



Assumptions and provisions of Bill C-36 relating to people who purchase sexual services: A policy in desperate need of evidence

A Brief to the Senate Committee on Legal and Constitutional Affairs on Bill C-36, An Act to amend the Criminal Code in response to the Supreme Court of Canada decision in Attorney General of Canada v. Bedford and to make consequential amendments to other Acts

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I have been researching adults who purchase sexual services (clients) and working in a supportive capacity with sex work(er) researchers and outreach organizations since 1995. During this time I have been the principal investigator on three major studies of clients, acted as co-investigator on three additional studies of health and safety in the off-street sex industry, and provided research counsel or assistance on six other projects focusing on the impact of work environment and communications networks on the health and safety of off-street sex workers; violence in off-street sex industry work places; sex industry labour conditions; community attitudes toward prostitution; online sex industry advertising; sex work exiting and re-entry; and, mobile outreach service provision for street-based and survival sex workers. I have also been involved extensively in committees and working groups formed to study and develop social and health policy as well as regulatory approaches to addressing issues related to the sex industry in Canada.

My research with clients began in 1995 with a project funded by the British Columbia Ministry of Attorney General where my research partners and I completed the first large-scale study of clients in Canada. For this study we conducted a descriptive analysis of 'bad date sheets' (reports of violence and victimization made by people involved in the sex industry) published in Vancouver, surveyed information contained in the court files of 434 men charged for communicating in a public place for the purposes of prostitution under s.213 of the Criminal Code, and gathered information directly from clients through semi-structured interviews (n=12) and self-administered questionnaires (n=134). Following this study I spent a year (between January 31 and December 31, 1999) doing micro-ethnographic research and program evaluation in the Toronto Prostitution Offender Diversion Program (a.k.a., "John School"). During this time I observed 366 program participants over the course of 13 eight-hour 'classes' in addition to collecting survey information directly from 263 participants.

Between 2006 and 2010 I was the lead investigator on the client research component of a multi-member

Canadian Institutes of Health Research (CIHR) funded project entitled “*Development of an HIV/AIDS prevention intervention for indoor sex workers and their partners*”. This study was, until recently, the largest voluntary first-person investigation of people who purchase sexual services ever conducted, anywhere. For the project I collected self-administered survey information from 922 Canadian clients and conducted in-depth interviews with an additional 24. I am currently in the process of publishing the findings from my latest study called the Sex, Safety and Security (SSS) project. This study is also part of a much larger CIHR funded team grant examining the contexts of health and safety in the Canadian sex industry, titled “*Contexts of Vulnerabilities, Resiliencies and Care among People in the Sex Industry*”. As of December 31st, 2013, the Sex, Safety and Security study has surpassed my previous study – which I branded “Johns’ Voice” – as the largest and most comprehensive investigation of people who purchase sexual services ever conducted. The final sample consists of 1217 survey and 18 in-depth interview participants and 100’s of hours of micro-ethnographic observation in various physical and virtual communities across Canada. In brief, over the past two decades, I have heard from 2590 Canadian adult sex buyers who have volunteered their time to provide empirical evidence of their experiences purchasing sexual services. I’d like to now draw upon the results of my research to examine some of the core propositions in Bill C-36: The Protection of Communities and Exploited Persons Act.

The central argument I make within my submission is that the main assumptions and provisions of Bill C-36 concerning people who purchase sexual services are based on flawed logic and incomplete information. Moreover, if the proposed legislation is implemented it will likely result in a variety of harms affecting people involved in the sex industry, including harms to those that are the most vulnerable. In order to support my arguments I will draw upon empirical evidence provided by my studies of people who purchase sexual services – a group that has not been represented in any of the ‘consultations’ surrounding the development of the proposed legislation. I will specifically speak to the following questions, assumptions or goals of the proposed legislation:

- a) Is prostitution inherently exploitative?
- b) How much violence is there?
- c) Those who engage in prostitution need to be encouraged to report incidents of violence
- d) The demand for prostitution needs to be curbed and the attitudes and behaviours of sex buyers need to be changed
- e) Advertising of sexual services needs to be restricted

A. Is prostitution is inherently exploitative?

In the preamble to the Bill the claim is made that prostitution is “inherently” exploitative. Exploitation is defined in s.279.04 of the Criminal Code as causing someone to provide, or to offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service. Moreover, in determining whether a person exploits another this section states that the Court may consider whether the accused: (a) used or threatened to use force or another form of coercion; (b) used deception; or (c) abused a position of trust, power or authority.

