

## **PART IV: KEY THEMES FROM THE AFFIDAVITS**

### **INTRODUCTION**

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, inadequate 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.

### **POVERTY AND SOCIAL ASSISTANCE**

Pivot's affiants all share one characteristic – they live in poverty. Sex workers in the DTES struggle to survive under difficult financial circumstances. Sex work is their means of economic survival. Numerous affiants stated they entered the sex trade, or remained working in it, as a matter of financial necessity.<sup>23</sup>

Other affiants stated they became a sex worker 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. This amount was equivalent to 34 percent of the low-income cut off (LICO) figure of \$19,256. The LICO figures are Statistics Canada's estimates of the income levels below which people will need to spend almost all their income on food, shelter and clothing.<sup>24</sup> 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

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<sup>23</sup> Affidavits 002, 006, 015, 027, 030, 045, 046, 047, 049, 052, 066, 068, 069, 070, 074, 076, 082, 084.

<sup>24</sup> D.P. Ross, K.J. Scott and J. Peter Smith, *The Canadian Fact Book on Poverty* (Ottawa: Canadian Council on Social Development, 2000).

## 29 Voices for Dignity

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on income assistance of \$13,706 annually.<sup>25</sup> 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.<sup>26</sup>

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.....

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. [Affidavit 046 at paras. 8 and 9]

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Welfare pays my rent directly. They don't pay the full amount, so I have to pay the rest out of my support money, which is supposed to be for groceries and clothing. Rent is \$350, I have to pay \$25 of that off of the \$270 support. Other money comes off for damage deposit. I have found a place to get my methadone covered. The money I have left is nowhere near enough. [Affidavit 069 at para. 15]

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<sup>25</sup> National Council of Welfare, *Welfare Incomes, 2002* (Ottawa: National Welfare Council, 2003), online: National Council of Welfare Homepage <[http://www.ncwcnbes.net/htmdocument/reportwelfinc02/Welfare2002.htm#\\_Toc500047787](http://www.ncwcnbes.net/htmdocument/reportwelfinc02/Welfare2002.htm#_Toc500047787)>.

<sup>26</sup> A. 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).

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. There is little money for purchases other than rent and food, including such essential items as clothing or personal hygiene products. 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.

The government of British Columbia announced its intention, beginning in April 2004, to reduce social assistance availability and make further cuts to the already inadequate amounts paid. This is likely to increase the number of people forced to rely on sex work as an additional or only source of income.<sup>27</sup> Recent changes in B.C. include:

1. Terminating the benefits of people deemed “employable” when they have received benefits for a total of 2 years out of a 5-year period (the 2-of-5 rule). People in other categories can experience reductions in their benefits after the 2-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.

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<sup>27</sup> S. 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).

### 31 Voices for Dignity

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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 engaged in sex work.
5. The 2-year work force history requirement. Those over the age of 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.<sup>28</sup>

Social assistance cutbacks are particularly harmful to women and members of disadvantaged minorities. Women in British Columbia have higher rates of poverty than men. A disproportionate number of Aboriginal women live in poverty. The average annual income of Aboriginal women is \$13,300 compared to \$18,200 for Aboriginal men and \$19,350 for non-aboriginal women.<sup>29</sup> A recent review of the effects of cutbacks on women noted:

Income (or social) assistance is a key social program for women. Because more women than men are poor, because their employment is more marginal and less well-paid, and because they have greater responsibilities for child care, more women are likely, at one time in their lives or another, to need publicly-provided income assistance. Without adequate social assistance, women cannot escape violent relationships with partners, nor can they raise their children alone. Without a publicly provided economic support, women cannot count on enjoying sexual autonomy or liberty. They can be trapped in coercive partner or employment relationships, without any means of escape. Adequate social assistance is an essential underpinning for women's equality...

The people who are affected by the inadequacy of welfare benefits (and the growing gap between welfare benefits and the actual costs of living) are disproportionately women. According to a group of academics at the University of British Columbia, largely as a result of childcare responsibilities, women are more likely than men to rely on social assistance. Of the entire income assistance caseload, 33.6% are single parent families, of which 88.5% are families lead by women. For these single mothers, the new reductions in rates combined with the cancellation of family maintenance and earnings exemptions mean that some have seen a drop in their benefits of as much as \$351 per month. If a single mother has two children, she will also have her shelter allowance reduced.<sup>30</sup>

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<sup>28</sup>Research Advisory on the Provincial Cuts and Violence Against Women, "Social Assistance and Other Social Programs: Anticipated Impact on Women who Experience Violence" (2002) British Columbia Institute Against Family Violence, online (last modified: 10 April 2002)

<sup>29</sup>M. Morris, *Women and Poverty*, (Ottawa: Canadian Research Institute for the Advancement of Women, 2002), online: Canadian Research Institute for the Advancement of Women Homepage <<http://www.criaw-icref.ca/>> (accessed: 16 January 2004).

