

**[letterhead]**  
**Conseil du statut de la femme du Québec**

**Brief on Bill C-36**

*Protection of Communities and Exploited Persons Act,*  
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

Submitted to the Standing Committee on Justice and Human Rights  
7 July 2014

The Conseil du statut de la femme du Québec [Quebec Council on the Status of Women] is a government advisory and review body that has sought to promote and defend the rights and interests of Quebec women since 1973. It advises the Quebec minister responsible for the status of women on all subjects related to the equality of women and respect for their rights and status and, to that end, has autonomy of thought and expression. Its advice is based on solid field research and has influenced government action for the last 40 years.

In May 2012, the Council published a well-developed opinion entitled “La prostitution: il est temps d'agir” [Prostitution: time to take action], in which it urged the government to decriminalize prostitutes while continuing to punish johns and pimps. In the social realm, it called for specialized services to help prostitutes and trafficking victims exit this environment. Having completed two research projects on this issue, conducted 10 years apart, the Council has acquired solid expertise on prostitution. To prepare the 2012 opinion, our researchers interviewed social workers and police officers involved in projects to combat procuring. We also spoke to women who have lived the life of prostitution, some of whom call themselves “sex workers” and others who say that in no way can this business be called a trade. We also examined the experiences of countries that have adopted different approaches to dealing with this issue.

The Council is conscious of the diversity of opinions and life experiences of prostitutes. Today as in the past, prostitution reflects society's class differences, ranging from deluxe brothels to prostitution practised in destitution. It must of course be recognized that certain women are able to make a profit from this lucrative business. Nonetheless, the facts show that the great majority of prostitutes find themselves in situations of exploitation and violence that they did not choose, and from which they find it hard to extricate themselves without outside help. The Council has chosen to focus on the consequences of this business on the lives of the most vulnerable women, since we feel it is the role of the state and the law to ensure that the most vulnerable members of society are protected. To that end, we advocate for an abolitionist position, meaning that we want certain measures taken to limit prostitution to the fullest possible extent, since it is a form of exploitation which mainly benefits men and pimps.

The Conseil du statut de la femme welcomes the federal government's Bill C-36 on

prostitution, which criminalizes the purchase of sexual services by proposing to target pimps and johns rather than prostitutes, and to prohibit all advertising of sexual services. In following the Swedish model, Canada is joining a small group of the most forward-thinking countries in this regard—France, Norway and Iceland—that are trying to curb the demand for prostitutes. The Council realizes that the total elimination of prostitution is probably a pipe dream. Nonetheless, any society that respects the fundamental rights of women must take all necessary steps to address this issue.

France, for example, is in the process of adopting the *Loi renforçant la lutte contre le système prostitutionnel* [Act to step up the fight against the prostitution system]. The abolitionist position adopted by the French national assembly, which is presently at second reading in the Senate, now characterizes prostitutes as victims rather than criminals. The bill will penalize the johns, notably by providing for fines ranging from C\$2,175 for a first offence to C\$5,440 for a repeat offence. The legislation also establishes a fund for the prevention of prostitution and for the social and occupational support of prostitutes. In addition, trafficking victims will be granted temporary residence status for a period of six-months by way of assistance in protecting them and ensuring that they aren't forced to live "underground" or face deportation to their country of origin, where they might be in danger. In February 2014, the European Parliament passed a resolution deeming prostitution an obstacle to equality and a violation of human rights. The European parliamentarians thus recommended penalizing the purchase of sexual services, but also decriminalizing prostitutes. This too is an abolitionist position that sends a strong message to the various European states, which are divided on this issue. Canada is now following this line of thought.

The Council commends the federal government's preoccupation with the exploitation that is inherent in prostitution and the potential violence to which prostitutes are exposed. The Canadian government recognizes that it is important to denounce and prohibit the purchasing of sexual services because it only helps to create a demand for prostitution. Hence, emphasis is being placed on the fact that targeting the johns will reduce the demand for sexual services, which will, in turn, eventually reduce prostitution.