There are undoubtedly situations where some sex workers are exploited by third parties such as business owners, managers, ‘madams’ or ‘pimps’. However, my research indicates that many sex workers work independently. In fact only 35% of clients we heard from in my most recent study indicated that they had, on at least one occasion in their lifetime, had to arrange sexual services with a sex worker through a third party. The remaining 65% maintained that they always ‘negotiated’ the exchange of sexual services for money directly with the sex worker. Assuming that independent sex workers – who make up the majority of people selling sexual services – are not threatening, forcing, coercing, or deceiving

themselves, the only other party that could be responsible for the “inherent exploitation” experienced by sex workers who work independently would have to be the client.

When it comes to the claim that it is clients who exploit service providers my data offer some interesting insights that not only demonstrate that such assertions might not be valid but it also provides a pretty interesting picture of how clients perceive the control and power they do have when with service providers. The majority of clients I have surveyed provide no indication that they have ever threatened, forced, coerced, deceived or abused a position of trust, power or authority to get service providers to provide sexual services – a claim supported by sex workers who participated in research conducted by my research partners in our sister project focusing on sex workers (www.understandingsexwork.com). Having said this, a minority of clients we surveyed do admit to exhibiting clearly exploitative behaviours. When it comes to overtly coercive and deceptive behaviour, 7.3% indicated that they had pressured a sex worker into doing something sexually that they were not prepared to do and 1.6% reported that they had refused to pay for services they had received. When it comes to more direct threats and force, 3.6% admitted to having had insulted or put down a sex worker and less than 1% had made threatening gestures toward a sex worker, had threatened to destroy a sex workers property, had verbally threatened to hurt a sex worker, had verbally threatened to assault a sex worker, or and had physically restrained a sex worker and not allowed them to leave when they wanted to. Certainly, there are particular individuals and situations that exhibit cruel and unjust (exploitative) behaviours and conditions, but my research indicates that these appear to be the exception and not the rule.

The assumption that relations that occur between sex workers and people who purchase sexual services are exploitative because the balance of control and power is asymmetrical, favouring of the client (i.e., only the worker is being ‘used’ by the client as a means to an ends) also is not supported by the accounts of the clients I have surveyed. Many of the participants in our most recent study indicated that they either felt that the service providers they engaged with had more control or power, or that control or power were relatively equally distributed. For example, when we asked them who got their way when they had a disagreement with a sex worker, 34.6% stated that the worker got his or her way, 56.6% felt that resolution was equal, and only 8.9% felt that they got their way. Similarly, when we asked about who has more say about the terms of service, 57.2% of clients felt that the sex worker had more say, 26.2% felt that both parties had relatively equal say, and only 16.6% felt that they had more say than the worker. Finally, when we asked about who they felt had more power in the relationship, 46.2% felt that the sex worker had more power, 35.1% felt that the power was relatively equally distributed, and only 18.8% felt that they had more power than the sex worker. Again, these findings are supported by the accounts of the sex workers that my research partners have spoken with.

B. How much violence is there?

The preamble to the Bill also indicates that the proposed legislation was developed in response to the “risks of violence posed to those who engage in [prostitution]”. Moreover, in presenting the Bill Minister MacKay referred to prostitution as “inherently dangerous” and “inherently violent”. These statements suggest that violence and danger are intrinsic to selling sexual services. By extension, they also suggest that the sources of this violence and danger are, among others, people who purchase sexual services.

