

Hyperbole Exposed

Brief to the Senate Committee on Legal and Constitutional Affairs on the Protection of Communities and Exploited Persons Act.

John Lowman, PhD, School of Criminology, Simon Fraser University

Since 1977, I have conducted numerous studies of sex work, and prostitution law and its enforcement in Canada. Between 1984 and 2002, the Department of Justice Canada contracted me to conduct eight studies of prostitution and prostitution law enforcement in Vancouver, and one on gaps in the prostitution research literature. In 1989, the Standing Committee on Justice and Legal Affairs invited me to make a submission on the 1985 communicating law. In 2005, the Subcommittee on Solicitation Laws invited me to make two submissions on Canadian prostitution law. I was an expert witness for the applicants in *Bedford v. Canada*, and for Commissioner Oppal in the *Missing Women Commission of Inquiry*.

The ensuing submission describes how supporters of demand-side prohibition – which permits the sale of sex but criminalizes its purchase – manipulate evidence; they rely on research legends and anecdotes that do not stand empirical scrutiny. The brief focusses on the average of entry into prostitution in Canada, the nature of “consent” in adult prostitution, the incidence of childhood sexual abuse among sex workers, and public opinion about the legal status of adult prostitution. It suggests that Bill C-36 will introduce laws that are unconstitutional, and will create a system of state-sponsored entrapment of sex purchasers.

Choice, consent, and the underlying logic of asymmetrical criminalization

The logic of asymmetrical prohibition rests on two main arguments denying that female sex sellers truly “consent” to sell sex. The first infantilizes sex sellers. Because the “average” prostitute began selling sex as a child, she never consents to acts of prostitution as an adult. She effectively is a child. The second holds that various inequalities – poverty, colonialism, patriarchal social relations – force females to sell sex. Because sex buyers exploit such females, the state should criminalize sex buyers, but not sellers, as they are the buyer’s victims.¹

Infantilizing Sex Sellers

A core demand-side prohibitionist mantra is that the “average” female sex seller in Canada begins prostituting when she is 12-14 years old. For example, in 2008 Professor Richard Poulin, one of the Crown’s expert witnesses² in *Bedford v. Canada*, claimed that that “the average age of recruitment ... in Canada is 14 years old.”³ In 2012, Conservative MP Joy Smith, the leading parliamentary advocate of demand-side prohibition, held that “The average age of entry into

¹ Prohibitionists build these denials of sex seller agency and culpability on a series of broader claims: prostitution is inherently harmful not just to sex sellers but to women in general; prostitution is inherently dangerous; prostitution is male violence against women; women cannot gain equality with men as long as prostitution exists.

² For further commentary on the Crown’s expert witness testimony, see Lowman, J. (2013) “Crown Expert-Witness Testimony in *Bedford v. Canada*: Evidence-based Argument or Victim-Paradigm Hyperbole?” pp. 230-250 in E. van der Meulen, E. Durisin and V. Love (eds) *Selling Sex: Canadian Academics, Advocates, and Sex Workers in Dialogue*. Vancouver: UBC Press.

³ Joint Application Record Vol. 40, Tab 102, paragraphs 24, 28.

prostitution in Canada is between twelve and fourteen years of age,"⁴ a claim she repeated on CBC radio on 5th June 2014, a day after the tabling of Bill C-36. Melissa Farley, another Crown expert witness in *Bedford*, explained the importance of age of entry this way:

"The 14-year-old in prostitution eventually turns 18 but she has not suddenly made a new 'vocational choice'.... Women who began prostituting as adolescents may have parts of themselves that are dissociatively compartmentalized into a much younger child's time and place" (Farley et al. 2003, 36).

The claim that adult sex workers effectively are children leads to the argument that: i) few sex workers "choose" to prostitute; and ii) the purchase of sex from adults should be prohibited in order to protect children. But what if the claim about average age of entry is apocryphal? When pressed to substantiate it, how have its advocates fared?

