

June 25, 2014

Government of Canada
Standing Committee on Justice and Human Rights

Re: Bill C-36 Protection of Communities and Exploited Persons Act.

Dear Honorable Committee Members,

The following document is a joint submission by the City of Vancouver and Vancouver Coastal Health Authority in response to Bill C-36 *The Protection of Communities and Exploited Persons Act*, tabled by the Minister of Justice on June 4, 2014. It includes our shared evidence-based views on the consequential effects of the proposed legislation as well as specific recommendations centered on human-rights principles and harm reduction strategies.

It is our mutual position that the Standing Committee consider the Supreme Court of Canada's December 2013 Bedford Decision that prioritized the health and safety of adult sex workers in accordance with the *Canadian Charter of Rights and Freedoms*. Further, we ask that the Federal Government consult with local health authorities and municipalities in the process of Criminal Code development because together we bear the burden of mitigating the impacts on our local residents and communities.

The City of Vancouver and Vancouver Coastal Health are recognized as leaders in Canada for our progressive approaches to address issues impacting sex workers and communities and our efforts to prevent sexual exploitation. In collaboration, we strive to decrease the adverse effects of health and social inequities among marginalized and underserved populations and to create a healthy and safe city for all of our residents.

We are happy to respond to any questions and we welcome the opportunity to further contribute to this important issue.

Yours truly,



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Position Paper on:
Bill C-36 the Protection of Communities and Exploited Persons Act

BRIEF TO THE

STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS

**HOUSE OF COMMONS
41st Parliament**

TITLE OF BILL

BILL C-36

The Protection of Communities and Exploited Persons Act

**Submitted by City of Vancouver, and
Vancouver Coastal Health Authority**

JUNE 25, 2014

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Executive Summary

This joint submission reflects the City of Vancouver and Vancouver Coastal Health's response to Bill C-36 *The Protection of Communities and Exploited Persons Act* tabled in response to the Supreme Court of Canada's December 2013 decision in *Canada (Attorney General) v. Bedford* ("Bedford"). It is our shared view that the legislation does not adequately respond to the Bedford, which prioritized the health and safety of adult sex workers. The health and safety impacts not only remain under the proposed changes in Bill C-36, but may make conditions worse for these populations by further marginalizing vulnerable individuals and placing them at more risk of harm, as has been demonstrated through research and was agreed upon by the Supreme Court of Canada.

Protection of children from all forms of exploitation is paramount; this response focuses on adult sex work, which is not to be conflated with youth sexual exploitation.

In summary, the City of Vancouver and Vancouver Coastal Health recommend that:

1. The new legislation be referred to the Supreme Court of Canada to ensure constitutionality, compliance with the Charter of Rights and Freedoms and consistency with Bedford.
2. The Federal Government consult with municipalities as originally requested in our submission during the Federal Government's consultation process in March 2014. Local governments play a critical role in these issues, given their jurisdiction over zoning and business licensing, and their role in mitigating neighbourhood impacts through effective law enforcement.
3. The Federal Government consult with provincial health ministries and regional health authorities, as jurisdiction over health is a provincial responsibility and regional health authorities will bear the burden of dealing with the injury and illness resulting from the proposed laws.
4. Criminalization of selling sex in any form be removed from the legislation, and that any laws addressing sex work not constrain a sex worker's ability to exit or transition out of sex work due to barriers such as criminal records.
5. Neither selling nor the purchasing of sex between *consenting* adults should be illegal. This includes communication with the intent to sell or purchase.
6. Advertising for the purpose of selling indoors not be illegal. While indoor sex work currently still puts sex workers at risk of violence, it is implicitly safer for both workers and the community and therefore advertising for such purposes should not be illegal (Provision 286.4).
7. Material Benefit from Sexual Services, (i.e. living off the avails of prostitution), should not be criminalized nor be tied to a "legitimate living arrangement" as such arrangements should be self-determined in consensual sex work and not prohibited by the Criminal Code.
8. Material Benefit from Sexual Services, as connected to a "legal or moral obligation" be removed as this is ambiguous.
9. A national public inquiry into missing and murdered Aboriginal women and girls in Canada be called, and the involvement of Aboriginal women in the design, decision-making process and implementation of this inquiry be supported.
10. Funding supports be expanded to address systemic vulnerabilities and socio-economic barriers, including the expansion of affordable child care, affordable housing, employment options, mental health and addiction care and specific population supports for immigrant, LGBTQ, Aboriginal, youth, elder, female, and male focused programs that would address poverty, stigma, racism and marginalization.

