



West Coast Legal Education and Action Fund

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VIA EMAIL: financecommittee@leg.bc.ca

Select Standing Committee on Finance and Government Services
Parliament Buildings, Room 224
Victoria, BC
V8V 1X4

Re: Submissions on dedicated and sustainable funding for community-based sexual assault crisis response teams and integrated sexual assault clinics

West Coast LEAF urges the government of British Columbia to invest in a rights-based framework for survivors of sexual assault by committing to provide dedicated, secure, and sustainable funding for community-based sexual assault crisis response teams and integrated sexual assault clinics across British Columbia¹. We are joined in this ask by a growing number of umbrella and direct-service organizations that have been working tirelessly to support sexual assault survivors across British Columbia; these organizations are listed below. Their knowledge and expertise drives the underlying premises of these submissions.

West Coast LEAF is a BC-based legal advocacy organization. Our mandate is to use the law to create an equal and just society for all women and people who experience gender based discrimination. In collaboration with community, we use litigation, law reform, and public legal education to make change. In particular, we aim to transform society by achieving: access to healthcare; access to justice; economic security; freedom from gender based violence; justice for those who are criminalized; and the right to parent.

We have particular expertise in equality and human rights, and a long history of work on sexual assault law and policy. Commencing in 2016, we partnered with the YWCA-Metro Vancouver on a project aimed at identifying strategies to reduce barriers in the justice system for sexual assault survivors through dialogue among key stakeholders, including frontline anti-violence activists and service providers, police, former Crown, retired judges, academics, and defense counsel. As part of this project, we spoke with survivors of sexual assault about their experiences reporting or not reporting. In November 2018, we released *We Are Here: Women's Experiences of the Barriers to Reporting Sexual Assault*² which centers women's experiences of the devastating impacts of sexual assault, which are all too often deepened by the legal system's inadequate responses.

¹ We use this terminology to maintain consistency with terminology used in other Budget 2020 submissions by frontline anti-violence organizations including VSAC and WAVAW.

² Prochuk, Alana (2018) *We Are Here: Women's Experiences of the Barriers to Reporting Sexual Assault* West Coast LEAF: Vancouver.

It is in the context of the findings of our project that we support the submissions of the Victoria Sexual Assault Centre (VSAC) – the only integrated sexual assault clinic in the province – as well as those of Women Against Violence Against Women Rape Crisis Centre (WAVAW) which coordinates one of the few Sexual Assault Response Teams (SARTs) in BC. In particular, we echo the following findings and recommendations:

- Community-based integrated sexual assault response teams that provide medical care, forensic exams, crisis support, and police reporting options can drastically reduce the long-term effects of the trauma on survivors of sexual assault including reducing the likelihood of re-traumatization when engaging with the criminal justice system;
- These services can substantially reduce the overall social cost of sexual assaults in British Columbia and improve confidence in the justice system;
- These services are drastically underfunded in urban centres and virtually non-existent in rural communities;
- There is an urgent need for dedicated, sustained, and adequate funding for sexual assault crisis response teams and integrated sexual assault clinics; and,
- For people experiencing intersecting forms of marginalization that face particular hurdles to accessing emergency care, including trans survivors of sexual assault, integrated clinics and support teams may provide one of the only viable service frameworks.

We provide the following rights-based analysis and legislative framework for realizing the recommendations set out within VSAC's and WAVAW's submissions.

A rights-based framework for survivors of sexual assault recognizes that survivors have rights when in receipt of services, protection, and supports following a sexual assault that are regularly being violated by state actors. Survivors of sexual assault have the right to security of the person³, including the right to protection against severe psychological harm caused by state conduct⁴. The heart breaking video of an RCMP officer in Kelowna questioning a 17-year-old Indigenous youth in care following her report of sexual assault is but one example of the ways in which state conduct can violate a survivor's right to security of the person.⁵ In the video, the officer asks the youth if she was 'at all turned on' and suggests consent can be inferred from the fact that the youth "did not put up much of a fight".⁶ This conduct is not only in violation of the progressive law of sexual assault⁷, but it is also conduct that has been proven to cause severe psychological harm to survivors of sexual assault and result in re-traumatization. The youth explained her experience of the investigation as follows: "It's very horrifying, my mental health couldn't take it, so I ended up in the hospital so I could process it,"⁸

Despite significant efforts by many, including justice system actors, to shift underlying stereotypes and misapprehensions about survivors of sexual assault, the above experience is unfortunately well known to anti-violence advocates. One need look no further than the commentary by former Judge Robin Camp who asked a 19-year-old complainant of sexual assault why she did not "keep her knees together" to see how rape myths continue to permeate the entire justice system and undermine the right to security of the person

³ *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the Constitution Act, 1982.

⁴ *Chaoulli v Quebec (AG)*, 2005 SCC 35 at pp 116.

⁵ Sterritt, Angela and Jason Proctor, "Were you at all turned on?: RCMP's handling of sexual assault interview denounced" *CBC News* (2019), online: <<https://www.cbc.ca/news/canada/british-columbia/rcmp-sexual-assault-video-1.5137676>>.

