



VIVRE ET TRAVAILLER EN SÉCURITÉ ET AVEC DIGNITÉ

**Submission to the Senate Committee on Legal and Constitutional Affairs  
The Protection of Communities and Exploited Persons Act (Bill C-36)  
Stella, l'amie de Maimie  
September 5, 2014**

**Introduction**

Founded in 1995, Stella is a sex worker driven organization offering services and advocacy for Montreal sex workers. We work with both on street and off street sex workers, doing street based Outreach and workplace visits (i.e., to escort agencies, massage parlours, strip clubs, dungeons, and In-Call and Out-Call agencies), host a bi-weekly Medical Clinic in partnership with nurses from our local Community Health Centre, offer Violence Prevention Programs across the city, hold Workshops and Focus Groups in our Drop In, accompany sex workers to health, social and legal service providers and annually respond to approximately 5000 calls to our Listening Line. Stella is a 'by and for' feminist sex worker organization which focuses on the Human Rights of sex workers. We are women and we are trans women. We are students, single mothers, drug users and/or educators. We are your mothers, sisters, aunties, daughters – full members of this society - and your neighbours.

We are submitting this Brief because we are alarmed that the provisions of Bill C-36 will continue to violate sex workers' Rights as guaranteed us by the *Charter of Rights and Freedoms*, our same Rights upheld by the Supreme Court of Canada in its December 2013 *Bedford* decision. In that decision, the Court recognized how criminal law contributes to the violence that sex workers' experience. Writing for the Court, Chief Justice McLachlin said, "The prohibitions at issue do not merely impose conditions on how prostitutes operate. They go a critical step further, by imposing dangerous conditions on prostitution; they prevent people engaged in a risky – but legal – activity from taking steps to protect themselves from the risk" (paragraph 60)<sup>1</sup>. We are equally alarmed by the fact that Bill C-36's criminalization of our clients will further displace sex workers deeper into unprotected areas and farther away from safety and security where predators of women are found, far from view.

**10 Common Myths About Bill C-36**

**Myth 1: Bill C-36 will eradicate exploitation.**

Violence against women of all ages, ancestries and classes is rampant in this country. Violence against women is not a product of sex work, and the sex industry is not a promotional tool of that violence.

As is the case for all other Canadian women, women sex workers experience violence first and foremost as a result of this society's paternalism, sexism and misogyny and have the identical experience of violence against women as our non sex worker sisters, which is to say that collectively, we are still not being taken seriously where violence is concerned. Witness the current controversy engulfing Canadian campuses as to what constitutes inappropriate sexual behaviour and rape itself in the eyes of young adults.

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<sup>1</sup> (*Procureur général*) c. *Bedford*, Collection Jugements de la Cour suprême, 20 décembre 2014 (<https://scc-csc.lexum.com/scc-csc/scc-csc/fr/item/13389/index.do>).



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Bill C-36 equates prostitution with violence and further antagonizes the delicate relationship between sex workers and police. Sex workers can indeed be exploited and experience workplace violence. When we have these experiences, we are as much the subjects of crime as any other member of this society. To this day, the testimony of a sex worker reporting violence to law enforcement officials is not taken seriously if she is known to them as a sex worker. Historically, when we turn to the police we are met with derision, stigmatization and the accusatory assumption that we have “brought it upon ourselves” by working in the sex industry. On the June 2013 day of the *Bedford* hearing before the Supreme Court, the Justices were meticulous in asking questions of Intervenors which allowed them to understand the details of how a street based sex worker’s safety and security are compromised when she does not have adequate time to properly ‘vet’ a potential client.

Sex worker Rights groups such as Stella exist to combat violence and exploitation, seeking to have the police and the general public recognize violence when it occurs to sex workers, looking to all of you as potential allies who help us report violence visited upon us. The blanket imposition of ‘exploitation’ to describe the entirety of our sex work experience denies us recourse to be seen, heard, respected and taken seriously when we report cases of violence. Bill C-36 continues this exploitative tradition.

**Myth 2: Bill C-36 will make it easier for sex workers to report violence.**

Sex workers will continue to be criminally liable under Bill C-36, our relationship with police irredeemably locked in even deeper antagonism. When reporting violence to police, we are often held responsible for criminal infractions peripheral to prostitution (such as Warrants for Breach of Conditions) and encouraged to give information about our clients or third parties (ex. an Escort Agency’s Secretary, Bookkeeper or Driver), who are also criminally liable under Bill C-36. When sex workers want to report a crime of violence against our person without risking the loss of our source of income and our supportive, professional relationships, police are of little use to us.

For those sex workers who decide to continue working in the sex industry and who want to denounce violence, we need more than just exit-based programs and we need an end to anti-sex worker prejudice.