Specific Recommendations regarding the Protection of Communities and Exploited Persons Act by the City of Vancouver and Vancouver Coastal Health.

The stated intent of the Government of Canada's amendments in response to the Supreme Court of Canada's decision in Bedford is:

- To protect those who sell their sexual services from exploitation;
- To protect communities from the harms caused by prostitution; and
- To reduce the demand for sexual services.¹

To achieve these objectives, the Government of Canada is proposing new offences. Concerns shared by the City of Vancouver and Vancouver Coastal Health are expressed regarding each of the following provisions:

Provision 213: Stopping or impeding traffic in order to offer, provide or obtain sexual services for consideration and Communicating for the purpose of offering or providing sexual services for consideration in a public place, or in any place open to public view, that is or is next to a place where persons under the age of 18 can reasonably be expected to be present.

- Buyers and sellers will attempt to comply with new provisions by avoiding work where anyone under the age of 18 could reasonably be present, which could cause harmful displacement and further isolate street-based and survival sex workers, as noted by the evidence².
- The provision limits the ability of sex workers to negotiate with and screen potential clients, to consent to specific services and to take safety precautions such as working in groups and negotiating condom use.
- Increased criminalization could lead to an increase in violence, health risks and decrease the ability of sex workers to access police protection when they face violence for fear of being arrested.
- Limits on solicitation through advertising and defining where a minor could reasonably be expected to be present are ambiguous and will limit how and where indoor workers may solicit clients, which may increase street-based sex work and have a negative impact on other community members.
- The divide between sex workers and their community will increase; social isolation will be reinforced as direct communication with, or support of a known, or suspected, sex worker could be justification for arrest.

¹ Protection of Communities and Exploited Persons Act, Government of Canada, Department of Justice, Date modified: 2014-06-04. Available at <http://news.gc.ca/web/articleen.do?mthd=tp&crtr.page=1&nid=853729&crtr.tp1D=930>

² Bruckert, C and T. Law, Beyond Pimps, Procurers and Parasites: Mapping Third Parties in the Incall/Outcall Sex Industry, Rethinking Management in the Adult Sex Industry Project, March 2013, (40-55). Available at [http://www.nswp.org/sites/nswp.org/files/ManagementResearch%20\(4\).pdf](http://www.nswp.org/sites/nswp.org/files/ManagementResearch%20(4).pdf)

Provision 286.1(1): Prohibition against the purchase of sexual services “Commodification of Sexual Activity”

- Evidence supports the conclusion that the prohibition of the purchase of sexual services does not reduce the demand for the services, or work to eliminate prostitution.³
- The ability of sex workers to adequately screen clients is impeded, therefore the risk of violence and sexually transmitted infections is increased while access to police protection is constrained.
- Evidence supports the conclusion that this legislative response forces both indoor and street based sex workers to work alone and in dangerous conditions.^{4,5}
- Inhibits willingness of witnesses to report situations of suspected coercion or trafficking due to fear of criminal liability.
- Inhibits ability for sex workers to report situations of coercion, trafficking or assault, as they are party to an illegal act.

Provision 286.2: “Material Benefit from Sexual Services”

- This is a reiteration of the struck provision “living off the avails of prostitution struck in the Bedford Decision” and should not be criminalized nor be tied to a “legitimate living arrangement” as such arrangements should be self-determined in consensual sex work and not prohibited by the Criminal Code.
- Evidence demonstrates that the inability to access health and safety provisions, labour law and human rights protection will increase the isolation of sex workers and decrease safety.⁶
- Independent sex workers will be limited in their ability to hire security guards, receptionists, internet service providers, call managers and those who compile bad date lists for safer engagement in sex work, because these relationships that may not be deemed “legal and moral obligations” or “legitimate living arrangements” and therefore could be subject to prosecution. This re-introduces the risks to individual and community safety by re-creating the harms of the “living off of the avails” provision struck by Bedford. This provision unduly limits the ability of workers to protect themselves, and to hire support staff and seek protection.

³ Levy J and P. Jakobsson, “Sweden’s abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden’s sex workers” *Criminology and Criminal Justice*, March 2014, (1-15) Available at <http://lastradainternational.org/lsidocs/3049-Levy%20Sweden.pdf>

⁴ Krusi A, Pacey K, Bird L, et al., *Criminalisation of clients: reproducing vulnerabilities for violence and poor health among street-based sex workers in Canada—a qualitative study*. 2014 *BMJ Open* 2014, Available at <http://bmjopen.bmj.com/content/4/6/e005191.full?keytype=ref&ijkey=dJU3wHI0LEkteB7>

⁵ SWUAV et al. “My Work Should Not Cost me My Life”. Pivot Legal Society, Vancouver May 2014, Available at http://www.pivotlegal.org/y_work.