Crown witness Poulin alleged that several studies substantiated his claim about the average age of entry. However, under cross-examination, he acknowledged that only one source – McIntyre's (1999⁵) study of sexually exploited youth – gave fourteen as the average age of entry. That is hardly surprising given that her study *focussed on youth*. Because it excluded persons who began selling sex as adults, it tells us nothing about the average age of entry into prostitution in Canada. Poulin ended up admitting that he could not substantiate his claim.

Similarly, when pressed for research evidence on age of entry, Joy Smith was unable to provide it. In August 2012, when I asked her to provide sources, she identified just one: Estes and Weiner's *Commercial Sexual Exploitation of Children in the U.S., Canada, and Mexico*. However, like McIntyre's research, *it excluded adults* (p. 27). Further, Estes and Weiner did no research in Canada.⁶ Why did MP Smith not cite *any* Canadian studies? One could at least calculate the average age of entry across these studies, which had thousands of participants.

During the Standing Committee hearings, MP Smith provided several additional sources:

we find that from the John Howard Society study on prostitution, 14 to 16 is the average age of entry From the childhood victimization journal, the *Journal of Interpersonal Violence*, 89% enter into prostitution before the age of 16. They're 13 to 19 years old on entry in Canada, *An International Handbook on Trends, Problems, and Policies*. (Transcript July 7, 1-00-3.00, p. 14)

Although she has not responded to my request for citations, it appears that she was referring to a 1996 John Howard Society of Alberta literature review,⁷ Nadon et al.'s article on antecedents to youth prostitution,⁸ and my article in an international handbook on prostitution.⁹ Again, the first two sources excluded adults. The third source reviewed studies of street sex workers, the

⁴ Joy Smith "Sex traders keep your hands off our children" *The Province*, July 29, 2012.

⁵ McIntyre, S. 1999. The Youngest Profession, the Oldest Oppression: A Study of Sex Work. In *Child Sexual Abuse and Adult Offenders: New Theory and Research*. Ed. Bagley, C. and Mallick, K. 159-192. London: Ashgate

⁶ Their decision to include "Canada" in the title thus remains a mystery.

⁷ <http://www.johnhoward.ab.ca/pub/C51.htm>

⁸ Susan M. Nadon, Catherine Koverola and Eduard H. Schludermann "Antecedents to Prostitution: Childhood Victimization" *Journal of Interpersonal Violence* 13: 206-221, 1998.

⁹ Lowman, J. (1993) "Canada" in Nanette Davis (ed.) *Prostitution: An International Handbook on Trends, Problems and Policies*, pp. 56-86. Westport, Connecticut: Greenwood Press.

population with the youngest females (most licensed massage parlours and escort services will not hire them¹⁰). None of these studies reported the average age of entry as being 14.

On a related point, during the hearings, documentary filmmakers Michelle and Jared Brock disagreed with my testimony that most Canadian sex workers are not “trafficked:”

At various points in the Bedford case, and in the past few days in this committee, there has been a debate over the average age of entering into prostitution. Some argue it's 14; some say 18.

When Mr. Lowman said before this committee that it was a preposterous claim that the average age is 14 ... one of our interviewees pointed something out... even if you go with a conservative estimate of 18, that means roughly half of them began as minors, and that's considered, by definition, trafficking.¹¹

The Brock's portrayal of the data in dispute is misleading. My brief to the Standing Committee cited three studies from the *Bedford* evidentiary record that reported average age of entry. In Benoit and Millar's sample, it was 19;¹² in O'Doherty's sample, it was 22,¹³ and in Farley et al.'s sample of Vancouver Downtown Eastside street workers (perhaps the most marginalized sex-worker population in Canada) it was 18.¹⁴ The average across the three surveys was 19.7 years, in which case, according to the Brocks' logic, most began as adults.

Like most supporters of demand-side prohibition, the Brocks argue that very few females in prostitution exercise choice. They suggest that critics of this position fail to “appreciate the nuance of the word ‘choice’.” Or is it the Brock's binary concept of choice – something a person either has or does not have – that lacks nuance? The dozens of studies of prostitution conducted in Canada since 1980 suggest that we can distinguish three broad categories of sex seller, the latter two of which represent a continuum from very little to a relatively great deal of choice:¹⁵

- a) Sexual slavery and trafficking involve one or more persons forcing another to prostitute.
- b) Survival sex involves a person engaging in prostitution because she (or he) has few options.
- c) Opportunistic prostitution involves a person deciding to engage in sex work rather than some other kind of labour because of the greater financial reward it brings.

