

**MINISTRY OF JUSTICE
Justice Services Branch
BRIEFING NOTE**

PURPOSE: For decision by Suzanne Anton, QC, Minister of Justice and Attorney General.

ISSUE: British Columbia's (BC) position on the federal legislative response to the Supreme Court of Canada's decision in *Bedford* regarding the unconstitutionality of three prostitution-related provisions of the *Criminal Code*.

DECISION REQUIRED/ RECOMMENDATION:

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- The Government of Canada is seeking the public's input on the criminal law's response to adult prostitution (i.e., the sale and purchase of sexual services from persons 18 years of age or older). This online consultation is open from February 17 to March 17, 2014.
- It is anticipated that BC advocacy groups and some police agencies will respond directly to the federal government.

BACKGROUND:

The Bedford Decision

- On December 20, 2013, the Supreme Court of Canada's decision in *Bedford v. Attorney General of Canada* found three *Criminal Code* prostitution provisions unconstitutional, but suspended the declaration of invalidity for one year:
 - s. 210, which prohibits keeping or being found in a bawdy house;
 - s. 212 (1)(j), which prohibits living on the avails of prostitution; and
 - s. 213(1)(c), which prohibits communicating in public for purposes of prostitution.
- The Supreme Court found that these offences violate prostitutes' right to security of the person, as protected by section 7 of the *Charter*, by preventing them from taking measures to protect themselves while engaging in high risk activity.
- Parliament has until December 2014 to respond before the judgment takes effect.

Various Approaches to Dealing with Prostitution

- Internationally, prostitution is generally treated in one of three ways:
 - decriminalization/legalization
 - prohibition
 - abolition
- Canada's current approach is a hybrid of decriminalization and prohibition as prostitution is legal, but almost all activities associated with it are criminalized. Enforcement practices vary across the country.
- BC's approach to prostitution focuses on:
 - preventing the recruitment and sexual exploitation of youth;
 - balancing the needs of the community and the safety of the sex trade workers;
 - addressing exploitation and increasing the safety of sex trade workers; and
 - addressing other serious prostitution concerns, such as human trafficking.

Prosecutions in BC

- In BC, the number of prostitution-related prosecutions is low. As of April 23, 2014, there were 7 outstanding prosecutions province-wide. BC has publicly indicated it will continue to prosecute prostitution-related offences, on a case by case basis. Guidelines have been provided to Crown Counsel to assist them in assessing the public interest in proceeding with prosecutions. The guidelines identify a continued public interest in the prosecution of:
 - charges for communicating for the purpose of prostitution against clients (especially where the solicitation was made to an undercover police officer);
 - charges involving bawdy-houses laid against the persons running the bawdy-house or their clients where an exploitive context exists, or there is evidence of actual exploitation; and
 - charges for living on the avails of prostitution where an exploitive context exists, or there is evidence of actual exploitation.
- Given the issues identified in *Bedford*, the guidelines identify a diminished public interest in proceeding with a prosecution on charges of communicating for the purpose of prostitution (typically street solicitation cases) against sex trade workers, or prosecution of bawdy-house charges against sex trade workers.

Examples of BC Programs and Services

- The BC government is providing annual funding of \$750,000 over the next three years to the Women's Information Safe Haven (WISH) Drop-in Centre Society. WISH offers women who work in the sex trade a safe place to access programs and services designed to improve their health, safety and wellbeing. BC also contributes funding for the Mobile Access Project (MAP) Van which trains and employs former sex workers to deliver services to women working in the street level sex trade.
- BC invests more than \$70 million a year in services to support victims of crime in the province. This includes outreach to vulnerable women who are at risk of victimization, and supports for women who have been victimized. Sex trade workers who are victims of violence have access to these services.
- BC's Office to Combat Trafficking in Persons works in partnerships to protect trafficked persons, some who are trafficked for the purposes of prostitution in BC. Activities include:
 - coordination of services for trafficked persons;
 - capacity development in local communities to address and prevent trafficking; and
 - education and awareness raising with youth about sexual exploitation and human trafficking in BC.

Examples of Models and Programs to Address Prostitution

The Nordic Model - First adopted in Sweden in 1999, this model seeks to abolish the exploitation of persons through prostitution by criminalizing those who exploit prostitutes, while decriminalizing prostitutes and providing them with services. The Nordic model requires significant investment in comprehensive social services for victims of exploitation and exit programs for those who wish to leave prostitution. Several countries have followed Sweden's example, and many more are now considering the Nordic approach. Some have raised concerns that this model can potentially move prostitution further underground decreasing safety and isolating sex trade workers even more¹; however, it is important to note that there has not been a comprehensive evaluation of the effects of this model to date.

The New Zealand Model – In 2003, New Zealand developed a framework to protect the human rights of sex workers. Prostitution was legalized and sex workers became protected by labour laws that promote their health and safety. Brothels pay licensing fees that are the same as other businesses.

Prostitution Offender Programs - The John Howard Society ran a "john" school program in the Lower Mainland during the past decade, ending a few years ago. Police could make direct referrals to the program, but because it was not an authorized program pursuant to the *Criminal Code*, clients could not be prosecuted for non-compliance. The program is no longer in use, in part due to the low number of prostitution-related occurrences, and

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Seizure of Vehicles Programs – Several provinces in Canada have provincial legislation (e.g., Highway Traffic Act) that allows peace officers to seize vehicles from customers of prostitutes.

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¹The Canadian HIV/AIDS Legal Network. *Sex Work Law Reform in Canada: Considering Problems with the Nordic Model* by Sandra Ka Hon Chu and Rebecca Glass.
<http://www.aidslaw.ca/publications/interfaces/downloadFile.php?ref=2193>

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Note: The attached appendix will be sent to Justice Canada for their information on

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OTHER MINISTRIES IMPACTED/CONSULTED:

- N/A

DECISION APPROVED/NOT APPROVED

DATE:

Suzanne Anton

30 Apr 2014.

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Attachment(s):

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Pages 7 through 12 redacted for the following reasons:

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