

December 14th, 2018

**VANCOUVER SEX WORKERS RIGHTS COLLECTIVE
WRITTEN SUBMISSIONS**

**National Inquiry into the Murdered and Missing
Indigenous Women and Girls**

Vancouver Sex Workers Rights Collective

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TABLE OF CONTENTS

INTRODUCTION	2
VANCOUVER SEX WORKERS RIGHTS COLLECTIVE	3
CONTEXT: THE LENS FOR THE INQUIRY	4
A. LANGUAGE, INCLUSION AND ACCEPTANCE	5
B. PROVIDING SEXUAL SERVICES	6
C. HUMAN TRAFFICKING FRAMEWORK	8
D. STIGMA OF SEX WORK	10
E. RESPECT FOR THE WHOLE PERSON	12
F. IMPORTANCE OF VOICES	13
G. CHALLENGES TO BEING HEARD	14
RECOMMENDATIONS	18
INCLUDE AND RESPECT OUR VOICES	18
POLICE MUST RECOGNIZE OUR RIGHT TO BE SAFE AND FREE FROM VIOLENCE	19
PROVIDE SAFE SPACES AND HOUSING NOW	23
FUND OUR VISION OF SUPPORT AND SERVICES	26
OUR FAMILIES DESERVE HEALING AND SUPPORT, NOT DISRUPTION	32
LISTEN TO OUR TEACHINGS	34
THE LAW MUST NOT DEPRIVE US OF SAFETY	37
IMPLEMENTATION	40
CONCLUSION	41

INTRODUCTION

1. The Vancouver Sex Workers Rights Collective [the “Collective”] is a diverse collective of Indigenous individuals who participate or participated in sex work or trade or provide sexual services in the Downtown Eastside of Vancouver. We are represented in the National Inquiry into Murdered and Missing Indigenous Women and Girls [the “National Inquiry”] by a collective of four organizations: Providing Advocacy Counselling & Education [“PACE”], WISH Drop-in Centre Society [“WISH”], Sex Workers United Against Violence Society [“SWUAV”] and Pivot Legal Society.
2. The Collective works to amplify the voices of Indigenous peoples who self-identify as cis, trans, two-spirit women and individuals from diverse gender identities and sexual orientations who participate or have participated in sex work or provide sexual services. Collective members share their stories in keeping with the diverse Indigenous traditions of the Collective and the Inquiry’s mandate to be respectful of Indigenous legal principles and practices. . As was indicated during the Collective’s oral submissions to the National Inquiry, sex workers are knowledge keepers of their own experiences. As with the Collective’s oral submissions, the written submission to the National Inquiry will be animated by the voices and stories of the Collective’s members.
3. WE acknowledge that the National Inquiry has held hearings and gathering throughout what is now Canada on the traditional territories of many Indigenous Nations.

WE acknowledge and honour those Nations, their sovereignty, and their self-determination.

WE acknowledge and honour the spirits of our stolen sisters, survivors, and families.

WE are the experts.

WE are the voices that need to be heard.

WE offer important knowledge and stress the urgency of our recommendations.

WE submit the following written submissions in the hope that our voices will be given full consideration in the National Inquiry’s findings and final report.

VANCOUVER SEX WORKERS RIGHTS COLLECTIVE

4. WE are Indigenous trans and cis women, and individuals from diverse gender identities and sexual orientations who participate or have participated in sex work or provide sexual services and four organizations that provide services to individuals who participate in sex work or trade in Vancouver, British Columbia.
5. PACE is a peer-driven society that seeks to reduce the harm and isolation associated with Sex Work through education, support, and advocacy. PACE works to increase the health, safety, and empowerment of its members, by respecting members' rights to self-determination and supporting their self-identified needs. PACE provides violence prevention workshops and a range of individual and group peer-run supports for cisgender, transgender, and two-spirit sex workers, including a weekly Aboriginal Sharing Circle.
6. About 55% of the members of PACE report having Indigenous ancestry. Approximately 30 - 35% of members identify as trans, non-binary, two-spirit, or gender diverse; 90% use she/her pronouns, 6% use they/them, and 2.5% use he/him. The most common areas of support sought by members in one-on-one support services are (in order): emotional support, housing, financial, medical, advocacy, safety, financial, sexual assault, violence, legal, mental health, and support around trauma.
7. WISH aims to improve the health, safety and well-being of self-identified adult women who are involved in the street-based sex trade and has provided direct services to sex workers in the Downtown Eastside since 1984. WISH has operated a drop-in centre since 2008, which now provides overnight services, including food, clothing, emergency and medical referrals. WISH also operates the Mobile Access Project (MAP) Van, conducting outreach to street-based sex workers throughout Vancouver. WISH convenes the Aboriginal Health and Safety Project to provide opportunities for women who do sex work to connect with their culture.
8. The WISH drop-in centre serves approximately 115 breakfasts, 120 dinners and as many as 90 midnight meals a day, 365 days a year. In the last year the number of women taking

midnight meals increased from 20 to 90 meals served daily. The self-identified women who use the drop-in represent the full spectrum of involvement in sex work or trade, from nightly activity to individuals who have largely exited but maintain one long standing client. The mean age of individuals who use the drop-in is 45 years old. The MAP van provides food and services to self-identified women who are actively engaged in street-based sex work. Their median age is 38 years old. Over 80% of women who use WISH are homeless or inadequately, inappropriately or unsafely housed. Sixty % of them self-identify as Indigenous, 25 % as LGBTQ and 20% as trans or two spirited individuals.

9. SWUAV is a peer-based organization of current and former sex workers in the Downtown Eastside who engage in advocacy and peer street-based outreach. SWUAV's Board of Directors is and has always been composed predominantly of Indigenous cisgender and transgender women. SWUAV has been involved in two Supreme Court of Canada cases challenging the constitutionality of the laws on sex work: as a plaintiff in *Canada (Attorney General) v SWUAV*, 2012 SCC 45 [*SWUAV v Canada*] and as an intervenor in *Canada (Attorney General) v Bedford*, 2013 SCC 72 [*Bedford*].
10. Pivot Legal Society is a non-profit organization founded in 2002 in Vancouver's Downtown Eastside that works on behalf of marginalized communities to create a just, fair, and equal society through strategic litigation, law reform, legal research, and public education. Pivot Legal Society represented SWUAV in *SWUAV v Canada*, and was part of an intervenor coalition with PACE and SWUAV in *Bedford*, a decision that invalidated three of Canada's criminal laws regulating sex work.

CONTEXT: THE LENS FOR THE INQUIRY

11. The report and recommendations of the National Inquiry must reflect and honour the diversity of experiences and identities of murdered and missing Indigenous women and girls including gender diverse individuals, survivors and family members. The National Inquiry must avoid further perpetuating the colonial systems, concepts and power structures that have contributed to and caused violence, murder or disappearance of Indigenous women, girls and individuals of diverse gender identities and sexual orientations.

12. The National Inquiry must recognize self-determination, self identification and choice of all Indigenous peoples, whose diversity of experiences, stories and truths must not be erased or conflated into a single narrative. We urge the National Inquiry to respect the diversity and beauty of different Indigenous nations, cultures and traditions as well as diverse sexual orientations, gender identities and choices. We urge the National Inquiry to accept that the choice to sell or trade sex can be exercised in a manner that is non-exploitative and a matter of personal sovereignty and jurisdiction.

A. Language, Inclusion and Acceptance

13. Language is important and powerful. It is crucial that the diversity of sexual orientations, gender identity, continuum of choice and varied experiences of sex work are respected and honoured in the language we use. We urge the National Inquiry to be deliberate in the terms they use throughout their report and recommendations. It is important for the National Inquiry to avoid erasing or imposing judgment on an individual's truth and circumstances, and the Inquiry must not place further colonial interpretations and stereotypes collectively on Indigenous peoples who engage in sex work. Rather the National Inquiry must preserve and refer to an individual and collectives who sell or trade sex in the manner they describe themselves, including as having autonomy in their decision to engage in sex work.

14. In this document we use the terms that are used by members of the Collective as they refer to themselves. We define "Indigenous" to include Inuit, Métis and First Nations. We acknowledge and honour a spectrum of gender identities and define the term "gender identities" to include trans and cis women, two spirit, non-binary and gender fluid individuals, as well as any other gender identities we have not included here. We recognize a continuum and a diversity of sexual identities and define the term "sexual orientations" to include lesbian, gay, bisexual, asexual, pansexual and queer individuals, as well as any other sexual orientations we have not included here.