During the Standing Committee hearings, supporters of Bill C-36 held that the third category either does not exist or is so insignificant – between 1-10%¹⁶ – that it is irrelevant to the analysis

¹⁰ A few days before the Ontario Superior Court released its decision on Bedford et al.'s application, BC police raided a dozen massage parlours across the Lower Mainland, ostensibly as part of a trafficking investigation. They did not find a single youth working in any of the parlours. All but one were open for business just two days later.

¹¹ July 10, 9.30-11.30 p. 4. The Palermo protocol defines trafficking as “the recruitment, transportation, transfer, harboring or receipt of a child by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.” It refers to third party involvement, not purchase of sexual services. Although exploitation is not required in the case of minors, “trafficking” nevertheless refers to third party involvement. It is thus difficult to see how a person under 18 prostituting is “by definition, trafficking.”

¹² Benoit, C. & Millar, A. (2001). *Dispelling myths and understanding realities: Working conditions, health status, and existing experience of sex workers*. <http://www.peers.bc.ca/images/DispMythsshort.pdf>

¹³ O'Doherty (2011) “Victimization in Off-Street Sex Industry Work,” *Violence Against Women* 20:10:1-20.

¹⁴ Farley, Melissa et al. *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder* (2003) *Journal of Trauma Practice* Volume: 2 Issue:3/4, p. 35.

¹⁵ The Subcommittee on Solicitation Laws reported that these distinctions “were corroborated by many of the former and current prostitutes who testified before our Subcommittee.” See *The Challenge of Change: A Study of Canada's Criminal Prostitution Laws*. Report of the Standing Committee on Justice and Human Rights, 2006, Chapter 2.

¹⁶ For example, Timea Nagy of Walk With Me Canada Victim Services claimed that “Studies estimate the number of women voluntarily making an informed choice to do sex work is between 1% to 10%” (July 7, 1.00-3.00, p. 1). Ms. Larissa Crack (Co-

of prostitution. However, they either pluck these numbers from thin air, or rely on one or two non-generalizable samples – such as Farley’s sample of Downtown Eastside sex workers (see footnote 14) – to substantiate them rather than a broad and unbiased review of the literature.

Or they doctor the evidence. Take for example, the April 23, 2014 open letter¹⁷ signed by over 800 persons worldwide to the leaders of Canada’s federal political parties urging them to support demand-side prohibition. Written in response to a March 27, 2014 open letter to the same federal party leaders supporting decriminalization,¹⁸ the call for demand-side prohibition argued that:

“The use of the term ‘evidence-based’ has become a smear word used by those supporting the sex industry to suggest that those who oppose it in the name of women’s equality are arguing from a position of nothing more than anecdote or opinion. The list of signatories implies that only those with formal credentials can ‘research’ or interpret evidence. We reject both of these premises...”

To the extent that the letter agreed that the choice between decriminalization and demand-side prohibition *is* partly a dispute about evidence, consider the way it distorted one of the few fragments of evidence it actually offered.

The letter argued that we ought not to distinguish “sex work” from trafficking and child prostitution, because sex work is rarely a “choice.” As evidence, the letter asserted that, in *Bedford*, the Supreme Court of Canada found that “*most* women cannot be said to choose prostitution”¹⁹ (emphasis added). The letter is not truthful. In fact, the Supreme Court said that, “while some prostitutes may fit the description of persons who freely choose (or at one time chose) to engage in the risky economic activity of prostitution, *many* prostitutes have no meaningful choice but to do so” (paragraph 86, emphasis added). Later in the same paragraph, the decision identified *street prostitutes* as those to whom it referred:

As the application judge found, street prostitutes, with some exceptions, are a particularly marginalized population ... Whether because of financial desperation, drug addictions, mental illness, or compulsion from pimps, they often have little choice but to sell their bodies for money. Realistically, while they may retain some minimal power of choice ... these are not people who can be said to be truly “choosing” a risky line of business.

