

February 28, 2016

Reply to: Brenda Belak
Direct Line: (604) 255-9700 x 150
E-mail: brenda@pivotlegal.org

Via Email: FFADA-MMIWG@aandc-aadnc.gc.ca

Missing and Murdered Indigenous Women and Girls Pre-Inquiry Secretariat
15 Eddy Street, 6th Floor
Gatineau, Quebec
K1A 0H4

Dear Secretariat members:

Re: Recommendations for the design of the Missing and Murdered Indigenous Women and Girls Inquiry

I write on behalf of Pivot Legal Society, an organization that has been working with marginalized women and on issues of police accountability in Vancouver's Downtown Eastside since 2002. We have acted in a legal capacity with Indigenous sex workers fighting to decriminalize sex work since 2005. Pivot represented Downtown Eastside Sex Workers United Against Violence (SWUAV) in two cases aiming to strike down Canada's criminal laws on sex work, *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society and Kiselbach*, 2012 SCC 45 (*DESWUAV*), and *Canada (Attorney General) v Bedford, Scott and Lebovitch*, 2013 SCC 72 (*Bedford*). SWUAV is a peer support organization of sex workers in Vancouver. At any given time since its incorporation as a society in 2007, between 60% and 80% of SWUAV's members have identified as Indigenous women.

Like other Indigenous women in Canada who have grown up with colonialism's legacy of systemic and structural violence, Indigenous sex workers regularly experience physical, sexual, and emotional violence in their work and in their lives. Indigenous women were disproportionately represented among the missing and murdered women in the Downtown Eastside and along the Highway of Tears who were the focus of BC's Missing Women Commission of Inquiry. Indigenous women who exchange sex for money or goods are also disproportionately criminalized and experience the effects of being over policed and under protected, distancing them from law enforcement and exposing them to more violence.

As a member of the BC Coalition on Missing and Murdered Indigenous Women and Girls, Pivot endorses the recommendations for the design of a Missing and Murdered Indigenous Women and Girls Inquiry in the attached documents, which were presented to Minister Bennett on January 12 and February 13, 2016, in Vancouver. We make the following additional recommendations.

Listen to Indigenous sex workers. We believe it is essential that the Inquiry hear from Indigenous women who exchange sex for goods or services about their experiences and the conditions that have caused or contributed to their lack of security. The Inquiry will not get a complete understanding of the experiences of Indigenous women in the sex trade unless it hears from current sex workers and from the people who work with them in support and outreach every day. Making this possible will mean developing special participation mechanisms.

Create safe spaces for those who sell or trade sex to participate, including by allowing for anonymity and ensuring confidentiality if participants desire. Stigma makes it difficult for current sex workers to speak out and to self-identify at community consultations, particularly where activists who campaign for the prohibition of sex work are present. The fear of being outed to their families and communities, of potential violence, and of increased scrutiny and surveillance by law enforcement, may serve to silence those who sell sex if they are required to speak in public forums. Justice Cromwell, writing for the Supreme Court of Canada in *DESWUAV* precisely on why sex workers required the anonymity of a group to bring a legal case forward, recognized the concerns that inhibited sex workers' access as individuals to legal processes at paragraph 71:

They feared loss of privacy and safety and increased violence by clients. Also, their spouses, friends, family members and/or members of their community may not know that they are or were involved in sex work or that they are or were drug users. They have children that they fear will be removed by child protection authorities. Finally, bringing such challenge, they fear, may limit their current or future education or employment opportunities (Affidavit of Jill Chettiar, September 26, 2008, at paras. 16-18 (A.R., vol. IV, at pp. 184-85)).

It is critical that the Inquiry create safe spaces for these women to participate and speak by providing them with opportunities to present anonymously (whether in person or in writing), by preserving confidentiality, and by ensuring participants have appropriate supports.

Provide appropriate monetary and emotional support for participants. Sex workers we have worked with in previous consultation processes have said they would prefer peer support and known, local counsellors and elders to therapists brought in from outside the community specifically for consultations. Most participants require financial support in the way of stipends to make up for missed work and meals and travel costs in order to participate.

Work with and provide funding to trusted community organizations, including sex worker led and sex worker serving groups, to facilitate local consultations. Sex workers are more likely to participate in consultations that are facilitated by community organizations with whom they have existing relationships. There are a number of organizations in Vancouver, including Pivot, SWUAV, WISH Drop-In Centre, and PACE Society, that have convened consultations with sex workers in the past and that would be well-placed to ensure that consultations are conducted

respectfully and sensitively at venues that are accessible to sex workers. These organizations should be actively engaged in design and delivery of consultations.

Allow for creative, flexible methods of receiving evidence, including through anonymous affidavits. Even with well-designed consultation processes in place, some participants may be prevented from participating by distance, life events, or the potential trauma associated with revisiting and recounting painful memories. In order to incorporate their voices, the Inquiry should consider other methods of hearing from sex workers, including sworn affidavits that do not disclose affiant names.

Consider and address the negative impacts that Canada's criminal laws, including the *Protection of Communities and Exploited Persons Act*, have had on Indigenous women's health, safety and human rights. Our current criminal laws on sex work were enacted in response to the Supreme Court of Canada decision in *Bedford*, which found three Criminal Code provisions on prostitution unconstitutional for their infringement of sex workers' right to security of the person under s. 7 of the *Charter*. The new provisions brought in by the *Protection of Communities and Exploited Persons Act* reproduce and add to the harms of the laws they replaced. These laws continue to directly impact all sex workers, including Indigenous sex workers, and prevent them from working in safety. The Inquiry should examine the effects of criminalization on sex workers' lives and the particular impacts of the laws on those who are marginalized and thus restricted by lack of resources to work in particular environments and venues. In conducting this research, the Inquiry can avail itself of the extensive research conducted in Canada about our sex work laws, including the voluminous record before the Court in the *Bedford* decision as well as emerging research in BC.

We are encouraged to see the government's commitment to making this Inquiry a reality and look forward to seeing it take shape. As a final observation, we note that many groups that may have liked to provide input into the design of the Inquiry were unaware of the February 28 deadline for submissions. We hope that the Secretariat will be lenient and continue to consideration to submissions received after the deadline, as much as that is possible.

All of which is respectfully submitted,

PIVOT LEGAL SOCIETY



per:

Brenda Belak
Barrister & Solicitor

Enclosure