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to:- Standing Committee on Justice and Human Rights
Senate of Canada
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re:- brief re Bill C-36

I wish to register my very strong objection to Bill C-36 and to ask that the Senate of Canada reject this Bill and to recommend to the House of Commons that it do the same on the basis that this Bill is unconstitutional and that it is unconstitutional for the Parliament of Canada to even consider such a grossly and obviously unconstitutional Bill.

Bill C-36 is unconstitutional in its present form and it is also unconstitutional for the Parliament of Canada to approve or even to consider a Bill which by its nature is unconstitutional in whole or in part.

First, on Dec 20/13 the Supreme Court of Canada (SCC) overturned three old and very durable sections of the Canada Criminal Code (CCC) pertaining to various aspects of prostitution on the basis that they were unconstitutional and violated the right to life of persons engaged in prostitution.

In doing this they were informed to a great extent by the systematic murders of an estimated 50+ female prostitutes over 25 years by Robert Pickton.

This was one of the worst serial murder cases in modern history in the world and it was made possible by certain provisions of the Canada Criminal Code.

In their decision the SCC instigated what amounted to a major legal revolution since they actually also reversed a number of fairly recent SCC decisions.

However the main intent of Bill C-36 seems to be to totally frustrate and negate the recent SCC decision by maintaining the original concept of the various overturned CCC sections and simply rephrasing them quite awkwardly and clumsily.

As such Bill C-36 is basically unconstitutional.

In particular, there is no way to criminalize the purchase of sexual services without frustrating both the letter and the spirit of the recent SCC decision and without violating the basic right of prostitutes to work safely as other workers are allowed to do and certainly the various sex-worker organizations from across Canada have presented considerable evidence to support this contention.

Likewise there is no way to criminalize the carrying of advertisements placed by prostitutes without also violating the recent SCC decision.

Bill C-36 does explicitly guarantee the right of prostitutes to sell sexual services for money and to advertise those services and to support themselves and their dependents on the income earned in that way and to use that income to buy various necessities to support their work and it also shields those who knowingly sell goods and services to prostitutes for money earned from prostitution provided that the price charged for such goods and services is equal to similar goods and services purchased by others or at least is commensurate with the utility value of those goods and services to the customer.

However it is then quite absurd to criminalize those who purchase sexual goods and services from prostitutes and to criminalize those who carry ads commissioned by prostitutes and this has the effect of frustrating their prescribed right to engage in legal prostitution:- if it is legal for a prostitute to sell or advertise their services it follows that it is legal for customers to buy those services and for publishers to carry ads for such services.

Virtually any criminal defence lawyer in Canada will be able to quickly persuade any judge in any criminal court in Canada that these provisions are quite absurd and are inconsistent with the recent SCC decision and on that basis to overturn them and essentially C-36 will start dying shortly after it is proclaimed into law and police try to enforce it:- it will not take long.

Criminalizing the purchase of sexual services also violates the basic right to life of those purchasing sexual services and its implicit appurtenant right to freedom of all forms of sexual expression which do not violate somebody else's basic rights of life.

As part of the basic right to life everyone is also implicitly free to engage in all forms of sexual expression whether for free or for money or other compensation which do not hurt anyone else.

In all of Canadian history selling or paying for sex has never been made illegal per se because legislators always recognized that engaging in sex even for money is part of each person's basic right to life.

Past efforts on suppressing prostitution have always focused on doing so indirectly by attempting to criminalize activities such as soliciting and advertising and using the earnings of prostitution for other purposes and so on but the recent SCC decision essentially overruled that approach as well.

Bill C-36 is simply another quite absurd and very stupid attempt to suppress prostitution by violating the right of clients to purchase sexual services from willing suppliers who are not subject to any coercion to do so.

There simply is no way to criminalize prostitution per se without violating the basic human rights of both prostitutes and clients and that is what the SCC decision was really all about and although the diehard proponents of Bill C-36 simply refuse to accept this legal and judicial reality and insist on defying the recent SCC decision.

The proponents of Bill C-36 have stated that they need to “stamp out prostitution” in order to protect the public from nuisance-some solicitation in public and private places and from child prostitution and from trafficking and forced prostitution and they imply that the need to do this also entitles them to ignore the SCC decision of Dec 20/14 and to simply grossly continue violating the basic human rights of all prostitutes and all clients in order to do so.

It is a bit like saying that because some cars driven by irresponsible or malicious drivers do sometimes kill some people that therefore we must criminalize the ownership and operation of all cars by everyone:- this is a completely absurd and extremely extreme and grossly excessive approach to controlling the original problem and of course no legislator would seriously consider such a silly idea and its proponents would soon be relegated to a psychiatric institution.

Bill C-36 in its present form is an inherently unconstitutional and will soon be overturned by the courts but at considerable cost to the taxpayers as it consumes huge amounts of policing and prosecutorial and judicial expense in the process of being gradually overturned case by case and to no good effect.

The Senate of Canada is supposedly the “conscience” of Parliament and perhaps this would be a good time for it to reject this silly bit of extremist legislative nonsense and send it back for a major reworking to bring into full conformity with both the letter and the spirit of the SCC decision of Dec 20/13.

The Senate should also keep in mind that under the Constitution Act of 1982 and the Charter of Rights and Freedoms it has become implicitly unconstitutional for the Parliament of Canada and the for each provincial Legislature to even consider or enact into law any Bill which in whole or in part is unconstitutional.

The Parliament of Canada and the provincial Legislatures implicitly voluntarily accepted that limitation on their legislative supremacy in ratifying the Constitutional Act although they can reverse that by way of constitutional convention but short of that the Parliament of Canada may not even consider an inherently unconstitutional Bill such as C-36.

The Constitution Act of 1982 and its included Charter of Rights implicitly subordinated the legislative powers of Parliament and the Legislatures to the Constitution and implicitly created a more republican form of separation of powers between the legislative, judicial, and executive branches of government.

On that basis the Senate should simply refuse to consider C-36 any further and simply let the wretched thing die.

No harm will actually arise by doing so simply because serious problems such as public nuisance caused by solicitation on public and private property without the permission of owners and lessees, and child prostitution, and trafficking and forced prostitution can be controlled quite easily with very specific provisions to criminalize those activities without violating the Charter of Rights or prostitutes and their clients in general.

Thus in conclusion and summary I would like to say that Bill C-36 is unconstitutional in major parts and that it is unconstitutional for Parliament even to consider it in its present form and for the Senate to send it back to the House of Commons on that basis with a recommendation that they also reject it fully on the basis of its unconstitutionality:- the Government needs to do better than that and should stop trying to foist this silly and grossly excessive unconstitutional nonsense which so openly and brazenly defies a recent major Supreme Court decision on the Parliament of Canada.

Thank you.