

December 17, 2014

**The Honourable Suzanne Anton
Minister of Justice
Box 9044, Station PROV GOVT
Victoria, BC V8W 9E2**

Dear Minister Anton:

Re: *The Protection of Communities and Exploited Persons Act*

The undersigned are organizations deeply committed to the health, safety, and human rights of sex workers.

We are dismayed that the Government of Canada responded to the landmark *Bedford*¹ decision by enacting new laws that criminalize adult sex work. The *Protection of Communities and Exploited Persons Act* (“PCEPA”), which became law on December 6, 2014, creates a legal framework that criminalizes many aspects of adult prostitution, including the purchase of sexual services, the advertisement of sexual services, and communication for the purpose of prostitution. Evidence clearly demonstrates that this approach will have devastating consequences on sex workers throughout Canada.

We ask, therefore, that you create prosecutorial guidelines to guide Crown counsel’s decisions regarding charge approval and prosecutions in adult prostitution matters under the PCEPA. The guidelines should state that sex workers’ safety is a priority and it is not in the public interest to charge or prosecute individuals who are alleged to have violated the following provisions of the *Criminal Code*:

1. The prohibition on the purchase of sexual services (s. 286.1(1));
2. The ban on communication for the purposes of prostitution (ss. 213 and 286.1(1));
3. The amended procuring provision and the prohibition on materially benefitting from another person’s sex work (ss. 286.2(1), (3), (4), (5), (6) and 286.3(1)); and
4. The ban on advertising (s. 286.4).

Enforcement of these provisions is not only harmful to sex workers, but is also unnecessary as a means of providing protection. In cases where coercion, exploitation, or violence against sex

¹ *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101.

workers is alleged to have occurred, charges can be laid under a range of other *Criminal Code* provisions.²

The PCEPA will reproduce the harms that existed under Canada's previous laws

The **new prohibition on purchasing sexual services (and a new, sweeping prohibition on a client communicating anywhere for that purpose)** will recreate or worsen the dangerous conditions that existed under the former prostitution laws. Targeting clients will displace sex workers to isolated areas where prospective customers are less likely to be detected by police. Sex workers will have little or no opportunity 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. Furthermore, sex workers will continue to be prevented from operating in most safe indoor spaces, 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 have the same effect as the former laws, and subject sex workers to greater risks to their safety.

The law also **prohibits the advertising of sexual services**. While an individual sex worker does not face prosecution for advertising their own services, the provision can be interpreted as prohibiting any other party (e.g. a newspaper, website, etc.) from publishing any prostitution-related advertising due to the laws restricting advertising and the prohibition on receipt of material benefit. The practical effect is to make it very difficult for sex workers to find a way to advertise, which will significantly limit sex workers' ability to work safely indoors because they will be unable to promote their services.

We are extremely concerned about the **prohibition on communication (by clients in any place and by sex workers in a public place that is next to a school ground, playground, or day care centre)**, which will harm street-based sex workers, who are among the most marginalized people in the industry. These laws, which make sex workers' clients guilty of a crime for any communication to obtain their services, will have the same effect as the previous laws: sex workers will be less able to take the time to screen clients and negotiate the terms of the transaction before getting into a client's car, and will be displaced to more isolated areas where they are at greater risk of violence and less able to seek help if necessary.

The *PCEPA* creates a new offence of "**receiving a material benefit**," which criminalizes third parties who receive a financial or other material benefit from someone else's sex work. This provision is excessively vague and complicated, making it difficult to determine who is at risk of prosecution.

² House of Commons, Report of the Standing Committee on Justice and Human Rights, *The Challenge of Change: A Study of Canada's Criminal Prostitution Laws*, (December 2006), Appendix D: Non-Exhaustive List Of Generic Provisions Within The Criminal Code Available To Protect Prostitutes, Children and Youth, and Communities.

