

Special Committee to Review the Independent Investigations Office
c/o Parliamentary Committees Office- Room 224
Parliament Buildings
Victoria, British Columbia
V8V 1X4
Via email iocommittee@leg.bc.ca

October 30, 2014

Dear Special Committee,

Justice for Girls Outreach Society, the West Coast Women's Legal Education and Action Fund (West Coast LEAF), Vancouver Rape Relief and Women's Shelter, and Women Against Violence Against Women (WAVAW) make this submission to the Special Committee to Review the Independent Investigations Office (the "Special Committee"). Our organizations have decades of experience, expertise and leadership working systemically and with individual girls and women to ensure rigorous criminal justice system responses to violence against girls and women. Our efforts have involved local, provincial, national and international work for women's equality and for adherence to internationally recognized norms of criminal justice response to violence against women. We have worked extensively to ensure that governments meet their due diligence obligations to respect, protect and fulfill the rights of girls and women to lives free from violence.

It is our submission that the equality and human rights of girls and women protected by Canadian and international law are being violated by the government's failure to provide for independent and effective investigation of police perpetrated sexual violence against them. We regretfully submit, due to serious concerns set out further below, that the IIO does not at present meet the level of credibility and competence required to carry out sexual assault investigations. We request that the provincial government hold a full consultation with women's groups, and other experts, to create a plan for how police perpetrated sexual violence and other violence against women should be investigated in a manner that meets international standards.

Critical context

As the Special Committee is aware, both the UN CEDAW Committee and the Inter-American Commission on Human Rights recently visited BC to investigate allegations of police failures to respond to violence against Indigenous girls and women and to investigate police abuses of girls and women. Our organizations have made submissions to both of these bodies and to the UN Committee on the Elimination of Racial Discrimination regarding systemic discrimination against Indigenous girls and women and the state's failure to protect their rights to equality and security.

As the Special Committee is also aware, in February 2013 Human Rights Watch released their report "Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada."¹ This report documented serious human rights abuses committed by police against Indigenous girls and women in the north of the province. Human Rights Watch documented

¹ Available at <<http://www.hrw.org/reports/2013/02/13/those-who-take-us-away-0>>

numerous police failures to protect Indigenous girls and women from violence, and disturbing accounts of violence by police, including sexual assaults of Indigenous women and girls.

International legal standards for independent investigations

International courts as well as the United Nations Committee against Torture have recognized rape by state officials as a form of torture². Whether or not rape is committed by a state representative, governments can be held responsible internationally for their failure to investigate and hold perpetrators accountable. The UN Human Rights Committee has reinforced that the failure to investigate human rights breaches can violate international law. The Human Rights Committee found there to be a breach of human rights in several cases where allegations of sexual assault by state representatives were not investigated.³ Internationally agreed upon principles for investigations of torture and inhuman treatment set out that, “even in the absence of an express complaint, an investigation shall be undertaken if there are other indications that torture or ill-treatment might have occurred.”⁴ Effective remedies such as judicial and administrative mechanisms to promptly investigate violations must be in place.⁵

International standards are also clear that investigations of rights violations must be done by independent and impartial bodies, and must be prompt, comprehensive, and effective.⁶ For investigations of torture and other cruel and degrading treatment in particular, international standards emphasize that investigators must be independent of the alleged perpetrators and of the agency the suspected persons serve. The methods used to carry out such investigations must meet the highest professional standards.

Article 4 (c) of the *UN Declaration on the Elimination of Violence against Women* requires governments to “exercise due diligence to prevent, investigate and in accordance with national legislation, punish acts of violence against women whether those acts are perpetrated by the State or by private persons.”⁷ This due diligence obligation is well established by international jurisprudence.

Women and girls are guaranteed the right to equality under Section 15 of the *Canadian Charter of Rights and Freedoms*, which articulates the right to the equal protection and equal benefit of the law without discrimination.⁸ Their right not to be discriminated against in the provision of services, including police and government services, is also protected by BC’s *Human Rights Code*.

² Redress. *Redress for Rape: Using International Jurisprudence on Rape as a Form of Torture or Other Ill-treatment*, 2013, p.56

³ *Ibid*, p.77

⁴ *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 2000.

⁵ Human Rights Committee (HRC), *General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, Article 2, paragraph 3

⁶ *Ibid*.

⁷ UN General Assembly, *Declaration on the Elimination of Violence against Women*, 20 December 1993, A/RES/48/104

⁸ The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11

Discriminatory mandate exclusion of the IIO

Sexual assault investigations are currently not within the mandate of the IIO. This exclusion amounts to sex discrimination under domestic and international human rights obligations. As the Special Committee is aware, parallel police oversight bodies across Canada include sexual assaults and domestic violence in their mandates. It is critical that independent civilian oversight of police in British Columbia complies with domestic and international human rights obligations by ensuring that gender-specific police perpetrated serious harms, such as sexual and physical violence against girls and women, are investigated and addressed.

