

March 17, 2014

Government of Canada
Department of Justice
Via email to: Consultations.Prostitution@justice.gc.ca

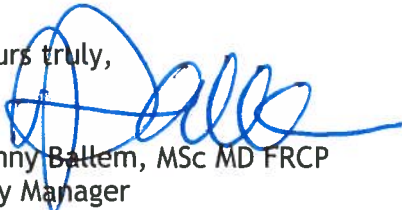
Dear Honourable Minister of Justice,

Re: Public Consultation on Prostitution-Related Offenses in Canada

The following documentation includes the City of Vancouver's response to the on-line questionnaire "Public Consultation on Prostitution-Related Offenses in Canada". It also includes additional background information on Vancouver's response to the Missing Women Commission of Inquiry, issues identified in your *Discussion Paper* as well as the rationale for responses. It is the City's position that Parliament must also consult directly with municipalities on changes to the Criminal Code in response to the Bedford Decision as municipalities will bear the burden of the impact at the local level.

The City of Vancouver is recognized as a leader in Canada for its municipal response to the issues impacting sex workers and communities and sexual exploitation. We look forward to an opportunity to consult further on this important issue and we are happy to respond to any further questions.

Yours truly,



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City of Vancouver Position on the Community Impact of Bedford Decision and potential changes to Canadian Criminal Code

- **In Response to Federal Public Consultation on
Prostitution Laws**

3/17/2014
City of Vancouver

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Executive Summary

This paper reflects the City of Vancouver response to the Federal Government's on-line, one-month public consultation which opened on February 14th regarding the December 2013 Bedford Decision.

In *Canada (Attorney General) v. Bedford*, The Supreme Court struck down three laws related to prostitution in December 2013:

- Prohibiting the keeping and being an inmate of or found in a bawdy house (section 210)
- Living off the avails of prostitution (section 212(1)(j)); and
- Communicating in a public place for the purpose of engaging in prostitution or obtaining the sexual services of a prostitute. (section 213(1)(c),

While prostitution is legal in Canada, the Supreme Court ruled these laws surrounding prostitution were violating the Charter of Rights and Freedom by preventing sex workers from protecting themselves, e.g. selling sexual services indoors, hiring bodyguards and drivers, and negotiating safer conditions for the sale of sexual services in public places. Parliament has one year (until December 2014) to bring in new legislation.

The City's input responds to the Federal Government's questionnaire. Additional information on Vancouver's context, including the City's response to the Missing Women Commission of Inquiry, issues identified in the Federal Government's discussion paper, and rationale for the City's response to the questionnaire is provided in the background section.

In summary, the City of Vancouver recommends that:

1. New laws must be consistent with the Bedford decision with a focus on the health, safety and human rights of adults engaged in sex work.
2. Any laws addressing sex work should not constrain a sex worker's ability to exit due to barriers such as criminal records.
3. Neither selling nor purchasing sex between *consenting* adults should be illegal. This includes communication with intent to sell or purchase.
4. Indoor sex work is implicitly safer for both workers and the community and therefore "Bawdy Houses" should not be illegal.
5. Living off the avails of prostitution should not be illegal as it undermines sex workers from protection and security from their families.
6. Portions of the Criminal Code that pertain to violence, coercion and exploitation should be expanded and be specific to enhance the safety of sex workers.
7. Sexual exploitation of youth is never consensual and therefore youth involved in sex work should not be illegal or criminalized. That purchasing, or attempting to

purchase sex from a youth under the age of 19 should be illegal. This is maintained in the Criminal Code Section 212(4).

8. Youth who are engaged in transactional sex (for food, money, shelter etc.) should not be criminalized for being sexually exploited. Further support from laws governing child welfare and youth justice must be developed to further support law enforcement and service providers in their ability to intervene.
9. The federal government needs to consult with municipalities given local government jurisdiction over zoning, by laws, by law enforcement, and business licensing and roles played in mitigating neighbourhood impacts including strategies involving law enforcement and residents.
10. Other police forces in Canada should adopt the Vancouver Police Department's Sex Work Enforcement Guidelines and best practices including the Sister Watch program, and that
11. The call for a national public inquiry into missing and murdered Aboriginal women and girls in Canada, and the involvement of Aboriginal women in the design, decision-making process and implementation of this inquiry are supported.

