



September 30, 2010

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Dear Sirs:

Re: *Bedford v. Canada*, 2010 ONSC 4264 and regulation of sex work in British Columbia

I write to you in my role as President of the B.C. Civil Liberties Association. On June 10, 2009, we wrote to you on the topic of the impact that the lack of workplace regulation and licensing has on the health and safety of sex workers.

In that letter, enclosed, we expressed concern that:

Despite the wide availability of paid sexual services in Vancouver and other centres across B.C., the province has failed to regulate sex work in order to protect the health and safety of these workers.

In response to that letter, you referred us to other government departments who ultimately referred us to WorkSafeBC.

WorkSafeBC confirmed in a letter to us dated July 9, 2009, that:

Barbara Walman, Assistant Deputy Minister of Labour, has already written to you with regard to the *Criminal Code of Canada*, the *Workers Compensation Act* and *Occupational Health and Safety Regulation*, the requirements and limitations of which do not allow WorkSafeBC to register or provide coverage in circumstances where work is illegal.

That proposition was, as legal advisers in the Attorney General's ministry no doubt could advise, a suspect one. The notion that prostitution itself is "illegal" is one that fell out of the law more than 30 years ago. The fact that the Criminal Code continued to have provisions related to activities that were ancillary to it would not have precluded WorkSafeBC from dealing with the "legal" aspects of it.

Issues relating to those ancillary provisions have largely been addressed with the constitutional ruling in hand from Ontario that reiterates and confirms our concerns. Given the federal government's stated intentions, that case is likely to become a nationally binding precedent when it is heard and determined ultimately by the Supreme Court of Canada. The case, of course, is the recent decision from the Ontario Superior Court, *Bedford v. Canada*, in which a group of sex workers challenged the criminal prohibitions around communicating for the purposes of prostitution, the bawdy house provision, and the living on the avails provision.¹

We note that the province has recently put in place a commission of inquiry to address the investigation and handling of matters concerning what ultimately resulted in the Pickton prosecution. The terms of reference of that commission speak of reviewing "the investigations conducted between January 23, 1997 and February 5, 2002, by police forces in British Columbia respecting women reported missing from the Downtown Eastside of the city of Vancouver." Many of the missing women referred to worked in the sex trade.

Addressing the issues relating to the conditions that women engaged in such work on the Downtown Eastside of Vancouver face will only be partly covered through the lens of a commission of inquiry into police investigations. While we encouraged and applauded the government for

¹ *Bedford v. Canada*, 2010 ONSC 4264, available online at: <http://www.canlii.org/en/on/onsc/doc/2010/2010onsc4264/2010onsc4264.html>

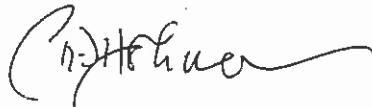
putting a commission in place, that does not deal with matters that ought to be addressed now in relation to the working conditions and other challenges that such women live with currently.

The detailed and painstaking work that will be required to ensure that whatever provincial legislative scheme that is put into place given that sex work criminal prohibitions are unconstitutional ought to be begun now. Ensuring that measures that are implemented are appropriate to the circumstances and actually improve the health and safety of the women and men engaged in the sex trade suggests to us that the province should immediately begin consultations with sex workers and sex worker advocacy groups on what that system should look like. Given the recent ruling from Ontario, it is just a matter of time before the province is called on to implement its constitutional duty to regulate trade within the province.

Our office is willing to assist in this and we have a number of other agencies that we have worked with in the past which are similarly willing to work to assist in these consultations and in preparing this new legislative regime. While the current laws threaten women and men's safety, a total legislative vacuum would also represent a significant threat to sex workers, and an abdication of the responsibility of the province to regulate trade. We urge you to be proactive in your efforts and start the legislative consulting and drafting process now.

We look forward to hearing from you. If there is anything our office may do to assist, please do not hesitate to ask.

Yours truly,

A handwritten signature in black ink, appearing to read 'R. Holmes', with a long, sweeping underline.

Robert Holmes
President