<sup>30</sup>B.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),

The effects of poverty are profound. Affiants described suffering depression and anxiety due to lack of funds.<sup>31</sup> Additionally, parents who are impoverished and parents of Aboriginal children living in poverty are many times more likely than their affluent counterparts to have their children removed on the grounds of neglect, because they simply can not pay for the necessities of life. Social assistance does not provide enough money to pay for proper shelter, clothing and food for children.<sup>32</sup> 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.<sup>33</sup> Aboriginal children are approximately 8 percent of children in B.C. but represent 40 percent of children in care.<sup>34</sup> Due to the threat of removal, single parents on social assistance face a difficult choice – if they don't seek other means of making money, such as sex work, they may lose their children, but their participation in sex work itself increases the risk of losing their children. Parents who do sex work face stigmatization as criminals and unfit parents, or permanent loss of social assistance entitlement due to a conviction for social assistance fraud.<sup>35</sup>

As the number of sex workers increases and competition drives down the price for sexual services, sex work becomes less remunerative. This in turn increases pressure on sex workers to see more clients and to take more risks to earn money. The quasi-criminal status of prostitution makes it virtually impossible for sex workers to advocate for better working conditions or

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online: PovNet Homepage <<http://www.povnet.org/downloads/CEDAW/cedaw.htm>> (last modified: 7 May 2003).

<sup>31</sup> Affidavit 082 at para. 11.

<sup>32</sup> B.C. CEDAW Group, op. cit at n.30; See also K.J. Swift, *Manufacturing Bad Mothers*, (Toronto: University of Toronto Press, 1995).

<sup>33</sup> Ministry of Children and Family Development, online: Government of British Columbia Homepage <[http://www.mcf.gov.bc.ca/media\\_site/breaking\\_news\\_hogg\\_jan18.htm](http://www.mcf.gov.bc.ca/media_site/breaking_news_hogg_jan18.htm)> (accessed: 16 January 2004).

<sup>34</sup> Ministry of Children and Family Development, online: Government of British Columbia Homepage <[http://www.mcf.gov.bc.ca/media\\_site/vc\\_aboriginal.htm](http://www.mcf.gov.bc.ca/media_site/vc_aboriginal.htm)> (accessed: 16 January 2004).

<sup>35</sup> *Employment and Assistance Act*, S.B.C. 2002, c. 40, s.15(1).

### 33 Voices for Dignity

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negotiate adequate compensation for their services. If they are assaulted by a client or robbed of their earnings they may be unwilling to report the offence. To do so would render them vulnerable to prosecution and investigation for social assistance fraud.

It is imperative that the government ensure all members of our society are guaranteed a basic standard of living. This means providing income assistance that reflects actual needs, including adequate 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.

## HOUSING

Sex workers, like all people with low incomes, find it hard to find safe, comfortable and affordable housing. Canadian laws applicable to sex work make inadequate housing an even greater problem.

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.<sup>36</sup>

I think it is really important to provide good housing for girls. If girls were able to have nice housing and have nice clothes, it [*sic*] a lot easier to do things for yourself. When you apply for housing they make it really hard for you and that makes it hard to get into good housing. I understand they need to weed out the

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<sup>36</sup> J. 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).

people who will never change, but some people are really trying and deserve a second chance.

If you improve a person's environment, people tend to improve themselves. But if you are living somewhere dumpy, they tend to stay in their rut. Moving people away from the Downtown Eastside could change their lives. [Affidavit 066 at paras. 17 and 18]

In the eyes of landlords who fear prosecution under the bawdy-house law, sex workers are 'suspect tenants'. Apart from the general stigmatization of sex workers, which makes it harder for them to find accommodation, the potential for criminal prosecution means many landlords will likely refuse to rent to anyone they think may be a sex worker. Sex workers, who are already limited in their options for accommodation, are unlikely to have any real recourse against a landlord who refuses them accommodation or evicts them on this basis.

In many DTES hotels, the imposition of "guest fees" for any visitor at any time is an apparent attempt to limit prostitution in hotels. The effect is that women are forced to work on the street or in cars 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. [Affidavit 033 at para. 6]

## 35 Voices for Dignity

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The law with respect to living off the avails of prostitution also contributes to the housing problems of sex workers by exposing roommates to prosecution if a sex worker's earnings are used to pay rent and household expenses. Case law has established that such an arrangement is only criminal if "parasitic",<sup>37</sup> but that term is ambiguous and its interpretation depends on the court's view of the facts in each case.

As described in this report's subsection on poverty, many sex workers from the DTES are on social assistance and the amounts they receive for rent are inadequate, particularly in a city like Vancouver. The DTES, where the rent may be more reasonable, can present serious problems for sex workers. This is particularly so for sex workers with children who are in need of more space and a safer environment than a single person might require. For single parents, the dearth of suitable housing accessible to them contributes to the likelihood of their children being taken into care.

Decent affordable housing is a prerequisite for safety, health and well-being.<sup>38</sup> Sex workers, who are struggling with multiple challenges every day, need to have better housing options and an end to laws that exacerbate their challenges in attaining adequate housing.

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<sup>37</sup> *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.