Public Consultation on Prostitution Questions

- 1. Do you think that purchasing sexual services from an adult should be a criminal offence? Should there be any exceptions? Please explain.**

No. Consensual and adult sex work should not be a criminal offence. Criminalization of any part of the transaction has proven to place sex workers at extreme risk. Only in situations of coercion or exploitation should there be law enforcement intervention. The criminal code already contains specific laws that address violence, sexual assault, harassment, threats and other related abuses.

- 2. Do you think that selling sexual services by an adult should be a criminal offence? Should there be any exceptions? Please explain.**

No. Selling consensual sexual services should not be a criminal offence. Criminalization of any part of the transaction has proven to place sex workers at extreme risk. Only in situations of coercion or exploitation should there be law enforcement intervention.

Although the criminal code already contains specific laws that address violence, sexual assault, harassment, threats and other related abuses, there is still a significant issue with the protection of sex workers from exploitation. A new legal/regulatory framework in regard to the protection of sex workers from exploitation of any kind needs to be developed.

The City's recommendation is that the criminal code be rewritten to better address the protection of sex workers from predators, exploitive pimps, and protection from trafficking, and to specifically address the coercive and exploitive nature of non-consensual sex work. The City recommends that in doing so, that there be no room for misinterpretation of the intent that would violate the Charter of Rights and Freedoms of sex workers to ensure their own health, safety and well-being. Furthermore, any laws addressing sex work should not constrain a sex worker's ability to exit due to barriers such as criminal records.

- 3. If you support allowing the sale or purchase of sexual services, what limitations should there be, if any, on where or how this can be conducted? Please explain.**

Canada needs to develop a legal framework that respects and reflects adult sex worker's healthy, safety and human rights. There should be no criminalization of either the consensual selling or purchasing of sex work.

Disallowing the sale or purchase of sexual services should be targeted only if it

involves the exploitation of children and youth and those adults being forced to engage against their consent in any aspect of sex work.

The criminal code already contains specific laws that address violence, sexual assault, harassment, threats, exploitation, trafficking and other related abuses. A new social/legal/regulatory framework in regard to the protection of sex workers from exploitation of any kind needs to be developed. This should be developed in consultation with all levels of government, sex workers, community, women's and Aboriginal organizations, to ensure that the goals of such a framework can be successfully met.

Initial work done by the City in the area of protecting the health and safety of sex workers and mitigating neighbourhood impacts has identified the following gaps in services, supports, regulation and enforcement:

- **Direct services:** increase the capacity of health, support and outreach programs that are tailored to the unique populations that exist within sex work such as Aboriginal, immigrant, migrant, male and transgendered sex workers and at-risk youth.
- **Housing availability and accessibility:** develop a continuum from safe houses, supportive housing and subsidized housing for sex workers and sexually exploited youth that include holistic services such as food security, counselling and integrated health care etc.
- **Transitioning and exiting options for sex workers:** advocate for and explore funding options for an effective service delivery model that provides alternative life and work options for those desiring to exit sex work.
- **Greater awareness and training of multiple stakeholders:** coordinate on-going discussions with senior governments and key stakeholders on response strategies of sex work and sexual exploitation, particularly after the Supreme Court of Canada's Bedford decision.
- **Community health and social services:** increase sensitivity and confidentiality training to health, financial, and employment agencies that sex workers access. Increase mental health and addictions supports and services.
- **Prevention of sexual exploitation:** promote mandatory province-wide prevention curriculum for youth, parents, teachers and communities.
- **Coordinated immediate intervention response strategies:** enhance collaborative responses of the VPD, community agencies and provincial departments to reports of exploitation and trafficking.
- **Legal access:** enhance sex worker awareness on available legal aid resources and access to pardons to support transitioning from sex work.
- **Aboriginal:** Specific services must be developed and geared directly to the disproportionate number of Aboriginal people involved in survival sex work and exploitation.

- **Poverty:** provide enhanced social assistance and income supports to alleviate extreme poverty that can lead to survival sex work.

4. Do you think that it should be a criminal offence for a person to benefit economically from the prostitution of an adult? Should there be any exceptions? Please explain.

No. Benefiting economically from prostitution should not be a criminal offence. Sex workers should be able to establish business and personal relationships that improve their health, safety and well-being.