B. Providing Sexual Services

15. We envision a future where all individuals who participate in sex work are free from the risk of violence, discrimination, social stigma, and harms, so they may enjoy the same rights as all other Canadian citizens including the rights to life, liberty, security of the person, and equal protection under the law.¹
16. Governments, service providers, Indigenous organizations and individuals must make long-term commitments to social change. This change is urgently needed to eradicate systemic issues that create disproportionate levels of poverty, homelessness, health concerns, and substance use within the Sex Work community. Change is urgently needed so that individuals can make safe, healthy, and informed decisions in their lives.
17. Sex work defined broadly includes any erotic, intimate, or sexual activities performed in exchange for material consideration, including to meet basic needs. Sex work includes escorting, street based sex work, cam work, cyber sex, exotic dancing, pornography and more. Selling sexual services is not illegal in Canada. Many activities associated with sex work or trade are illegal resulting in the criminalization of individuals who participate.
18. The National Inquiry must respect how individuals self identify and take care to use terms that celebrate a whole person and diversity of experiences and identities. As such we urge the National Inquiry to adopt the terms of “individuals who provide sexual services” or “individuals who participate in sex work or trade.” Indigenous women and individuals of diverse gender identities and sexual orientations participate in sex work or trade for diverse and personal reasons.
19. No person should be reduced to a single aspect of their life, their job or the violence they have experienced. The National Inquiry must not pin the identity of Indigenous women to a point in time. If an individual was sexually exploited or assaulted as a youth, they must not be reduced to that experience, in the same way that Indigenous women who are remembered and cherished by family members who have spoken to this National Inquiry

¹ PACE Society, “Vision” (12 December, 2018), online:< <http://www.pace-society.org/about-us/mission-history/>>

must not be reduced to the violence that ended their lives. The National Inquiry must not state that a person who has experienced violence at one point is unable to make choices.

20. Indigenous women and individuals of diverse gender identities and sexual orientations hold bodily self-determination, autonomy and choice. The National Inquiry must not assault the truths, experience or bodies of Indigenous women by negating or erasing their capacity to consent or to choose. The concept of choice for all Indigenous peoples exists within the structures of colonialism. Ongoing colonization has marginalized, erased and normalized poverty and extreme violence against Indigenous women, girls and individuals of diverse sexual orientations and gender identities leading to situations where there are sometimes few choices available to them. Indigenous women and girls have and continue to resist poverty, homelessness, inadequate provision for their thriving families and violence. Resistance, survival, and prospering in the face of colonial systemic and direct violence is a choice, and sex work can be chosen in this context.
21. There is a spectrum or continuum of choice and sexual exchange. On the side of full choice is the exchange of sexual acts for pleasure and/or for consent given freely. On the side of no or limited choice is trafficking. On the spectrum exist: sex work, sexual exchange for status or power, sexual exchange for necessities (food, drugs, shelter etc.), sexual exploitation and assault.
22. An Indigenous woman can be assaulted, raped or murdered in any setting, in her home, at gatherings, work, walking down a street. A family member, acquaintance, service provider, police officer, employer, customer, client or date could target her. A person cannot revoke their human right to live free from violence, and cannot legitimize or invite violence or murder, including by providing sexual services or participating in sex work or trade.² Sex work itself is not a key risk factor for violence; colonization is the key factor.³

² Transcript, Cross examination of Jacqueline Hansen, Amnesty International Canada: “Criminal Justice Oversight and Alternative Programs,” Quebec City, Mixed Part II & III Volume VI at pg. 236 -7; Transcript, Cross examination of Dr. Renée Brassard “Criminal Justice Oversight and Alternative Programs,” Quebec City, Mixed Part II & III Volume VIII at pg. 176-177

³ Barkaskas, Patricia and Hunt, Sarah [Access to Justice for Indigenous Adult Victims of Sexual Assault For the Department of Justice](https://ubc.academia.edu/SarahHunt) (October 2017) <online: <https://ubc.academia.edu/SarahHunt>> pg. 16

C. Human Trafficking Framework

23. Responses to human trafficking should be understood as one legal response among many to violence against Indigenous women. Unfortunately, human trafficking is presently *the* primary framework under which state authorities conflate multiple types of violence, sexual exploitation, child exploitation and adult sex work. Imposing the singular framework of trafficking onto all cases of murdered, missing or victimized Indigenous women and girls “serve(s) only to diminish and hide what we know to be true about their experiences.”⁴
24. The use by academics, activists, the media and governments of human trafficking as *the* framework or lens through which responses to murdered and missing Indigenous women and girls are considered is inappropriate, ineffective and harmful. The focus on human trafficking shifts attention away from the systemic colonial factors that created and maintain the circumstances and structures of violence. This approach focuses resources and responses to violence into increased policing and away from programs and services that may help individuals that are facing specific types of violence that are conflated into human trafficking (child exploitation, sexual exploitation or violence experienced when participating in sex work). Police attention on individuals who participate in sex work reclassified as victims in the human trafficking framework puts these individual at risk.
25. The sex work community has expressed the harms of imposing a human trafficking framework in the context of the Ontario police Operation Northern Spotlight.⁵ The experience with Operation Northern Spotlight, and its increased police interference and surveillance in the lives of people participating in sex work, “compromise[d] their safety and dignity” and “undermined sex workers’ health and safety.”⁶ Assistant Commissioner Joanne Crampton of the Royal Canadian Mounted police, responsible for Federal Policing

⁴Hunt, Sara “Representing Colonial Violence: trafficking, sex work and the violence of laws” *Atlantis* 37.2 (1), 2015/2016 <online: <http://journals.msvu.ca/index.php?journal=atlantis&page=article&op=view&path%5B%5D=3042> > pg. 32 citing Native Women’s Association of Canada (2010) *What their stories tell us: Research Findings From the Sisters in Spirit Initiative*. Ottawa, ON: Native Women’s Association of Canada

⁵ Canadian alliance for sex work law reform press release “Turn off the spotlight: Sex workers ad allies urge an end to operation Northern Spotlight” <online: <http://swanvancouver.ca/wp-content/uploads/2017/11/Cross-Canada-Letter.pdf>>

⁶ *Ibid.*

Criminal Operations including human trafficking, testified at the St. John's Newfoundland hearing. She indicated that RCMP policy is to ensure that interactions with individuals who come to their attention does not cause them further harm. However, she reported no specific policy or training for interacting with Indigenous women and girls who are potentially being trafficked, and no policy that detailed how police would uphold a woman's dignity through specific steps such as making sure she was clothed.⁷

26. Assistant Commissioner Crampton painted a dire picture of domestic trafficking becoming more and more prevalent in Canada and noted that young Indigenous women and girls were particularly vulnerable. Later she confirmed that she was not able to provide information on how many of the 6 individuals removed under Northern Spotlight in 2017, or the 324 individuals identified as being at risk of human trafficking were Indigenous. She reported "I wouldn't have accurate information on that."⁸ This suggests that Indigenous women and girls may not have been a priority of Northern Spotlight or the claim a human trafficking crisis in which indigenous women and girls are overrepresented cannot be substantiated.

27. The human trafficking framework erases the experiences and stories of individuals by imposing the narrative of victimhood. The National Inquiry must not position Indigenous women and girls as helpless victims that need to be saved. Rather the National Inquiry must respect and honour their agency, self-determination and strength. Unless an individual who participates in sex work or provides sexual services self identifies as a victim they should not be labeled as such. Labeling a person a victim when they do not identify as such is a perpetuation of the paternalism, racism, and sexism of colonialism. Doing so denies the personal autonomy of individuals over their bodies and the decisions they make about what they do with their bodies.

28. Activists, Governments and bodies, including Indigenous women's organizations, who wish to abolish prostitution have adopted the human trafficking framework imposing

⁷ Transcript Assistant Commissioner Joanne Crampton "Sexual Exploitation, Human Trafficking and Sexual Assault" St. John's Mixed Part II & III Volume XV at pg. 289-90

⁸ Transcript Assistant Commissioner Joanne Crampton "Sexual Exploitation, Human Trafficking and Sexual Assault" St. John's Mixed Part II & III Volume XV at pg. 287

“victimhood” on all individuals who participate in sex work. Indigenous women and girls who participate in sex work cannot and must not be seen as a monolithic group; they have a diversity of experiences, backgrounds, journeys, and reasons for entering sex work. People who sell or trade sex cannot be simply understood as *items* of sexual trafficking – their bodies reduced to *objects* and their free will erased. People involved in the sex trade are not part of a monolithic group. They do not describe their experience as purely victimization, and their voices cannot be disregarded. Their feelings, opinions, thoughts, and responses to sex work are diverse, multiple, and unique, and any attempt to reduce their agency and complexity is an imposition of colonial paternalism, racism, and sexism.