<sup>38</sup> M. B. Kushel, E. Vittinghoff, J. S. Haas, "Factors associated with the health care utilization of homeless persons" (2001) 285 JAMA 200.

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## VIOLENCE

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 the DTES, the trial of William Pickton,<sup>39</sup> the charges against Donald Bakker,<sup>40</sup> the conviction of the Green River killer,<sup>41</sup> and the affidavits contained herein, there is ample evidence to conclude sex workers live and work in conditions of extreme violence and danger. Research suggests that these levels of violence have been on the rise for the past several decades, and recent events demonstrate that the epidemic of violence against sex workers is not decreasing.<sup>42</sup>

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]

Accounts of physical and sexual violence against sex workers recurred throughout the affidavits. 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 described at least one personal experience of physical violence<sup>43</sup> and many described more than one violent

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<sup>39</sup> At the time of this report, William Pickton had been charged in the murders of 22 women from the Downtown Eastside.

<sup>40</sup> Donald Bakker has been charged with sixteen counts of sexual assault against women from the DTES. J. Lee & W. Boei "Man Suspected of Raping and Torturing 51 Women" *The Vancouver Sun* (17 January 2003) A1.

<sup>41</sup> Gary Leon of Seattle, Washington confessed to killing 48 women. "Defendant Pleads Guilty to 48 Murders In Green River Case" *The New York Times* (5 November 2003) online: Walnut <[http://www.walnet.org/csis/news/usa\\_2003/nytimes-031105.html](http://www.walnet.org/csis/news/usa_2003/nytimes-031105.html)>

<sup>42</sup> J. Lowman, "Violence and the Outlaw Status of (Street) Prostitution." (2000) 6(9) *Violence Against Women*.

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

<sup>43</sup> Affidavits 002, 018, 020, 022, 023, 024, 032, 040, 046, 059, 060,062,073, 085.

### 37 Voices for Dignity

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incident.<sup>44</sup> One affiant told us, “[p]retty well every woman has a story of a guy who has literally tried to kill them” [Affidavit 069 at para. 22].

Sex workers reported having been sexually assaulted, beaten, robbed, held hostage and some reported having narrowly escaped murder attempts. In short, the affidavits document a pattern of violence against sex workers perpetrated by strangers, clients, acquaintances and police.

Sex workers not only deal with the physical consequences of violence but also with the psychological repercussions of knowing they risk their lives every time they go to work.

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

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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]

Recent studies have documented levels of violence experienced by sex workers. 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.<sup>45</sup> Violence against women is a problem

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<sup>44</sup> Affidavits 001, 025, 027, 043, 055, 056, 061, 083.

<sup>45</sup> C. Benoit and A. Millar, *Dispelling myths and understanding realities: Working conditions, health status and exiting experiences of sex workers*. (Victoria: PEERS, <sup>2001</sup>), online: University of Victoria Homepage <<http://web.uvic.ca/~cbenoit/papers/DispMyths.pdf>> (accessed: 1 August 2003)

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.

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

of global significance and concern. However sex workers experience this phenomenon to an exceptional degree. It is commonly assumed that violence perpetrated against sex workers is an inevitable consequence of engaging in sex work. Many participants in this project were quick to challenge this assumption. They expressed the belief that 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.

The law prohibiting “communicating” for the purposes of prostitution was identified as 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.

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 [*sic*] 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 more time, I may not have gotten into the car with him. [Affidavit 025 at para. 3]

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

### 39 Voices for Dignity

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bring you back. There is nobody there to keep an eye out for you. [Affidavit 037 paras 13 and 14]

A number of affiants specified that they did not want clients to be subject to prosecution for communicating for the purposes of prostitution.<sup>46</sup> 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, 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 is 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]

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<sup>46</sup> Affidavits 002, 016, 004, 082, 038, 047, 076

Another recurring theme involved the difficult relationships sex workers have with the police. Many affiants made it clear that a general distrust of police exists amongst sex workers. One affiant explained this phenomenon as follows:

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]

Not only does the quasi-criminalization of sex work lead to fear and distrust of police, it also creates a context for abuse of sex workers by some law enforcement officials. Some affiants reported being verbally and sexually harassed by police. A significant number also described having been physically and sexually assaulted by police.<sup>47</sup>

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]

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<sup>47</sup> Affidavits 010, 012, 084, 030, 053, 080, 081.

## 41 Voices for Dignity

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This fear and distrust of law enforcement has led to a situation in which many sex workers are unwilling to report violent incidents to police for fear of being disbelieved or discounted because of their occupation. Many even express fear 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]

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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 of sex workers renders sex workers even more vulnerable to violent and predatory attacks. This is evidenced by the January 2004 arrest of Donald Bakker, who was caught in possession of over 60 home video tapes recording violent assaults of DTES sex workers. Police have expressed concern over the absence of police reports by any of the sex workers who had been assaulted.<sup>48</sup>

The relationship between the criminalization of the sex trade and the violence experienced by sex workers is apparent. The criminalization of prostitution-related activities devalues the humanity of sex workers and places them in unacceptably dangerous situations. Effective harm reduction measures are impossible to implement within the current legislative framework. 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 protection from violence as other members of our society.

