

**Brief to the Justice Committee on behalf of PEERS Victoria Resource Society, 1-744  
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PEERS Victoria Resource Society (PEERS) is a non-profit organization which became incorporated in 1995. The mission of PEERS is advocacy, education and support of sex workers as well as public education using a “by and for” model based on the expertise and leadership of people currently or formerly involved in the sex industry. PEERS aims to serve the wider population of people involved in the sex industry in our region including women, men and trans\* people who are/were involved in street based, independent indoor, and agency based indoor environments.

While we aim to serve the broader population of sex workers in the region, our support services are most often utilized by current and former street based sex workers who face multiple barriers to health and safety. Approximately one third of our service participants identify as Aboriginal and the vast majority are women. Our programs include **day outreach** (assistance with housing, food security, income assistance, access to health care and other community resources), **night outreach** (a van on the Victoria stroll that delivers food, clothing, harm reduction supplies, and one to one support), **employment programs** (including a new small business start up and micro lending program which is offered in partnership with the Municipality of Esquimalt and Bridges, a local employment program for women), a weekly **health clinic**, and a day time **drop in program** that offers meals and education and support groups. Staff working across these programs participate in the compilation and circulation of an aggressor (otherwise known as “bad date”) sheet and work with sex workers locally to report crimes committed against them. Between our programs we serve 350-500 individuals each year.

PEERS closely followed the case of Bedford versus Canada and celebrated the Supreme Court decision in December 2013 to strike down three sections of the criminal code (210, 212.1[j], and 213.1[c]) because they were found to violate sex workers right to security of person. We viewed this decision as an important step towards addressing the constitutional rights of sex workers as well as the systemic stigma and discrimination they encounter daily. We had hoped that the federal government would respect the evidence considered in this case by letting this decision stand without intervening, bringing Canada closer to the decriminalization of adult prostitution.

Our organization represents people who hold various opinions of the sex industry informed by a wide spectrum of experiences within the sex industry. Many of our clients who have worked in street based environments have experienced multiple forms of violence over their lifespans, whereas others do not report experiencing violence in the sex industry or in other contexts of their lives. The diversity among people who work in the sex industry in our region is considerable.

Despite varied views and experiences among our target population and allies, we agree that criminalizing any aspect of sex industry harms sex workers as it inhibits their ability to make choices to promote safety and well-being, and it encourages a culture in which

sex workers are stigmatized and discriminated against. It is our belief that sex workers should have access to the same laws as other citizens; laws that address violence against women (assault, sexual assault, kidnapping/confinement, criminal harassment, trafficking, theft and extortion) are sufficient to protect women (and men) in the sex industry and the laws that prohibit the sexual abuse of children should be considered separately from laws concerning the sexual activities of adults.

In this brief we focus specifically on our greatest concerns with Bill C-36. We draw on our knowledge of the sex industry in our region and a recent focus group held with 14 participants regarding various legal models internationally and debates in Canada leading up to the introduction of C-36.

### **False assumptions communicated when introducing Bill C-36**

As noted above, PEERS disproportionately serves street based sex workers given that these persons comprise a minority within the sex industry. Their service needs relate largely to problems associated with insecure housing, chronic physical and mental health conditions and often violence. These histories of violence, which affect some of our clients, extend to childhood experiences, relationship issues, and the myriad deprivations experienced by people who are involved in street based environments due to inadequate income, substance dependence and homelessness. Although we serve many persons involved in street based work, **coercive relationships with third parties are rarely mentioned as personally affecting sex workers in our region**, even if some clients have observed such relationships during their time in the sex industry. In our recent organizational surveys, of street based clients, a substantial minority entered the sex industry before the federal age of majority, but based our surveys of indoor based clients, the vast majority entered as adults, including close to a third who entered the sex industry after the age of 30. This difference in age of entry into sex work speaks to the variation in vulnerability among our clients. On average, those who use PEERS's programs are in their late 30's. Sex workers in our region predominantly describe their involvement in the sex industry as an economic choice, albeit a choice often made within the context of poverty, which is disproportionately experienced by women, and Aboriginal women in particular. The majority of PEERS' clients are on income assistance and yet find this assistance insufficient to secure housing, food, and child care. While we know that many of PEERS' program clients often face multiple social and economic disadvantages as might be expected among recipients of social service programs, this is not the case for all persons in the sex industry in our region, including some of the volunteers involved in the drafting of this brief who describe greater access to societal resources and very positive experiences in the sex industry.

