

July 7, 2014

The Right Honourable Stephen Harper, P.C., M.P.
Prime Minister of Canada
Office of the Prime Minister
80 Wellington Street
Ottawa, ON K1A 0A2

Dear Prime Minister:

Re: Canada's response to the decision in *Canada (Attorney General) v. Bedford*

We write to you as concerned citizens and members of the legal profession.

We are concerned about the direction your government is taking with respect to adult prostitution in Canada. Bill C-36, also known as the *Protection of Communities and Exploited Persons Act*, proposes a legal regime that criminalizes many aspects of adult prostitution, including the purchase of sexual services, the advertisement of sexual services, and most communication in public for the purpose of prostitution.

As the Supreme Court of Canada unanimously held in *Canada (Attorney General) v. Bedford* ("*Bedford*"), three of Canada's current adult prostitution laws are an unjustifiable infringement of sex workers' right to security of the person, pursuant to s. 7 of the *Canadian Charter of Rights and Freedoms* ("*the Charter*"). These laws were found to create and exacerbate dangerous conditions and prevent sex workers from taking action to reduce or mitigate the risks they face. We are concerned that, for the very same reasons that caused the Court to strike down these prostitution laws, the criminal regime proposed by Bill C-36 is likely to offend the *Charter* as well.

The prohibition on purchasing sexual services (and communicating anywhere for that purpose) will have much the same effect as existing adult prostitution laws. Targeting clients will displace sex workers to isolated areas where prospective customers are less likely to be detected by police. Such criminalization will continue to limit the practical ability of sex workers to screen their clients or negotiate the terms of the transaction, as there will be pressure from clients to proceed as quickly as possible. Sex workers will continue to face barriers to police protection and will be prevented from operating in a safe indoor space, as clients face the potential of being arrested if they attend such spaces.

As a result, while criminalizing the purchase of sexual services is said to be aimed at protecting sex workers, this type of criminal prohibition will in fact do what the current

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Le très honorable Stephen Harper, P.C., M.P.
Premier Ministre du Canada
Bureau du Premier Ministre
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Monsieur le Premier Ministre,

Re: Réponse du Canada au jugement dans *Canada (Procureur général) c. Bedford*

Nous vous écrivons en tant que citoyens et membres de la communauté juridique.

Nous sommes préoccupés par l'orientation envisagée par votre gouvernement en ce qui a trait à la prostitution adulte au Canada. Le projet de loi C-36, intitulé *Loi sur la protection des collectivités et des personnes victimes d'exploitation*, propose un régime légal criminalisant plusieurs aspects de la prostitution adulte, y compris l'achat de services sexuels, la publicité de services sexuels et la majorité des communications publiques relatives à la prostitution.

Tel qu'établi dans le jugement unanime de la Cour suprême du Canada, *Canada (Procureur Général du Canada) c. Bedford* ("*Bedford*"), trois des articles de loi actuels sur la prostitution constituent, en vertu de l'article 7 de la *Charte canadienne des droits et libertés* ("*la Charte*"), une atteinte injustifiable aux droits des travailleurs(euses) du sexe et à la sécurité de leur personne. La Cour a jugé que ces articles de loi créent et exacerbent des conditions de travail dangereuses pour les travailleurs(euses) du sexe, les empêchant ainsi de prendre les moyens nécessaires pour réduire ou atténuer les risques auxquels ils(elles) doivent faire face. Nous sommes préoccupés que le régime proposé par le projet de loi C-36 est susceptible de contrevenir à la *Charte* pour les mêmes raisons ayant amenées la Cour à invalider les trois articles de loi concernant la prostitution.