## HEALTH

Health was a recurring theme throughout the affidavits featured in this report. Sex workers are a population whose health status falls well below the Canadian average and who have traditionally experienced barriers in access to healthcare. Many participants struggle with chronic illnesses and described how the criminal laws have a negative affect on both their health and access to healthcare.<sup>49</sup>

Income level is arguably the primary determinant of health.<sup>50</sup> In Canada there is a strong correlation between poverty and ill health. People of lower socio-economic status, women and ethnic minorities have worse health than other Canadians.<sup>51</sup> The mental and physical health of Aboriginal people has been referred to as a national disgrace.<sup>52</sup> The disproportionate number of

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<sup>48</sup> J. Armstrong, "Sex workers in Vancouver kept quiet about torture" *The Globe and Mail*. January 20, 2004. <<http://www.globeandmail.com/servlet/ArticleNews/TPStory/LAC/20040120/SEX20/TPNational/To pStories>>.

<sup>49</sup> Affidavits reporting health problems, including HIV, hep 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.

<sup>50</sup> Freedom from violence, housing and appropriate responses to addiction represent basic prerequisites for health and are discussed in other subsections of this report. See J.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.

<sup>51</sup> Crichton et al., 1994.

<sup>52</sup> 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.

### 43 Voices for Dignity

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impoverished women, and specifically Aboriginal women, who work in sex trade in the DTES is a crucial consideration for health policy makers and service providers.

A women's group called "Core Women Care" looked specifically at the healthcare needs and priorities of women living in the Downtown Eastside. They concluded their key health concerns were basic survival needs such as nutrition, housing, safety, drinking water and sanitation.<sup>53</sup>

These same conditions of poverty place residents of the DTES at risk for communicable diseases such as HIV and hepatitis C. Communicable diseases are acquired primarily through injection drug use, unprotected sexual contact and childbirth.<sup>54</sup> These factors are compounded for female sex workers who are also injection drug users [IDUs].

Since the mid-1990s, the DTES has experienced an explosive HIV epidemic among IDUs.<sup>55</sup> HIV incidence rates among female injection drug users in Vancouver are about 40 percent higher than those of male injection drug users<sup>56</sup> and Aboriginal IDUs are becoming HIV positive at twice the rate of non-Aboriginal IDUs.<sup>57</sup>

Injection drug use is a greater determining factor in acquiring HIV than sex work itself. Female sex workers who inject drugs are more likely to acquire a disease commonly transmitted through

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<sup>53</sup> *The Place to Start: Women's Health Care Priorities in Vancouver's Downtown Eastside* (Core Women Care, 1995).

<sup>54</sup> Health Canada, online <<http://www.hc-sc.gc.ca/english/diseases/aids.html>>.

<sup>55</sup> B. Fischer, J. Rehm and T. Blitz-Miller, "Injection drug use and preventive measures: A comparison of Canadian and Western European jurisdictions over time," 162(12) *Canadian Medical Association Journal*.

<sup>56</sup> 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*.

<sup>57</sup> K.J.P. Craib, P.M. Spittal, E. Wood, N. Laliberte, R.S. Hogg, K. Li, K. Heath, M.W. Tyndall, M.V. O'Shaughnessey, and M.T. Schechter, "Risk factors for elevated HIV incidence among Aboriginal injection drug users in Vancouver" (2003) 168 *Can. Med. Assoc. J.* 19.

injection such as hepatitis C or HIV than those who do not inject drugs.<sup>58</sup> It appears the majority of sex workers who acquired HIV through sexual contact, contracted it through unprotected sex with male IDUs, who are mostly non-paying, intimate partners as opposed to clients.<sup>59</sup>

That the exchange of money or drugs for unprotected sex does not increase the risk of HIV infections should not be taken to mean sex workers are not at risk of contracting STDs from clients.

Condoms are a primary means to avoid transmittal and acquiring of STDs directly from engaging in sex work, regardless of whether a sex worker is an IDU or not. Pivot's affiants indicated the availability of condoms was an integral part of their ability to take care of their health.<sup>60</sup> The availability of condoms, though vital, is 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. Many sex workers find it difficult or impossible 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.

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<sup>58</sup> L. Jackson, A. Highcrest & R. Coates, (1992). "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. M. Weeks, M. Grier, N. Romero-Daza, M. Puglisis-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.

<sup>59</sup> 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). 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). See also Tortu, S., *et al.*, (1998) and Spittal *et al.*, (2002).

<sup>60</sup> See also affidavits 001, 002, 039, 074.

## 45 Voices for Dignity

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Some affiants proposed that working indoors would protect them from being compelled to have sex without a condom.<sup>61</sup>

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 sex work takes place in 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 and/or other safer sex practices. Many affiants expressed the belief that having 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 a specialized health clinic.<sup>62</sup>

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 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]

Some group-discussion participants suggested testing clients as a way to protect sex workers, since sex workers are more at risk of contracting a disease than actually passing it on through sexual contact.<sup>63</sup> Notably, participants emphasized that privacy considerations were paramount for testing of both sex workers and clients.