⁶ *Ibid.*

⁷ *Criminal Code*, RSC 1985, c C-46, s 273.2(c)

⁸ *Supra* note 5.

for survivors of sexual assault.⁹ The complainant testified following the trial that the judge's conduct had made her contemplate committing suicide and that it had made her hate herself".¹⁰

Survivors' reports are supported by statistics on the attrition of sexual assaults through the criminal justice system. Statistics from 2017 demonstrate that of the only 5% of sexual assaults against women aged 15 and older that are reported to police, 19% are declared unfounded and charges are laid in only 49% of the remaining cases¹¹. The numbers dwindle even further once charges are laid with only 49% of cases proceeding to trial and just half of those resulting in a conviction.¹² This means that a meagre 0.3% of sexual assaults against women result in a conviction.¹³

Survivors of sexual assault also have the constitutional right to equal protection and equal benefit of the law.¹⁴ This right is assessed through a substantive equality framework which places a burden on the state, when providing a service, to do so in a way that accounts for the lived experiences of those accessing the service. Thus, because responses to sexual assault – including investigation, the court process, accessing health care, and counselling supports – are services provided by the government, the government is obligated to provide these services in a way that does not reinforce, perpetuate, or exacerbate the disadvantage experienced by survivors of sexual assault.

Yet, an intersectional substantive equality analysis focusing on the lived experiences of survivors of sexual assault demonstrates that government policies and practices do exacerbate the disadvantages experienced by survivors of sexual assault in BC. The right to equal protection and benefit of the law is placed in peril when the conduct of some state actors is permeated with sexist stereotypes.¹⁵ Systemic issues with emergency response, investigations, the criminal trial process, and the provision of support services following sexual assault also have the ability to undermine a survivor's right to equality because women and people of all marginalized genders are overwhelmingly the victims of sexual assault, [and thus]... disproportionately impacted by the resulting poor quality of investigation".¹⁶

In addition to its obligation to ensure that laws, policies, and state conduct do not undermine a survivor's right to security of the person and equality rights, the government has a positive obligation to exercise due diligence to prevent, investigate, prosecute gender-based violence and compensate survivors, The articles of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) confer a responsibility on states to provide appropriate "protective and supportive services" to survivors of gender-based violence.¹⁷ The CEDAW Committee has found on numerous occasions that states

⁹ Graveland, Bill "Sex assault complainant testifies at review of Alberta judge who asked her why she couldn't keep her knees together" *GlobalNews* (2016) <<https://globalnews.ca/news/2924267/sex-assault-complainant-testifies-at-review-of-alberta-judge-who-asked-her-why-she-couldnt-keep-her-knees-together/>>.

¹⁰ *Ibid.*

¹¹ Lievore, D. (2003). *No Longer Silent: A Study of Women's Help-seeking Decisions and Service Responses to Sexual Assault*. Canberra: Australian Institute of Criminology and Office for Women, p. 41.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Supra* note 3 at s 15(1).

¹⁵ *Jane Doe v. Board of Commissioners of Police for the Municipality of Metropolitan Toronto et al.*, [1998] O.J. No. 2681.

¹⁶ *Ibid.*

¹⁷ Representative of the Committee on the Elimination of All Forms of Discrimination against Women, 11th Session, January 20-30, 1992, at 1-8, U.N. Doc. A/47/38.

have violated the anti-discrimination provision when they have failed to provide adequate support services.¹⁸

The state has additional obligations vis-à-vis Indigenous women, Two Spirit, gender diverse and gender non-confirming people under the United Nations Declaration on the Rights of Indigenous Peoples¹⁹ (UNDRIP). UNDRIP places positive obligations on states to “take the appropriate measures”²⁰, including providing financial and technical support²¹, to ensure that every Indigenous person has the right to ‘life, physical and mental integrity, liberty and security of the person’²² and the right to live free of discrimination²³ including in accessing social services²⁴. UNDRIP emphasizes the obligations on states to ensure that Indigenous women “enjoy the full protection and guarantees against all forms of violence and discrimination”²⁵.

Nevertheless, Indigenous women, Two Spirit, gender diverse and gender non-confirming people continue to face high rates of violence in BC and significant barriers when dealing with system actors.²⁶ This has created distrust in the justice system. One project participant clearly explained why she did not see reporting as a viable option for her:

I’m also a woman of colour, and [...] I never thought [reporting to police] would be helpful or that I would be treated fairly. [...] I’ve heard a lot of things about Aboriginal women who have, you know, tried to reach out about different assaults in the Vancouver area and just like what little support they’ve been getting. (Interview 30) (page 30)

Anti-violence experts and researchers have regularly maintained that survivors need integrated, culturally-safe and trauma-informed services for the full realization of their fundamental rights. Our research on dismantling the barriers to reporting sexual assault supports the submissions of VSAC and WAVAW that: the best practice model for responding to sexual assault is through community-based assault crisis response teams and integrated sexual assault clinics. Survivors that participated in our research spoke to the urgent need for these services:

