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New research shows criminalization of clients endangers Vancouver sex workers and violates their human rights

BMJ Open study finds criminalization and policing of clients in Vancouver reproduces the same risks for violence, abuse, and poor health for sex workers as previous criminalization model in Canada

Legal analysis of the research concludes criminalization of clients creates an unacceptable risk of harm and violates sex workers' constitutional right to security of the person

Vancouver, B.C. [June 3, 2014]—Criminalizing clients endangers the health and safety of the most marginalized sex workers in Vancouver, Canada, according to a newly published study in one of the top global health journals, *British Medical Journal (BMJ) Open*.

Between January and November 2013, researchers from the Gender and Sexual Health Initiative (GSHI) of the BC Centre for Excellence in HIV/AIDS (BC-CfE) and the University of British Columbia (UBC) conducted in-depth interviews with 31 street-based sex workers in Vancouver to examine sex workers' experiences and negotiation of safety and health following the implementation of new Vancouver Police Department enforcement guidelines introduced in January 2013. The new VPD policy prioritizes sex workers' safety over arrest while continuing to focus enforcement on clients and third parties. The approach of criminalizing clients, but not sex workers, is often referred to as the "Swedish" or "Nordic" model and has received substantial attention in recent months given the federal government's intention to propose new prostitution laws before the end of the year.

Following the new VPD enforcement policy, sex work-related arrests increased from 47 in 2012 to 71 in 2013. Despite the policies express commitment to sex workers' safety, the research suggests that there was no decrease in rates of work-related physical or sexual violence after policy implementation, with 24% of 275 street-based sex workers in 2012 experiencing violence compared to 25% of 236 women in 2013.

Despite the welcomed shift away from police targeting sex workers, sex workers in the study describe how the continued policing of clients recreated the same harms as the current criminalized model in Canada by severely limiting sex workers' control over their health and safety. "Harassing the clients is exactly the same as harassing the women. You harass the clients and you are in exactly the same spot you were before. I'm staying on the streets. I'm in jeopardy of getting raped, hurt." says Jasmine, a sex worker, in the *BMJ Open* report.

"The findings clearly show that criminalization of clients in Canada risks recreating the same devastating harms to the health, safety and human rights of sex workers as the last two decades of missing and murdered women," says Dr. Kate Shannon, senior author of the *BMJ Open* report, GSHI director and associate professor of medicine at UBC. "Sex workers in the research were very clear: Where clients continue to be targets of police, sex workers' ability to protect themselves from violence and abuse or access police protections is severely limited."



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Sex workers interviewed in the study said that criminalizing and policing clients increased their risks for violence, abuse, and health-related harms, including HIV infection, due to:

- an inability to screen prospective clients or negotiate the terms of transactions;
- displacement to isolated spaces; and
- an inability to access police protections.

A second report and legal analysis of the *BMJ Open* research was also released today by Pivot Legal Society, Sex Workers United Against Violence (SWUAV) and GSHI. The report, entitled “*My Work Should Not Cost Me My Life: The Case Against Criminalizing the Purchase of Sex In Canada*” provides a legal analysis of the evidence from the *BMJ Open* research, as well as from Sweden and Norway regarding the impacts of criminalization of clients on sex workers’ safety. The report concludes that given the harms created by this model of criminalization and the reasoning from *Canada v. Bedford*, there is a strong case to be made that a law that prohibits the purchase of sexual services would violate sex workers’ constitutional right to security of the person and should be struck down.

“This important new research concludes that using the criminal law to target clients perpetuates the life-threatening conditions that sex workers faced under the laws that were struck down in the *Bedford* case,” says Katrina Pacey, litigation director at Pivot Legal Society. “If this approach were to become the law in Canada, it would create the same unconstitutional harms the Supreme Court found are a violation of sex workers’ right to security of the person.”

“This research shows how important it is to have sex workers voices and experiences at the forefront of any legislative change,” said Lorna Bird, co-author of the *BMJ Open* report and board member of SWUAV, an organization run by and for street-based sex workers in Vancouver’s Downtown Eastside.