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<sup>61</sup> See also affidavits 074, 001, 067, 082.

<sup>62</sup> Affidavits 003, 004, 006, 007, 014, 015, 028, 038, 039, 056, 063, 066, 070, 076.

<sup>63</sup> Affidavit 065 at para. 14. See also *Prostitution and HIV/AIDS, Predictors, Female Prostitutes, and Risk Factors, supra*.

The Canadian HIV/AIDS Legal Network also 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.<sup>64</sup>

One group discussion participant informed us that sex workers might not get tested due to fear of the results. She expressed the need for sex workers to have access to education, support and counselling around testing.

According to some affiants, the sex trade laws affect the spread of communicable diseases.<sup>65</sup> This is consistent with the position of the Canadian HIV/AIDS Legal Network, which identified criminalization as contributing to the oppression of sex workers and thus impeding the fight against HIV/AIDS.<sup>66</sup>

Sex workers in need of health care may find it difficult to access services. Many affiants expressed the belief there is discrimination against sex workers in healthcare provision.<sup>67</sup> Participants in group discussions used words like "humiliated" and "stigmatized" to describe their experience of the healthcare system.<sup>68</sup> In affidavits where healthcare was addressed this was advanced as a reason some do not seek care or may leave clinics and hospitals before receiving medical attention.<sup>69</sup> Not seeking care in a timely manner can exacerbate many conditions that could otherwise be effectively treated.

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<sup>64</sup> *Prostitution and HIV/AIDS*, above.

<sup>65</sup> Affidavits 084 and 051.

<sup>66</sup> Canadian HIV/AIDS Legal Network. "Prostitution and HIV/AIDS" online: <<http://www.aidslaw.ca/Maincontent/issues/prostitution.htm>>.

<sup>67</sup> Affidavits 003, 019, 070, 073.

<sup>68</sup> Pivot held group meetings to discuss social impacts on sex workers.

<sup>69</sup> Affidavit 070.

## 47 Voices for Dignity

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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.<sup>70</sup>

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]

Some affiants hid the fact that they were sex workers for fear of being judged, treated rudely, or not having their health concerns taken seriously, compromising their access to quality healthcare.<sup>71</sup>

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]

Several group-discussion participants described experiences with hospital staff who assumed they had substance use problems because they were sex workers.<sup>72</sup> In some cases this led to further assumptions that their pain was due to drug withdrawal or they were faking pain to get drugs. As a result, they were refused pain medication even when it was clearly required. One affiant described how healthcare workers' assumptions resulted in poor treatment.<sup>73</sup>

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<sup>70</sup> Affidavit 056 at para. 16, Affidavit 081 at paras. 18 and 19

<sup>71</sup> See also Affidavits 073-15.

<sup>72</sup> Pivot held group meetings to discuss social impacts on sex workers.

<sup>73</sup> Affidavits 081-19.

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 counselling. 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 gonorrhoea 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 019 at para. 18]

One group discussion 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.<sup>74</sup>

Many affiants suggested they would be able to access healthcare services better and conduct their work in a healthy manner in a brothel setting.<sup>75</sup>

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]

## 49 Voices for Dignity

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Dignified treatment is fundamental to mental health as well as physical health. Dangers resulting from criminalization, stigmatization, poor living conditions and depressed socio-economic status together appear to have a deleterious effect on the mental health of sex workers.<sup>76</sup> Sex workers experience high rates of psychological disorders such as depression, anxiety and eating disorders, as well as post-traumatic stress disorder.<sup>77</sup> 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.”<sup>78</sup> This would be consistent with affiants’ descriptions of violence experienced at the hands of clients, other sex workers and the police, and in some cases, in intimate or family relationships.

Group discussion participants reported experiencing fear, stress, an inability to let down their guard, and emotional and sexual difficulty in maintaining intimate relationships. They attributed this to the laws, which they feel make their work more stressful because they always have to be on guard for police and potentially dangerous clients.<sup>79</sup>

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 sex trade has increased with the ongoing release of patients from mental health institutions.<sup>80</sup>

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<sup>74</sup> Pivot held group meetings to discuss social impacts on sex workers

<sup>75</sup> Affidavits 003, 024, 056, 063, 070.

<sup>76</sup> C. Benoit and A. Millar, *Dispelling myths and understanding realities: Working conditions, health status and exiting experiences of sex workers*. (Victoria: PEERS, 2001), online: University of Victoria Homepage <<http://web.uvic.ca/~cbenoit/papers/DispMyths.pdf>> (accessed: 1 August 2003).

<sup>77</sup> *Ibid.*

<sup>78</sup> M. Farley, & H. Barkan, “Prostitution, violence against women and posttraumatic stress disorder” (1998) 27(3) *Women & Health* at 37-49, online: Prostitution Research & Education Homepage <<http://www.prostitutionresearch.com>> (accessed: 30 September 2003).

<sup>79</sup> Group meetings were held to discuss social impacts on sex workers.