This legislative proposal challenges the right of men to pay to use the bodies of women and procure sex from them by affirming that the bodies of women and children are not for sale. We cannot but welcome this new direction.

**Nonetheless, the Conseil du statut de la femme has serious reservations about Bill C-36, and would like to propose a number of improvements.**

First and foremost, the bill must protect the most vulnerable of prostitutes. In our opinion, protecting communities is secondary: considerations relating to the peace and quiet of residential neighbourhoods should be given less priority. The title of the bill should be changed so that “protection of communities” comes after protection of “exploited persons”. Public morality cannot be the foundation of a bill designed to protect vulnerable persons. In reality, this is an issue of human dignity and fundamental rights.

Second, the Council is greatly concerned that clause 15(3) of Bill C-36 would restrict prostitution in public places by prohibiting all solicitation in places frequented by young people under the age of 18. This means that street prostitutes, who are already the most vulnerable of those offering sex for money, would be forced to isolate themselves even more, thus jeopardizing their safety. It is estimated that about 10% of prostitutes work the streets, and it is this group that accounts for the largest number of substance abusers.

In tabling Bill C-36, Justice Minister Peter MacKay sought to put people’s minds at ease about the application of clause 15(3) by saying that prostitutes would only be liable to fines. In actual fact, however, the *Criminal Code* provides as follows:

787. (1) Unless otherwise provided by law, everyone who is convicted of an offence punishable on summary conviction is **liable to a fine of not more than five thousand dollars or to a term of imprisonment not exceeding six months or to both.**

(2) Where the imposition of a fine or the making of an order for the payment of money is authorized by law, but the law does not provide that

imprisonment may be imposed in default of payment of the fine or compliance with the order, **the court may order that in default of payment of the fine or compliance with the order, as the case may be, the defendant shall be imprisoned for a term not exceeding six months.**

Therefore, a judge will have discretion to impose payment of a fine or a term of imprisonment upon prostitutes soliciting clients on a public street. Although this does not mean that prostitutes would automatically receive prison terms, the *Criminal Code* provides that such a sentence could be imposed for an offence punishable on summary conviction. If a fine is imposed and the person does not pay it (a common situation with prostitutes, who continue to sell their body to pay accumulating fines, thus creating a vicious circle from which they cannot escape), the court can order that person to be imprisoned, thereby establishing a criminal record for that individual.

The Council considers this a direct form of criminalization of prostitutes.

**The criminalization of prostitutes—even if only in certain circumstances—goes against the abolitionist approach espoused by the Council.** We believe that it could compromise the safety of these women, while seriously obstructing their efforts to quit the business. Such measures, which have the effect of criminalizing prostitutes, do not exist in Sweden.

In Quebec, an innovative project called *Les Survivantes* offers an apt illustration of why it is appropriate not to criminalize street prostitutes. Since 2009, the Montreal police department (SPVM) has a squad of six investigators who did not have to wait for the *Criminal Code* to be amended to realize that female prostitutes are generally victims and not criminals. In other words, the forces of law and order have the requisite flexibility to not penalize prostitutes in enforcing section 213, which prohibits communication for purposes of prostitution. Without waiting for any laying of information, the squad at the Montréal police department tracks the pimps and not the prostitutes, and this has yielded good results. It allows for 10 to 20 pimps to be charged in a year, and for the police officers in this squad to offer support to female prostitutes who want to get out of the business, without criminalizing them.

This change, already implemented by the SPVM, was confirmed following the Bedford decision. Several Montreal police units have overhauled their approach to prostitution and now focus on targeting pimps and protecting prostitutes. In only a few years, prostitutes have gone from being considered as criminals to being regarded as victims in the eyes of the police. This is an important paradigm shift.