Sex working communities have long created tools to communicate amongst ourselves – the *Bad Tricks and Aggressors List* is one way that we in Montreal communicate violent incidents across our community. We have come to understand that only we can protect ourselves from violence in a legislative climate which criminalizes both us and our work.

**Myth 3: The amendment to Bill C-36 concerning protecting communities by defining a “reasonable place where individuals under 18 years of age may be present” is a reasonable way to keep prostitution out of communities.**

Last July 15<sup>th</sup>, the House of Commons Justice Committee made a few Amendments to Bill C-36, one of which included adding specifications to a “reasonable place” where individuals under 18 years of age can be found, including the words “school ground, playground and daycare centre”. This amendment contains broad and ambiguous language which has been historically present in prostitution law, resulting in harm and danger for sex workers.

In this Amendment, how a playground is defined and the distance from which a sex worker needs to be



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from it, is not specified, thus leaving a large margin of interpretation to individual police officers and putting both indoor and outdoor sex workers at risk of arrest and/or displacement. As described in the Supreme Court's *Bedford* decision, displacement engenders harm to sex workers.

A further conversation that needs to happen is about *where* and *how* sex work happens. Municipalities need to engage in respectful dialogue with sex workers to find solutions, seeking community-based solutions (acknowledging our role as your neighbours), so as to implement models which truly work.

Justice McLachlin writes in paragraph 136 of the *Bedford* decision, "[T]he harms identified by the courts below are grossly disproportionate to the deterrence of community disruption that is the object of the law. Parliament has the power to regulate against nuisances, but not at the cost of the health, safety and lives of prostitutes<sup>2</sup>."

#### **Myth 4: The Amendment to conduct a Comprehensive Review 5 years after the Bill's implementation provides a good perspective on its efficacy or failure.**

The Supreme Court of Canada established the harms of using the Criminal Code to regulate prostitution and sex workers. Supporting evidence before the Court highlighted the amount of violence sex workers experience as a direct result of the criminalization of sex workers, clients and third parties. Bill C-36 reproduces much of the previous law's flaws and goes even further in criminalizing clients in *all* contexts. Given the social stakes at hand and the human lives at risk, the harms of any prostitution law need to be documented *now*, not five years after the Bill's passage. Canada should learn from the errors of other countries' similar exercises. Critics of a recent Norwegian report on the Nordic model which criminalizes the purchase of sex, note its flawed methodology and the lack of effective consultation with sex working communities, the latter essential in order to get a true evaluation of the impacts of any law. Professor and Researcher Anette Brunovskis from the University of Oslo states in her critique of the Report, "The evaluation that Vista Analysis has undertaken is too narrow and there are too many uncertainties underlying the Report's main conclusions. The outcome is exactly what we feared; an evaluation that does not bring us any closer to a conclusion on how the prostitution market has developed<sup>3</sup>."

#### **Myth 5: Bill C-36 only targets "johns" and "pimps".**

Bill C-36 is modeled after Swedish law which focuses on the criminalization of clients and third parties. In Canada, police forces past and present have prioritized similar models which target and arrest clients to no avail and with no positive effect on the safety and security of sex workers.

Justice Minister MacKay and other proponents of Bill C-36 continuously remark that the Bill aims to protect sex workers and prosecute "johns and pimps". Provisions within Bill C-36 however, directly criminalize sex workers directly (213.1) as well as indirectly through provisions of the law which criminalize clients and "pimps" in all other sections. Criminalizing clients and third parties not only ensures that sex workers are still criminally liable, but impacts sex workers' health, safety and economic stability. Sex workers cannot work without the aid and protection of third parties – whether it be to

<sup>2</sup> *Op. cit.*

<sup>3</sup> Brunovskis, Anette et Skilbrei, May-Len, « The evaluation of the Sex Purchase Act brings us no closer to a conclusion », *Aftenposten*, 16 août 2014 (<http://www.fafu.no/prostitution/140816-ABR-oped.html>).



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seek out clientele, to help with advertising or to provide physical protection. Again, sex workers remain criminally liable under Bill C-36. Bill C-36 also ensures that indoor venues offering sexual services cannot operate legally as it criminalizes clients and third parties, the first for the purchase of sex and the second, for receiving a material benefit from same. Additionally, sex workers will now face criminal charges for working from our own homes or working collectively from a single venue and it will be illegal for us to advertise our services for which we often need the help of a third party (webmaster, advertiser, etc.).

