

July 23, 2020

DELIVERED BY EMAIL

The Hon. David Lametti
Minister of Justice and Attorney General of Canada

Dear Minister Lametti:

In 2014, the federal government passed the *Protection of Communities and Exploited Persons Act* (S.C. 2014, c. 25), criminalizing all facets of sex work, including selling sex in a public space, purchasing sex in all spaces, all material benefits from the sale of sexual services, advertising, and working as a third party. The law has been roundly criticized by sex workers,ⁱ human rights organizations,ⁱⁱ lawyers,ⁱⁱⁱ academics,^{iv} and constitutional scholars^v for reproducing many of the harms that the Supreme Court of Canada recognized as unconstitutional in *Canada (Attorney General) v. Bedford* 2013 SCC 72. As recently as February 2020, the Ontario Court of Justice determined that the third party and advertising prohibitions were unconstitutional.^{vi} Now, more than five years after the passage of the law, we write with urgency to request that you use the tools at your disposal to immediately issue a federal directive to prosecutors to refrain from enforcing sex work-specific criminal laws.

The COVID-19 pandemic has further exposed stark health inequities and the many structural factors that increase people's vulnerability to the virus. Sex workers are one of the most marginalized groups of people in Canada and their communities include a large proportion of people experiencing multiple forms of discrimination and social exclusion. Today, many sex workers remain out of work, and all of those who continue are working in precarious conditions. But unlike workers in other industries, sex workers have largely been unable to access emergency income supports because the criminalization of sex work isolates sex workers from formal income reporting mechanisms like filing taxes, and because many live and work in poverty and do not meet the income thresholds for emergency benefits. Still others will not engage with government institutions for fear of repercussions due to criminalization, stigma and discrimination.

These challenges are compounded for migrant workers, who must also contend with immigration laws that prohibit everyone without Canadian citizenship or permanent resident status from working in the sex industry. These laws subject migrant sex workers to additional law enforcement surveillance and the threat of detention and deportation — further deterring migrant sex workers from accessing emergency supports. Sex workers who are Indigenous, Black, migrant, trans, or who use drugs are disproportionately affected by criminalization, and also face particularly intense police profiling, including a presumption of involvement in sex work, but are routinely positioned outside the reach of security, safety and assistance in times of actual need.

As UNAIDS has affirmed, “**The criminalization of various aspects of sex work ... magnify the already precarious situation of sex workers in the informal economy.** As sex workers and their clients self-isolate, sex workers are left unprotected, increasingly vulnerable and unable to provide for themselves and their families.”^{vii}

UNAIDS has therefore called on countries to take immediate, critical action, grounded in human rights principles, to protect the health and rights of sex workers, which include, among other steps, an “**immediate halt to arrests and prosecutions for sex work-related activity**, moving away from punitive measures and criminalization towards reaching and serving those most in need.”^{viii} The UN High Commissioner for Human Rights has also recommended that “[i]mprisonment should be a measure of last resort, particularly during the crisis.”^{ix} Similarly, Human Rights Watch urges governments to “abstain from enforcing laws that have traditionally resulted in arrest, like prohibitions on sex work and or possession of drugs for personal use,” describing U.S. police authorities that have issued directives to refrain from enforcing sex work laws and state attorneys that have ordered prosecutors to dismiss sex work charges.^x In Canada, organizations including Amnesty International^{xi} and the Canadian HIV/AIDS Legal Network^{xii} have criticized the ongoing enforcement of sex work criminal laws, particularly during the pandemic. And while not specific to sex work offences, the Public Prosecution Service of Canada has issued guidance to prosecutors to reduce “to the extent possible, in a principled manner,” the “detention population during the pandemic period.”^{xiii}

Yet, laws criminalizing sex work continue to be enforced across Canada during the pandemic.

As you know, the Minister of Justice and the Attorney General of Canada is responsible for providing legal advice to all government departments. Section 10(2) of the *Director of Public Prosecution Act* allows the Attorney General to issue federal directives with respect to cases generally.^{xiv} Most recently, in 2018, the Attorney General issued a directive with respect to prosecutions for non-disclosure of HIV status in specific circumstances.^{xv} It is therefore within your power to issue a federal directive to the Director of Public Prosecutions not to prosecute the sex work-specific offences in the *Criminal Code*.

While we are aware that a federal directive only governs federal Crown attorneys who handle prosecutions in the three territories, a federal directive would send a strong message to the entire country that the criminalization of sex work does not promote human rights and is not in the public interest.