At paragraph 135 the Supreme Court agreed with the Court of Appeal’s observation “that empirical evidence on the [the effect of bawdy house laws] is difficult to gather, *since almost all the studies focus on street prostitution*” (emphasis added). Further, the Supreme Court agreed that “indoor work is far less dangerous than street prostitution,” a finding “that the evidence amply supports” (para. 63). Street prostitutes are “the most vulnerable class of prostitutes ... who

founder, Northern Women's Connection) held that “The small percentage of women, as stated by a study completed in 2014, who truly fit into this privileged category is no more than 10% of the population” (she did not identify the study). Ms. Linda MacDonald: “We have to always remember to think of the majority, not the 3% to 10% who say it's work” July 9, 3.30-5.30, p.13.

¹⁷ <http://www.rapereliefshelter.bc.ca/sites/default/files/imce/april-23rd-open-letter-in-support-of-the-nordic-model-signed-by-more-than-800-people.pdf>

¹⁸ Open letter calling for decriminalization of sex work in Canada and opposition to criminalizing the purchase of sex, March 27, 2014, addressed to party leaders Stephen Harper, Thomas Mulcair, Justin Trudeau, Jean-François Fortin, and Elizabeth May. http://www.gshi.cfenet.ubc.ca/openletter#.U-P_w-kg-Uk

¹⁹ *Canada (Attorney General) v. Bedford*, 2013 SCC 72, para. 86, online at: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do>

face an alarming amount of violence...” (*Canada (Attorney General) v. Bedford*, para. 64). Without adducing any convincing evidence, demand-side prohibitionists deny these variations.

Although the street and off-street populations are not mutually exclusive – some persons change venues at different points during their working careers – there is a consensus that street prostitution comprises only 5% to 20% of the Canadian prostitution trade.²⁰ It is thus likely that the majority of women involved in prostitution never or rarely work the street, in which case it would be folly to generalize from street prostitution to the whole Canadian sex-worker population. And yet, demand-side prohibitionists repeatedly make such generalizations.²¹

Childhood Sexual Abuse

Another demand-side prohibitionist mantra is that the large majority of prostitutes experienced childhood sexual abuse, a claim often repeated by supporters of Bill C-36. For example, during the Standing Committee hearings, Ms. Mélanie Sarroino²² stated that “Various studies show that between 80% and 90% of women who have been involved in prostitution were sexually assaulted as Children” (July 10, 1.00-3.00, Transcript p. 3). Ms. Timea E. Nagy²³ stated: “I speak for the 60% to 95% of women in the sex trade, based on numerous studies, who were sexually molested or assaulted as children” (July 7, 1-3, Transcript p.2). Ms. Michelle Miller²⁴ stated that, “the majority of prostituted women report a history of childhood sexual abuse.” Unlike the others, Miller did at least provide a source for her claim. However, like the studies that MP Smith identified regarding the average age of entry, Nadon et al.’s study (footnote 8) *was restricted to adolescents*. One cannot derive the rate of childhood sexual abuse of sex workers as a whole from a study that excludes persons who enter prostitution when they are adults.

Again, supporters of Bill C-36 cited only those studies that support their analysis of prostitution, ignoring everything else. In fact, there has been a long-standing disagreement in the Canadian literature about the extent of childhood sexual abuse among sex workers, with different surveys yielding a wide range of findings – from 10% to 90%.²⁵ Most of these surveys focus on street prostitutes, several of which exclude adults. Asserting that “the majority” or “the vast majority” of sex workers experienced childhood sexual abuse requires filtering out and ignoring a large part of the research literature and disregarding sampling issues.

A Cautionary Tale

To get a sense of the problems created by generalizing from samples of street sex workers, consider Ine Vanwesenbeeck’s comparison of Dutch and North American research on the

²⁰ *The Challenge of Change: A Study of Canada’s Criminal Prostitution Laws* (see footnote 13).

