RECKLESS ENDANGERMENT:

Q&A ON BILL C-36:

PROTECTION OF COMMUNITIES AND EXPLOITED PERSONS ACT

UPDATE - AMENDMENTS TO BILL C-36

OCTOBER 2014

For a bill to become law it typically goes through a series of readings in both the House of Commons and the Senate. The bill can be accepted as is, approved with amendments, or rejected in its entirety. On October 6, 2014, Bill C-36 passed third reading in the House of Commons with some amendments. This document is an addition to *Reckless Endangerment – Q&A on Bill C-36: Protection of Communities and Exploited Persons Act.* It includes the main amendments made by the House of Commons to Bill C-36 since its introduction in June 2014.

Please note that this document should not be taken as legal advice.

Amendment #1: Communicating for the sale of sexual services [section 213(1.1)]

Bill C-36 makes it a crime to communicate for the purpose of offering or providing sexual services for consideration in a variety of circumstances and contexts. The term "for consideration" means that sexual services are exchanged for something of some value, whatever the form and however small the value. The initial version of this provision criminalizes communication when taking place "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 amended version of Bill C-36, rather than using this language, targets three locations where the prohibition is in effect: a public place, or any place that is open to public view, that is or is next to school grounds, playgrounds and daycare centres.

Aspects of the communicating law unchanged by the amendment:

- It continues to be a crime for a sex worker or a client to stop or attempt to stop a vehicle, impede pedestrian or car traffic, or impede an entrance/exit to a venue for purposes of prostitution. These acts are made a crime under sections 213(1)(a) and 213(1)(b) of the *Criminal Code*. These laws where not challenged in *Bedford* and are therefore unaffected by the *Bedford* decision. They are also unaffected by Bill C-36.

- The amendment to section 213(1.1) does not impact the proposed section 286.1, which makes it a crime for a client to communicate anywhere, whether in public or in private, to obtain sexual services.

How broadly would the amended Bill C-36 criminalize communication in public places?

The new communicating law specifically targets the person offering or providing the sexual services. As such, it would apply to sex workers and third parties. The sex workers most at risk of arrest under this provision are those who work on the street. Sex workers working in indoor locations that are open to public view, and are or are "next to" one of the three public places named above, are also at risk of arrest. The amended version of Bill C-36 makes it a crime for any sex worker (or third party) to communicate "in a public place"[1] or "any place open to public view" if that place "is or is next to a school ground, playground or daycare centre."

The amendment in section 213(1.1) refers to school grounds, playgrounds, daycare centres and public places (or places open to public view) that are near one of these three types of locations. It is unclear how the communication law will be enforced for various reasons:

1. The law does not define what distance is considered "next to" one of these three types of locations. Therefore, the police will have some discretion in deciding whether a given location is "next to" a school ground, playground or daycare centre. When these cases go before the courts, judges will have to define the distance that will be considered "next to," and therefore which neighbouring indoor locations and outdoor public spaces will be found within this perimeter.

1 An explanation of the definition of "public place" is provided on page 5 of *Reckless Endangerment* (June 2014).

2. It is unclear what would be considered a "playground." Would this include all parks? Would the park require a swing set or other traditionally child-specific installation to be considered a playground? Once again, police will have very broad discretionary powers to decide which open public spaces will be captured in this category.

3. It is unclear how the law would be enforced next to "daycares." Would this include the numerous daycares that cannot be seen or identified by a passerby?

The language in both the initial and amended Bill C-36 communication provision is broad and ambiguous, and the bill itself will reproduce the harms exacerbated by the current communication law. The Supreme Court of Canada recognized these harms in *Bedford* and for this reason struck down the current communication law. Further, the amended communication provision is even broader than the current communication law in that it could capture sex workers working in an indoor location that is open to public view, if the work location is considered "next to" a school ground, playground or daycare centre.

What about communicating online?

The internet may be considered a "public place," but it is unlikely to be considered a place that is or is next to a school ground, playground or daycare centre.

However, courts may define some online communications as advertising – and these communications would then fall under the general advertising prohibition. Individual sex workers could not be prosecuted for such advertisement (i.e., if related to their own sexual services), but sex workers who advertise collectively, hire or work with third parties, and those who put out or publish sex work advertisements could be prosecuted.

And finally, all clients who communicate with sex workers online could be criminally charged under Bill C-36 for communicating for the purposes of obtaining sexual services for consideration.

Amendment #2: Review and report of the bill [section 45.1.1]

The amended version of Bill C-36 now requires that a comprehensive review of the provisions and operation of the new criminal law on prostitution be undertaken by the House of Commons within five years of the bill coming into force.

A review is extremely important to evaluate the impact of the new law. Five years, however, is too long given that the courts have already determined that the current law,[2] which criminalizes communicating for the sale of sexual services, is unconstitutional and detrimental to sex workers' health and safety. Evidence submitted to the courts and available to Parliament already demonstrates that criminalizing the sale of sexual services endangers sex workers. Waiting five years to demonstrate the impacts of criminalization is inhumane. The harms that are exacerbated by the current communication provision and that will persist under Bill C-36 must be recognized, and laws that continue to exacerbate those harms must be avoided.

It is essential to employ experienced and impartial researchers to conduct a thorough evaluation after two years of any bill's implementation. Consultations with and evidence from affected communities – those sex working under the regime of Bill C-36 – must be at the core of any review.

Any evaluation must also consider how conversations at the federal level coincide and work in tandem with conversations at a municipal level; comprehensive reviews must include concrete examples of how local law enforcement is implementing these new prostitution laws.

2 Section 213(1)(c) of the *Canadian Criminal Code* was struck down by the Supreme Court of Canada in December 2013 *(Bedford. v. Canada).*

Written by:
Jenn Clamen, Stéphanie Claivaz-Loranger, Richard Elliott, Katrina Pacey and Tara Santini

Design:
Inspired by the design of Carleena Ranger for *Reckless Endangerment* (June 2014)

This info sheet is a collaboration between:

Canadian HIV/AIDS Legal Network
1240 Bay Street, Suite 600
Toronto, Ontario
Canada M5R 2A7
Telephone: +1 416 595-1666
Fax: +1 416 595-0094
E-mail: info@aidslaw.ca
Website: www.aidslaw.ca

Pivot Legal Society
121 Heatley Avenue
Vancouver, British Columbia
Canada V6A 3E9
Telephone: +1 604 255-9700
Fax: +1 604 255-1552
E-mail: kpacey@pivotlegal.org
Website: www.pivotlegal.org

Stella, l'amie de Maimie
2065 Parthenais Street, Suite 404
Montréal, Quebec
Canada H2K 3T1
Telephone: +1 514 285-1599
Fax: +1 514 285-2465
E-mail: stellappp@videotron.ca
Website: www.chezstella.org