### **Myth 6: Bill C-36 helps and addresses violence against Indigenous women.**

Resorting to criminal law to address prostitution, and particularly to 'save' prostitutes, reinforces the legacies of colonialism and places Indigenous women in even more precarious living and working conditions. In his Report stemming from the Province of British Columbia's *Missing & Murdered Women's Inquiry*, Commissioner Wally Oppal recognized this when he stated that, "the marginalization of women is due to the retrenchment of Social Assistance programs, the ongoing effects of colonialism, and the criminal regulation of prostitution and related law enforcement strategies<sup>4</sup>" (emphasis added, pg. III). Criminalization models such as Sweden's contribute to women's inequality as they most heavily impact marginalized sex workers. There is substantial evidence that materially poor Indigenous women sex workers have faced some of the highest rates of violence as a direct result of the criminalization of sex work. Within the Swedish model, these women would still be prevented from working together, from enlisting third parties to screening clients, and would be displaced to unprotected areas to find their source of income (i.e. clients). A recent study by the Gender and Sexual Health Initiative (GSHI) of the BC Centre for Excellence (BC-CfE) in HIV/AIDS and the University of British Columbia (UBC) conducted in-depth interviews with 31 street-based sex workers in Vancouver to examine sex workers' experiences as to how they negotiate safety and health issues following the implementation of new Vancouver Police Department Enforcement Guidelines in January 2013<sup>5</sup>. The research indicates that there was no decrease in work related physical or sexual violence. The study also highlights testimony from sex workers which asserts that prioritizing the criminalization of clients only reproduces the same harms to sex workers, by limiting safety – the same conclusion as the Court's in Bedford<sup>6</sup>. Current evidence demonstrates that the Swedish model reproduces the harms of Canadian prostitution laws while increasing the incidents of violent physical and sexual assault against street based sex workers.

### **Myth 7: Criminalizing sex workers and putting them in prison is a helpful first step for sex workers to exit prostitution.**

During the July 2014 Justice Committee Hearings we heard from a variety of Canadian Police Chiefs who suggested that prison is a good tool to help women exit the sex industry. On July 8<sup>th</sup> the Calgary Police Chief testified of his desire to, "use the law as an opportunity to extract and provide services for

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<sup>4</sup> Oppal, Wally T., *Forsaken : The Report of the Missing Women Commission of Inquiry - Executive summary*, Colombie-Britannique, p. III, 19 novembre 2012.

([http://www.ag.gov.bc.ca/public\\_inquiries/docs/Forsaken-ES.pdf](http://www.ag.gov.bc.ca/public_inquiries/docs/Forsaken-ES.pdf)).

<sup>5</sup> Vancouver Police Department, Sex Work Enforcement Guidelines, janvier 2013

(<http://vancouver.ca/police/assets/pdf/reports-policies/sex-enforcement-guidelines.pdf>).

<sup>6</sup> The Gender and Sexual Health Initiative (GSHI), « New research shows criminalization of clients endangers Vancouver sex workers and violates their human rights », Communiqué de presse du 3 juin 2014 (<http://www.gshi.cfenet.ubc.ca/crimclients>).



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those who are the victims of prostitution, the service providers” (Standing Committee on Justice and Human Rights, No. 35, 2<sup>nd</sup> Session, 41<sup>st</sup> Parliament). This ‘forced rehabilitation’ is both paternalistic and infantilizing. It removes adult sex workers’ agency while also detrimentally impacting our future, clouded by the spectre of a criminal record.

Whatever the subject, when governments use criminal law in an attempt to curb behaviour or control communities, the ensuing typical effects are repression and the rendering invisible of the communities in question, as those populations then do everything in their power to evade the law as well as detection by the general public. This is what is called “going underground”. People who work in the sex industry “go underground” for a variety of reasons – to support our families, to pay for our schooling, to feed ourselves, to support our substance use. Bill C-36 will now oblige us to earn our living in conditions which will most certainly increase the potential for danger. Is this not the polar opposite of the Supreme Court Justices’ intent in their *Bedford* ruling?

### **Myth 8: Prostitution and trafficking are intrinsically linked.**

Sex work is not coercion. It is important to listen to sex workers and let us identify our experiences of coercion and violence. Criminalization is not helpful to law enforcement agencies seeking to combat trafficking. In fact, enforcement strategies further harm sex workers and people caught in situations of trafficking, as defined as criminals, they avoid engaging with law enforcement to report violence and coercion. Where violence exists, other sex workers, clients and third parties often have the most access and are best positioned to identify it – but they are unlikely to identify victims of trafficking or exploitation if they are themselves facing criminalization. There is no evidence to support the claims that the Swedish model has decreased instances of trafficking. Anti-trafficking organizations like The Global Alliance Against Traffic in Women (GATW) strongly oppose criminal penalties against clients, highlighting in one report that these types of approaches do not reduce trafficking or sex work<sup>7</sup>. Moreover, New Zealand – a country that removed criminal sanctions against sex workers, clients and third parties in 2003 – maintains a Tier I ranking that is still the highest (i.e., the most favourable) in the *US 2013 Trafficking In Persons (TIP) Report*, and has been ever since New Zealand was included in the report as of 2004.