In all of my studies of clients I have sought to better understand issues and instances of violence and victimization that take place when sexual services are being sold and purchased. In my two most recent studies we asked participants to tell us about violence that they instigated as well as that which they were victims of. Moreover, in my most recent study I was able to look a little deeper into issues of violence and victimization. In order to do this we asked participants what they felt produced the violence and victimization they had taken part in or experienced and if they had witnessed incidents that

others (both sex workers and clients alike) might have experienced.

The results from two separate large-scale investigations with large samples of clients have produced consistent findings when it comes to the levels of self-reported violent and aggressive actions that respondents report committing against sex workers. Overall, the majority of interactions clients have with sex workers are peaceful. Having said this it is important to point out that a small portion of clients report having committed violent offenses – as defined by Canada's Criminal Code – against sex workers. These offenses include: making threatening gestures toward a sex worker (0.4%); verbally threatening to hurt them (0.4%); verbally threatening to physically assault them (0.2%); throwing an object at them out of anger (0.2%); biting, scratching or pushing them out of anger (0.8%); hitting or slapping them out of anger (1.9% of JV and .3% of SSS); physically assaulting them (0.9%); and, physically restraining them and not allowed him or her to leave when they wanted to (0.6%).

Non-violent behaviour in the form of verbal assaults and property crimes are more frequently reported by clients in our samples. More specifically, 3.6% had insulted or put down a sex worker; 4.5% of JV and 1.2% of SSS participants had verbally abused or harassed them; 1.5% had taken money, jewellery or other items of value from them; .4% had intentionally damaged their property; and, 2.1% of JV and .3% of SSS respondents had robbed them. By far the most commonly reported non-violent means of “attacking” a sex worker reported by clients we have sampled comes in the form of posting a negative review about the worker in an online forum, with 30% of JV and 23.3% of SSS participants reported having done so.

A small percentage of clients also report experiences of violent victimization while purchasing sexual services. The specific victimization they have reported includes: being physically assaulted by an agency owner, manager, ‘pimp’ or ‘madam’ (1.7% of JV and 1.1% of SSS); being verbally threatened by an agency owner, manager, ‘pimp’ or ‘madam’ (3.6%); being threatened (gestures) by a sex worker (3.4%); verbally threatened that they would be hurt by a sex worker (4.2%); being threatened with physically assault by a sex worker (2.9%); being hit or slapped by a sex worker who was angry with them (1%); and, being physically assaulted by a sex worker (5.1% of JV and 1% of SSS).

Again, non-violent victimization in the form of verbal assaults and property crimes is more commonly reported by clients we have sampled. Participants reported that on at least one occasion a sex worker had robbed them (21.1% of JV and 14.8% of SSS), had stolen their property (15.1% of JV and 15% of SSS), and had stolen money, jewelry or other items of value (15.7%). A somewhat smaller percentage (3.5% of JV and 5.6% of SSS) reported being robbed by an agency owner, manager, ‘pimp’ or ‘madam’. Finally, quite a few participants reported that they had been verbally abused or harassed by a sex worker (18.8% of JV and 11.9% of SSS) or agency owner, manager, ‘pimp’ or ‘madam’ (6%).

More sophisticated analyses of my data has revealed that actual occurrences of violence and victimization in the sex trade vary significantly across different contexts, specifically in different venues where commercial sexual interactions take place. The street-based portion of the sex industry seems to be a context that holds the most potential for violent interactions to occur, and where concerns around safety for both sex workers and clients are the greatest. Part of dangers for those involved in the street-based sex industry is a result of the isolated nature of locations that they are forced to move to because of their constant fear of arrest, "concerns about community safety", the absence of clear and commonly understood behavioural norms or regulations, and the increased likelihood that either the worker or client will be under the influence of drugs or alcohol.

Given what we know about the diversity of these various experiences and responses to violence and victimization in the sex industry, I wonder how criminalizing all clients equally – whether or not they actually victimize a sex worker – is meant to address concerns and challenges that both clients and sex

worker report. The fact that less than 1% of clients in my two separate large-scale studies admit to committing criminally violent offences and less than 5% admit to committing verbal abuse or property crimes against sex workers – whether provoked or unprovoked – does not justify treating the other 95-99% of buyers of sexual services as criminals. Criminalizing all buyers of sexual services equally would not only result in innocent people being marked for life with the label ‘criminal’ but would also make it significantly more difficult to properly prevent and address actual acts of violence that do occur within the sex industry.