As noted above, only in situations of coercion and exploitation should there be law enforcement intervention.

5. Are there any other comments you wish to offer to inform the Government's response to the Bedford decision?

Please refer to the attached document.

6. Are you writing on behalf of an organization? If so, please identify the organization and your title or role:

City of Vancouver

Background

This background provides context to the issues of sex work in Vancouver, including the City of Vancouver response to the Missing Women's Commission of Inquiry (MWCI), and discusses issues reflected in the Federal discussion paper and provides rationale for responses to the public consultation questions.

The MWCI was established in September 2010 to examine the investigations by the police between 1997 and 2002 and failures within the justice system in regard to the missing and murdered women in the DTES who, due to shared conditions of marginalization, poverty and health inequities, were vulnerable to extreme violence. Out of the MCWI 2012 report, "Forsaken", 63 recommendations were proposed with three directed to the City of Vancouver:

- That all entities with proposed responsibilities under the Living in Community (LIC) Action Plan commit to these priority actions which together form a strong basis for enhancing the safety of women engaged in the survival sex trade (MWCI Recommendation 5.2)
- That the City of Vancouver create and fund two community-based liaison positions to be filled by individuals who have experience in the survival sex trade (MWCI Recommendation 5.5).
- That the City of Vancouver and the Vancouver Police Department take proactive measures to reduce the numbers of court warrants issued for minor offences. (MWCI Recommendation 5.9)¹

On September 22nd 2011, Vancouver City Council approved the recommendations and actions in the report "Preventing Sexual Exploitation and Protecting Vulnerable Adults and Neighbourhoods Affected by Sex Work: A Comprehensive Approach and Action Plan"². This report identified the need for a coordinated approach that included the following key elements:

- enhanced prevention and awareness,
- access to health and safety services,
- investment in social services and supports, including adequate resources to assist individuals to exit sex work, and
- strengthened regulatory and enforcement approaches which better addressed complex challenges and met the needs of individuals at risk and neighbourhoods.

A city-wide Task Force comprised of community organizations, researchers, and all levels of government was convened to implement the outlined actions.

¹ Oppal, WT. Forsaken: The Report of the Missing Women Commission of Inquiry Executive Summary, November 19 2012, P163-164 <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>

² <http://former.vancouver.ca/ctyclerk/cclerk/20110922/documents/penv4.pdf>

On December 18th 2013, Vancouver City Council approved the staff recommendations included in the “Report back on Missing Women Commission of Inquiry and the City Task Force on Sex Work and Sexual Exploitation”³, and requested a future report from the City’s Social Policy Department on the pending Supreme Court of Canada decision in *Canada v. Bedford*.

The safety and inclusion of all residents is in direct alignment with the integrated long-term plan of the Healthy City Strategy⁴ (HCS) of the City of Vancouver and Mayor and Council’s priorities for a safe and livable city for all Vancouver residents. Further, this commitment is supported by a Memorandum of Understanding and partnership with the local health authority, Vancouver Coastal Health.

³ <http://former.vancouver.ca/ctyclerk/cclerk/20131218/documents/cfsc7.pdf>

⁴ <http://vancouver.ca/people-programs/healthy-city-strategy.aspx>

The City of Vancouver Responses to the MWCI recommendations:

The City of Vancouver has taken several actions in response to the MWCI including;

1. Responded to 11 of 12 actions from the Living in Community's (LIC) 2007 Action Plan where the City has some role to play, developed through an extensive process of community engagement, includes 27 recommendations on safety and social justice issues for sex workers, sexually exploited youth and the neighborhoods they share throughout Vancouver.
2. Filled two permanent Social Planner positions to liaise with community and police, and identify gaps and barriers affecting the safety and well-being of those involved in sex work as well as addressing and preventing the sexual exploitation of youth.
3. Allocated \$427,780 in social grants to organizations that support programs and services for sex workers and prevention of sexual exploitation (see Appendix A). This is an increase of 179% since 2010.
4. Implemented pilot training sessions for City staff on effective responses to sex work and related issues, sexual exploitation and vulnerable populations.
5. Collaborated with senior government and community to meet the housing needs for vulnerable women.
6. Changed by-laws to better support the health and safety of indoor sex workers
7. Development of by-law enforcement/outreach protocol and staff response guidelines to provide integrated, proactive and coordinated approach to support the safety of sex workers and address community concerns is underway.
8. Addressed the recommendation of reducing the number of court warrants for minor offences in partnership with VPD through research on the issue and providing a factual response.⁵
9. Support the Sister Watch program, a promising practice and partnership between community organizations and the Vancouver Police Department that supports the safety of vulnerable women in the DTES.

