

# Sex Workers and Bill C-36: Analysis based on Social Science Evidence

On June 4<sup>th</sup>, 2014 Justice Minister Peter MacKay introduced Bill C-36 Protection of Communities and Exploited Persons Act. The draft legislation could bring about sweeping criminalization of the sex industry through the criminalization of: the purchase of sexual services, the advertisement of sexual services, communication in public for the purpose of prostitution by anyone, and third parties in the sex industry. The Minister of Justice also committed 20 million dollars in new funding for social service providers to encourage and support people to leave the sex industry.

The social science evidence from Canada and throughout the world indicates that, if this Bill becomes law, it will force the sex industry further into the shadows, restrict sex workers' access to important safety strategies and have significant and profound negative consequences on sex workers' health, security, equality and human rights.

## Background and Analysis

Provision 213: Stopping or impeding traffic in order to offer, provide or obtain sexual services for consideration and Communicating for the purpose of offering or providing sexual services for consideration in a public place, or in any place open to public view, that is or is next to a place where persons under the age of 18 can reasonably be expected to be present.

The proposed Communicating provision is almost identical to the version that was struck down by the Supreme Court of Canada, with the only difference being its application to sex workers who are at or next to places where anyone under the age of 18 could be reasonably expected to be. The provision still prohibits communications in most public places.

### Background

In *Bedford*, the Supreme Court of Canada unanimously struck down the communicating provision (s.213(1)(c)) on the basis that it violated section 7 of the Charter of Rights and Freedoms. The courts acknowledged social science evidence and sex worker testimony that the law undermined the ability of the most marginalized sex workers to implement crucial security strategies. In order to avoid attracting the attention of the police, street-based sex workers abandon established tactics such as working in pairs, soliciting in familiar, well-lit, populated areas, and taking the time to carefully assess a client prior to entering a vehicle.<sup>1</sup> Moreover sex workers' ability to communicate openly and clearly with clients about services and negotiate safer sex practices – a necessary precondition to consent – is restricted by laws that prohibit communicating for the purposes of prostitution.

If (as is possible) indoor sex workers' advertising or conversations with clients are interpreted as public communication under the proposed law, these sex workers would attempt to avoid criminalization through the use

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<sup>1</sup> *Bedford v. Canada*, 2010 ONSC 4264 (CanLII). See also Bruckert, C, and F. Chabot, 2010, *Challenges: Ottawa Area Sex Workers Speak Out* available at [http://www.powerottawa.ca/POWER\\_Report\\_Challenges.pdf](http://www.powerottawa.ca/POWER_Report_Challenges.pdf); Lewis, J. and F Shaver, 2006, "Safety, Security and the Well-being of Sex Workers" STAR Report. Available at [http://web2.uwindsor.ca/courses/sociology/maticka/star/pdfs/safety\\_and\\_security\\_report\\_final\\_version.pdf](http://web2.uwindsor.ca/courses/sociology/maticka/star/pdfs/safety_and_security_report_final_version.pdf); Lowman, J, 2000, "Violence and the Outlaw Status of (Street) Prostitution in Canada" *Violence against Women*, 6,9, available at [http://www.hawaii.edu/hivandaids/Violence\\_and\\_the\\_Outlaw\\_Status\\_of\\_Street\\_Prostitution\\_in\\_Canada.pdf](http://www.hawaii.edu/hivandaids/Violence_and_the_Outlaw_Status_of_Street_Prostitution_in_Canada.pdf)

of euphemistic 'code' language, effectively hindering their ability to specify services, increasing the possibility of misunderstandings and decreasing sex workers' ability to control their labour.<sup>2</sup>

What the evidence says about the effects of this type of prohibition

- Greater displacement and isolation of street-based sex workers
- Emergence of sex work areas in industrial zones, one of the few places anyone under the age of 18 could not "reasonably be expected to be"
- Increased violence experienced by street-based sex workers
- Reduced ability of street-based sex workers to negotiate with clients
- Continued barriers to accessing police protection for fear of being criminalized
- Inability of indoor workers to clearly advertise services

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<sup>2</sup> Bruckert, C and T. Law (2013) *Beyond Pimps, Procurers and Parasites: Mapping Third Parties in the Sex Industry* available at [http://www.nswp.org/sites/nswp.org/files/ManagementResearch%20\(4\).pdf](http://www.nswp.org/sites/nswp.org/files/ManagementResearch%20(4).pdf)

## Provision 286.1(1): Prohibition against the purchase of sexual services “Commodification of Sexual Activity”

This aspect of the law, which criminalize everyone who purchases or communicates in order to obtain sexual services, was derived from the prostitution laws first implemented in Sweden.