Several affiants expressed the need for emotional support and appropriate mental health services.<sup>81</sup>

Nurses are needed who have experience with addiction and empathy, and counsellors 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]

The World Health Organization defines health as the state of complete physical, mental and social well-being, a definition that takes into account the individual's point of view and perceived status, as well as disability and activity limitations which affect quality of life.<sup>82</sup> A more conventional definition of health, defined by the average person as the absence of illness, focuses on morbidity, life expectancy and mortality. Measures of all these criteria confirm that the health of sex workers living in Vancouver's Downtown Eastside falls well below average.<sup>83</sup>

Any government regulatory scheme should prioritize the promotion of the health and well-being of its constituents. Participants provided evidence that current laws surrounding the sex trade directly threaten the health of sex workers and the dignity they are afforded in receiving healthcare services. Affiants were also 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 determinants of health and needs of sex workers. These include health services that

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<sup>80</sup> *Core Women Care, supra.*

<sup>81</sup> *See also* Affidavits 038-6, 063-6, 070-10.

<sup>82</sup> Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19-22 June, 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100) and entered into force on 7 April 1948.

<sup>83</sup> Vancouver Community Profile (October 2002) at 2-15, online: Vancouver Richmond Health Board Home Page <<http://vcn.bc.ca/vrhb>> (accessed: 16 February 2004).

are free of discrimination, sensitive to the experiences of sex workers, and respectful of measures they take to make themselves healthier.

### **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.<sup>84</sup>

Despite common stereotypes, not all sex workers engage in illicit drug use. Within the sample of sex workers that participated in this project, there is a high incidence of addiction but this is not necessarily representative of sex workers overall. The high incidence is largely attributable to the geographic focus of the research on Vancouver's Downtown Eastside, 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.<sup>85</sup> Eighty percent of female IDUs surveyed in Vancouver reported being active in sex work at some point during their lives.<sup>86</sup> Therefore, the rate of addiction among the participants in this project cannot be taken as representative of the rate among sex workers overall.

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<sup>84</sup> Fifty-two participants described a history of drug use and an additional 15 participants were currently on a prescription methadone program.

<sup>85</sup> M.T. Schechter & M.V. O'Shaughnessy, "Distribution of Injection Drug Users in the Lower Mainland." (2000) 42(2) B.C. Medical Journal.

<sup>86</sup> <sup>86</sup> L. Cler-Cunningham & C. Christensen, *Violence Against Women in Vancouver's Street-level sex Trade and the Police Response*. (Vancouver: PACE Society, 2001).

Alcohol, heroin and cocaine have been found to be the drugs used most often by sex workers in the DTES with the latter two most frequently consumed via injection.<sup>87</sup> Lowman and Fraser reported similar findings in their survey of sex workers in the lower mainland of British Columbia in 1994, citing injection heroin and cocaine use as the most popular form of drug use among sex workers in the Downtown Eastside.<sup>88</sup> However, there has been a trend of increasing crack use, which correlates with increased health risks.<sup>89</sup>

Whether smoked or injected, crack and cocaine require more frequent use and have therefore been associated with entry into sex work as well as unsafe sex practices.<sup>90</sup> The high cost of a crack habit will affect how many dates a sex worker must accept to meet the cost of his or her addiction.<sup>91</sup> This also plays a role in the level of violence experienced by sex workers. When the supply and demand for crack fluctuates, women are left open to more violence at the hands of customers and even other sex workers, since competition for clients increases and sex workers become more desperate to earn income.<sup>92</sup> 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 STDs and violence.<sup>93</sup> They are less able to screen their clients or refuse clients' demands to

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<sup>87</sup> S. Currie et al., *Assessing the Violence Against Street-Involved Women in the Downtown Eastside/Strathcona Community*. Mimeo, 1995.

<sup>88</sup> J. 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.

<sup>89</sup> M. Tyndall et al. Patterns Of Drug Use Following The Initiation Of Methadone Maintenance Treatment, Canadian Association for HIV Research Conference, 2001.

<sup>90</sup> R.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.

<sup>91</sup> L. Maher, "Hidden in the light: Occupational norms among crack-using street-level sex workers" (1996) 26(1) *Journal of Drug Issues* 143.

<sup>92</sup> M. 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.

<sup>93</sup> 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.

## 53 Voices for Dignity

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work without a condom. Research has demonstrated that elevated vulnerability associated with this cycle of crack cocaine use is also associated with the spread of HIV.<sup>94</sup>

In 1997, in response to high rates of overdose and HIV transmission, the Vancouver Richmond Health Board declared a public health emergency in Vancouver's Downtown Eastside.<sup>95</sup> Despite the wealth of scientific and public health evidence demonstrating the ineffectiveness of reliance on enforcement and the effectiveness of health interventions related to addiction, the primary response to the health and social emergency was to intensify law enforcement.<sup>96</sup> 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.<sup>97</sup>

The response by provincial and federal health-policy makers has been slow. In 2000, former Vancouver Mayor Phillip Owen released "Framework for Action: A Four Pillar Approach to Vancouver's Drug Problems," outlining a new comprehensive approach to addressing the city's drug problem. This approach included treatment, prevention, harm reduction and enforcement.