***Provision 286.1(1): "Commodification of sexual activity." Obtaining sexual services for consideration. Everyone who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person is guilty of (a) an indictable offence and liable to imprisonment for a term of not more than five years ...***

In a recent client focus group, respondents noted that since commercial sexual transactions involve both buyers and sellers in interaction, that criminalization of the person obtaining service would necessarily impact the person providing service. More specifically, criminalizing any aspect of this encounter will necessarily further the tendency for such negotiations to occur in a clandestine and hasty manner. Sex workers and allied support persons have repeatedly identified that open communication is a fundamental aspect of the screening process and the foundation of setting terms of service. Poor and inadequate communication in this realm leads to both conflict and violence. It also reinforces widespread stereotypes among sex workers that it is not safe to access police services because they are engaged in criminal transactions, even if they are not the primary targets of criminal laws regarding obtaining a sexual service.

***Provision 213 (1.1): “Offenses in relation to offering, providing or obtaining sexual services for consideration.” Stopping or impeding traffic. Everyone is guilty of an offence punishable on summary conviction who communicates with any person — 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.***

This provision with its reference to public places where a person under the age of majority may be present is also directly damaging to sex workers, and like the previous communication law, will predictably be disproportionately applied to street based sex workers, many of whom are Aboriginal and face multiple barriers to health and safety. This law effectively reestablishes the capacity of law enforcement to move sex workers out of public view in response to complaints. For many years now, we have seen outdoor strolls operate in semi segregated and industrial zones where they have been pushed by police to be out of public view. There is also a natural tendency for sex work to take place out of public view regardless of the laws as it is profoundly stigmatized and thus both sellers and buyers have strong privacy concerns. Reflecting the social exclusion of sex workers in our region, the outdoor stroll in the Victoria CRD moved many years ago to an industrial zone. Provisions 213.1.1 will continue this practice of pushing outdoor sex workers to community margins, a practice which has been shown empirically to heighten the violence experienced by street based sex workers.

It is also noteworthy that sex workers generally police themselves with regard to where they conduct business and often have strong codes of ethics regarding commercial transactions – this is not surprising as many have children of their own. In addition to the possibilities that this law raises regarding criminal charges against sex workers who do not have the resources to conduct themselves out of public view off street – and most certainly will not have the resources to pay fines, challenge criminal records or obtain adequate legal support – one of the more damaging aspects of this law is that, despite the general claim that this bill aims to protect people in the sex industry, this portion of the bill is explicit in its message regarding sex workers as a threat to communities. This is a message which has profound implications for furthering systemic and interpersonal violence against sex workers.

***Provision 286.2: “Material Benefit from Sexual Services.” Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 286.1(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.***

While exceptions noted in 286.1.4 a-d include persons deemed to be in legitimate living arrangements persons who receive benefits under moral obligation, and those who offer services/goods to the public at rates deemed appropriate, this law is nevertheless very problematic as it puts an onus on these parties to prove they fall within these exceptions.

Sex workers in our region have voiced concerns that their intimate partners experience discrimination by association, and under the previous criminal code may have been subject to prohibition of “living off the avails”. Section 286.1, with its emphasis on an assumption of guilt in regards to persons *who live with or are habitually in the company* persons who sell sex services, raises similar concerns, despite the exception noted in 286.1.4.a regarding legitimate living arrangements. For example, it is not clear what defines a “legitimate living arrangement”. Furthermore, “legitimate living arrangements” may not be an accessible form of intimate relationship for our most marginalized clients who have unstable housing and are in relationships with other persons who similarly experience marginalization arising from lack of housing, substance dependence and poor mental and physical health. It is common in street based sex work, for instance, for friends and intimate partners to act as “spotters” and assist with others’ safety enhancing activities. How will these “street-based” relationships, which do not conform to conventional marital-type relationships, be viewed?

In 286.1.5 it is noted that no exceptions may be accessed by persons who materially benefit from the sale of sexual services in a “commercial enterprise”, and the context of a commercial enterprise may be considered by the court as an aggravating factor. In our region there are a small number of commercial establishments which have been in operation for many years. There has been no increase in the number of these businesses in our region in recent decades. People within these businesses report security, and describe some trust that local police and municipal officials support their health and safety. Members within these businesses have partnered on service and research initiatives locally aimed at improving health and safety in the sex industry, including initiatives organized by PEERS Victoria demonstrating their shared interest in matters of health and safety. People who choose to work within these businesses also cite a number of benefits including the social supports of a group setting, existing arrangements for access to safer sex supplies, drivers, reception, a safe place to conduct their work, and support with advertising, screening and service negotiation, and someone who checks in both before and after service to ensure safety.

While the majority of people in the sex industry in our region work independently, these businesses, which we assume might be regarded as “commercial enterprises” offer an alternative for adult sex workers who wish to have organized supports in a group setting. This section (as well as section 286.4-“advertising”) which criminalize the supports made available by third parties in commercial establishments would intrude on these

environments which offer a safer alternative for many sex workers in our region, compared to more isolated independent or street based venues. Thus, this “no exception” provision will constrain sex workers’ ability to work in indoor group settings which enhance safety and access to important social supports.