Considerations for Key Issues and Needs for Sex Workers and Sexually Exploited Youth

The City will continue build on, extend and evaluate the priority actions in the Policy report, "Preventing Sexual Exploitation and Protecting Vulnerable Neighborhoods Affected by Sex Work: A Comprehensive Approach and Action Plan."⁶

⁵ City of Vancouver, Social Policy Report, December 18, 2013, Report Back on Missing Women Commission of Inquiry and Task Force on Sex Work and Sexual Exploitation. Appendix B, Page 2
⁶ City of Vancouver, Policy Report, Social Development, September 22 2011, Preventing Sexual Exploitation and Protecting Vulnerable Adults and Neighbourhoods Affected by Sex Work: A Comprehensive Approach and Action Plan.

Despite the City of Vancouver's leadership and convening of senior levels of government and other partners, a number of critical gaps still exist. The identified gaps in services and supports for sex workers and sexually exploited youth include:

- **Direct services:** increase the capacity of health, support and outreach programs that are tailored to the unique populations that exist within sex work such as Aboriginal, immigrant, migrant, male and transgendered sex workers and at-risk youth.
- **Housing availability and accessibility:** develop a continuum from safe houses, supportive housing and subsidized housing for sex workers and sexually exploited youth that include holistic services such as food security, counselling and integrated health care etc.
- **Transitioning and exiting options for sex workers:** advocate for and explore funding options for an effective service delivery model that provides alternative life and work options for those desiring to exit sex work.
- **Greater awareness and training of multiple stakeholders:** coordinate on-going discussions with senior governments and key stakeholders on response strategies of sex work and sexual exploitation, particularly after the Supreme Court of Canada's Bedford decision.
- **Community health and social services:** increase sensitivity and confidentiality training to health, financial, and employment agencies that sex workers access. Increase mental health and addictions supports and services.
- **Prevention of sexual exploitation:** promote mandatory province-wide prevention curriculum for youth, parents, teachers and communities.
- **Coordinated immediate intervention response strategies:** enhance collaborative responses of the VPD, community agencies and provincial departments to reports of exploitation and trafficking.
- **Legal access:** enhance sex worker awareness on available legal aid resources and access to pardons to support transitioning from sex work.
- **Aboriginal:** Specific services must be developed and geared directly to the disproportionate number of Aboriginal people involved in survival sex work and exploitation.
- **Poverty:** provide enhanced social assistance and income supports to alleviate extreme poverty that often leads to survival sex work.

Considerations for Sexually Exploited Youth and Victims of Trafficking

Minimizing the risk to juveniles is a recurring theme in national discussions on the pending legislation. The Criminal Code already covers the serious issues of trafficking, exploitation and violence in several other sections. Specifically, in regards to the sexual exploitation of youth in Canada, Section 212(4) of the Criminal Code states it is illegal to buy, or communicate with the intent to buy, sexual services from anyone under the age of 18.⁷

Offence — prostitution of person under eighteen

212(4) Every person who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person who is under the age of eighteen years is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years and to a minimum punishment of imprisonment for a term of six months.

This section of the criminal code still empowers law enforcement with a legal tool for the intervention needed for their counter-exploitation efforts, to intervene in the sexual exploitation of those under the age of 18. However, further support from laws governing child welfare and youth justice must be developed to further support law enforcement and service providers in their ability to intervene.

Similarly, Canada's criminal laws prohibit trafficking in persons for any exploitative purpose, regardless of whether the trafficking occurs wholly within Canada or whether it involves bringing persons into Canada. Canada's criminal laws apply across the country and provide a uniform approach to address Trafficking in Persons and related conduct. Specific offences include (279.01-279.03): kidnapping, forcible confinement, uttering threats, extortion, assault, sexual assault, prostitution-related offences, and criminal organization offences.⁸

Criminalization of Prostitution

It is the City's position that the new laws must be consistent with the health, safety and human rights of those involved in adult and legal sex work. The evidence that criminalization of laws associated with sex work leads to violence regardless of choice, circumstance or coercion is indisputable. Safety issues caused by criminalization lead the court to conclude the laws were unconstitutional.