²¹ For examples of such unwarranted generalization, see John Lowman (2013) “Crown Expert-Witness Testimony in *Bedford v. Canada*: Evidence-based Argument or Victim-Paradigm Hyperbole?” pp. 230-250 in E. van der Meulen, E. Durisin and V. Love (eds) *Selling Sex: Canadian Academics, Advocates, and Sex Workers in Dialogue*. Vancouver: UBC Press.

²² Representing Regroupement québécois des Centres d’aide et de lutte contre les agressions à caractère sexuel, and a member of the Women’s Coalition for the Abolition of Prostitution).

²³ Founder and Front-Line Victim Care Worker, Walk With Me Canada Victim Services.

²⁴ Executive Director of Resist Exploitation, Embrace Dignity. REED is a faith-rooted women’s equality-seeking organization that offers support to women in prostitution, provides public education, and addresses the root causes of sexual exploitation.

²⁵ Lowman, J. (1991). Street prostitutes in Canada: An evaluation of the Brannigan-Fleischman opportunity model. *Canadian Journal of Law and Society*, 6, 137-164.

incidence of childhood sexual abuse among sex workers.²⁶ Citing examples of North American research on street prostitutes that show high levels of childhood sexual abuse (73% in Bagley and Young, 1987;²⁷ 60% in Silbert and Pines 1982²⁸) Vanwesenbeeck commented, “These figures are in sharp contrast with my own findings in the Netherlands.” In a sample of 130 active sex workers, she found that just over 15% had experienced childhood sexual abuse. Her explanation for the difference was that North American studies “have predominantly investigated those who are worse off.” She continued:

“[O]ur findings for the women working on the streets were comparable for those in these studies. But, when a diversity of prostitutes is taken into account, when sex workers are recruited in all different working sites to form a more or less representative sample, figures are clearly not as high. If one wants to say something about sex workers as a group, women working in all various forms of prostitution will have to be taken into account in order to not conform to stereotypes that are not even half true.”

The problem with studies that exclude adults is that they cannot tell us anything about levels of childhood sexual abuse among sex workers in general. The problem with relying on anecdotal evidence from service providers is that one might expect persons who had experienced childhood sexual abuse to seek treatment or help. Generalizing the experience of sex workers who seek help is akin to generalizing the experience of women who show up at a battered women’s shelter to married women in general. Obviously, like battered women who seek help, sex workers who want help deserve to receive it. However, to understand the experience of married women in general, or sex workers in general, we need a research methodology that does not rely on anecdotal information or studies that exclude large segments of the relevant population.

Sex Worker Agency

Like many wage labourers, many women who sell sex do not do so out of desperation. Studies such as Benoit and Millar’s *Dispelling Myths and Understanding Realities* (2001)²⁹ and Jeffrey and McDonald’s *Sex Workers in the Maritimes Talk Back*³⁰ (2006) suggest that, for many sex workers, the decision to prostitute is a rational economic choice, albeit one that is shaped by race, class and gender. Many choose sex work over minimum wage service sector jobs, and reject the victim status that prohibitionists impose on them. Those who work independently often see themselves not as victims, but as entrepreneurs taking advantage of their sexual capital.

Demand-side prohibitionists deny that sex workers exercise choice. Racist, sexist and classist social structures force them to prostitute. If this deterministic concept of cause is accurate, why is it that not all Aboriginal women, all poor women, all runaways, and all females who experienced childhood sexual abuse do not end up selling sex? Some choose to sell sex; others do not. Rather than prohibiting demand, thereby increasing the risks for women who do sell sex, I suggest we deal with supply – racism, classicism and colonialism – in order to maximize women’s choices.

²⁶ Ine Vanwesenbeeck (Netherlands Institute of Social Sexological Research, Tilburg University) “Levels of victimization and well-being in female sex workers.” Paper presented at Caring for Victims. 9th International Symposium on Victimisation, Amsterdam, August 25-29, 1997.

²⁷ Bagley, C. & Young, L. (1987). Juvenile prostitution and child sexual abuse: A controlled study. *Canadian Journal of Community Mental Health*, 6(1), 5-26.