The Council believes that introducing an amendment that would create an offence that prohibits communicating — for the purpose of selling sexual services — in a public place, or in any place open to public view, that is or is next to a place where persons under the age of 18 can reasonably be expected to be present, constitutes a further stigmatization of prostitutes and is a step backward from certain projects, including the one mentioned above, which already exist in several communities. **We would like this clause removed from the bill.**

**Third, we reiterate the importance of investing more in social services to assist prostitutes.**

Bill C-36 is accompanied by \$20 million in federal funding over five years, to be allocated to education and support for exiting from prostitution. While it is a step in the right direction, the Council considers this amount largely insufficient for meeting needs in all the provinces and territories. In our opinion, the bill derives its credibility from the fact that it provides the financial resources necessary to offer a real alternative to persons who want to get out of prostitution. In providing adequate funding for the social services required, the government would prove that it takes the health and safety of prostitutes seriously, and that the bill truly aims to defend their fundamental rights and interests.

To help people leave prostitution, it is crucial that specialized services be made available to them. These include safe houses, detox services, adapted psychological assistance, assistance with vocational training and with social and economic reintegration, legal assistance to obtain a pardon for convictions related to communicating for the purposes of prostitution, etc. Specific programs must be created for the resources that are trying to combat sexual exploitation. At the moment there are no social policies or programs exclusively dedicated to these resources.

These services will have to take into account the specific needs of aboriginal women, who are

overrepresented in prostitution. Their proportion among young prostitutes in Canada varies geographically between 14% and 85%, and sometimes exceeds 90% in urban settings

Furthermore, Canada is recognized as a destination and transit country for international trafficking. Given the specific vulnerabilities of trafficking victims, additional and distinct financial resources must be allocated to support initiatives in the field to extricate them from sexual exploitation and offer them viable economic solutions.

Funding should also be provided for awareness campaigns directed at men, with a view to eliminating the demand for sexual services. At present, the frequenting of prostitutes is trivialized in our society. Following the example of what has been done in Sweden, these campaigns could include information sessions for government authorities, social workers, NGOs, media and the general public. This would put the emphasis not on the victims of prostitution, but on the demand created by men who pay for sex, and would deliver the message that the john is exploiting another person, the exchange of money notwithstanding.

One of the positive outcomes of the Swedish legislation has been its normative impact on attitudes and behaviours. It has helped to modify the general attitude of the Swedish population and to discourage men from resorting to prostitution. Whereas, from a legal standpoint, prostitution was once trivialized and perceived as a victimless crime, it is now considered socially unacceptable by the majority of individuals. Anonymous surveys are one of the recognized ways of measuring individuals' attitudes and behaviours. In a 1996 survey, 13.6% of men admitted to using the services of a prostitute, compared with only 7.8% in 2008; this represents a reduction of over 40%. What is more, regular surveys reveal to growing support in Swedish for this legislation. Prior to passage of the law in 1997, only 45% of women and 20% of men were in favour of prohibiting the purchase of sexual services, compared with 79% of women and 60% of men in 2008.

Lastly, we want to make it clear that the position defended by the Conseil du statut de la femme is not based on moral considerations or on the protection of public order. For the Council, this is first and foremost a question of dignity, of women's right to equality and to the

protection of their fundamental rights, which are violated by prostitution.

The government of Quebec has made gender equality a fundamental value of society by entrenching it, for example, in the preamble to its Charter of Human Rights and Freedoms. Furthermore, the province has a policy to make the equality of men and women a reality, and in our opinion, an amended Bill C-36 could help it to advance this mission. It is also time to make combatting sexual exploitation a priority. Lastly, Quebec has prerogative power in the administration of justice, and is responsible for enforcing the law while not penalizing the most vulnerable persons. It would therefore have the flexibility to apply clause 15(3) of the bill more or less stringently, if that clause is maintained.

In our view, it is crucial not to lose sight of the important social issues associated with the expansion of prostitution, such as the trafficking of women and children to supply this market and the many prejudices arising from prostitution for individuals and for society. In closing, given that this debate is arousing passion and controversy on all sides, no policy on prostitution will ever garner unanimous support. This should not prevent Canada from taking action to establish a position based on respect for the fundamental rights and collective long-term interests of prostitutes.