use drugs, the provincial government must set policing priorities focused on harm reduction.

Specific Recommendations

- 1) Implement de facto decriminalization for simple possession of illicit substances in BC, per the recommendation of BC’s Provincial Health Officer, Dr. Bonnie Henry.³⁴
- 2) Direct police forces in BC to work with service providers to develop “bubble zones” around supervised consumption sites, overdose prevention sites, and other harm reduction sites with a goal to eliminate policing practices that deter site access (i.e., police presence at sites, arrests or undercover operations in and near sites, and surveillance of clientele).³⁵
- 3) Develop a provincial policy on harm reduction which includes discouraging the confiscation of intoxicating substances (including alcohol).³⁶
- 4) Direct police officers to never confiscate new or used syringes, naloxone, and other harm reduction and overdose prevention supplies; and explicitly state that harm reduction supplies, new or used, are not a basis for search or investigation.³⁷
- 5) Direct police forces in BC attending overdose calls that their role is to deliver first aid if they are the only responders available, or to protect the safety of Emergency Health Services and members of the public, not to investigate the individuals or circumstances at the scene unless police determine that there is an exigent public safety concern.³⁸

Recommendation 5

Enable communities to defund the police.

Pivot supports the movement to “defund the police.” Since 2019, Pivot has advocated for defunding the Vancouver Police Department, and in the summer of 2020, defunding the police became a global movement, fomented by numerous police-involved deaths. Given our long-standing work alongside criminalized folks, peer-led organizations, and survivors of police violence, defunding the police aligns with our decades of advocacy. Defunding the police is not about dismantling safety – quite the opposite, actually. Pivot supports efforts to defund police and shift public resources into evidence-based solutions that reflect the needs and capacity of directly-impacted communities.

We know that people with lived and living experience have the expertise to address conflict, crisis, and harms in their community, but we also know that many of these folks are living in situations worsened by austerity and exclusion. We are working to imagine a world where people can have their survival needs met and be supported as first responders in their own communities.

Specific Recommendations

- 1) Produce all provincial policies related to “adequate and effective levels of policing” as defined in the *Police Act*, Section 2.³⁹
- 2) Produce transparent information on the determinations of authorized strength of all police forces in BC and provide information on what health, social, and community services are required to reduce the authorized strength.
- 3) Immediately establish a framework for defunding the police (including municipal police and RCMP), in favour of community-led safety initiatives. Support rather than interfere with municipalities currently working to defund local police forces.⁴⁰
- 4) Divest from police harm, invest in community safety. Pivot urges the province to prioritize community safety over the violent, colonial institution of policing. This includes divesting from police and investing in non-lethal and non-violent community safety solutions, and heeding calls to “defund the police,” including RCMP and municipal police forces throughout BC.⁴¹
- 5) Providing permanent funding to community-led safety initiatives, led by directly impacted communities, namely people who are Black, Indigenous, racialized, Two-Spirit, Indigiqueer, queer, trans, disabled, (im)migrants, substance users, low-income, and engaged in criminalized economies.⁴²

Conclusion

Members of the Special Committee on Reforming the *Police Act* have the opportunity to implement essential, overdue changes to the governance, oversight, and conduct of police forces in BC. This moment – marked by global uprisings against oppressive police – comes at tremendous social, spiritual, economic, personal, and physical costs. The toll of police violence includes the cumulative impacts of fatal incidents, instances of brutality, discriminatory surveillance, and woeful remedies to systemic issues. As an organization with a long history of police accountability work, we will continue to engage government regarding the 26 recommendations contained in this report, with the hopes we can help realize true safety for all people living in BC.

Appendix A: Open Letters to Government, 2017-Present

Battered Women's Support Services et al. "Joint Open Letter on Decriminalizing Poverty", (March 2021), online: Pivot Legal Society, https://www.pivotlegal.org/joint_open_letter_on_decriminalizing_poverty

BC Association of People on Opiate Maintenance et al. "Joint Statement Re: Vancouver Police Department 2021 Operating Budget" (December 2020), online: Pivot Legal Society, https://www.pivotlegal.org/joint_statement_re_vancouver_police_department_2021_operating_budget

Vancouver Area Network of Drug Users & Pivot Legal Society "Joint Statement" (November 2020), online: Pivot Legal Society, https://www.pivotlegal.org/vandu_pivot_joint_statement

Western Aboriginal Harm Reduction Society, Pivot Legal Society & Vancouver Area Network of Drug Users "Joint Complaint opposing New VPD Neighbourhood Response Team" (November 2020), online: Pivot Legal Society, https://www.pivotlegal.org/joint_complaint_on_neighbourhood_response_team

Pivot Legal Society, "Re: Identifying Priorities for the BC Provincial Government" (October 2020), online: Pivot Legal Society, https://www.pivotlegal.org/letter_to_provincial_leaders

TJ Felix & Meenakshi Manno, "Support for 'Police-Free Schools are Safer Schools' Petition" (June 2020), online: Pivot Legal Society, https://www.pivotlegal.org/support_for_police_free_schools_are_safer_schools_petition

Caitlin Shane & Meenakshi Manno, "Letter to Provincial Leadership on Addressing Anti-Black Racism in Policing" (June 2020), online: Pivot Legal Society, https://www.pivotlegal.org/anti_black_racism_in_policing

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Pivot Legal Society, "Memo on Street Checks Moratorium" (July 2019), online: Pivot Legal Society, https://www.pivotlegal.org/street_check_moratorium

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Pivot Legal Society, "Police Attendance at Overdoses" (October 2017), online: Pivot Legal Society, https://www.pivotlegal.org/police_attendance_at_overdoses

Andrew Sorfleet et al., "Open Letter to BC Police Forces: End Participation in Operation Northern Spotlight" (July 2017), online: Pivot Legal Society, https://www.pivotlegal.org/open_letter_to_bc_police_forces_end_participation_in_operation_northern_spotlight

Appendix B: Relevant Reports

Tim Howard et al., *To Serve and Protect: A Report on Policing in Vancouver's Downtown Eastside* (Vancouver: Pivot Legal Society, 2002). Available online:

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Darcie Bennett and DJ Larkin, *Project Inclusion: Confronting Anti-Homeless & Anti-Substance User Stigma in British Columbia* (Vancouver: Pivot Legal Society, 2018). Available online:

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