### **Myth 9: Bill C-36 is based on an equality model and promotes a feminist response to exploitation.**

It is abundantly evident to us that no matter this country’s oratory on the subject, equality simply doesn’t exist in Canada in the simple way in which it is affirmed as fact. In the face of this harsh reality, Stella’s response to the rampant inequality born of classism, racism and gender bias, is to create ways in which we can nonetheless build equitable personal and social relationships.

Sex work is an economic opportunity for women, be we those living in material poverty or not. Removing this economic opportunity is not a step towards equality. When the government frames Bill C-36 as an equality model, it ignores the reality of people working in the sex industry, brushing broad ideological strokes which claim that all sex work is automatically violence against women and must

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<sup>7</sup> Global Alliance Against Traffic in Women (GATW), *Moving Beyond ‘Supply and Demand’ Catchphrases*, 2011 ([http://www.gatw.org/publications/MovingBeyond\\_SupplyandDemand\\_GAATW2011.pdf](http://www.gatw.org/publications/MovingBeyond_SupplyandDemand_GAATW2011.pdf)).



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therefore be eliminated. Violence is violence. Sex work is an economic opportunity. Prostitution and violence are not intrinsically related, except in circumstances where sex workers realities' are dismissed and when we do not have equal access to the same social mechanisms of protection afforded other full members of society. The criminalization of sex work increases inequality as it ensures that sex workers experience increased violence and discrimination as a result of these laws – a reality supported by *Bedford*.

### **Myth 10: The Criminal Code is a useful tool to address prostitution.**

As witnesses before the Justice Committee attested (members of the Canadian Criminal Lawyers Association and Pivot Legal Society), criminal law is a messy and heavy-handed tool when used to respond to complex social issues. Lawyer and Trudeau Scholar Kyle Kirkup chided the federal government for their default response, “Got a complex social issue, there’s a prison for that.” (Kirkup, *Globe and Mail*, June 4<sup>th</sup>, 2014)<sup>8</sup>.

Sex work can be regulated by laws other than ones of a criminal nature and in ways which not only ensure the health and safety of the wider public but also the health and safety of sex workers. These laws already exist in regulatory mechanisms at both the provincial and federal level - within Health Law and Labour Law. In New Zealand, New South Wales (Australia), some areas of Germany and The Netherlands, sex work is solely regulated by such Health and Labour Laws. These countries have mechanisms which ensure Occupational Health and Safety Regulations for people working in the sex industry which address violence in the workplace, as well as protection for those who call out unsafe working conditions and/or those who refuse to work in the sex industry in general. The New Zealand *Prostitution Reform Act (PRA)* of 2003 and its accompanying *Health and Safety in Employment Act* is an example of how prostitution can be regulated without relying solely on criminal law. It outlines regulations for Health and Safety within the industry<sup>9</sup>. The Supreme Court of Canada’s *Bedford* ruling clearly asserts that the intended use of criminal law to protect sex workers actually puts us in more danger. We need to look to other regulatory mechanisms to improve sex workers’ health, not further marginalize sex workers far from the public eye and Health/Social Services.

The New Zealand *Prostitution Reform Act (PRA)* of 2003 is an example of how prostitution can be regulated without relying solely on criminal law, outlining regulations for Health and Safety within the industry. Research has demonstrated that:

- The PRA did not result in any growth of the sex industry or increase in number of sex workers.
- The PRA has had a marked effect in safeguarding the sex workers’ human and labour rights. Prior to the enactment of the PRA, the illegality of the sex industry meant that sex workers were vulnerable to coercion and violence.

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<sup>8</sup> Kirkup Kale, *Globe and Mail*, 4 juin 2014 (<http://www.theglobeandmail.com/globe-debate/new-prostitution-laws-same-old-harms-to-sex-workers/article18992544/>).

<sup>9</sup> Government of New Zealand - Department of Labour’s Occupational Safety and Health Service (OSHS). (n.d.) *Health and safety in employment act - A guide to*. Wellington, New Zealand: Department of Labour. Found online: <http://www.business.govt.nz/worksafe/information-guidance/all-guidance-items/sex-industry-a-guide-to-occupational-health-and-safety-in-the-new-zealand/sexindustry.pdf>



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- As a result of the PRA, sex workers are more empowered to negotiate safer sex practices, and in instances of violence, their improved relationship with police means they are able to access police protection if they so desire.