⁶ Gillies, K., *A wolf in sheep’s clothing: Canadian anti-pimping law and how it harms sex workers*. In E. van der Meulen, E. Durisin & V. Love (Eds.), *Selling sex: Experience, advocacy, and research on sex work in Canada*, Vancouver, UBC Press, 2013, (412-426)

Provision 286.4: Advertising Sexual Services

- This provision makes sex worker collectives and businesses unable to advertise in newspapers, online, or in other forms of media and therefore impedes the establishment of safer indoor work spaces due to the inability to use advertising to specify services and safety procedures that assist in screening clients.
- Supporting evidence suggests the inability to advertise will interfere in law enforcement efforts to locate and combat exploitation and trafficking.⁷
- Immunity from prosecution under this provision is only extended to those that can prove they are working alone and advertising for themselves alone. This is not a viable option for sex workers who want to work in collectives. This isolates sex workers and puts them at further risk to violence and harm.
- Decreases virtual/on-line safety networks and access to essential health and social services, which are often provided through these online networks.
- Evidence suggests this will force sex workers to utilize websites hosted outside of Canada and beyond the jurisdiction of Canadian law, resulting in less ability to address exploitation.⁸
- The criminalization of web providers will hurt enforcement efforts to identify involuntary sex workers. The online environments will become even more clandestine to avoid prosecution and further isolate sex workers who negotiate their transactions online.

Federal Government's Commitment of Funds for Exiting

Exiting from sex work is a process, not an event. To be successful, the resources to support a continuum of needs and readiness to transition must be available. While new funding for those who want to leave sex work is necessary, it is wholly insufficient. The underlying reasons vulnerable people resort to sex work are deeply rooted in problems such as systemic racism and the legacy of residential school trauma, sexism, lack of healthy public policy to reduce poverty, and lack of affordable, accessible housing and childcare. Coherent and sustained policy changes far upstream are needed to improve these determinants of health.

Beyond investing in these areas, the costs of expanded, integrated, and comprehensive care of mental illness and addiction for these vulnerable groups would itself require a much more significant investment than that proposed. Funding attached to any new law must be sufficient to address root causes, and be stable.

Criminalizing any part of a transaction creates inherent risks to the safety of sex workers. While Sweden has enacted the "Nordic Model" of prostitution laws, these prostitution laws are also surrounded by a legal and social context including universal childcare and generous parental leave. Regardless, those sex workers who have experience in the Nordic model, where the purchase of sex work has been criminalized, have shown increased risk to safety.⁹

⁷ M. Latonero et al., USC Annenberg Ctr. on Comm'n Leadership & Policy, Human Trafficking Online: The Role of Social Networking Sites and Online Classifieds, CCLP 2011 Report, 2011 (21-22) Available at http://technologyandtrafficking.usc.edu/files/2011/09/HumanTrafficking_FINAL.pdf

⁸ Office of the Attorney General, Criminal Justice, Section 23 of the Irish Criminal Justice, Public Order Act, 1994 Available at <http://www.irishstatutebook.ie/1994/en/act/pub/0002/index.html>

⁹ January 203 Canadian HIV/AIDS Legal Network, "Sex Work Law Reform in Canada: Considering problems with the Nordic model", <http://www.aidslaw.ca/publications/publicationsdocEN.php?ref=1398>

So far, the legislation, the Nordic model and discussions of exiting do not address the disproportionate number of Aboriginal people represented in survival sex work or how this intersects with rates of violence or rates of incarceration. This proposed funding does not offer an adequate solution to the issues such as poverty, racism or stigma that entrench sex workers in survival sex work.

Position

Due to the devastating loss of the missing and murdered women in the Downtown Eastside of Vancouver, and the continued violence and stigma against sex workers (consistently reported by sex worker-serving organizations through local bad date lists and outreach programs), we are committed to developing progressive and compassionate approaches with law enforcement, and health and social service partners to increase awareness, minimize social harm and implement inclusive policies and practices for sex workers in Vancouver. The City of Vancouver and Vancouver Coastal Health are committed to forming local responses that address the underlying causes of violence and reduce violence against sex workers and save lives.