Bolstered by the success of harm reduction models from other countries, Mayor Owen promoted supervised injection sites as one piece of the solution. On 21 September 2003, Vancouver

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<sup>94</sup> R.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. 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.

<sup>95</sup> E. Wood, T. Kerr, P. Spittal, M. Tyndall, M. O'Shaughnessy, M. 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) *BCMJ* 130.

<sup>96</sup> J. 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.

<sup>97</sup> Report 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/domino/reports.nsf/html/01menu\\_e.html](http://www.oag-bvg.gc.ca/domino/reports.nsf/html/01menu_e.html)> (accessed January 2003).

became the first North American city to open a sanctioned supervised injection facility; “*insite*,” is currently supervising between 400–500 injections per day.<sup>98</sup>

Drug users must be given a real voice in the creation and decision-making process surrounding programs and policies designed to serve them. This is particularly true for sex workers with addictions whose needs are distinct from the broader population of people with substance use issues and for women whose needs are different from those of men. Affiants made a number of concrete recommendations for change to Vancouver’s current approach to assisting persons with addictions. Several female 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.

[Affidavit 042 at para. 11]

Another affiant described a need for access to treatment and professional support appropriate to sex workers with histories of trauma and 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

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<sup>98</sup> Online: <[http://www.vch.ca/sis/site\\_statistics.htm](http://www.vch.ca/sis/site_statistics.htm)>

## 55 Voices for Dignity

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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...We need experts to help us heal. [Affidavit 080 at para. 7]

Another affiant echoed the need for appropriate and sensitive service provision, especially since sex workers may experience vicarious trauma when they act as supports for one another.

I have found it difficult to leave the drug trade and the sex trade because of my addiction. I understand that the only person who can help me is myself. It would be better for me to have someone there for me who really understood what I have been through. [Affidavit 017 at para. 6]

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]

.....

I would like to see something like a safe injection site, but for girls who are working in the sex trade. [Affidavit 063 at para. 6]

Many parallels can be drawn between the criminalization of prostitution and drug use. Both have been treated as social vices and in both cases, society has employed the *Criminal Code of Canada* 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 address inequitable social and economic conditions. In fact, as it is argued throughout this report and has been demonstrated through academic research on drug policy, criminalization does nothing more than drive sex workers and

drug users into more harmful, dangerous and marginalized circumstances. For this reason, harm reduction advocates have pointed to the benefits of a decriminalized and more effective and compassionate approach to both sex work and drug addiction.

## LAW ENFORCEMENT

The direct result of the criminalization of the sex trade is the policing, arrest, conviction and sometimes incarceration of sex workers for prostitution-related offences. There are also indirect consequences resulting from the enforcement of the *Criminal Code*'s sex trade laws. This discussion provides an overview of law enforcement as experienced by Pivot's affiliates.

While enforcement affects all sex workers, those involved in street-level sex work suffer the effects of criminalization to a disproportionate degree. This is because their primary work place is on the street. 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 shows that over 90 percent of sex-trade related offences in a given year are made for violations of s. 213.<sup>99</sup> Due to the quasi-legality of escort and massage-parlour sex work, the majority of the documented arrests involve street-level sex workers. A proportion of these charges involve clients, who can also be arrested for communicating for the purposes of prostitution.

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<sup>99</sup> Planning, 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).

Police enforcement of s. 213 is often used to control the street-level sex trade in an attempt to reduce its visibility and displace sex workers to or from specified areas. Enforcement often results from complaints from residential neighbourhood groups. Pivot’s affiants described incidents where they felt disproportionate and selective enforcement by police officers was taking place.<sup>100</sup>

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]

.....

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]

Affiants described police cataloguing sex workers and dictating hours and locations where they could and could not work. Any perceived benefits of such an approach are nominal – sex workers may no longer work in a specified area or at certain times, but enforcement does not affect the overall number of sex workers on the street or increase their safety.

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]

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<sup>100</sup> Affidavits 001, 028, 030, 033, 037, 038, 045, 047, 058, 065, 066, 082, 084.

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. However, this puts sex workers at risk of becoming victims of violence.

Once sex workers have been “relocated” into specified areas, police often attempt to catalogue them in a way that would be unacceptable to the average person. Affiants reported being “tagged” by the police, who took their pictures without their consent or made them show identification when they had not broken any law.<sup>101</sup>

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 described repeatedly throughout the affidavits.

Affiants’ descriptions of police sting operations follow a common pattern. In the course of a police sting a police officer, posing 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,

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<sup>101</sup> Affidavits 006, 008, 018, 029, 038, 040, 043, 047, 071.

**59 Voices for Dignity**

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another police officer approaches the scene and arrests her for communicating for the purpose of prostitution.<sup>102</sup>

Affiants reported that once they were tagged, arrested or otherwise identified as prostitutes, police harassment often followed. In some instances this harassment took place when they were not working.<sup>103</sup>

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 Petrocanada 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 bathroom. 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]

.....