### Background

Independent research evidence clearly demonstrates that, contrary to the claims made by the Swedish government, prohibiting the purchase of sexual services does not eliminate prostitution<sup>3</sup> but rather displaces sex workers into ever more isolated areas, pushing the sex industry further underground which results in extremely dangerous working conditions for sex workers. In Sweden, sex workers report less access to social services, reduced access to condoms, difficulty securing and retaining housing, increased stigma and adversarial relationships with police.<sup>4</sup> In Norway, researchers also found that violence against sex workers increased following the enactment of a similar law.<sup>5</sup>

In Vancouver, where police have a policy of targeting clients, two recent reports on sex work found that street-based sex workers experienced increased risk of violence, abuse, and health-related harms as a result of their inability to screen prospective clients or negotiate the terms of transactions; displacement to isolated spaces; and an inability to access police protection. Sex workers also reported spending longer periods of time on the street

<sup>3</sup> Available at <http://aidslaw.ca/publications/interfaces/downloadFile.php?ref=2191>

<sup>4</sup> Levy J and P. Jakobsson (2014) “Sweden’s abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden’s sex workers” *Criminology and Criminal Justice* (1-15) Available at: <http://lastradainternational.org/lisidocs/3049-Levy%20Sweden.pdf>, Dodillet, S., and Östergren, P. (2011). *The Swedish Sex Purchase Act: Claimed Success and Documented Effects*. Available online: <http://myweb.dal.ca/mgoodyea/Documents/CSWRP/CSWRPEUR/The%20Swedish%20Sex%20Purchase%20Act.%20Claimed%20Success%20and%20Documented%20Effects%20Dodillet%20&%20Ostagen%20May%202011.pdf>

<sup>5</sup> Bjørndahl U, *Dangerous Liaisons, A report on the violence women in prostitution in Oslo are exposed to*. (Oslo: Municipality of Oslo, 2012) at 5. Available at: <http://prosentret.no/wp-content/uploads/2012/06/FARLIGE-FORBINDELSER.pdf> (Norwegian) <http://humboldt1982.files.wordpress.com/2012/12/dangerous-liaisons.pdf> (English translation) [Accessed on May 3, 2014]. Dodillet and Östergren, 2011,. *The Swedish Sex Purchase Act: Claimed Success and Documented Effects*. Available at: <http://gup.ub.gu.se/records/fulltext/140671.pdf>

before making contact with a client and were therefore more likely to take chances with questionable clients.<sup>6</sup> The law would also impact indoor workers, many of whom screen their clients by collecting and verifying personal information, as it is unlikely clients would be prepared to provide accurate personal information if they are at risk of arrest.<sup>7</sup>

What the evidence says about the effects of this type of prohibition

- Decreased ability to screen clients and therefore increased risk of violence
- Limited ability to access police protections
- Increased isolation and dangerous working conditions for street-based sex workers
- Reduced willingness on the part of clients to contact police regarding situations of exploitation or trafficking
- Inability by sex workers to establish safe indoor spaces to do sex work.

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<sup>6</sup> Krusi A, Pacey K, Bird L, et al., 2014, *Criminalisation of clients: reproducing vulnerabilities for violence and poor health among street-based sex workers in Canada—a qualitative study*. *BMJ Open* 2014;4:e005191. doi:10.1136/bmjopen-2014-005191 available at <http://www.gshi.cfenet.ubc.ca/crimclients>; SWUAV et al. (2014) “My Work Should Not Cost me My Life”. Pivot Legal Society, Vancouver. Available at [http://www.pivotlegal.org/my\\_work](http://www.pivotlegal.org/my_work)