29. Perceiving Indigenous cis and trans women through the lens of human trafficking and as victims erases their lives. Dr. Sarah Hunt notes:

The continuum of violence, state neglect, and silencing they faced leading up to their deaths or disappearances remain invisible, facilitated in part by the criminalization of their lives as sex workers and drug users. Constructed as belonging to degenerate spaces, such as the Downtown Eastside or the reserve, Indigenous sex workers fail to matter until after they are dead and can be taken up as one of ‘the missing women,’ at which point their agency is no longer in question and others are needed to speak for them. Interrupting this characterization of Indigenous people who trade or sell sex requires upholding and enhancing their agency and voice while they are still alive, rather than rendering them as pure victims.⁹

D. Stigma of Sex Work

30. Individuals who participate in sex work or provide sexual services constantly encounter and have to overcome stigma. Stigma manifests in individual, social, societal, governmental, and criminal responses and is grounded in stereotype and racism. It operates so that individuals are blamed for their own victimization, mistreated, dismissed, criminalized, ignored and erased.¹⁰

Social stigma against sex work creates particular needs for sex workers

⁹ Hunt, Sara “Representing Colonial Violence” at pg. 34

¹⁰ Barkaskas, Patricia and Hunt, Sarah Access to Justice for Indigenous Adult Victims of Sexual Assault For the Department of Justice (October 2017) <online: <https://ubc.academia.edu/SarahHunt>> pg. 26 and 27; Transcript Dr. Janet Smylie, “Colonial Violence”, Iqaluit, Part II&III, Vol III, p 85; Transcript, Jasmine Redfern, “Colonial Violence”, Iqaluit, Part II&III, Vol IV, p 135

of all genders who have experienced sexual violence, both historic and recent, as a “discourse of disposal” (Comack and Seshia 2010) renders sex workers at greater risk of violence and of having the violence not taken seriously. [...] The prevalence of sexual violence against Indigenous sex workers demands that “we pay attention to the role of public discourse in perpetuating this ‘othering’ process” (Comack and Seshia 2010) such that Indigenous sex workers can disclose incidents of violence without facing further discrimination.¹¹

31. A human trafficking framework reinforces the belief that “no one would choose” to participate in sex work, and that, conversely, if choice does exist, individuals who participate in sex work are to blame for the violence they experience due to their “high risk lifestyle.” The human trafficking paradigm gives rise to the “worthy victim,” someone who is worth saving only if they recognize that sex work was not a choice. Worthiness is equated to victimhood and the desire to be saved, which is only narrowly understood as the need to exit the sex trade. Imposition of “victimhood” fails to recognize a person’s resistance and their choices, and fails to treat individuals with dignity.

32. A human trafficking framework further discourages women from reporting violence that they experience as a result of selling or trading sex precisely because instead of being provided supports addressing the actual violence, they are instead victimized. If they do not accept the victimization projected onto them they are stigmatized and blamed for the violence they experience. As a result of mapping a human trafficking framework onto all sex work, Indigenous sex workers are further marginalized. The fear of being blamed and unsupported increases the likelihood that Indigenous peoples engaged in sex work will not report violence to state authorities or institutions.

33. WE submit that the human trafficking framework is harming Indigenous individuals who participate in sex work or provide sexual services and is not helping us to avoid harm or live and work safely.¹²

¹¹ Barkaskas, Patricia and Hunt, Sarah Access to Justice for Indigenous Adult Victims of Sexual Assault For the Department of Justice (October 2017) <online: <https://ubc.academia.edu/SarahHunt>> (pg.28)

¹² Transcript examination in Chief, Lanna Moon Perrin “Sexual Exploitation, Human Trafficking and Sexual Assault” St. John’s Mixed Part II & III Volume XVII at pg. 87-88

34. WE call on the National Inquiry to reject the blunt and non-nuanced human trafficking framework as the only lens through which to view sex work, with the effect of viewing all Indigenous people who engage in sex work as victims.

WE ask the National Inquiry to listen to our voices and hear us when we say that we are not all victims and that without changes to the current criminalization of sex trade, especially as framed through a human trafficking framework, we will continue to experience violence that we do not feel safe to report and that may lead to more murders and disappearances.

E. Respect for the whole person

35. Individuals who participate in sex work or provide sexual services must be respected as whole complicated diverse people. The National Inquiry was tasked with investigating the root causes of the murder and disappearance of Indigenous women and girls. The National Inquiry's report must not serve as a mechanism to formally recognize Indigenous bodies "as spaces of expected violence" further normalizing the everyday violence of colonialism and embedding it deeper within Indigenous and settler communities.¹³ As Lanna Moon Perrin urged in her testimony at the National Inquiry hearings in Newfoundland, we must stop constantly telling our children and the world that we are victims that we are defined by the violence that we experience.¹⁴ As Dr. Wade stressed at the National Inquiry hearings in Winnipeg, the National Inquiry's report must recognize the resistance to violence, and the dignity of Indigenous individuals.¹⁵
36. Dr. Sarah Hunt notes: "Representing Indigenous girls and women purely as victims in need of government or legal help in order to 'save' or 'protect' us does nothing to dislodge the

¹³ Holmes, Cindy, Sarah Hunt, and Amy Piedalue. 2015. "Violence, Colonialism and Space: Towards a Decolonizing Dialogue". *ACME: An International Journal for Critical Geographies* 14 (2), 539-70 at pg. 550 online: < <https://www.acme-journal.org/index.php/acme/article/view/1102>>

¹⁴ Transcript, Lanna Moon Perrin: "Sexual Exploitation," St. John's Newfoundland, Mixed Part II & III Volume XVII at pg 90

¹⁵ Transcript, Cross examination of Dr. Allan Wade: "Criminal Justice Oversight and Alternative Programs," Winnipeg, Mixed Part II & III Volume XIV at pg. 163

colonial relations in which our victimization has become normalized.”¹⁶ Instead, we submit that the National Inquiry must acknowledge the ways colonial discourses are challenged and rebelled against. The complicated lives of sex workers must be recognized. As Hunt points out, “We are cultural knowledge keepers, dancers and singers, students, and in many other ways, vital members of our communities.”¹⁷ The richness of Indigenous sex workers’ identities are lost in the narrative of victimhood produced, reproduced, and maintained in the trafficking framework.

37. Indigenous individuals of diverse gender identities and sexual orientations who participate in sex work or provide sexual services cannot and should not be reduced to the violence they experience as a result of choices they make or their jobs. For example, the Indigenous self-identified women who use the services provided by WISH want housing, services, health care, treatment for substance use, protection of the police an end to violence, an end to police abuse and harassment.

38. We are mothers, daughters, sisters, trans women, matriarchs and knowledge keepers. We are Two Spirit, and that means so much. We participate and give back to our communities. We engage in every day activities like all human beings. We are courageous, resilient, caring, artistic and intelligent. We deserve love and respect. We are beautiful inside and out.

F. Importance Of Voices

39. WE submit that our stories build a strong foundation for supporting changes to perceptions of sex work in Canada. A strong foundation is necessary to understand what needs to change to make life safer for Indigenous individuals who participate in sex work or provide sexual services. Our voices are ignored. Even when we do tell our stories, Indigenous women are not truly heard because of paternalistic, racist, and sexist colonial attitudes and stereotypes.

¹⁶ Holmes, Cindy, Sarah Hunt, and Amy Piedalue. “Violence, Colonialism, and Space: Towards a Decolonizing Dialogue” at pg. 558

¹⁷ Holmes, Cindy, Sarah Hunt, and Amy Piedalue. “Violence, Colonialism, and Space: Towards a Decolonizing Dialogue” at pg. 558

40. A Collective member who describes herself as a survivor of the streets asked to share one of her stories so people can try to understand:

Who among you can understand what it is like?
Have you been raped? Do you know what it is like to be raped?

walking down the street at night, you hear footsteps behind you...
he put a rope around my neck.

later when the police come, you hear:
you were drinking, weren't you,
why were you out so late at night.
I could report this but it is a waste of time.

When I think about all this, recommendations, the Inquiry.
I had a rope around my neck, that is my visual...

How can we get that experience across to people?
to know what it is like to have a rope around your neck,
to know you were so close to death.

if they had taken me seriously maybe other people wouldn't have been raped.

G. Challenges To Being Heard

41. WE ask the National Inquiry to pay particular attention to these words: “if they had taken me seriously, maybe...” Indigenous women, including individuals of diverse sexual orientations and gender identities who participate in sex work have been excluded, silence and their truths have not been believed. If they had been taken seriously, any number of steps could have been taken to save lives and preserve physical and psychological integrity.

42. Indigenous women and individuals of diverse sexual orientations and gender identities who participate in sex work face multiple and often compounding barriers to reporting violence to police. These barriers include: previous bad experiences and distrustful relationships with police; fear of having their children removed, losing their home, and violence; and the fear of being outed to their families and communities as someone involved in sex work or trade.¹⁸ Barriers to reporting violence silence truth and hide violence.

¹⁸ Transcript cross examination, Sergeant Dee Stewart “Police Policies and Practices” Regina, Part II Volume VIII at pg. 354-355

Exclusion From Justice

43. The criminalization and stigma surrounding sex work means that Indigenous individuals who provide sexual services are likely to be mistreated by police. Violent predatory individuals exploit this reality to engage in violence with impunity, as the police, crown prosecutors, and judges often do not believe individuals who participate in sex work. Stigma and criminalization of sex work silences truths and hides perpetrator violence.
44. Lana Moon Perrin testified at the National Inquiry hearing in St. John's Newfoundland. She participated in street-based sex work at the age of 16. She has worked in multiple cities and settings and at the age of 40 is still a sex work advocate. Drawing on her 24 years of involvement in the community, she reflected on how often people who assault sex workers are charged or convicted. She noted simply and powerfully: "I don't know any."¹⁹ Patricia Barkaskas and Dr. Sarah Hunt note "the unfortunate reality for most survivors of sexual assault is that justice is very rarely accessed through the justice system."²⁰
45. The Canadian State has failed to investigate, charge, and convict perpetrators who harm Indigenous women and individual of diverse gender identities and sexual orientations who participate in sex work. Overwhelmingly, individuals who provide sexual services are excluded from justice. Where there are no repercussions, no protection, no justice, the system silences truth and hides violence, making it increasingly difficult to prevent.