²⁸ M.H. Silbert and A.M. Pines, 1982, “Victimization of street prostitutes, *Victimology: An International Journal*, 7: 122-133. In Bagley and Young’s sample 73% had experienced childhood sexual abuse; in Silbert and Pine’s sample the figure was 60%.

²⁹ <http://www.peers.bc.ca/images/DispMythsshort.pdf>

³⁰ Vancouver, BC: University of British Columbia Press.

State-sponsored Entrapment: a violation of Charter s.15?

Demand-side prohibitionists argue that demand causes prostitution. Targeting (male) demand is the best strategy to end (female) prostitution (their analysis during the Standing Committee hearings never addressed male prostitution). Bill C-36 ignores the way that supply and demand interact. Just as demand produces supply, so supply produces demand. For example, in one of the first studies of sex purchasers in Canada, when asked what initially prompted them to purchase sex, 41% of respondents answered that it was the availability and/or visibility of sex workers.³¹

While Bill C-36 prohibits third-party advertising of sexual services, it would allow adult sex workers to advertise their own sexual services, and sell them to anyone responding to the ad. Regardless of how prostitution is organized, and even if third parties are involved, the nature of advertising will likely evolve under the new law to ensure that, even if they are working in the context of a business, sex workers advertise their own services. The primary purpose of advertising is to stimulate demand. Given that Bill C-36 allows advertising – i.e. it allows the stimulation of demand for sexual services – it represents institutionalized state sponsored entrapment of buyers, a government sponsored honey trap.

Because most adult sex workers are of sound mind, and thus in a legal sense able to consent to sell sex, the new law could well violate Charter s. 15 (1)³² if section 15 (2)³³ does not save it. Would asymmetrical prohibition ameliorate the conditions of women and Aboriginals, or would it make their situation worse by reproducing the conditions that led the Supreme Court of Canada to strike down the communicating, living on the avails and bawdy-house laws because they violate a sex worker's right to security of the person. Would it make their situation worse by reducing demand for sexual services, thereby reducing a source of income, and lead to marginalized women taking more risks? I believe that it will do the latter.

Law enforcement patterns would remain unchanged

During the past twenty years, Vancouver Police Department designed law enforcement to contain street prostitution in several industrial and commercial districts. Police found the procuring laws difficult to enforce, requiring intensive and costly investigations because evidence was hard to obtain. The system resulted in a two-tier prostitution trade; the off-street trade operated with relative impunity while police enforced the communicating law extensively. Indeed, in Canada since the legislature enacted the communicating law in 1985 in order to control street prostitution, 93% of all prostitution charges have been for communicating. Would asymmetrical prohibition result in different law-enforcement patterns? Probably not.

³¹ Lowman, J. & Atchison, C. (2006). Men who buy sex: A survey in the Greater Vancouver Regional District. In C. Benoit & F. Shaver (Eds.), Critical perspectives on sex industry work in Canada [Special issue]. *Canadian Review of Sociology and Anthropology*, 43(3), 281-296.

³² "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

³³ Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

One of the initial experiences of asymmetrical prohibition in Sweden was that law enforcement targeted the street trade.³⁴ How would Canadian police prosecute off-street clients? Set up bogus sex-worker advertisements in order to entrap clients. Or would enforcement look like it did in Vancouver in the mid-1990s, when VPD had a policy of enforcing the communicating law against clients, but not against sex workers in the Downtown Eastside as long as they restricted their activity to an industrial area. Robert Pickton picked up most of his victims in this area. The new prohibition that Bill C-36 creates will likely continue this enforcement pattern, thereby adversely affecting survival sex workers the most – those who most need help.