Municipalities, provincial health ministries and regional health authorities, need to have input into any proposed legislative changes regarding sex work as those responsible for the implementation, enforcement and impacts. A comprehensive approach to the issues cannot be addressed by legislation alone.

The City of Vancouver and Vancouver Coastal Health wholly support safe and healthy communities for all residents. We concur that there needs to be Criminal Code provisions that prohibit forms of exploitation and abuse, including against sex workers, to ensure that all Canadians are protected against violent offenders and those who act to dehumanize and victimize others. However, neither selling nor purchasing sex between consenting adults should be illegal. This includes communication with the intent to sell or purchase and advertising with the intent to sell.

There is ample research that states this proposed legal framework, similar to many existing worldwide models, has been proven to result in further sexual assault and violence.¹⁰ The criminalization of sex work contravenes the spirit of the Bedford decision and raises considerable concerns for the future health and safety of sex workers. Harm reduction methods would better address the health and safety of sex workers and would further serve to reduce the impacts that sex work may have on other community members than the proposed legislation.

Rapid and extreme law reform that does not take into account the diversity of sex workers, will further exacerbate the damaging stereotypes and stigma caused by criminalization, and will continue to undermine the safety of those involved. Systemically racialized sex workers, such as Indigenous and immigrant persons, are especially vulnerable to punitive laws as they already face significant barriers in the criminal justice system.

The law cannot infringe on sex worker's rights to life, liberty, and security of the person, and freedom of expression under the *Charter of Rights and Freedoms*. Bedford also tells us that the law cannot create an unsafe environment for sex workers.¹¹

¹⁰ Sandra Ka Hon Chu and Rebecca Glass, Alberta Law Reform Review 51, Sex work Law Reform in Canada: Considering Problems with the Nordic Model, Canadian HIV/AIDS Legal Network, Journal Article, October 2013, (101-124)

¹¹ SUPREME COURT OF CANADA, Citation: Canada (Attorney General) v. Bedford, 2013 SCC 72, [2013] 3 S.C.R. 1101, December 20, 2013, Available at <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do>

We agree with Amnesty International, in that

...policies which purport to support and improve the situation of the resource-poor must focus on empowering the disenfranchised and directly addressing structural disadvantages such as poverty, not on devaluing their decisions and choices or criminalizing the contexts in which they live their lives. We believe that a policy based on human right principles that values the input and experiences of sex workers is the most likely to ensure that no one enters or stays in sex work involuntary.¹²

And as such, we urge the Federal Government to refer Bill C-36 to the Supreme Court of Canada in order to ensure its constitutionality and compliance with the Charter of Rights and Freedoms.

¹² Amnesty International, Decriminalization of Sex work: Policy Background Document, January 2014, (1)
Available at <http://www.scribd.com/doc/202126121/Amnesty-Prostitution-Policy-document>

Background of the City of Vancouver/VCH Partnership and Joint Submission

On March 8th 2013, The City of Vancouver and Vancouver Coastal Health signed “A Healthy Vancouver for All: a Healthy City Partnership MOU.” The vision for this collaboration is a Healthy City for All: a city where together we are creating and continually improving the conditions that enable all of us to enjoy the highest level of health and well being possible. It is through this vision, that we submit this position to the House of Commons Justice Committee for consideration.

The City of Vancouver's mission is to create a great city of communities that cares about our people, our environment, and our opportunities to live, work, and prosper. The City of Vancouver, including the Vancouver Park Board, is regulated under the Vancouver Charter, passed in 1953, a provincial statute that contains the rules that govern how the City operates, what bylaws City Council can create, and how budgets are set. Other provincial legislation, such as the BC Police Act, determine the responsibilities of other City boards and commissions. The primary mandate is to provide local programs and services, including police, fire and rescue services, parks and recreation, libraries, as well as to regulate land use planning and development. The municipality is also responsible for the provision of public infrastructure including streets, sewers, water and transportation planning. Vancouver’s population of over 603,000 is situated in the metro region of 2.46 million people.

Vancouver Coastal Health is responsible for the delivery of \$3.2 billion in community, hospital and residential care to more than one million people in communities including Richmond, Vancouver, the North Shore, Sunshine Coast, Sea to Sky corridor, Powell River, Bella Bella and Bella Coola. As part of our goal to improve the health of our communities, we are dedicated to reducing inequities in the health of our population.

Attachments

The City of Vancouver previously submitted a position through the Online Public Consultation on Prostitution-Related Offences in Canada by the Department of Justice in March 2014. This has been included as supplementary supporting document.