Exclusion From Decision Making

46. Indigenous trans and cis women, and folks of diverse sexual orientations and gender identities who participate in sex work have been excluded from meaningful participation in the creation and implementation of laws, policies, and decision making – including in the planning, implementation, and processes of the National Inquiry.

¹⁹ Transcript Cross examination, Lanna Moon Perrin "Sexual Exploitation, Human Trafficking and Sexual Assault" St. John's Mixed Part II & III Volume XVII at pg. 250-251

²⁰ Barkaskas, Patricia and Hunt, Sarah Access to Justice for Indigenous Adult Victims of Sexual Assault, for the Department of Justice (October 2017) <online: <https://ubc.academia.edu/SarahHunt>>, page 16

Exclusion From Indigenous Organizations, Services And Communities

47. Indigenous women, and folks of diverse sexual orientations and gender identities who participate in sex work are often stigmatized and shamed in their Indigenous communities, and by Indigenous women's organizations. Due to shame and stigma, individuals who provide sexual services are often silenced, marginalized and face barriers to accessing housing, employment, health care and other services.²¹

Exclusion From Inquiries: the safety and accessibility of the process

48. Indigenous women and folks of diverse sexual orientations and gender identities who participate in sex work or provide sexual services are excluded and silenced in many of the processes that are suppose to shine a light on their realities. Including inquiries. The Murdered and Missing Women's Commission (BC) excluded and silenced the very people it was meant to seek justice for: women who were murdered and disappeared from Vancouver's Downtown Eastside, the survivors and their families. In the end, recognizing the fatal error of omitting their voices, the report called for the very voices it had excluded to be heard. But it was too late: once again the voices of sex workers were not heard.

49. In this National Inquiry, Indigenous women and folks of diverse sexual orientations and gender identities who participate in sex work or provide sexual services have been excluded. Their voices have been silenced through the process of this Inquiry.

50. Some members of the Collective shared that they did not feel welcome or safe attending the statement gathering event held in Richmond, BC. Throughout the Inquiry at various stages the Collective has repeatedly requested that the National Inquiry provide, facilitate or fund statement gathering in a safe confidential location. Our requests were not answered in a meaningful way. The stories of many members of the Collective were not heard and are not part of the evidence of this Inquiry. Additionally, for members of the Collective who have chosen to attend and tell their truths there has been a deep personal cost. They shared that

²¹ Transcript Cross examination, Lanna Moon Perrin "Sexual Exploitation, Human Trafficking and Sexual Assault" St. John's Mixed Part II & III Volume XVII; Transcript Direct examination, Mary Fearon, "Sexual Exploitation, Human Trafficking and Sexual Assault" St. John's Mixed Part II & III Volume XVII at pg. 141-142

there has been no aftercare support provided. That experience affirmed for others in the Collective that sharing with the Inquiry was not as safe as it should have been.

51. At the National Inquiry's Institutional, Expert and Knowledge Keeper hearings, dozens of witness documents amounting to hundreds of pages per witness were provided to the parties with standing, often the night before a panel of witnesses testified, or sometimes after they testified. This process made it impossible for meaningful review of the evidence by counsel and, importantly, by the Collective members.
52. Many of the Collective members do not have cell phones or "the privilege of sitting at a desk" where they could have answered emails and phone calls right away to give input and instructions at the last minute. The late delivery of documents, documents that became evidence of this National Inquiry, was not properly tested and no accommodations were made to include responses to evidence that did not take place at the hearings. This process failed to allow for meaningfully informed participation. The process silenced the invaluable feedback and expertise of Collective members.
53. Opportunities for the Collective to challenge the narrative of four or five key witnesses and hundreds of pages of documents per panel was at times limited to as little as 3.5 minutes. This was simply not enough time to meaningfully test, challenge or supplement the narrative entered as evidence. This process silenced Indigenous responses to the evidence by failing to provide adequate time for fully consultative Indigenous processes that may have led to meaningful responses and the inclusion of voices otherwise missing from the evidentiary record.
54. Finally, the hearings and final oral closing submissions were not timed or adequately funded to allow for the inclusion of members of this Collective or survivors, family members, and other community members. The funding model of the National Inquiry is one that requires the upfront expenditure of significant expenses. Tens of thousands of dollars had to be spent in order to participate in the process and then carried for months before reimbursement. The frontloading of these costs made full participation in the Inquiry by

members of this Collective and survivors, family members, and other community members, some of the most marginalized folks, simply impossible.

55. WE submit that the voices of people who sell or trade or sold and traded sex are erased, marginalized, and silenced in society and have been likewise underrepresented in the National Inquiry.

RECOMMENDATIONS

56. The recommendations of the Vancouver Sex Workers Rights Collective call for necessary and urgent steps to be taken. There is no single recommendation that will solve the ongoing crisis, we call for a fundamental shift.

Include And Respect Our Voices

1. **WE** call for the recommendations of the National Inquiry into Murdered and Missing and Missing Indigenous Women and Girls and all actions taken to implement the recommendations to include Indigenous trans and cis women, two spirit, non-binary and gender fluid individuals as well as lesbian, gay, bisexual, asexual, pansexual and queer individuals.

2. **WE** call on all governments, decision makers and policy makers to include Indigenous folks from diverse gender identities and sexual orientations who participate or have participated in sex work or provide sexual services as participants in the development of all policies, programs, and laws that will impact them, including but not limited to policies, initiatives and laws related to police, health, housing, justice, and child protection. In such efforts, compensation must be provided for the time, knowledge and participation offered.

Two spirit means so much; that needs to be brought back.

When policy and lawmakers talk about sex work without talking to sex workers, I feel:
*they don't have a clue how hard they are making it for us.
no heard like a third wheel unimportant
very upset and left out
that our (MY) personal well being is not on their agenda*

57. Exclusion, erasure, marginalization and criminalization of Indigenous women and individuals of diverse gender identities and sexual orientations who participate in sex work or trade has directly contributed to the murder and disappearance of Indigenous women and girls.²² We call for our voices to be heard, included and believed.

Police Must Recognize Our Right To Be Safe And Free From Violence

58. Indigenous women and individuals of diverse gender identities and sexual orientations who participate in sex work are over-surveilled and under-served by the police. Members of the Collective highlighted many issues with the police including:

- a. Unacceptable failure to respond to reported incidents of violence in a timely manner or not responding at all.²³
- b. Failing to protect Indigenous women by arresting *them* when they report violence, or when Indigenous women are the victims of violence (also known as “pro arresting” or “pro charging”). This fails to protect Indigenous women, disincentivises reporting to the police, and reinforces notions that Indigenous women’s bodies are inherently violent.²⁴
- c. Engaging in harassment, over-surveillance and criminalization of individuals who participate in sex work.
- d. Indigenous women being forced to interact with police officers while naked.²⁵
Our dignity, humanity and lives are not respected.

²² Wally T. Oppal, Commissioner, *Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Summary*, (Victoria, Service BC, 2012) online: < <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>>, p. 43-55, 71-81, 93, 167 (Transcript Cross examination, Elisapi Davidee Anigmuiq, “Colonial Violence”, Iqaluit, Parts II & III, Vol II, p 51-53);

²³ Transcript Cross examination, Chief Terry Armstrong, “Criminal Justice Oversight and Accountability”, Quebec City Vol V, p. 251-252

²⁴ Hunt, Sara “Representing Colonial Violence: trafficking, sex work and the violence of laws” *Atlantis* 37.2 (1), 2015/2016 <online: <http://journals.msvu.ca/index.php?journal=atlantis&page=article&op=view&path%5B%5D=3042> >; Barkaskas, Patricia and Hunt, Sarah *Access to Justice for Indigenous Adult Victims of Sexual Assault For the Department of Justice* (October 2017) <online: <https://ubc.academia.edu/SarahHunt>> at p. 5-6

²⁵ Transcript Cross Examination, Chief Superintendent Mark Pritchard, “Police Policies and Practices”, Regina, Part II, Vol X, p.67-70; Transcript Cross Examination, Assistant Commissioner Joanne Crampton, “Sexual Exploitation”, St. John’s Newfoundland, Part II & III, Vol XV, p.290-291

Members of the Collective shared that for these and many other reasons, they only report violence they experience to the police in extreme circumstances, when it is life threatening.

3. **WE** call on the VPD, the RCMP and all police forces in Canada to work in partnership with Indigenous women’s organizations to create enforceable policy and procedures for respectful dignity based interactions with Indigenous women, girls and individuals of diverse gender identities and sexual orientations. These policies must include:
 - a. revising all forms and educating all officers so that officers consistently and respectfully ask how a person identifies (gender), their pronouns, and if they identify as Indigenous what nation or community they are from;
 - b. ensuring that Indigenous women and individuals of diverse gender identities and sexual orientations are never forced to be naked in police presence, individuals must be given the opportunity to dress or provided with blankets or robes;
 - c. a default policy of non-disclosure of the information that an individual participates in sex work or trade; and
 - d. implementing procedures for how to connect with a person’s extended family or chosen family through the course of an investigation.