Other constitutional problems with the proposed legislation

If Bill C36 becomes law, numerous constitutional challenges will arise, and could well be successful given that selling sex will still be legal. One can anticipate the following arguments:

- I. The proposed prohibition of “Material benefit from sexual services,” the exceptions notwithstanding, could prevent an independent sex worker from hiring bodyguards and drivers solely for the purpose of protecting her while engaged in sex work, thereby reproducing the constitutional violation of the former living on the avails law.
- II. The criminalization of clients will result in street prostitution continuing to be clandestine, thereby reproducing the constitutional infringement that caused the Supreme Court of Canada to strike down the communicating law.
- III. The atomization of sex workers that will result from prohibition of third-party involvement in prostitution may mean that third parties cannot become involved in creating indoor “safe havens” for survival sex workers. The prime example of such venues was Grandma’s House, a Vancouver charity set up to help sex workers. When it became obvious that a serial killer was operating in Vancouver the charity began allowing women to bring their dates to the house. However, when Vancouver police charged the operator with running a common bawdy house, Grandma’s House closed.

Even if the legislature were to criminalize the sale of sex, the prohibition would compromise the sex worker’s right to security of the person.

Government Manipulation of Measures of Canadian Public Opinion

Mrs. Joy Smith: “*We’ve done an extensive consultation of Canadians, and without a doubt they are on the side of Bill C-36.*”³⁵

MP Smith suggests that a majority of Canadians support Bill C-36. Her statement is untrue. Prior to tabling Bill C-36, the government used two methods to gauge public opinion on the legal status of prostitution. The first was the inclusion of two questions in a Department of Justice funded national opinion survey of criminal justice issues. Ipsos-Reid conducted this poll (n=3,000) between January 30th and February 7th 2014. The second was an online consultation

³⁴ See the Norwegian review of the Swedish law at <http://odin.dep.no/jd/english/012101-990578/dok-bn.html>

³⁵ Transcript of the Standing Committee of Justice and Human Rights hearings on Bill C-36, July 9, 3.30-5.30, p. 13.

from February 17th to March 17th 2014,³⁶ which generated 31,172 responses. The consultation sought Canadians opinions on prostitution law reform in response to the *Bedford* decision.

Despite numerous requests to release the results of the Ipsos-Reid survey in time for the Standing Committee hearings, the government refused. However, it did release the results of the consultation; 56% of respondents thought that purchasing a sexual service should be a criminal offence, while 44% thought that it should not.³⁷ In contrast, only 34% of respondents thought that selling a sexual service should be a criminal offence, while 66% thought it should not.³⁸ Also, 66% respondents felt that benefiting economically from the prostitution of an adult should be a criminal offence. The release of the consultation but not the Ipsos-Reid survey indicates the government's willingness to manipulate evidence to support demand-side prohibition.

On July 16th, the *Toronto Star* published the results of the leaked Ipsos-Reid poll,³⁹ but the Standing Committee had already wrapped up its hearings by that time. In contrast to the consultation, when it came to the criminal status of prostitution, respondents were deeply divided: 51.2% of the respondents, believed that buying sex should be illegal, compared to 44.1% who thought it should be legal, while 49.8% thought that selling sex should be illegal, compared to 45.4% who thought it should be legal.

Because it used a probabilistic sample, we can generalize the Ipsos Reid survey findings to Canadians as a whole. However, because the consultation was a self-selected sample, one cannot generalize its findings. Lending credence to the Ipsos-Reid poll was an Angus Reid survey conducted on June 10, 2014,⁴⁰ just a few days after Peter MacKay tabled Bill C-36. This more detailed survey revealed a substantial gender difference in attitudes to the legal status of prostitution. Overall, 51% of those polled thought that selling sex should be legal compared to 39% who thought it should be illegal (40% of women thought it should be legal compared to 49% who thought it should not). Overall 45% thought that buying sex should be illegal compared to 45% who thought that it should be legal (34% of women thought that buying should be legal compared to 55% who thought it should be illegal). The survey revealed 35% support for Bill C-36, while 47% were opposed (the remaining 18% were not sure). Where does this leave MP Smith's claim that "Canadians ... without a doubt ... are on the side of Bill C-36?"