<sup>7</sup> Krusi A, Pacey K, Bird L, et al., 2014, *Criminalisation of clients: reproducing vulnerabilities for violence and poor health among street-based sex workers in Canada—a qualitative study*. *BMJ Open* available at <http://www.gshi.cfenet.ubc.ca/crimclients>

## Provision 286.2: “Material Benefit from Sexual Services”

The new provision continues to criminalize those who gain material benefits from sex work. This replaces the “living on the avails” provision that was struck down in Bedford and supplements the existing procuring provisions of s. 212(1) which prohibit anyone from facilitating or controlling someone else who is providing sexual services. The law states that it does not apply to those in “legitimate living arrangements” or those with “legal or moral obligations” to sex workers; it does, however, apply to exploitative and abusive relationships, and to those in which a person supplies drugs or alcohol.

### Background

Sex workers have a wide range of relationships with third parties. Independent sex workers hire individuals to provide particular services (e.g. security, receptionist, or on the street, taking licence plates) that increase their safety and security. As in any other occupation, however, not all sex workers wish to run their own business and prefer to work for someone else. Research has shown that these arrangements may be a desirable option for sex workers for a variety of reasons including the provision of services that increase their safety and security such as screening, maintaining zero-tolerance policies for clients who have been inappropriate and establishing bad date lists, the collection and verification of personal information (e.g. name, phone number, employer), providing a deterring presence and hiring on-site or on-call security persons. For some street-based workers whose housing is precarious, these types of arrangements are an option other than soliciting on the street.<sup>8</sup>

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<sup>8</sup> Bruckert, C and T. Law (2013) *Beyond Pimps, Procurers and Parasites: Mapping Third Parties in the Sex Industry* available at [http://www.nswp.org/sites/nswp.org/files/ManagementResearch%20\(4\).pdf](http://www.nswp.org/sites/nswp.org/files/ManagementResearch%20(4).pdf)

Criminalization of these third parties also excludes sex workers from the labour site protections and security afforded to other Canadian workers.<sup>9</sup>

What the evidence says about the effects of this type of prohibition

- Decreased ability to access the services of third parties including those that increase their safety and security
- Criminalization of sex workers personal and professional relationships including those deemed by the courts not to be “legitimate living arrangements”.
- Inability to access health and safety provisions, labour laws and human rights protection
- Increased social and professional isolation of sex workers
- Decreased options for sex workers regarding where and how they engage in sex work

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<sup>9</sup> Gillies, K. (2013). A wolf in sheep’s clothing: Canadian anti-pimping law and how it harms sex workers. In E. van der Meulen, E. Durisin & V. Love (Eds.), *Selling sex: Experience, advocacy, and research on sex work in Canada* (pp. 412-426 Vancouver: UBC Press.

## Provision 286.4: Advertising Sexual Services

The bill proposes to criminalize “everyone who knowingly advertises an offer to provide sexual services for consideration.”

### Background

An on-line presence or other forms of advertising is essential for independent sex workers who do not solicit on the street. While sex workers who advertise their own services would not be sanctioned under this specific provision (provided they work alone and are only advertising their own services) their ability to advertise would be extremely restricted if newspapers, magazines and websites can be criminally charged. This law, in principle, makes the establishment of safer indoor work spaces unviable - as working indoors is futile if a service provider can not advise potential clients about their services. In this context, sex workers will necessarily endeavor to be extremely discreet in their promotion to avoid having their posts or advertisements blocked. When sex workers are unable to indicate services (including those they are not providing), specify fees and outline safer sex expectations the potential for miscommunication increases, as does their risk.

In practice, it is probable that many Canadian sex workers will, as did sex workers in Ireland when that country attempted to ban erotic advertisements,<sup>10</sup> turn to websites hosted outside of our national borders beyond the jurisdiction of Canadian law. Research has shown that this would severely curtail the ability of Canadian law enforcement to combat exploitation and trafficking and render impossible collaborative relationships between website providers and Canadian law enforcement that facilitate identification of coerced victims.<sup>11</sup> It would also deny sex workers an important security mechanism by shutting down region-specific (i.e. Ottawa, Toronto) websites that, in addition to providing advertising space, host virtual sex worker-only spaces where sex workers post information on bad clients, discuss security measures, share industry information on third parties and elicit client references from local sex workers. As such these spaces are important for security at the same time as they foster online communities among independent sex workers who might otherwise be isolated<sup>12</sup>