*As a sex worker, I would like:
respect as a human being, regardless of profession, gender or ethnicity.*

4. **WE** call on the Vancouver Police Department [“VPD”] to expand the role of the Sex Work Liaison Position [“SWLP”] by creating at minimum a second Liaison Position. Further we call for the creation of Sex Worker Liaison positions in all major cities in Canada.

59. The VPD’s SWLP is a direct result of the flawed investigation into the murdered and missing women from the Downtown Eastside of Vancouver and the eventual arrest of Robert Pickton. The position was created in response to community requests and as an attempt to begin mending the lack of trust in the VPD.²⁶

60. Members of the Collective highlighted the following concerns with respect to the VPD’s SWLP position:

- a. the person in the role of the VPD’s SWLP is overworked; she is not able to be in multiple locations nor work 24 hours a day, 7 days a week;

²⁶ Wally T. Oppal, Commissioner, *Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Summary*, (Victoria, Service BC, 2012) online: < <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>>. at 128

- b. the VPD’s Sex Worker Liaison needs to continue to build trust with the community;
- c. the City of Vancouver’s Sex Work Response Guidelines²⁷ are not being honoured, nor are they being implemented consistently across the VPD, nor provincially in other policing units;
- d. negative interactions with the VPD, including acts of police violence, harassment and degradation have not significantly decreased despite filling the SWLP; and
- e. although the current VPD Sex Worker Liaison is trusted by many in the community and is referenced as the sole police officer Collective members felt comfortable speaking with and potentially reporting violence to, that is a low bar. It is clear that she is *the only* member of the VPD Collective members indicated they *may* trust. More work must be done to build meaningful relationships between sex workers and the VPD to increase safety.

5. **WE** call on the VPD, the RCMP and other police departments to work with Indigenous sex worker organizations and Indigenous women’s organizations to create enforceable policy that ensures that when reporting violence, or when police are called to a violent incident, the “victim” is treated with dignity and respect and is not arrested for minor unrelated outstanding charges.

61. Over incarceration of Indigenous women is inextricably linked to systemic oppression and the direct and structural violence they experience. Indigenous women are disproportionately overrepresented in Canadian prisons due in part to crimes related to self-defense and poverty.²⁸ Police are afforded discretion in choosing if and how they arrest, detain, question or interview women who have experienced violence while selling or trading sex. Discretion is currently operating to forcibly arrest victims, failing to treat them with dignity.²⁹ Actions

²⁷ City of Vancouver’s Sex Work Response Guidelines, (September 2015) online <<https://vancouver.ca/files/cov/sex-work-response-guidelines.pdf>>

²⁸ Transcript Cross Examination, Kassandra Churcher, “Criminal Justice Oversight and Accountability”, Quebec City, Parts I & II, Vol VII, p. 34-42; Transcript Cross Examination, Chief Commissioner Brenda Lucki, “Police Policies and Practices”, Regina, Part II, Vol VI, p. 292-293

²⁹ Human Rights Watch, *Those who take us away, Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia*, February 2013, online: <<http://www.hrw.org/reports/2013/02/13/those-who-take-us-away>> p. 68

by police officers that reinforce distrust create further barriers to reporting and more possibilities that women will experience violence in the future.

6. **WE** call for an independent review of the VPD’s responses to 9-1-1 calls involving violence or threats of violence in the Downtown Eastside of Vancouver, and of any policy that sets priorities for police response.

This review must investigate the overwhelming evidence that police are not protecting Indigenous folks from diverse gender identities and sexual orientations who participate or have participated in sex work or provide sexual services. The review must explore the lack of accountability for failing to respond in a timely manner or to investigate when violence is threatened or committed against Indigenous folks who participate in sex work or provide sexual services.

62. It is unacceptable for any police force to fail to protect racialized and marginalized citizens from violence or fail to respond to and investigate violence in a timely manner. The actions and inactions of the police are a key factor in the violence committed against Indigenous women and girls, and have contributed to their murders and disappearances.³⁰

7. **WE** call for an independent civilian police accountability mechanism created in partnership with Indigenous women’s organizations and individuals with lived experience. The mechanism must:
 - a. be accessible to all, including marginalized and racialized peoples and people of diverse gender identities and sexual orientations;
 - b. have the capacity to investigate police actions and inactions
 - c. be procedurally fair by having processes that acknowledge and address the structural inequalities between the parties (police and complainant); and
 - d. empowered to grant real outcomes or remedies.

8. **WE** call for the long-term sustained funding of “victims services” for those that participate in an independent police accountability or complaint mechanism that is equal to the services and support provided to police officers who are being investigated.

³⁰ Transcript Cross Examination, Chief Terry Armstrong Nishnawbe-Aski Police Service, “Criminal Justice Oversight and Accountability”, Quebec City, Parts II & II, Vol V, p 252

63. Any independent accountability mechanism must work to address the power imbalance between the police and a complainant. The police officer, who has income, benefits, and stable housing, is supported by a union and a lawyer. A complainant may struggle with compound factors of oppression such as food insecurity, inadequate or insufficient housing, no income, health issues etc. There are structural inequalities that must be acknowledged and addressed in the accountability mechanism so that both parties can fully and equally participate. Further, there must be an independent accountability mechanism for citizens to obtain justice for violence committed by the tool of the state, the police. This mechanism would serve as a check to the power of the police who have been an instrument in the enforcement of colonial genocidal laws and policies against Indigenous people.
64. The Collective highlights key components of what police accountability would need to include for their community:
- a. Visible: on the ground change;
 - b. Meaningful: not just completing a computer training scenario or ticking a box;
 - c. Transparent and accountable: measured by the community not by the police;
 - d. Effective: demonstrated by a reduction in the abuse of police power, increase in trust, increase in reporting to police and effective and respectful investigations of violence.

Provide Safe Spaces And Housing Now

9. **WE** call for the creation of safe spaces or shelters in all Indigenous communities and all cities in Canada that are accessible 24 hours a day for Indigenous women and girls, including all sexual orientations and gender identities.

65. Many members of the Collective, particularly individuals who identify as trans women or two spirited individuals, reported that they have left their communities and come to the city because there was nowhere safe for them to be in their community.
66. We urgently need housing and safe spaces in northern British Columbia. As illustrated by Amnesty International Canada's report No More Stolen Sisters, there is a direct correlation

between resource extraction work camps with young male populations and violence against Indigenous women and girls in neighbouring communities.³¹ Amnesty highlighted how the unavailability of housing, income disparity, over taxed service and lack of shelters meant that women were unable to make the choices they need to stay safe. Members of the Collective have similar experiences in both urban and more remote settings. Faced with the choice to stay in an abusive violent situation or become homeless, along with the potential their children may be taken from them, many women in these circumstances leave and travel to the city in order to try to find work and escape violence. For some, work selling and trading sex is the only work available to them.

67. Dr. Mary Ellen Turpel-Lafond shared Paige’s story at the Winnipeg hearing.³² The lack of housing and the lack of safe spaces for Indigenous women and their children meant that Paige could not stay at a shelter with her mother. She was left outside; she was left in a vulnerable place. She was excluded from a safe place and there was no safe place for her to go. Paige was pushed into a place where she was vulnerable to be victimized or preyed upon.

68. Collective members emphasize that vulnerability is not the same thing as victimhood. Indigenous women are systemically vulnerable due to the entrenched colonial, paternalistic, racist, and sexist policies and systems that do not consider their lived realities. Collective members noted that this systemic vulnerability is especially problematic for individuals of diverse gender identities and sexual orientations who have even fewer safe spaces they can access and even fewer supports and resources available.

10. **WE** call for the immediate construction of new housing and the provision of repairs for existing housing for self-identified Indigenous women in Indigenous communities.

³¹ “No More Stolen Sisters: The Need for a Comprehensive Response to Discrimination and Violence Against Indigenous Women in Canada,” Amnesty International Publications, 2009, Index: AMR 20/012/2009, Exhibit 17 (P02-03P02P0201), Mixed Part II-III volume VI online: < <https://www.amnesty.ca/news/no-more-stolen-sisters-need-comprehensive-response-discrimination-and-violence-against>>

³² Mary Ellen Turpel-Lafond, Representative for Children and Youth, “Paige’s Story: Abuse, Indifference and a Young Life Discarded,” (May 2015) online: < <https://rcybc.ca/paige> > Exhibit 40 (P02-03P03P0401), Mixed Parts II-III Volume XIII

11. **WE** call for the provision of clean, safe housing in urban centers and cities for Indigenous women and their families, inclusive of individuals of diverse sexual orientations and gender identities. The housing should be located in a variety of neighbourhoods and must serve a variety of specific housing needs including:
- a. transitional housing;
 - b. safe housing specifically for Indigenous women and girls who have experienced violence;
 - c. housing for specific tenants including: single women, Indigenous women and their children, and Indigenous families;
 - d. housing that allows for overnight guests;
 - e. housing that is not conditional on maintaining sobriety; and
 - f. “dry” housing (no substance or alcohol use).

69. Much of what is labeled “native housing” or “social housing“ is highly paternalistic and prescriptive. Individuals who are on disability or social assistance are not provided with a livable income. They do not have the capacity to secure lodging that is safe, clean, and in an environment or neighborhood that they would like to live in. Often the housing they can obtain comes with unrealistic demands or rules that replicate colonial racism and sexism.