Related materials:

- A summary and the *BMJ Open* publication is available here:
<http://www.gshi.cfenet.ubc.ca/crimclients>
- A summary and the constitutional analysis of the research is available here:
http://www.pivotlegal.org/my_work

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About the British Columbia Centre for Excellence in HIV/AIDS

The BC Centre for Excellence in HIV/AIDS (BC-CfE) is Canada's largest HIV/AIDS research, treatment and education facility and is internationally recognized as an innovative world leader in combating HIV/AIDS. The BC-CfE works in close collaboration with key provincial stakeholders, including health authorities, health care providers, academics from other institutions, and the community to decrease the health burden of HIV and AIDS. By developing, monitoring and disseminating comprehensive research and treatment programs for HIV and related illnesses, the BC-CfE helps improve the health of British Columbians living with HIV.

About the Gender and Sexual Health Initiative

The Gender and Sexual Health Initiative (GSHI) is a program of the BC-CfE with the overall mission to ensure research of the highest scientific and ethical standard informs evidence-based policy and practice in gender, sexual health and HIV/AIDS and reduces health and social inequities among marginalized populations in Canada and globally. GSHI, on behalf of the BC-CfE, was an intervener in the *Canada vs. Bedford* case at the Supreme Court of Canada.

About Sex Workers United Against Violence

Sex Workers United Against Violence (SWUAV) is a peer-based organization of active and former sex workers who live and/or work in the Downtown Eastside of Vancouver. SWUAV came together in 2005, seeing a need for an organization that could speak directly from the perspective of women who do sex work about issues of their health and safety, as well as general living and working conditions. SWUAV is committed to improving the working conditions for sex working women in the DTES of Vancouver, including fighting against poverty, racism, sexism, homophobia, criminalization and other forms of oppression that contribute to the violence and lack of safety for sex workers. In 2007, SWUAV filed a constitutional challenge to Canada's prostitution laws and was an intervener in the case of *Canada v. Bedford*.

About Pivot Legal Society

Pivot's mandate is to use the law to address the root causes of poverty and social exclusion. Our name is a metaphor for our approach to social change – by making the most tangible violations of human rights the focal point of our efforts, we exert maximum pressure in order to shift society toward greater equality and inclusivity. Since 2002, Pivot has been actively campaigning for the rights of sex workers to live and work in conditions that promote their health, safety, dignity and human rights. Pivot was counsel in a constitutional challenge to Canada's prostitution laws, and an intervener in the case of *Canada v. Bedford*.



Criminalization of Clients in Canada: Recreating the Same Harms to Sex Workers' Health and Safety

Background:

As Sweden, Norway and other countries move to criminalize clients (sex buyers), Vancouver, Canada provides a unique opportunity to evaluate the potential impact of legislation that criminalizes clients. In an effort to better protect sex workers, in January 2013, the Vancouver Police Department (VPD) officially adopted sex work enforcement guidelines that prioritize sex workers' safety over arrest, while continuing to focus enforcement and arrest on clients and third parties.

The Question:

How does a criminalization and enforcement model targeting clients impact sex workers' health and safety?

The Research:

Between January and November 2013, following implementation of new VPD guidelines, researchers from the Gender & Sexual Health Initiative (GSHI) of the BC Centre for Excellence in HIV/AIDS and the University of British Columbia conducted **ethnographic observation** and **31 in-depth qualitative interviews with street-based women sex workers**, together with an analysis of **rates of workplace sexual and physical violence** and **publically available police arrest statistics**. This study is a collaboration with Sex Workers United Against Violence (SWUAV) and Pivot Legal Society, and is part of an ongoing GSHI/ UBC research project evaluating the health and safety of sex workers. The project holds UBC ethical approval.

Key Findings:

- Police statistics show **arrest for sex work-related Criminal Code offences increased from 47 in 2012 to 71 in 2013**, post-implementation of guidelines.
- There was **no change in rates of work-related physical and sexual violence against sex workers** in the 8 months pre-policy (24% of 275 sex workers in 2012) as compared to post-policy (25% of 236 sex workers in 2013).