The deep division of opinion in the Ipsos Reid and Angus Reid polls is consistent with all the other national opinion surveys conducted over the past thirty years.⁴¹ These surveys indicate that Canadians are divided about the legal status of prostitution. Of those who believe that it should be illegal, the large majority think that the state should prohibit *both* the sale and purchase of sex. In the three Angus Reid surveys conducted in 2009, 2010 and 2011, just 8%, 10%, and 7% of

³⁶ http://www.justice.gc.ca/eng/rp-pr/other-autre/r14_09/r14_09.pdf

³⁷ The writers of the consultation report excluded the missing 9% of responses from the calculation of these percentages.

³⁸ The writers of the consultation report excluded the missing 14% of responses from the calculation of these percentages.

³⁹ "Secret poll shows Canadians deeply divided about prostitution," July 16, 2014,

http://www.thestar.com/news/canada/2014/07/16/secret_poll_shows_canadians_deeply_divided_on_prostitution_approach.html

⁴⁰ <http://www.angusreidglobal.com/polls/gender-split-reveals-deep-divide-between-men-women-on-issues-surrounding-the-sex-trade/>

⁴¹ For a review of their findings, see Lowman, J. and Louis, C. (2012) "Public Opinion on Prostitution Law Reform in Canada." *Canadian Journal of Criminology and Criminal Justice* 54:2:245-260.

respondents supported ‘punishing clients only.’” Of the women who supported prohibition, the large majority thought selling and buying sex should *both* be illegal.

The majority of Swedes do not support asymmetrical prohibition

Supporters of demand-side prohibition allege that one of its benefits is changing attitudes to prostitution. Swedish opinion polls show considerable support for the prohibition of the purchase of sex. However, none of the supporters of Bill C-36 ever mention that, after the introduction of asymmetrical prohibition, support for prohibition of the sale of sex in Sweden also increased. In a 2008 survey of a random sample of 1134 adult Swedes,⁴² 58.7% thought that the sale of sex should be prohibited, 27.4% thought it should be legal (13.9% had no opinion). Of the surveyed women, 66% thought the sale of sex should be illegal, 20.9% thought it should be legal, and 13.2% had no opinion. These results were consistent with surveys conducted in 1999 and 2002.

Conclusion

Prohibitionists selectively assemble evidence to suit their political agenda, ignoring anything that contradicts it. In the process, they hide, distort or misread evidence. Anecdotal evidence from various frontline organizations is problematic because it deals with women seeking help. These organizations never get to meet women who do not seek help, the women who do not think that they need rescuing. These women are much more likely to find their way into research samples.

Demand-side prohibitionists argue that, because there is a risk of violence no matter where prostitution occurs, we should abolish it. Imagine this argument carried over into other realms of human activity. Should we prohibit logging, fishing and mining because they are high-risk occupations, or should we try to make them safer? Because motorbike riding is 30 times more dangerous than driving a car⁴³ should we ban motor bikes, or require that riders wear crash helmets? Should we ban prostitution or design policy to ensure that women can sell sex in relative safety? The greatest irony of demand-side prohibition is that, pursuing abolition is likely to increase the risks associated with survival sex, not reduce them.

None of this is to argue that children should be involved in prostitution – or that they should consume alcohol, drive cars, or marry. However, generalizing research on “the victims of human trafficking” and “juvenile prostitution” to prostitution as a whole is akin to attending a series of Alcoholics Anonymous meetings and then arguing that the misery recounted at them is the experience of everyone who consumes alcohol. Prohibiting the purchase of sex from a consenting adult in order to stop children and youth from prostituting is like arguing that we should criminalize adult alcohol consumption to prevent children from drinking.

Ironically, if implemented, the proposed *Protection of Communities and Exploited Persons Act* will help to produce the very conditions its proponents allege are inherent to prostitution. Ultimately, the people who will suffer most if parliament passes Bill C36 are the ones who prohibition always victimizes: survival sex workers who cannot find an alternative way to make a living, and the sex workers who do not want to find an alternative, preferring to take advantage of their sexual capital rather than working long hours for mediocre wages.

⁴² Jari Kuosmanen “Attitudes and perceptions about legislation prohibiting the purchase of sexual services in Sweden” *European Journal of Social Work* (2011), pp. 1-17.

⁴³ James Ball “Our fear of flying is simply irrational” *The Guardian Weekly* August 1, 2014, p. 20.