70. Collective members indicated that in their experiences as individuals who live in poverty they are treated as children who are not capable of making decisions, unless those are “bad” decisions according to people in positions of authority. Single room occupancy [“SRO”] dwellings often do not allow individuals to have overnight guests, which is one of the key features of the normal autonomy recognized for individuals who rent or own – they have a right of privacy. The normal renter or home owner has a right to choose who can enter their home.

71. This also creates harmful situations where family members are separated from each other. For example, Collective members stated that a mother cannot even have her children staying with them in an SRO. These arrangements also force sex work and or relationships to occur outside of a person’s dwelling in potentially unsafe places, in the shadows.³³

³³ Transcript examination in Chief, Lanna Moon Perrin “Sexual Exploitation, Human Trafficking and Sexual Assault” St. John’s Mixed Part II & III Volume XVII at pg. 87-88

Fund Our Vision Of Support And Services

12. **WE** call for sustained core funding of Indigenous organizations, sex worker organizations, and sex worker supportive organizations.

72. Collective members expressed that it is only through working with Indigenous organizations that support sex workers that they feel seen. They indicated these organizations do not judge them, listen to them, advocate for them, and do not judge their decisions or their choices. In these spaces they say they are treated as humans and they can access options and services they otherwise have not been able to access. It is these organizations that they trust. These organizations help them move forward and help them make positive choices, including getting back to community.

73. The importance of sustained core funding was aptly described by a project manager for PACE Society:

We are almost solely small project grant funded and are completely limited by what grants we can apply for, although our programming we try to adapt to ongoing member feedback. We find it hard to fund larger cash stipends for group participation and other mentorship, training, and supported employment initiatives, despite ongoing and constant feedback that that is what our members want and what helps our members subsidize their income so they can improve their rights of refusal and choice while doing sex work (ie. keeps them safer).

13. **WE** call on all service providers, Indigenous organizations and shelters to adopt a “meet them where they are at” policy, decreasing or eliminating barriers for sex workers to access services. We further call on all service providers, health care providers and government officials to change all forms and educate all staff so they can respectfully ask how a person identifies (gender), their pronoun, and whether they identify as Indigenous/Aboriginal and/or what nation or community they are from.

74. As Lana Moon Perrin stated at the Newfoundland hearings: for a long time she felt alone. She said she felt significant harm from Indigenous women’s organizations because she identifies as a sex worker. In so doing she expressed the need for community and support. She noted that services must not be conditional upon asking someone to leave sex work.

75. The philosophy expressed in Jordan’s principle should apply: the safety of the individual must come first. There should never be a qualifying question where the person seeking shelter needs to prove themselves worthy. Safety, security of the person and the right to be free from violence are fundamental rights.³⁴

14. **WE** call for funding for sex worker supportive organizations to digitize existing bad date reports, develop and run a searchable Bad Date Report database, and create a mobile application for greatest access to safety information.

76. Indigenous women and individuals of diverse gender identities and sexual orientations who participate in sex work or trade hold knowledge that can keep them, their friends, or family members safe. If they disclose experiencing violence, they disclose in a safe setting in that is often to Indigenous women’s organizations or to a family member or a friend, not the police.³⁵ Commissioner Brenda Lucki of the RCMP at the National Inquiry Regina hearing acknowledged: “it’s shameful if they don’t feel that they can trust their local police to be able to report that [violence]. So we need to find alternative ways of allowing victims to come forward. And if the avenue is not their local police, we need to find a secondary avenue for that.”³⁶

77. Collective members report that sex worker support organizations currently collect “bad date reports” which are often in paper format. In Vancouver and Surrey, BC the bad date reports are typed out onto a two-page sheet that is posted and emailed out. When new reports come in they bump off the oldest report on the sheet. There is no accessible searchable database of these reports. A searchable database of bad date reports would create a reliable tool and allow an Indigenous woman to quickly look for keywords, license plates, and other descriptions so she can take informed steps to protect herself.

78. Of the bad date reports taken by WISH, approximately 9 out of 10 of Indigenous women

³⁴ Transcript Cross examination, Lanna Moon Perrin “Sexual Exploitation, Human Trafficking and Sexual Assault” St. John’s Mixed Part II & III Volume XVII at pg. 249-250

³⁵ Barkaskas, Patricia and Hunt, Sarah Access to Justice for Indigenous Adult Victims of Sexual Assault For the Department of Justice (October 2017) <online: <https://ubc.academia.edu/SarahHunt>> pg. 27

³⁶ Transcript Cross examination Commissioner Brenda Lucki Royal Canadian Mounted Police, “Police Policies and Practices“ Part II, volume VII, Regina, pg. 29

who make reports do not want the police notified of the incident. In the experience of the frontline staff at WISH, only roughly 10% of violent incidents experienced by individuals who participate in sex work are reported as a bad date report.

79. Collective members need to be able to report violent acts, including an assault or sexual assault to the police without being targeted, criminalized as sex workers, or labeled as a victim of trafficking. The assault needs to be addressed in its own right. Every act of violence deserves attention.

15. **WE** call for long term, sustainable funding for Indigenous women’s organizations and sex worker support organizations to create Sex Worker Outreach/Safety Positions in every major city, with those roles staffed by current or former sex workers who would be responsible for:
- a. building trust with street based sex workers and taking bad date reports,
 - b. “spotting” for Sex Workers: recording license plates, someone that a sex worker could let know where they were going, and when they expect to be back, and
 - c. providing information and taking requests /referrals for services.

80. The Collective expressed that the police does not protect them. In fact, in cases we heard about through the various hearings, the police have perpetrated violence against Indigenous women, girls and individuals of diverse gender identities and sexual orientations.

81. In addition to bad date reports, members of the Collective want to be able to take preventative action. They want to be able to act quickly when someone is victimized or goes missing. A person acting in a Sex Work Outreach/Safety Position could note license plates and descriptions of “dates” and hold money for sex workers so they would not be robbed. With this position the individual providing sexual services would be able to notify someone of when they anticipated coming back that night, or if they were going out for the whole night. The person in the Sex Work Outreach/Safety Position would be able to notify friends and family quickly if the person did not return.

16. **WE** call for an increase in social assistance and disability income rates that will provide a livable income.

82. The Collective members indicated that participating in sex work or trade pays for rent, bills, and safe homes for them and their children. In a December 2018 survey of frontline staff at WISH the primary request of self-identified women who use their services was for assistance securing employment and ways to increase their income. Collective members report that they are unable to *survive* on income assistance or disability rates.

17. **WE** call for free cell phones with phone plans to be provided for Indigenous women including all sexual orientations and gender identities for use in emergency situations.

18. **WE** call for free or low cost safe transportation between Indigenous communities, from Indigenous communities to cities, and within cities.

83. Collective members indicate that connection to community is key to their wellbeing and safety. Access to cell phones and transportation provide connections to family members, to territory, to supports, and to cultural teachers and teachings. Phones and transportation are also key tools necessary for Indigenous women, girls and individuals of diverse gender identities and sexual orientations to be safe and to avoid violent situations. The National Inquiry has failed to examine in detail hitchhiking as a necessary mode of transportation in many regions of Canada and the role of the transportation industries in the crisis of murdered and missing Indigenous women and girls.

84. In her work with Indigenous communities in Northern BC, Sarah Hunt reports that 45% of respondents hitchhiked to a neighbouring community to work. And while many people she spoke with did not identify themselves as participating in the sex trade or name themselves a sex workers, they did indicate to her that they have traded sex for a ride to or from their remote communities. It is clear that the lack of transportation in this region is a key issue to exposing Indigenous women to systemic vulnerability.³⁷

85. We call for safe spaces for Indigenous women, girls and individuals of diverse gender identities and sexual orientations along all major transportation routes.

³⁷ Hunt, Sara “Representing Colonial Violence: trafficking, sex work and the violence of laws” *Atlantis* 37.2 (1), 2015/2016 <online: <http://journals.msvu.ca/index.php?journal=atlantis&page=article&op=view&path%5B%5D=3042> > pg. 31

86. We call on all the government of Canada and all telecom providers to create cellphone infrastructure providing full signal coverage on highways across Canada so that no phone call for help is met with silence.

19. **WE** call for sustained core funding for the creation and running of holistic Indigenous healing centers (“one stop shop”) that focus on healing and prevention. Where the whole person is healed as an individual and part of a community with access to medical care, specific cultural and ceremonial practices, counselors, elders, sacred medicines, and prescriptions all in one location.

*Programs need to think about continuum of care,
it took a long time to heal ... search and find, navigate services myself.
A program would close and I would lose faith and trust.*

20. **WE** call for the creation of low barrier mobile medical care in the Downtown Eastside of Vancouver, including medical care that does not require identification documents or a fixed address.