⁷ It should be noted that the Supreme Court of Canada did not reference the Sexual exploitation of youth in the Bedford ruling of Section 213(1)(c) which addresses communicating in public for the purposes of prostitution.

⁸ Government of Canada, Department of Justice, Criminal Code Sections: 279.01-279.03

The City recommends that:

- a) Neither selling nor purchasing sex between *consenting* adults should be illegal. This includes communication with intent to sell or purchase.
- b) Indoor sex work is implicitly safer for both workers and community and therefore “Bawdy Houses” should not be illegal.
- c) Living off the avails of prostitution should not be illegal as it undermines sex workers from protection and security from their families.
- d) Portions of the criminal code that pertain to violence, coercion and exploitation should be expanded and be specific to enhance the health and safety of sex workers.
- e) Sexual exploitation of youth is never consensual and therefore youth involved in sex work should not be illegal or criminalized. That purchasing, or attempting to purchase sex from a youth under the age of 19 should be illegal.

The City’s recommendation is that the portion of the criminal code that addresses the original intent behind both the bawdy house laws and the living off the avails, the protection of sex workers from an exploitive pimp, and protection from trafficking, be rewritten to specifically address the coercive and exploitive nature of non-consensual sex work. The City recommends that in doing so, that there be no room for misinterpretation of the intent that would violate the charter of rights and freedoms of sex workers to ensure their own health, safety and well-being. Furthermore, any laws addressing sex work should not constrain a sex workers ability to exit due to barriers such as criminal records.

Criminalization of the Purchase of Sexual Services

While it is important to consider and respect the differing perspectives on sex work, the health and safety of those involved must be the focal point despite the polarized views on the legality of prostitution. On one end, proponents of legalization say that prostitution is legitimate work, albeit in a potentially violent workplace, and that whatever ills accompany the sex trade are exacerbated by criminalization. Others see prostitution as rampant gender inequality; the exploitation of girls and women that perpetuates the notion that human beings are commodities. Supporters of the decriminalization model do not want sex work to be legalized with strict government regulation and control. Instead they posit that sex work is a societal norm, will inevitably continue and needs to happen with safe and protective laws and non-judgemental access to wider community supports and services.

The City recommends that that neither selling nor purchasing sex between consenting adults should be illegal. The health and safety of community and sex workers, particularly of survival sex workers (who predominantly work on the street and not indoors), is the basis for this position.

Both community safety and the safety of workers becomes severely compromised when transactions, or portions of transactions, such as communicating for the purchase of sex work, or the purchase of sex work, are criminalized. The City understands the VPD perspective that removing the ability to police buyer's actions in sex work may increase the harm to many vulnerable sex workers.

However, there are inherent increased risks to the safety of sex workers by criminalizing any part of a transaction. While Sweden has enacted the "Nordic Model" of prostitution laws, these prostitution laws are also surrounded by a legal 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 safety⁹:

- increased risk and experience of violence.
- workers are pushed into more remote and secluded environments as clients prioritize avoiding prosecution.
- darker, more secluded spaces limit possibility of intervention and rescue by police.
- workers are limited from negotiating terms if unable to negotiate openly to terms and services.
- time to assess risk before taking a client or getting into a clients' vehicle is limited and increases danger for workers (workers must decide to get into a vehicle with little to no discussion or assessment as to who is in the vehicle). Unable to make adequate decisions regarding safety.
- negotiating options for sex workers are diminished and they can be forced into acts they would not otherwise consent to.
- witnesses to the criminal act of prostitution are the workers themselves.
- safety networks and warning practices of sex workers are impeded.
- creates a legal incentive to avoid condom use as they could potentially be used as evidence.

Furthermore, the stigma associated with sex work and prostitution, reinforced by the criminalization of any part of the selling or purchase results in:

- increased discrimination from community, health practitioners, service providers as misinformation, shame and blame are reinforced by the criminal code.
- increased difficulties in accessing and maintaining safe, appropriate and affordable housing.
- reduced access to services and reinforces care-resistance within the sex work community.