C. Those who engage in prostitution need to be encouraged to report incidents of violence

Again, in the preamble to the bill express reference is made to the purpose of the proposed legislation being to encourage those who engage in prostitution to report violence. While violence is not experienced by all people involved in the sale and purchase of sexual services, nobody will deny that instances of both violent and non-violent victimization do occur. As we have seen, my research supports this fact but also indicates that violence and victimization are neither “inherent” nor asymmetrical. My research also indicates the real and potential value of clients in detecting and reporting violence or other abuses that they witness or suspect.

With respect to actually *witnessing* sex workers being victimized, of the 4.6% of respondents who have witnessed victimization by a third party, 34% reported that they did something about it. Further, of the 4.2% that indicated that they have witnessed victimization by a client or someone they thought was a client, 69% did something about it. Moreover, among the 19.1% of respondents who have *suspected* a sex worker was being victimized by a third party, 30% revealed that they did something about it. Similarly, among the 8.5% of respondents who report that they *suspected* a sex worker was being victimized by a client or someone they thought was a client 30% report that they did something about it.

Violence and victimization appear to be relatively uncommon events in the experiences of the clients I have surveyed. Few clients actually report perpetrating violence against a sex worker, being victimized by a sex worker or third party, or witnessing sex workers being victimized. Despite this, in my most recent project I was interested in knowing what the clients we sampled might do if they witnessed or suspected a sex worker was being victimized. Almost half (46.5%) of respondents said they would do something if they witnessed a sex worker being victimized and a further 31.5% said it was likely that they would do something while 22% indicated that they would probably not do anything. Slightly more than one-quarter (27.8%) said they would do something if they suspected a sex worker was being victimized and 29.6% felt it was likely that they would do something while 42.5% said they would probably do nothing.

If the one of the aims of the proposed legislation is truly "to encourage those who engage in prostitution to report incidents of violence", then we need to make sure that we do not create laws that actually discourage this from happening. I am puzzled why the government is proposing a law that will criminalize the people that are frequently in the best position to report the instances of violence and victimization that they do witness. If by purchasing sex a person is engaging in a criminal activity, I have to wonder how likely they will be to report violent incidents? Again, my research findings offer some answers to this, when we asked participants why they might not report witnessing violence or victimization they most often cited fear of getting hurt, being arrested, or being “outed” as major obstacles.

D. Demand for prostitution needs to be curbed and the attitudes and behaviours of sex buyers need to be changed

In order to curb demand and to change the attitudes and behaviours of people who purchase sexual services, Bill C-36 – for the first time in Canadian history – proposes to criminalize the purchase of sexual services. Specifically, s. 286.1(1) of the Bill makes obtaining for consideration, or communicating with anyone for the purpose of obtaining for consideration, the sexual services of a person (i.e., purchasing sexual services) an indictable criminal offence if done in public or if involving anyone under 18, and a summary offence otherwise. Additionally, it adds obtaining sexual services for consideration to list of “secondary designated offences” in s.487.04 thereby subjecting sex buyers to *the possibility* of being included in an offender DNA database. Finally, it adds s.286.1 to list of offences in s. 490.001(b) which subject people convicted of obtaining sexual services for consideration to *the possibility* of having their names submitted to a registry of sex offenders.

At least a portion of the logic underlying the proposal to criminalize the purchase of sexual services appears to be grounded in the beliefs that: demand is the sole reason that the sex industry exists; and that transforming sexual activity into a good or service to be sold and purchased and objectifying the human body are ‘socially harmful’ activities. Moreover, the class of people who should be held legally accountable for these ‘evils’ are clients.

The belief that demand is solely responsible for the existence of the sex industry ignores the fact that in many cases supply actually produces demand. Results from the research that my research partners and I conducted with clients in 1996 revealed that visibility or availability accounted for the reason that 36.2% of clients we surveyed first purchased sexual services. Moreover, when we asked participants to rank various factors in their general decision as to when they purchased sexual services, 59.6% said the simple availability of a desirable looking sex worker was either important or very important.