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<sup>10</sup> Section 23 of the Irish Criminal Justice (Public Order) Act 1994

<sup>11</sup> M. Latonero et al., USC Annenberg Ctr. on Comm’n Leadership & Policy, Human Trafficking Online: The Role of Social Networking Sites and Online Classifieds 21–22 (2011) [hereinafter CCLP 2011 Report] Available at [http://technologyandtrafficking.usc.edu/files/2011/09/HumanTrafficking\\_FINAL.pdf](http://technologyandtrafficking.usc.edu/files/2011/09/HumanTrafficking_FINAL.pdf)

<sup>12</sup> Bruckert, C and T. Law (2013) *Beyond Pimps, Procurers and Parasites: Mapping Third Parties in the Sex Industry* available at [http://www.nswp.org/sites/nswp.org/files/ManagementResearch%20\(4\).pdf](http://www.nswp.org/sites/nswp.org/files/ManagementResearch%20(4).pdf)



What the evidence says about the effects of this type of prohibition

- Decreased options for sex workers through the creation of barriers to working independently. This has the potential to increase reliance on third parties
- Creation of significant barrier to working indoors which research shows is safer than working on the street
- Increased risk of violence by denying sex workers a forum to share vital information that improve their security
- Decreased ability of law enforcement to identify and intervene in situations of exploitation, abuse and trafficking
- Reduced likelihood of collaborative relationships between web providers and law enforcement
- Increased risk of misunderstandings about what services sex workers are, or are not providing, prices and safer sex requirements

### Support for 'exiting' programs

On June 4<sup>th</sup> Justice Minister Peter MacKay announced "\$20 million in new funding, including to support grassroots organizations dealing with the most vulnerable. Assistance will be provided to those who want to leave this dangerous and harmful activity; therefore, there will be an emphasis on funding programs that can help individuals exit prostitution."

### Background

Harm reduction mechanisms including bad date lists, provision of safer sex supplies and secure working spaces<sup>13</sup> reduce the risks confronted by sex workers. Evidence from Sweden has shown that when social service provision is contingent on sex workers exiting sex industry harm reduction activities are curtailed and the safety and security of sex workers are undermined and sex workers' access to information and safer sex supplies reduced. Swedish social service agencies have reported less contact with sex workers making it much harder to identify those in situations of exploitation.<sup>14</sup> Moreover, in Sweden, researchers found that discourses and social constructions key to their prostitution laws have informed the attitudes of service providers increasing the stigma, isolation and access to resources of sex workers not wishing to transition out of sex work. In short when exiting is prioritized crucial services and resources are unavailable to those that require them the most. Indeed, in addition to the specific outcomes of the law, researchers noted evictions of sex workers, problems with immigration authorities, child custody and the police, all of which render sex workers more vulnerable as well as push them further into the shadows of society.<sup>15</sup>

What sex workers, and particularly the most marginalized street-based workers, need is tangible services including economic security, housing and health support. Such broad based support positions people to make real and meaningful choices about whether they will participate in the sex industry and under what conditions they will do so (e.g. indoor or street-based).

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<sup>13</sup> Krusi, A., et al. 2012. Negotiating Safely and Sexual Risk Reduction with Clients in Unsanctioned Safer Indoor Sex Work Environments: A Qualitative Study. *American Journal of Public Health* 102 (6);

<sup>14</sup> Levy, J (2011) "Impacts of the Swedish Criminalisation of the Purchase of Sex on Sex Workers" available at <http://cybersolidaires.typepad.com/files/jaylevy-impacts-of-swedish-criminalisation-on-sexworkers.pdf>

<sup>15</sup> Levy, J and P. Jakobsson (2014) "Sweden's abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden's sex workers" *Criminology and Criminal Justice* (1-15) Available at: <http://lastradainternational.org/lisidocs/3049-Levy%20Sweden.pdf>

What the evidence says about the effects of this type of prohibition

- Restricted access to services and support for sex workers who do not want to leave the sex industry at this time
- Reduction in the availability of crucial harm reduction mechanisms (safer sex supplies, bad date lists)
- Increased isolation and social exclusion of marginal street-based sex workers