More specifically, this federal directive could direct the Director of Public Prosecutions as follows:

1. The Director shall not prosecute s. 213 of the *Criminal Code* (stopping or impeding traffic and communicating to provide sexual services);
2. The Director shall not prosecute s. 286.1 of the *Criminal Code* (obtaining sexual services for consideration);

3. The Director shall not prosecute s. 286.2 of the *Criminal Code* (material benefit from sexual services);
4. The Director shall not prosecute s. 286.3 of the *Criminal Code* (procuring sexual services); and
5. The Director shall not prosecute s. 286.4 of the *Criminal Code* (advertising sexual services).

As initiatives to defund police and redirect resources spent on law enforcement towards community gain support across North America, this directive would be a step in that direction. A moratorium on the enforcement of Canada's sex work laws is long overdue. As Minister of Justice, you have the responsibility to ensure laws do not impair the health and safety of sex workers and perpetuate unconstitutional harms.

We strongly urge you to issue the federal directive without further delay.

Sincerely,

Canadian Alliance for Sex Work Law Reform

Aboriginal Legal Services
Action Canada for Sexual Health and Rights
Amnesty International Canada
BC Civil Liberties Association
Black Legal Action Centre
Canadian HIV/AIDS Legal Network
Coalition of Quebec Community Organizations Fighting AIDS (COCQ-SIDA)
Criminal Lawyers' Association
First Peoples Justice Center of Montreal
HIV & AIDS Legal Clinic Ontario (HALCO)
Pivot Legal Society
West Coast LEAF

ⁱ Canadian Alliance for Sex Work Law Reform, *Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada*, 2017. Online: <http://sexworklawreform.com/recommendations/>.

ⁱⁱ Action Canada for Sexual Health and Rights, *Solidarity Statement for Sex Workers' Rights*, October 2019. Online: <https://secure.actioncanadashr.org/solidarity-sex-workers-rights>

ⁱⁱⁱ See, for example, *Open letter regarding Canada's response to the decision in Canada (Attorney General) v. Bedford* (signed by more than 200 members of the legal profession), July 7, 2014. Online: <https://bccla.org/wp-content/uploads/2014/07/LetterC36.pdf>.

^{iv} See, for example, *Open letter: 300 researchers call for decriminalization of sex work in Canada*, March 27, 2015. Online: www.actioncanadashr.org/news/2014-03-26-open-letter-300-researchers-call-decriminalization-sex-work-canada.

^v See, for example, H. Stewart, "The Constitutionality of the New Sex Work Law," *Alberta Law Review* (2016) 54:1; K. Kirkup, "New prostitution laws, same old harms to sex workers," *Globe and Mail*, June 4, 2014, and J. Ling, "Not quite the Nordic model," *CBA/ABC National*, June 5, 2014, online at www.nationalmagazine.ca/en-ca/articles/law/access-to-justice/2014/not-quite-the-nordic-model.

^{vi} *R. v. Anwar*, 2020 ONCJ 103.

^{vii} UNAIDS, Sex workers must not be left behind in the response to COVID-19, April 8, 2020. Online: www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2020/april/20200408_sex-workers-covid-19.

^{viii} Ibid.

^{ix} UNHR, Office of the High Commissioner, “Urgent action needed to prevent COVID-19 ‘rampaging through places of detention’ – Bachelet,” news release, March 25, 2020. Online: www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E.

^x Human Rights Watch, “Averting an Imminent Catastrophe: Recommendations to US Local, State and Federal Officials to Covid-19 in Jails and Prisons,” April 29, 2020. Online: www.hrw.org/news/2020/04/29/averting-imminent-catastrophe-recommendations-us-local-state-and-federal-officials

^{xi} Amnesty International Canada, *Canada’s exclusion of sex workers from COVID-19 emergency income supports is shameful and violates human rights*, June 25, 2020. Online: www.amnesty.ca/news/canada%E2%80%99s-exclusion-sex-workers-covid-19-emergency-income-supports-shameful-and-violates-human.

^{xii} Canadian HIV/AIDS Legal Network, *Flatten Inequality: Human Rights in the Age of Covid-19*, April 3, 2020. Online: www.aidslaw.ca/site/flatten-inequality-human-rights-in-the-age-of-covid-19/?lang=en.

^{xiii} Public Prosecution Service of Canada, *Memorandum - COVID 19: Bail and Resolution Principles*, April 8, 2020.

^{xiv} Section 10(2) of *An Act respecting the office of the Director of Public Prosecutions* S.C. 2006, c. 9, s. 121 provides, “The Attorney General may, after consulting the Director, issue directives respecting the initiation or conduct of prosecutions generally. Any such directives must be in writing and be published in the *Canada Gazette*.”

^{xv} Public Prosecution Service of Canada Deskbook, *5.12 Prosecutions involving Non-Disclosure of HIV Status Directive of the Attorney General Issued under section 10(2) of the Director of Public Prosecutions Act*, December 8, 2018.