87. Intake processes for clinics, doctors appointments, or hospital visits often ask an individual for basic information such as their name, date of birth, gender etc. The identities of trans, two spirit or gender fluid individuals often don’t fit into the gender boxes on the forms. The lack of space for these identities results in individuals feeling erased, that they are not being treated with dignity or respect and fosters a mistrust of the health profession. Colonial constructions of gender used in health care systems can act as a barrier to health care for trans, 2 spirit and gender fluid indigenous individuals,

88. Additionally, to access medical services individuals are asked to provide their legal name and address. When Indigenous women and individuals of diverse gender identities and sexual orientations who sell or trade sex experience violence there is a tension between needing medical help and their need to keep their identity and certain facts about what happened to them secret. Both are needed to stay safe and alive. This is another context where service providers should “meet us where we’re at.”

89. The Collective has highlighted several potential negative impacts that serve as barriers to accessing health care including:
- a. fear that seeing a doctor could mean having children taken by the state;
 - b. police being called and facing possible criminal charges for defending themselves;
 - c. fear of not being believed or being blamed for their own victimization, this is particularly true for individuals who provide sexual services;
 - d. fear that the stigma of sex work means they won't get the medical attention they needed;
 - e. fear of losing clients if they become seen as someone that talks about what happens; and
 - f. fear of violence after getting medical help from people who want to silence the story of what happened, how the woman was injured.

90. At the National Inquiry hearing in Iqaluit, Dr. Smylie held out a medical clinic in downtown Toronto as a model for low barrier access to medical care. She noted that the clinic allows the use of aliases, as an individual's files and medications can be traced through the alias. Dr. Smylie stressed the importance of making healthcare available to homeless populations, and the strategies the clinic uses to mitigate barriers to access.³⁸

21. **WE** call for the creation of community integrated healing centers including substance and alcohol misuse in urban centers and Indigenous communities. The healing centers will provide a continuum of care and assist individuals to transition out of treatment and continue healing in the community.

*I stayed in sex work because of my addiction to drugs and fast cash
I started chasing cops around to take me to jail, I wanted treatment. That moment of clarity.
The lineup [for treatment] was so long.*

91. Collective members indicated that there are few in-community treatment options and little to no transition options available. People often have to leave the city for culturally appropriate treatment then come right back into their "war zones." For these and other

³⁸ Transcript Dr. Janet Smylie "Colonial Violence" Iqaluit, Mixed Part II & III Volume III at pg. 80-89

reasons, the Collective recommends the creation of holistic health facilities that function as a “one stop shop” for health services inclusive of traditional practices.³⁹

Our Families Deserve Healing And Support, Not Disruption

22. **WE** call for support and services for Indigenous families to thrive. Children should not be removed from Indigenous mothers or families solely due to poverty, including inadequate housing.

92. Dr. Cindy Blackstock and Dr. Mary Ellen Turpel-Lafond both testified at the National Inquiry hearings in Winnipeg. Together they called for the end of the practice of removing children from Indigenous families due to poverty. Both Dr. Blackstock and Dr. Turpel-Lafond discussed the urgent need for resources and support so that Indigenous families and children can thrive. Members of the Collective stress the importance of supports and resources for Indigenous parents and family members in order for them to thrive. We call for an end to state imposed violence against Indigenous children and the destruction of Indigenous families that is carried out by the removal of children due to poverty-related factors.

23. **WE** call for a fundamental change to child protection legislation and policy including:

- a. requiring the perpetrator of violence rather than the child to be removed from the home;
- b. providing support to Indigenous women and girls, including the spectrum of sexual orientations and gender identities, who seek help to remove themselves from family violence; and
- c. providing support to someone who tries to protect a child, rather than removing the child

93. Members of the Collective stressed the urgent need to address violence in families. Indigenous children have a right to be free from violence, but removing them from their home and family is not always the solution, and does not mean they are safe. We call for focus of child services oriented to indigenous children to be the needs of the child

³⁹ Transcript Cross Examination, Mary Ellen Turpel-Lafond, Winnipeg, “Child and Family Welfare”, Parts II & III, Vol. XIII, p 194-196

understood broadly and in a culturally appropriate way. This requires that a violent perpetrator should be removed from a home, not the child.

24. **WE** call for the decolonization and indigenization of the definitions of “family” and “parent” in child protection legislation.

94. Collective members who are two spirit, non-binary, or gender fluid individuals have discussed the lack of acceptance and the presence of homophobic violence in their own communities as reasons why they moved to Vancouver. These Collective members have indicated the importance for state and state actors to understand they have a broader definition of family, which must be recognized so that their true family can help look after them or help look after their children.
95. For them, these chosen family members are their true and only families. These are the people they have lifelong relationships with and whom their children know as family. However, child welfare legislation does not recognize Indigenous extended or chosen family as having the same legal status as a parent or in some cases the community of origin of the parent. This needs to change.

25. **WE** call for the revision of permanent removal and adoption timelines, as they fail to recognize ongoing colonization and barriers to lifelong healing for parents, and fail to recognize that the removal of a child is toxic interference with the mother and traumatic for a parent.

96. In addition the collective calls for the recognition and support of the important role of aunties, grandmothers and cousins, who perform parental roles for Indigenous children. Collective members shared multiple stories about children being taken into care and then being placed for adoption. In many cases they described that through that child’s life the child is reaching back to find parents, to find relatives, or to try to find out where they are from. Strict legislative timelines for adoption are based on outdated medical concepts about how children form relationships and fail to account for the parents’ timelines for healing. Dr. Smylie, as well as Dr. Mary Ellen Turpel-Lafond, discussed the association between medical and psychological treatment of individuals and the preconceived notion

of attachment. They noted how the timeline is for adoption need to be updated to accurately reflect knowledge about current medical practices.⁴⁰

Listen To Our Teachings

26. **WE** call for the education of all children and youth to include:
- a. History and recognition of ongoing colonization in Canada;
 - b. history of strong vibrant Indigenous peoples;
 - c. the role of power dynamics in society, decision making, policy making and law;
 - d. self-esteem, self-awareness and body positivity;
 - e. basic human rights, including the right to be free from violence;
 - f. lifting up and normalizing folks of all sexual orientations and gender identities;
 - g. bodily autonomy, the concept of consent, and specifically consent to sexual activity;
 - h. Sexual health including STDs, and HIV, positive and negative physical touch; and,
 - i. hope.

*I didn't feel like I belonged. I didn't have a connection with family and other women ...
Being on the rez was colonizing in a way ... running away, finding people like me.
I didn't know I had a human right, I didn't have to get beaten up.*

~

*Growing up in a small community was really hard .
Growing up in a small community and being Indigenous was even harder.
Growing up in a small community being an Indigenous transgendered person was absolutely
unbearable !!*

There were no safe places to go. No one ever talked about Trans people.

*I tried to learn how to pretend to be a boy,
it wasn't easy to play this role and I reverted back to my feminine self regularly
until I was looked at strangely or someone said something.
I eventually couldn't stand living this double life
and couldn't focus on school it was exhausting.*

*I really feel if people were educated at early stages of education more trans people would have
better qualities of life. We're just as normal as anyone else, it's as simple as that.
If we're given the chance many folks will realize that
we're really no different than any other boy girl man or women.*

⁴⁰ Transcript Dr. Janet Smylie "Colonial Violence" Iqaluit, Mixed Part II & III Volume III at pg. 91-93

27. **WE** call for Indigenous communities to participate in facilitated, safe, open discussions about violence within their communities, particularly how this violence disproportionately impacts Indigenous women, girls, and individuals of all sexual orientations and gender identities.

97. Collective members have highlighted the need for open discussions about lateral violence. This violence is historical and occurred in residential schools and is currently occurring within Indigenous communities and families. Individuals and communities need to heal from this violence, which will necessitate honest discussions about incest and violence within communities and families. In the words of one Collective member with respect to the violence she experienced at the hands of her brothers and father: “I didn’t know I had the rights for them not to hit me.”

28. **WE** call for the education of the police and all service providers in decolonization, including self-awareness about the role of settlers and police in the colonial system, and the imbalance of power and control inherent in their work.

98. Collective members have called for the general education of all Canadians, in particular service providers, including healthcare providers, police, government officials, and people working with Indigenous communities about the history and ongoing colonization of Indigenous peoples in Canada.

99. Collective members emphasized that Indigenous communities remain strong and vibrant and are resilient in the face of ongoing colonization. They stated that revitalization of language and traditions will assist in rectifying the paternalistic, racist, and sexist colonial attitudes that are held by non-Indigenous peoples and internalized by Indigenous peoples, and that lead to the normalization of violence and abuse.

29. **WE** call for the creation and full support of Matriarch schools that will pass on traditional knowledge, empowering young Indigenous women.

100. Collective members spoke about the potential creation of matriarch schools that could provide a power shift and a culture shift through empowerment and education. Indigenous women need to be fostered and uplifted. They need to be taught at a very early age that they are not defined by paternalistic, racist, and sexist biases and stereotypes.

101. Indigenous women deserve to learn and know they have worth, they deserve to live a life free of violence, and to have hope for their futures; they need to know they are entitled to joy. This message would be very different from messages Indigenous women and girls receive daily. Canadian society normalizes the disappearance of Indigenous women and extreme violence against Indigenous women. This needs to stop. There needs to be a positive lifting up, and an acknowledgement of the strength and vibrancy of Indigenous women and girls, and individuals of all gender identities and sexual orientations.⁴¹

102. Further, Collective members indicated that we need to return to acceptance of the power, beauty, knowledge, and traditional teachings that Indigenous women and girls carry. Women have long held respected roles within many Indigenous societies. This includes those individuals of diverse gender identity and sexual orientations. There must be an open examination of the imposition of Christian gender norms and heteropatriarchy on indigenous cultures to ensure that Indigenous women, girls and diverse gendered individuals are respected and empowered.