Empirical research of sex workers' narratives provides clear evidence that criminalization and policing of clients:

- **Has no impact on deterring the frequency of street-based sex work**
Instead, criminalization of clients pushes sex workers to more isolated spaces to avoid police scrutiny and means longer hours on the street.
- **Severely limits street-based sex workers' control over their health and safety due to:**
 - (1) **Inability to Screen Clients or Negotiate Terms of Transactions:** In order for sex workers to avoid police scrutiny where their clients remain the targets of enforcement, sex workers are forced to limit or forgo screening clients (e.g. checking 'bad date' reports, looking for intoxication and weapons) or negotiate the terms (e.g. fee, services, condom use, and location of date) before entering a vehicle; thereby placing sex workers at increased risk for violence, abuse, and HIV infection.
 - (2) **Displacement to Isolated Areas:** Sex workers report that many clients demand to move to unknown, secluded, industrial areas to avoid police scrutiny and arrest, increasing sex workers' risk of physical violence and rape, and reducing their ability to safely negotiate the terms of the transaction (e.g. insisting on client condom use).
 - (3) **Inability to Access Police Protection:** While most women welcomed the shift away from targeting sex workers, the targeting of clients continued to place sex workers in an adversarial relationship with police, including reluctance to report violence, for fear that the information about their clients, or where or how they work, would be used to target their clients.

'Harassing the clients is exactly the same as harassing the women. You harass the clients and you're in the exact same spot you were before. It's exactly the same thing. Exactly. I'm staying out on the streets. I'm in jeopardy of getting raped, hurt'
- Jasmine, Sex Worker

Legal and Policy Implications:

- This study provides clear empirical evidence from the lived experience of marginalized, street-based sex workers that criminalization of clients reproduces the same harms to sex workers' health and safety as the failed criminalized model in Canada, including increasing risks for violence, abuse, and HIV infection
- This research supports global policy guidelines, including WHO, UNAIDS, UNDP, UNFPA, calling for full decriminalisation of sex work as a necessary evidence-based approach to ensuring the health and safety of sex workers.

Krusi A, Pacey K, Bird L, Taylor C, Chettiar J, Allan S, Kerr T, Montaner JS, Shannon K. Criminalization of clients: reproducing vulnerabilities for violence and poor health among street-based sex workers in Canada - A qualitative study. *BMJ Open* 2014; 4:e005191.



Backgrounder - Why a ban on the purchase of sexual services is inconsistent with the security of the person rights of sex workers

Canada v. Bedford

In the case of *Canada v. Bedford*, the communication, bawdy house and living on the avails laws were held to violate the security of the person rights of sex workers, guaranteed by s. 7 of the *Charter of Rights and Freedoms*. The Court found that these *Criminal Code* provisions impose dangerous conditions that prevent sex workers from taking steps to protect themselves from risk.

The Court found that:

- The bawdy house law (s.210) prohibits sex workers from seeing clients in an indoor venue that is controlled by the sex worker, which is the safest way to engage in sex work.
- The living on the avails law (s.212(1)(j)) prohibits individuals from working with sex workers, even if they enhance sex workers' safety.
- The communication law (s.213(1)(c)) prevents street-based sex workers from screening clients, setting the terms of a transaction and working in safer locations.

In their constitutional analysis, the Court held that these security of the person deprivations do not accord with the principles of fundamental justice. The harmful conditions created by the bawdy house and communication laws are grossly disproportionate to their legislative objectives of preventing nuisance. The living on the avails law is overbroad because it prohibits non-exploitative relationships, such as bodyguards. The Court concluded that the provisions are unconstitutional and must be struck down.

Charter analysis of a ban on purchasing sex

Given the clear evidence from the BMJ Open report, and from Sweden and Norway indicating that a prohibition on the purchase of sexual services would create the same harms identified in *Bedford* – including lack of ability to screen, displacement to dangerous locations, inability to work indoors or with others – there is a strong case to be made that such a law would violate sex workers' constitutional right to security of the person. After examining the law and the facts, Pivot concludes that the law would likely be found to be both overbroad (given its sweeping criminalization of all clients) and grossly disproportionate (given the harmful conditions created for sex workers) and should be struck down.