In this context, it is with the greatest regret and disappointment that our organizations cannot at this time recommend the expansion of the IIO mandate to rightfully include sexual assault and other forms of violence against women. At present, we do not have confidence in the IIO's ability or credibility to undertake independent, thorough investigations of police perpetrated sexual assault.

Concerns about present IIO functioning

We are concerned that about half of IIO investigators are ex-police officers and that most investigative teams are led by former police officers or other former police department staff. We believe that this structure undermines the credibility of the IIO and could be seen to or in fact may undermine the independence of investigations. It is also a concern that this structure has the potential to enshrine a 'police culture' within the organization, as indicated by recent reports of a staff survey revealing a "schism" forming between civilian staff and former police officer staff.⁹ An "organizational dysfunction" has also been noted by staff according to reports.¹⁰ While we understand the IIO is attempting to move closer to full civilianization, at this time the gap appears wide.

Further, it is unclear whether former police officers meet the international standard for independence when they investigate current officers. We encourage the Committee to review the government's international obligations in this regard.

Our organizations would also like to express our concern about a recent report that an IIO investigator was suspended due to allegations of harassment.¹¹ These reports about the internal functioning of the IIO reinforce that at present the IIO lacks the competence and credibility to investigate allegations of police perpetrated sexual assaults in a manner that meets international standards.

Questions about the actions of the IIO in the Gregory Matters shooting death warrant our pause. We sincerely hope that the current review of the case will get to the source of significant concerns about the IIO's investigation. The IIO's first investigative public report into the death of Mr. Matters reported that police shot Mr. Matters in the chest, when in fact he was shot in the back. The IIO's statement about where in the body Mr. Matters was shot was misleading to the public. Further, legal counsel for the family has identified many critical questions related to the shooting of Mr. Matters which have

⁹ Cooper, S. (2014, June 17). Top police watchdog fends off foes. *The Province*.

¹⁰ Ibid.

¹¹ Ibid.

not been sufficiently answered¹². Recently, as the Special Committee is also aware, the lead investigator in the case filed a complaint to the Deputy Attorney General and further allegations of inadequate conduct in the IIO investigation of the Matters case surfaced. We understand that complaints against the Director have been filed with both the Ministry of Justice and the Office of the Police Complaints Commissioner.¹³ While these complaints have yet to be adjudicated, they raise questions about the leadership and functioning of the IIO.

We regretfully submit that the IIO does not at present meet the level of credibility and competence required to carry out sexual assault investigations. Until the IIO operates as fully civilian oversight, meets the standard of independence and investigative expertise set out by the international legal community, and is shown to have conducted a thorough and proper investigation in the Matters case, we cannot in good conscience suggest that women put their faith in this office.

Ensuring adequate consultation with women's groups

Investigations of sexual assault, in particular sexual assault by police officers, require the highest level of integrity, independence, training, sensitivity, and comprehensive response. Such investigations must meet the highest standards to address the gender inequality that shapes and mediates sexualized violence and torture perpetrated by state authorities against women and girls.

We cannot strongly enough express the urgency of investigating cases of police perpetrated sexual assault, and we remind you of the obligation on government to ensure torture and other cruel and degrading treatment of women and girls is promptly investigated. Pursuant to both domestic and international human rights obligations, the province must provide women and girls with a mechanism to address gender-specific forms of police violence. We believe the only way to ensure that these cases are investigated with the required expertise and independence is for government to work in consultation with women's organizations to design appropriate mechanisms.

We request that the provincial government hold a full consultation with women's groups, and other experts, to create a plan for how police perpetrated sexual violence and domestic abuse should be investigated in a manner that meets international standards.

¹² IIO BC. *Supplemental Public Report of the Chief Civilian Director: Investigation into the September 10, 2012 fatal shooting of Gregory Matters by the RCMP near the city of Prince George, BC*, 2014.

¹³ Cooper, S. (2014, June 17). Top police watchdog fends off foes. *The Province*.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized star-like shape followed by a long horizontal line.

Asia Czapska, Director
Justice for Girls

A handwritten signature in black ink, appearing to read 'L. Track' in a cursive style.

Laura Track, Legal Director
West Coast Women's Legal Education and Action Fund

A handwritten signature in blue ink, appearing to read 'K. Smith-Tague' in a cursive style.

Keira Smith-Tague
Vancouver Rape Relief and Women's Shelter

A handwritten signature in blue ink, appearing to read 'Irene Tsepnopoulos-Elhaimer' in a cursive style.

Irene Tsepnopoulos-Elhaimer, Executive Director
Women Against Violence Against Women