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]

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

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<sup>102</sup> Affidavits 001, 003, 015, 017, 018, 021, 026, 030, 031, 034, 045, 047, 051, 052, 059, 076, 081, 085.

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. It has been scary working in the drug trade. I am under so much stress, it feels like I am getting stomach ulcers. [Affidavit 047 at para. 10]

Police presence and enforcement levels imposed during any given period directly affect the number of arrests made under the sex trade laws.<sup>104</sup> Many sex workers described having a difficult relationship with the police because their addiction in conjunction with their sex work, placed them more firmly in the category of "criminal." One participant reported having been detained by the police when she was caught smoking crack in a DTES alleyway and described the effect this has had on her trust in the Vancouver Police Department.

In January, 2003, I was in the alley behind the Drake Hotel on Hastings Street in Vancouver. 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.

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<sup>103</sup> Affidavits 002, 009, 012, 016, 025, 033, 036, 038, 048, 071, 081.

<sup>104</sup> Vancouver Police Department, *Annual Statistical Report, 2002* (Vancouver: Vancouver Police Department, 2002) at fn. 11.

## 61 Voices for Dignity

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I don't feel like I can go to the police for help. I am afraid of them. [Affidavit 030 at paras. 15 and 18]

On 7 April, 2003 the Vancouver Police Department initiated an aggressive campaign with the aim of displacing the drug market from the Downtown Eastside. This initiative is called the City-wide Enforcement Team (CET).

The CET continues to operate 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 health and social problems stemming from illicit drug use.<sup>105</sup>

The number of arrests of sex workers has risen as a result of increased enforcement. Affiants stated that the police presence also drives clients away, reducing the ability of sex workers to make choices about the type of clients they accept. Sex workers may agree to unsafe sex practices or accept dates they would otherwise refuse. The vulnerability of sex workers is increased on all these levels.

Regardless of the number of officers deployed, the criminalization of the sex trade exposes sex workers to the possibility of police abuse. While two affiants described positive relationships with police<sup>106</sup> and three affiants stated they had police officers as clients,<sup>107</sup> the majority of those

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<sup>105</sup> R.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.

<sup>106</sup> Affidavits 006 and 008.

<sup>107</sup> Affidavits 057, 074, 084.

who spoke about this issue described incidents of verbal abuse,<sup>108</sup> physical abuse<sup>109</sup> and sexual assault<sup>110</sup> during their encounters with police officers.

The fear of police described by Pivot’s affiants, whether it is fear of being arrested, assaulted or abused, creates secondary effects pertaining to law enforcement. Sex workers do not have equal access to police protection. 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, discrimination or being tagged.<sup>111</sup> 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.<sup>112</sup>

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. [Affidavit 039 at para. 5]

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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]

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

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<sup>108</sup> Affidavits 002, 012, 016, 024, 053, 061, 072, 083.

<sup>109</sup> Affidavits 010, 012, 030, 033, 043, 053, 061, 072, 080, 081, 083, 084.

<sup>110</sup> Affidavits 010, 026, 061, 084.

<sup>111</sup> Affidavits 002, 026, 028, 034, 037, 043, 047, 056, 057, 066, 070, 084.

<sup>112</sup> Affidavits 001, 018, 039, 054, 057, 059, 060, 061, 062, 065, 066, 070, 073, 075, 081, 082, 084.

## 63 Voices for Dignity

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precaution.<sup>113</sup> Many affiants felt police enforcement interfered with their ability to make use of a spotter. This is another way in which law enforcement exacerbates the risks faced by street-level sex workers.

Whereas the law fails to protect sex workers, it also fails to facilitate their choice to leave sex work. Exiting the sex trade is notoriously difficult for sex workers who face multiple obstacles to employment, such as a lack of education, inadequate housing and poverty. A criminal record can effectively trap them in sex work, restricting their ability to exit and make other professional and life choices.<sup>114</sup>

It is a hindrance 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]

Sex workers are victimized by clients, police and other citizens. Their vulnerability is by and large a result of the black market created by an illicit sex trade. 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.

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<sup>113</sup> Affidavits 001, 019, 028, 030, 034, 037, 046, 059, 067, 071, 075, 083.

<sup>114</sup> Affidavits 026, 066, 070. S. Davis & M. Shaffer "Prostitution in Canada: the invisible menace or the menace of invisibility." [www.walnet.org](http://www.walnet.org) (accessed: 13 February 2004).

Arbitrary crackdowns, barriers to reporting assaults, and police indifference or discriminatory treatment reinforce the perception that sex workers are disposable and not deserving of equal protection. A criminal record can effectively bar a woman who wishes to exit the sex trade from doing so. Criminalization increases the level of violence sex workers experience in their work and reinforces the prejudices already faced by sex workers. These prejudices influence every aspect of their lives and prevent them from participating in Canadian society.

## **CONCLUSION TO KEY THEMES**

In a just and democratic society all lives must be valued just as all citizens must be encouraged to participate in political and cultural life. The unintended negative consequences of criminalization, when observed in relation to the limited social benefits, create a strong call for systemic legal change and a new approach to providing choice and safety for all sex workers.

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 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.