I needed someone to hold my hand, you know, and it wasn’t there, and that was sort of the feeling I got. Like it was very much on me to, to do [complete paperwork and apply for supports] and [...] it doesn’t work that well, *like it’s just not realistic for somebody that’s gone through something like that*. (Interview 28) page 60

¹⁸ See e.g. *A.T. v. Hungary*, United Nations, Comm. on the Elimination of Discrimination against Women, UN Doc CEDAW/C/32/D/2/2003 (January 26, 2005) [where there was no shelter for a mother and her child to access following fleeing domestic violence]; see also *Goekce v Austria*, UN, Committee on the Elimination of Discrimination against Women, UN Doc CEDAW/C/39/D/5/2005 (August 6, 2007); *Yildirim v. Austria*, UN, Committee on the Elimination of Discrimination against Women, UN Doc CEDAW C/39/6/2005 (October 1, 2007) [where there was state failure to respond adequately to allegations of domestic violence].

¹⁹ UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295, online: <https://www.refworld.org/docid/471355a82.html> [accessed 26 June 2019].

²⁰ *Ibid* at art 38

²¹ *Ibid* at art 39.

²² *Ibid* at art 7 (1)

²³ *Ibid* at art 2.

²⁴ *Ibid* at art 24.

²⁵ *Ibid* at art 22(2)

²⁶ *Supra* note 2 at p 31.

Maybe I would report if I knew that the police interview would be comfortable, you know, if the officer, if I knew that the officer would be friendly, approachable, would believe me, would be easy to talk to, it didn't feel like an interrogation. If the room was comfortable. I remember seeing that awful video of the woman who was sexually assaulted and was interviewed in this tiny little room that looked like a depressing cell, like that just, God that was awful, I wouldn't want to sit in a room and talk about something so personal in a room like that. So even like the environment matters too. And if it didn't take a lot of time, like if they actually managed to get everything in one interview and you didn't have to go back for a second interview [...] and then if you didn't have to tell your story five times, that would also be nice. And if you knew that your rights and really your well-being as a victim would be respected and not just by police but in the court system, [...] that they wouldn't treat you as just a means to a conviction, that they would actually, you know, place you at the center of things rather than focusing solely on the accused's right to a fair trial at any cost. (Interview 21)

This framework for addressing sexual assault has been echoed in numerous reports including, most recently, in *The Final Report of the National Inquiry on Missing and Murdered Indigenous Women and Girls*²⁷:

3.5. We call upon all governments to establish culturally competent and responsive crisis response teams in all communities and regions, to meet the immediate needs of an Indigenous person, family, and/or community after a traumatic event (murder, accident, violent event, etc.), alongside ongoing support.

It is vital to fund this essential service to realize the rights of survivors of sexual assault. This funding must be needs-based and, thus, sufficient to meet the needs of all survivors in urban and rural centres. This funding must also be provided separate and apart from other funding needs of anti-violence organizations including the need to provide legal aid to anti-violence organizations who face section 278 applications within sexual assault trials as we, along with EVA BC and Surrey Women's Centre, recently set out in our letter to the Attorney General.

Furthermore, we urge you to consider legislating the right of victims of sexual assault to access community-based integrated crisis assault services in order to create a pathway for dedicated and sustained funding. The longevity of the funding is not only essential for the rights of survivors; it will also ensure that any long-term benefits materialize including the reduction in the overall social cost of sexual assault, increases in health outcomes, and improved confidence in the justice system.

In addition to, and in support of, dedicating funding to community-based integrated crisis sexual assault services as described above, we recommend the following amendments to the *Victims of Crime Act*:

Addition:

Community-Based Assault Integrated Crisis Services to be Provided

The Ministry of Public Safety and Solicitor General must take reasonable measures to ensure that victims of sexual assault are provided with access to community-based assault crisis services which at minimum include:

1. trauma-informed, culturally-appropriate care; and
2. wrap-around services including crisis support, victim services, and navigation support

²⁷ National Inquiry on Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry on Missing and Murdered Indigenous Women and Girls* online: <https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a.pdf>.

Amendment:

Section 5(b) to: “Justice system personnel must offer a victim general information concerning (b) *community-based assault crisis services* and other victim services”. [Italics indicate addition to legislative text]

Conclusion

We urge the government of BC to support a rights-based framework for survivors of sexual assault by committing to provide dedicated, secure, and sustainable funding for community-based assault crisis response teams and integrated sexual assault clinics across British Columbia. We support the submissions made by VSAC and WAVAW and encourage the government of BC to implement their recommendations by way of both an increase in funding and a legislated right to community-based assault crisis services.

Sincerely,



Elba Bendo, Director of Law Reform
West Coast LEAF

Encl.
VSAC Submissions
WAVAW Submissions

We are joined in this ask by:

Atra Women's Resource Society
Central Okanagan Elizabeth Fry Society
Chilliwack Community Services
Ending Violence Association of British Columbia
Tri-City Transitions Society
Vancouver Sexual Assault Centre
Women Against Violence Against Women