L'interdiction de l'achat de services sexuels (et la communication n'importe où à cet effet), aurait les mêmes effets que la loi actuelle sur la prostitution adulte. En ciblant les clients, l'on déplacerait les travailleurs(euses) du sexe vers des endroits isolés où les clients potentiels seraient moins susceptibles d'être repérés par la police. Une telle criminalisation continuerait aussi de limiter la capacité effective des travailleurs(euses) du sexe de filtrer leurs clients ou de négocier les termes de la transaction, puisqu'il y aura des pressions de la part des clients de procéder le plus rapidement possible. Une telle criminalisation continuerait également de restreindre l'accès à la protection policière,

adult prostitution laws do, which is to subject sex workers to a greater risk to their safety. This constitutes the reason why such laws were invalidated in the *Bedford* judgment.

Bill C-36 also proposes a law that will prohibit the sex industry from advertising. This type of prohibition will significantly limit sex workers' ability to work safely indoors, as it restricts their ability to communicate their services to potential clients. This is concerning considering that the Court in *Bedford* clearly found that the ability to operate in indoor venues is a key measure for sex workers to reduce the risk of violence.

We would also like to address the proposed prohibition on communication to offer sexual services in a public place that is or is next to a place where a person under the age of 18 could reasonably be expected to be found. This provision continues to criminalize street-based sex workers, who are among the most marginalized segment of the industry, and is only marginally narrower than what the Court struck down in *Bedford*. The law will have the same effect of displacing sex workers to isolated areas where they are more likely to work alone in order to avoid police detection, and where they will continue to rush into vehicles without taking the time to screen clients and negotiate the terms of the transaction.

We urge you to keep in mind the harms that the Court in *Bedford* said were caused by criminal prohibitions and to ensure that any future legal regime conforms to the *Charter* and does not cause sex workers an increased risk of harm.

Yours sincerely,

puisque tant les travailleurs(euses) que les clients craindront la présence policière. De surcroît, les travailleurs(euses) du sexe continuent d'être empêchés(ées) d'opérer dans des endroits sécuritaires intérieurs, puisque les clients seraient susceptibles d'être arrêtés s'ils s'y rendent.

En conséquence, bien que la criminalisation des clients pour l'achat de services sexuels vise soi-disant la protection des travailleurs(euses) du sexe, le mode de prohibition envisagé reproduira les effets des lois actuelles, soit de mettre à risque la sécurité même des travailleurs(euses) du sexe, entraînant du coup les mêmes maux qui ont motivé l'invalidation des lois dans le jugement *Bedford*.

Le projet de loi C-36 propose aussi un article de loi qui interdirait à l'industrie du sexe de faire de la publicité. Ce type d'interdiction limiterait de façon significative la capacité des travailleurs(euses) du sexe de travailler en toute sécurité à l'intérieur car cela limiterait leurs aptitudes à communiquer leurs services aux clients potentiels. Ceci est troublant car la Cour a clairement jugé, dans la décision *Bedford*, que la capacité de fonctionner à l'intérieur est essentielle pour réduire les risques de violences auprès des travailleurs(euses) du sexe.

Nous sommes également préoccupés par l'interdiction proposée d'offrir des services sexuels dans un endroit public où une personne de moins de 18 ans pourrait raisonnablement se trouver. Cet article de loi continue de criminaliser les travailleurs(euses) du sexe qui travaillent dans la rue, ceux-ci (celles-ci) figurant parmi le groupe le plus marginalisé de l'industrie; cet article est seulement marginalement moins restrictif que l'article de loi qui a été invalidé par la Cour dans *Bedford*. L'article de loi aura le même effet de déplacer les travailleurs(euses) du sexe vers des zones isolées où ils(elles) seront davantage susceptibles de travailler seuls pour éviter d'être détectés par la police, et de se précipiter dans des véhicules sans prendre le temps de filtrer certains clients ou de négocier les termes de la transaction.

Nous vous exhortons à garder en mémoire que les maux dénoncés par la Cour dans *Bedford* sont la conséquence d'une prohibition criminelle et à vous assurer que le futur régime légal soit conforme à la *Charte* et qu'ainsi ce nouveau régime n'entraîne pas de risques accrus pour les travailleurs(euses) du sexe.

Bien à vous,

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