I’ll set aside the moral argument about whether or not attaching an economic value to sexual activity (sexual labour) is more ‘socially harmful’ than attaching economic value to intellectual, physical, emotional or any other form of activity or labour because I don’t feel that such an argument can be resolved in the limited space I have here, nor can it be resolved by way of legislation. The aspect of the logic that I would like to take issue with is the implicit assumption that the purchaser of the sexual services or labour, by virtue of agreeing to pay the price that the seller of the service is demanding, should bare sole legal responsibility for the ‘social harm’ resulting from said commodification. While one might not agree with sex and sexuality being commodified, it is hypocritical and discriminatory in a society where sex and sexuality are used liberally to sell all sorts of goods and services to criminalize the purchase of direct contact sexual services while at the same time sanctioning (or at least not directly criminalizing) the sale of such services (i.e., asymmetrical criminalization). Furthermore, it is highly unlikely that such a discriminatory law will stand up to the inevitable, and costly, challenges under section 15(1) of the Canadian Charter of Rights and Freedoms.

Yet another assumption underlying s 286.1(1) and the other related amendments to the Criminal Code appears to be that demand can be curbed and attitudes and behaviours changed by simply criminalizing the purchase of sexual services and arresting, incarcerating and/or fining the people who engage in such behaviour. Results from both my 1996 study and my ethnographic evaluation of Toronto’s Prostitution Offender Diversion Program show that stigma, shame, and criminal persecution are not effective strategies for changing behaviour. Such approaches simply result in displacing the behaviour to hidden and potentially more dangerous locales. Moreover, labelling as criminal people who pay for sexual services, while at the same time legalizing the actions of people who sell such services, will create a situation that some have referred to as the “perfect crime” where people purchasing sexual services become the ‘legitimate targets’ of robbery, fraud, theft, blackmail and assault. Because of their

participation in what would be considered illegal activities, these people will be even less likely to report victimization they experience to the police. More importantly, those people who seek recourse for the victimization they experience may be more likely to turn to vigilante tactics; this will put people involved in the sex industry at even greater risk of violence and victimization.

Even when arresting and charging clients does have a specific deterrent effect, there does not appear to be any strategy or consideration for how long-term behavioural or attitudinal change that would be necessary for people to stop seeking sexual service providers to fulfill their needs are to be brought about (i.e., general deterrence). In other words, there is no provision in the Bill for any forms of ‘curbing demand’ that rely on intervention or education. The assumption appears to be that the deep-seated attitudes about the legitimacy of the commodification of sex and sexuality, the ‘objectification’ of the human body, and the ‘social harms’ caused by the people who engage in such behaviours can simply be legislated out of existence; such logic is fundamentally flawed.

E. Advertising of sexual services needs to be restricted

Quite frequently in conversations about communication, the focus is placed solely on the effect that limiting the ability to communicate has on the ability of sex workers to “screen clients”. In fact, the ability to communicate clearly and openly and in a non-hurried manner was recognized by judges in the Bedford case as being vitally important for protecting the health and safety of sex workers. Findings from the research I have conducted echo these sentiments and reveal that the open and unrestricted exchange of information between sex workers and clients also has significant implications for clients and for the subsequent interactions that they have with sex workers.

Within off-street environments – which as we know represent the vast majority of spaces where the sale and purchase of sexual services take place – there are a variety of ways that people providing sexual services advertise and there are a variety of ways that consumers of these services locate access and interpret the information provided within the advertisements. Advertisement serves as the first line of communication or knowledge exchange between clients and sex workers. Clients are able to look through advertisements to learn what services particular individuals or businesses offer, how much the services will cost, and – in some situations – what the conditions of the services may be. In doing this, clients can identify service providers that are able to meet their particular needs.