103. Further, there must be education in Indigenous communities about services that are available within cities to access cultural supports, housing assistance and other resources. Education must provide empowerment through understandings of sexuality, including positive sexuality, negative sexuality, bodily autonomy, meaningful consent, and sexual health including sexually transmitted infections.

30. **WE** call for the creation and support of sex work mentors.

104. Collective members have called for support for sex work mentors. There needs to be funding for Indigenous women to support other Indigenous women to tell them about safe places to go, safe people to talk to, how to be safe if they are going to engage in sex work, including what to look out for, what to agree to, and what to charge.

⁴¹ Transcript examination in Chief, Lanna Moon Perrin “Sexual Exploitation, Human Trafficking and Sexual Assault” St. John’s Mixed Part II & III Volume XVII at pg. 90.

105. Collective members have stated that sex work mentors could share valuable institutional knowledge about sex work, such as warning signs of potential violence.
106. There is deep and meaningful knowledge within the community of individuals who participate in or have participated in sex worker or provided sexual services. There must be a way for that knowledge to be shared in order to help protect individuals who are doing sex work or trading sexual services. Individuals who participate in sex work deserve to work in safe conditions and be safe while working.

The Law Must Not Deprive Us Of Safety

31. **WE** call for the decriminalization of safe, clean indoor spaces for sex work or the provision of sexual services to take place. Long term, sustained funding must be provided for sex worker organizations to set up and run these indoor spaces.

32. **WE** call for funding for the creation and distribution of Sex Worker Safety Kits for folks new to the community. The Kits would include at least the following: whistle, phone, harm reduction equipment including condoms, safety tips, information about rights and laws around sex work, lists of resources including safe places and shelters, contact information for mentors and organizations in the community, and contact information for police-Sex Worker Liaison officers.

33. **WE** call for the decriminalization of sex work, including the purchase of sexual services, the employment of third parties for safety, and communication for the purpose of participating in the exchange of sexual services. Communication is essential for safety and security, consent and negotiation of sexual services.

107. Sex work, which we understand as the consensual participation in the sale or trade of sexual services, must be decriminalized. This is supported by knowledge from our experiences, social science, the law and common sense.
108. The government has chosen to regulate sex work by way of the criminal law. It has not crafted criminal laws with the interests of people who participate in sex work or trade in mind. This includes today's law. The use of the criminal law as a tool has consequences

that have led to vulnerability and harm experienced by indigenous people who participate in sex work.

109. The laws cause harm in three key ways.

110. First, sex workers have been treated as criminals for engaging in consensual sexual interactions. The use of the blunt tool of the criminal law to attempt to regulate conduct society sees as immoral or nuisance has resulted in criminal sanctions, including incarceration, for some of our society's most marginalized individuals, and has contributed to the over-incarceration of Indigenous people and particularly women including Trans women. This is so despite the fact that many of the Indigenous people who have faced criminal sanction are being punished for what they have done in order to address poverty, addiction or social exclusion. Second, criminalization causes stigma and perpetuates discrimination. The criminalization of sex work, even where engaged in between consenting adults, has led to the treatment by our larger society of folks who trade or sell sexual services as less worthy of dignity and value than others in our communities. Third and vitally, the criminal law has the effect of standing between sex workers and the safety measures that they know they need to take to make their participation in providing sexual services safer and more consistent with their security and dignity.

111. In these ways, criminalization has created the perfect conditions for predation against individuals who participate in sex work. The vulnerability created in the law has been taken advantage of time and again, resulting in the murder and assault of numerous members of our communities.

112. The criminal law regime regulating "prostitution" was successfully challenged in *Bedford v. Canada*. The Supreme Court of Canada concluded that the criminal laws, which had the effect of preventing sex workers from taking steps to ensure their own safety, were in breach of s. 7 and 2(b) of the *Charter*, and were not justified under s. 1.

113. In particular, the court held that:

- a) A law that prevented sex workers from working at a fixed indoor location (then s. 210, the “bawdy house” law), shown in evidence to be safer than working on the street or meeting clients at different and less secure locations, had harmful impacts contrary to s. 7.^{42 43}
- b) The part of the procuring law that prohibited living on the avails of prostitution (then s. 212(1)(j)) was unconstitutionally overbroad because it did not distinguish between parasitic and beneficial relationships, and stood in the way of security measures such as retaining legitimate drivers, managers or bodyguards.⁴⁴
- c) The prohibition on communicating in public for the purpose of prostitution (then s. 213(1)(c)) interfered with sex workers’ abilities to screen prospective clients for intoxication, propensity for violence, and to set terms for transactions including condom use. These steps are actions that reduce the risks sex workers face. The enforcement of the communicating law also displaces sex workers from familiar areas to more isolated areas, increasing their vulnerability.⁴⁵ The Supreme Court concluded that these effects are grossly disproportionate to the aim of controlling public nuisance.⁴⁶

114. The Government’s response to *Bedford* was to pass amendments to the Criminal Code which would

- I. prohibit the purchase of sexual services (section 286.1(1)) (“Purchasing”);
- II. ban communication for the purposes of prostitution
 - a. by those purchasing sexual services (anywhere) and
 - b. those selling sexual services (anywhere in public that is near a daycare or school))(sections 213 and 286.1(1) (“Communicating”);
- III. prohibit materially benefitting from another person’s sex work (section 286.2(1), (3), (4), (5), and (6) and section 286.3(1)); and

⁴² *Canada v Bedford*, 2013 SCC 12, (“*Bedford SCC*”) paras. 61-65.

⁴³ *Bedford SCC*, para. 163.

⁴⁴ *Bedford SCC*, para. 142.

⁴⁵ *Bedford SCC*, paras. 68-72.

⁴⁶ *Bedford SCC*, para. 159.

IV. ban on advertising in relation to sexual services (section 286.4).

115. The criminal laws brought in through *PCEPA* following the Court's decision in *Bedford* continue to have the same harmful effects that occurred under and as a result of the laws in place before they were struck in 2013. Sex workers face the same or similar barriers to accessing safety, and continue to experience stigma as a result of the marginalizing forces of criminalization. They continue to be isolated and pushed to the margins. To the extent that the new *PCEPA* provisions had the aim of making circumstances safer for sex workers, they do not do so and cannot be expected to do so given they have a similarly isolating function that deprives sex workers of taking safety-oriented steps to improve or ensure their own security.⁴⁷
116. Reports and articles reveal that asymmetric decriminalization does not result in greater safety for people engaged in sex work. These are from Amnesty International,⁴⁸ the Global Commission on HIV and the Law⁴⁹, UNAIDS,⁵⁰ Human Rights Watch⁵¹ and other powerful international voices. The Amnesty report is from 2016 and captures the central concerns of the criminalization of the purchase-side of the sex work transaction, such as: incentivizing riskier conditions, diminishing prevention of HIV, collateral criminalization, ongoing discrimination and stigma.

IMPLEMENTATION

117. With few exceptions, the recommendations advanced by the VSWRC are modest in nature in the sense that they call on government bodies and actors to use existing powers, approaches, resources and values to give greater respect and ensure greater safety for Indigenous folks who participate in the sale or trade of sex. At the same time, the

⁴⁷ The Case for Repeal, http://www.pivotlegal.org/evaluating_canada_s_sex_work_laws_the_case_for_repeal

⁴⁸ <https://www.amnesty.org/download/Documents/POL3040632016ENGLISH.PDF>;

⁴⁹ Global Commission on HIV and the Law, Risks, Rights, and Health (New York: United Nations Development Programme, 2012) <https://hivlawcommission.org/wp-content/uploads/2017/06/FinalReport-RisksRightsHealth-EN.pdf>

⁵⁰ http://www.unaids.org/sites/default/files/media_asset/06_Sexworkers.pdf

⁵¹ <https://www.hrw.org/news/2014/06/18/canadas-prostitution-bill-step-wrong-direction>

recommendations are ambitious, in that they call for action by all levels of government and by many different entities in the Canadian public. We submit that this ambitious scope is necessary to address the significant harms that have been faced by our community over the course of years of disregard.

CONCLUSION

118. As individuals who participate in sex work or trade or have provided sexual services the Collective holds valuable knowledge and truths. They have never been silent about the violence they have experienced including violence because of structural inequality and colonialism. They have never been silent about friends and family members that were murdered and are missing or disappeared. They have never been silent about their desire to be seen and treated as human beings that have made choices in their lives that advance their own priorities, self-actualization and survival. And they will never cease to call for celebration of their humanity and indigeneity. Their voices have been dismissed and ignored, their truths and lives not valued. **This must change now.**

ALL OF WHICH IS RESPECTFULLY SUBMITTED

This 14th day of December, 2018

Vancouver Sex Workers Rights Collective.
c/o Carly Teillet, Counsel