***Provision 286.4: “Advertising sexual services.” Everyone who knowingly advertises an offer to provide sexual services for consideration is guilty of: (a) an indictable offence and liable to imprisonment for a term of not more than five years; or (b) an offence punishable on summary conviction and liable to imprisonment for a term of not more than 18 months.***

The majority of sex workers in our region advertise in online environments, while newspaper advertising is diminishing. Some also claim that street solicitation is declining in our region although further investigation is needed. For indoor workers, advertising is the first stage of screening and setting the terms of service as it offers a discreet way (as opposed to street signage or outdoor solicitation) to establish contact with those seeking sexual services. Sex workers use advertising to indicate their preferred terms thus effectively screening out those who do not meet these terms. While online advertising is discreet, it also offers opportunities, particularly where there is subsequent online communication, to capture information about sex buyers that can be used to establish security, and when required, to investigate instances where sex workers have been victimized. Advertising in the context of online community boards serves the dual advantage of advertising and providing a community for sharing information about health issues, aggressors or problem clients, services, and research participation opportunities. Thus, online advertising and related communication is part of a range of tools that indoor sex workers use, resulting in substantially lower rates of violence and conflict compared to those who work on street/in public.

While 286.5 offers immunity to sex workers who advertise their own services, there are many third parties who assist in advertising ranging from website developers, reception/owners of commercial adult businesses who maintain advertising as part of the service they offer to those who work in their establishments, to those who host online community boards and dating applications which offer sections for commercial sexual transactions – particularly in the case of websites/applications for men who have sex with men. Some or all of these parties may be subject to criminalization, which will limit the options available to sex workers to seek assistance with online advertising and social networking.

### **Impact on collaborations between PEERS and local police**

PEERS has benefited in recent years from collaborations with Victoria police aimed at increasing sex workers’ access to justice when they have been victimized. This relationship building has been built in part because police in the region are increasingly adopting an emphasis on health and safety rather than criminal enforcement. Members of the Victoria police are important allies in applications for service funding, public education, research, and investigations of violent and sexual crimes against sex workers

in the region. Representatives of PEERS and the Victoria Police Special Victims Unit have jointly worked to improve “bad date” reporting and related investigations. Our organization received a community safety award from the Province of BC this past year for this partnership work. PEERS’ staff often accompany sex workers when reporting crimes and help them to cope with the insensitivities and discrimination they inevitably encounter within the justice system. Despite these positive collaborations, our work to increase confidence in our region among sex workers with respect to accessing police support is tenuous, particularly among street based sex workers who have a deeply rooted distrust of law enforcement. These relationships, which have been nurtured through persistence and dedication from all those involved, would be severely compromised by any initiatives locally to return to enforcing criminal code sanctions with respect to adult prostitution.

**Inadequate resources among marginalized sex workers with respect to understanding the law and obtaining legal supports.**

Previous studies, and our own experience, indicate that the most marginalized sex workers, including those on the street, face systemic barriers to obtaining legal advice with regards to understanding how the law is interpreted in practice. They are also more likely to be charged, and face barriers to accessing resources for defense when they are charged. Even among those in the sex industry who have the resources to seek legal advice, we know that it is difficult to find lawyers who have specific expertise on the issues surrounding the criminal code provisions which concern the sex industry. Bill C-36 introduces several means by which sex workers, and those with whom they are in relationships, may be charged under the criminal code, despite the arguably disingenuous proclamations that this draft legislation has been introduced with the aim to protect sex workers. As we have learned over time from application of prostitution related criminal code, fine nuances which can only be properly understood by legal experts, combined with variations in enforcement practice will lead to misunderstanding and fear among people in the sex industry. A range of compromising practices will likely develop among sex workers – some of which cannot be anticipated in advance – in their efforts to avoid falling afoul of the criminal code, resulting in the kind of harms which were central considerations in Bedford versus Canada.

We believe this bill should not be passed and that a meaningful model to promote the rights of persons in the sex industry to safety and security through existing criminal code provisions, municipal legislation, and health oriented labour codes must be considered, taking cues from the most encouraging aspects of the model adopted New Zealand which has now been in place for a decade. We also believe that this model must include increased funding to the non profit organizations across Canada which provide supports to people in the sex industry, and that this funding cannot only be provided to agencies providing exiting programs. While we believe it is of fundamental importance to assist those wishing to leave the sex industry, we also believe supports for persons in the sex industry are a critical aspect of harm prevention.