In off-street exchanges the process of ‘negotiating’ the exchange of sexual services for money most often does not end with advertisement. Once a prospective client reads and interprets the advertisement he, she or they (in the cases of people who purchase sexual services as a couple) then contact the service provider directly (via phone, email, text message or in person) so that both parties can further discuss (‘negotiate’) other terms, conditions and expectations that each might have. In many cases these ‘negotiations’ involve several communications that sometimes take place over hours or even days. Through this process a framework is established that serves not only to guide aspects of the actual physical encounter between a particular client and sex worker, but over time as networks of clients and workers interact this framework becomes normative. When these norms are conveyed through print and online spaces where people involved in the sex industry advertise or communicate, people who are new to the industry are able to more clearly learn the ‘rules’. Having a clear understanding of the ‘rules’ greatly reduces the likelihood that the sexual and physical safety of people involved in the sale and purchase of sex will be compromised.

Section 286.4 of Bill C-36 proposes to make it a criminal offence to knowingly advertise an offer to provide sexual services for consideration. Additionally, the Bill also proposes amendments to s. 183 and s.184 of the Criminal Code authorizing law enforcement to intercept private communications of people suspected of communicating with anyone for the purpose of obtaining for consideration sexual services.

By restricting advertising and communication by prospective clients, the Bill places limits on the open and honest exchange of information that occurs between sex workers and their clients.

The proposed legislation will place an even greater onus of clarity in advertising services upon the shoulders of sexual service providers since clients cannot, legally, be clear about what it is that they are looking for or the expectations that they have of the exchange. Under this system I find it hard to see how conflicts over misunderstandings or disagreements about terms of services would not become commonplace and how such conflicts, in a criminalized environment, would not result in increased levels of non-violent and violent victimization.

Moreover, the proposed law also has potentially negative implications for outreach and support services as well as social and health research. At present we have relatively easy access to spaces where sex is being advertised for sale. This access provides an important avenue for us to contact those involved in the sex industry to provide them with essential health, education, and safety resources as well as to solicit their participation in social and health research that will allow us to better understand the complexities of the industry and peoples experience of it. With this access cut off our ability to identify unsafe situations or conditions is compromised and our ability to reach out to people in need is severely limited.

A Way Forward

In my work with Canada's sex industry over the past 20 years I have witnessed firsthand and heard from countless research participants – sex workers and clients alike – that while most commercial exchanges occur without instance, there are real issues faced by a minority of people in the sex industry. Frequently these issues are tied to larger and more socially pervasive structural oppression that intersects on axes of, among other things, gender, race, class, culture, and sexuality. We can all agree that as a society we are morally obligated to provide such people with assistance in various forms. We can also agree that stigma and discrimination are common experiences of most people involved in the sex industry, and that this negatively impacts their ability to access support.

What I have learned from my research with people involved in Canada's sex industry is what makes reading portions of the proposed Bill so incomprehensible. Bill C-36 disregards the findings of the Bedford decision – something that was pointed out again and again by witnesses who testified before the Standing Committee on Justice and Human Rights in July of this year. The Bill introduces a provision that would criminalize clients, but it has not been adequately or convincingly demonstrated why those who purchase sexual services should, as a class, be treated as criminals. The Bill also introduces provisions that dramatically limit the ability to advertise and 'negotiate' sexual services, making open communication – in public or private – between sex workers and clients legally impossible and thus increasing the risk to both the sexual, physical and economic safety of all parties. As a result, I would recommend that sections 286.1 and 286.4, the provisions criminalizing obtaining sexual services for consideration and advertising sexual services, be removed from the proposed legislation. In their place I recommend treating the sex industry as any other industry and regulating it through existing federal, provincial and municipal laws and regulations. I also recommend, as others have internationally, that harm reduction and health promotion policies be developed and implemented on the basis of the direct and active contribution of people who are actually involved in the sex industry as well as the empirical evidence provided by the growing wealth of ethical and methodologically sound Canadian research that has been done in this area. Finally, I would also propose that the money that would have been used to detect and prosecute clients be used to fund combating real violence and victimization experienced by some people who are involved in the sex industry as well as to provide support resources and services to those who request or need them.