9 January 2013 Canadian HIVS/AIDS Legal Network, "Sex Work Law Reform in Canada: Considering problems with the Nordic model", <http://www.aidslaw.ca/publications/publicationsdocEN.php?ref=1398>

National Implications of changes to the Criminal Code

Municipal Consultation

It is the City's position that Parliament must specifically consult with municipalities on changes to the Criminal Code in response to the Bedford decision. This consultation is crucial as municipalities will bear the burden of impact on the local level. These changes will affect every local level of responsibility and delivery of service including:

- Law enforcement
- Bylaws and by law enforcement
- Zoning
- Business licensing
- Housing development and access
- Development opportunities
- Strategies between law enforcement and communities

City staff cannot anticipate by-law, zoning and business licensing implications concerning the safety of sex workers until any new Federal legislation is introduced, especially if the Federal Government decides to implement broader guiding principles and, in effect, download the responsibility of regulation of sex work, including ensuring their health and safety, to municipalities.

Vancouver Police Department Guidelines and Best Practices

The Vancouver Police Department, with community consultation, developed Sex Work Enforcement Guidelines¹⁰ that show the intention of prioritizing the safety of sex workers, using discretion in enforcement.

“The VPD values building relationships with those involved in the sex industry in order to increase the safety of the workers, reduce victimization and violence, and where appropriate (such as with children and teens) to assist with exit strategies. In all situations, VPD officers will treat those in the sex industry with respect and dignity.”

The VPD Guidelines go on further to state that:

“Citizens of Vancouver involved in sex work are entitled to the same level of safety and protection under the law as are all residents of the City... The VPD believes it is important to act in a manner that is proportional to the risk presented and use the least intrusive method possible to manage a problem. As

10 <http://vancouver.ca/police/assets/pdf/reports-policies/sex-enforcement-guidelines.pdf>

such, officers should use discretion in dealing with a complaint, as formal enforcement action may not be required.

However, the VPD expects that officers will escalate their response in higher risk situations (as outlined above), or where previous attempts with less intrusive tactics have failed.”

This position, to minimize intrusion, build relationships, respect sex workers, and only rely on escalated response in the most extreme of cases, shows a respectful and collaborative approach that focuses on community safety –including the safety of sex-workers. The VPD Guidelines are unique. They were born out of necessity to address the extreme level of violence and impunity with which sex workers have been targeted in the city of Vancouver but could be adopted across the country.

Any proposed revision to the Criminal Code must recognize that even laws designed to help law enforcement in supporting the safety and well-being of sex workers and communities impacted by sex work can be applied inequitably. The VPD approach is a step in the right direction but it is not a national approach and the interpretation discretion can also be applied in punitive ways that compromise the safety of sex workers and the communities in which they live and work. Other police jurisdictions can adopt the VPD approach along with sufficient training and supports.

Appendix A – 2013 City of Vancouver Social Grants in Support of Sex Worker Organizations

Organization	Program Description	2013 Funding Amount
Living in Community	For community developer position	\$20,300
Collingwood Neighbourhood House	Sex Work Awareness for Everyone (SAFE program via Collingwood Neighbourhood House) for street outreach	\$20,000
Supporting Women's Alternatives Network (SWAN)	Outreach and support for migrant, newcomer and immigrant indoor sex workers	\$20,300
PACE	Reducing isolation and harm through education and support services for sex workers	\$74,956
HUSTLE	Program via Health Initiatives for Men for supports for men in the sex industry and supports for sexually exploited male youth	\$20,340
Mobile Access Project through WISH	Mobile outreach and support for sex workers.	\$50,000
WISH	Drop in program for sex workers	\$81,284
Battered Women's Support Services	To lead a multi-agency consortium that target specific populations within sex work to develop a model for transitioning and exiting programs	\$35,000
PLEA	Community Services to address critical gaps in outreach services for at-risk youth in on-line environments	\$35,600
Vancouver Board of Education	Increase sexual exploitation prevention awareness in Vancouver classrooms	\$30,000
Supporting Women's Alternatives Network (SWAN)	To develop and pilot on-line outreach to indoor sex workers to support health and safety	\$40,000
TOTAL 2013 Grants		\$427,780