However, it is clear that the provision will prevent sex workers from creating professional relationships that provide ongoing, secure working conditions. In this regard, the provision creates the same harms as its predecessor, the “living on the avails of prostitution” law. In addition, the material benefit law is unnecessary, because other provisions of the *Criminal Code* already capture the forms of exploitation and abuse that it seeks to prevent. The range of criminal laws that protect sex workers from abuse by third parties and others are set out clearly in *The Challenge of Change, the Report of the Standing Committee on Justice and Human Rights*.³

For these same reasons, we are concerned about the enforcement of **the procuring law**, which is overly broad and will prevent sex workers from establishing non-exploitive safety-enhancing relationships.

Learning from the tragedy of violence against sex workers in British Columbia

We must not allow the conditions that led to an epidemic of violence against sex workers in B.C. communities to persist. The role that criminalization plays in creating conditions for violence was made abundantly clear in the *Bedford* case, where the Supreme Court of Canada held:

By prohibiting communication in public for the purpose of prostitution, the law prevents prostitutes from screening clients and setting terms for the use of condoms or safe houses. In these ways, it significantly increases the risk they face⁴... If screening could have prevented one woman from jumping into Robert Pickton’s car, the severity of the harmful effects is established.⁵

The connection between law enforcement targeting sex work and risk to safety was also a key finding in the final report of Commissioner Wally Oppal, QC in the Missing Women’s Commission of Inquiry:

The relationship between police and sex trade workers is generally marked by distrust, so they tend to under-report crimes of violence. There is a clear correlation between law enforcement strategies of displacement and containment of the survival sex trade to under-populated and unsafe areas in the period leading up to and during the reference period and violence against the vulnerable women. This was an unintentional but foreseeable result.⁶

Based on this finding, Commissioner Oppal recommended that all police forces throughout the province consider developing and implementing guidelines modelled after the Vancouver Police Department’s Sex Work Enforcement Guidelines. The Guidelines state that the VPD’s priority is

³ *Ibid.*

⁴ *Canada v. Bedford*, at para 71.

⁵ *Canada v. Bedford*, at para 158.

⁶ The Hon. Wally T. Oppal, Q.C., *Forsaken: The Report of the Missing Women Commission of Inquiry* (Victoria: Missing Women Commission of Inquiry, 2012), Executive Summary, p. 15 – 16.

to ensure the safety and security of sex workers. Further, the Guidelines explicitly state that sex work involving consenting adults is not an enforcement priority for the VPD.

On this basis, we call on you, as Attorney General, to take the necessary steps to protect the health, safety, and human rights of sex workers in this province. As an essential aspect of that strategy, we ask that you create prosecutorial guidelines stating that sex workers' safety is a priority in British Columbia. Further, we ask that the guidelines state that it is not in the public interest to charge or prosecute individuals who are alleged to have violated the provisions of the *PCEPA* that criminalize sex workers, clients, or others engaged in consensual adult sex work.

We look forward to discussing this matter with you further.

Yours sincerely,

Katrina Pacey, on behalf of **Pivot Legal Society**

Raven Bowen, on behalf of **SPACES Research Project at the University of British Columbia**

Laura Dilley, on behalf of **PACE Society**

Rachel Phillips, on behalf of **Peers Victoria Resources Society**

Dr. Julio Montaner, on behalf of the **BC Centre for Excellence in HIV/AIDS**

Dr. Kate Shannon, on behalf of the **Gender and Sexual Health Initiative, BC Centre for Excellence in HIV/AIDS**

Susan Davis, on behalf of **BC Coalition of Experiential Communities**

Jill Chettiar, on behalf of **Downtown Eastside Sex Workers United Against Violence Society**

Kate Gibson, on behalf of **WISH Drop-In Centre Society**

Janice Abbott, on behalf of **Atira Women's Resource Society**

Joyce Arthur, on behalf of **FIRST Decriminalize Sex Work**

Alison Clancey, on behalf of **SWAN Vancouver Society**

Trina Ricketts-Bagnall, on behalf of **The Naked Truth**

Kailin See, on behalf of **PHS Community Services Society, Drug Users Resource Centre and the Women's Action Group**

Lisa Gibson, on behalf of **Living in Community**