

Brief to the Senate Committee on Legal and Constitutional Affairs

Protection of Communities and Exploited Persons Act Bill C-36

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PROFESSIONAL BACKGROUND

For 32 years I was a professor in the Department of Family Relations and Applied Nutrition at the University of Guelph, teaching courses in Family Relations and Human Sexuality. I retired in 2005. I have presented research papers at many national and international conferences and have more than 80 research publications. I am the Canadian co-author of the university textbook "Human Sexuality in a World of Diversity." The Society for the Scientific Study of Human Sexuality named me as a Fellow of the Society in recognition of my significant research contributions in the area of human sexuality.

I have conducted research on a diversity of topics in the area of human sexuality. This includes a 1998 national survey of Canadian's attitudes toward sexual issues, including prostitution. Also, with researchers in the Dominican Republic, we conducted a study of male and female sex workers in the Dominican Republic.

I was the founder and, for 15 years, the Chair of the Guelph Sexuality Conference. This is a national conference which provides professional education to health care professionals, educators and therapists regarding health issues, sexuality education, and counselling.

INTRODUCTION

Since the 1960s, Canadian attitudes and laws regarding issues around sexuality have become less restrictive in nature.

We have witnessed:

- The development of school-based sex education programs
- The legalization of birth control
- More open discussion of sexuality in the media
- The acceptance of sex outside of marriage
- The acceptance of unwed pregnancy
- Increased acceptance of common-law relationships

- The legalization and acceptance of same sex sexual relations
- The legalization of same sex marriage
- The legalization of sexually explicit materials

The commonality of these major changes in Canadian society is that each one was highly controversial and received strong emotional resistance. We are experiencing a similar situation today with regard to the conflicting views of prostitution.

Three divergent streams of arguments regarding Bill C-36 have been presented to both the House of Commons and the Senate Committees. The first is the conservative moral argument that prostitution is immoral. The second is the radical feminist argument that prostitution degrades and exploits women. The third is the liberal feminist argument that women should have the legal freedom to engage in prostitution if they choose to do so.

It is important to note that each of the three groups agrees that criminal laws are needed to deal with forced prostitution such as trafficking and juvenile prostitution. However, there are strong disagreements regarding the issue of adult prostitution.

#### EXPLAINING GROUP DIFFERENCES IN RESPONSE TO BILL C-36

Conservative moralists generally base their desire to have prostitution criminalized on the basis of traditional religious values. Other groups base their positions on whether or not they view exploitation as being inherent in prostitution.

Naomi McCormick (Feminist therapist, researcher and past President of the Society for the Scientific Study of Sexuality ) in her book, *SEXUAL SALVATION: AFFIRMING WOMEN'S SEXUAL RIGHTS AND PLEASURES* (1994), outlined fundamental differences among feminists regarding their views toward heterosexual relations . According to McCormick, radical feminists focus on the sexual victimization and dangers facing women, whereas liberal feminists focus more on women's sexual autonomy and freedom to enjoy sexual pleasure. For example, radical feminists viewed the sexual revolution of the 1960s as benefiting men but exploiting women who felt greater pressure to engage in sex when they did not want to. On the other side, liberal feminists focused on how women gained greater agency and sexual freedom from the sexual revolution. Not surprisingly, then, we see these same differences played out today; this accounts for radical feminists favouring Bill C-36 and liberal feminists opposing it.

Radical feminists believe that women who do sex work are victims of male exploitation and do not accept the idea that women freely choose to engage in prostitution. However, liberal feminists believe that many adult women who do sex work have agency and thus have freely chosen to engage in prostitution.

## THE JUSTICE MINISTER'S STANCE

The Justice Minister, in introducing Bill C-36, stated that it was based on the “Nordic Model” of penalizing clients of prostitutes. In doing so, he argued that this model was chosen so as to facilitate the safety of prostitutes. It is important to note here that the Nordic model was heavily shaped by radical feminist perspectives regarding societal male dominance and exploitation in male-female relations.

The Justice Minister, in adopting the radical feminist perspective of the Nordic Model, assumed that all clients of prostitutes are exploiters. Thus he proposed that all clients should be criminalized and be given harsh penalties including large fines and imprisonment.

The Justice Minister also stated that prostitution laws needed to be changed to reflect the “inherent exploitation” of prostitution. His statement is in direct opposition to the Supreme Court ruling in the Bedford case which did not find that exploitation is “inherent” to sex work. Indeed the courts found that the laws themselves increased the risk of violence to sex workers. The sex workers in this case argued that the restrictions on their work activities violated their rights under the *Charter of Rights and Freedoms* to security of the person and freedom of expression.

The Justice Minister, in choosing the Nordic model, completely ignored the alternative liberal feminist decriminalization model used in New Zealand. He also ignored the advice of most Canadian research experts on prostitution. Researchers such as Professor Francis Shaver of McGill University and Professors Eleanor Maticka-Tyndale and Jacqueline Lewis from the University of Windsor--in conducting studies of sex workers across Canada-- have concluded that the safety and well-being of sex workers can be enhanced through policies which focus on occupational health and safety, and access to essential services. They propose that sex work be treated the same way as it is in New Zealand, which places sex work in a harm-reduction and labour-rights model (Shaver, Lewis & Maticka-Tyndale, 2011).

In 1998, I was a consultant for a Compas national survey which found that two-thirds of Canadians favoured legalizing prostitution if it were regulated by HEALTH OFFICIALS. This finding suggested that most Canadians view prostitution from the perspective of a health and safety issue rather than as a criminal one.

A recent study of sex workers published in the medical journal Lancet (2014) concluded that the decriminalization of prostitution could result in the prevention of about a third of HIV infections among prostitutes and their clients. The lead author of the study was Kate Shannon, an associate professor of medicine at the University of British Columbia. Another study concluded that the accidental decriminalization of prostitution in Rhode Island resulted in fewer rape and gonorrhoea cases. The study was published by the National Bureau of Economic Research (2014).

The Minister of Justice, in introducing Bill C-36, indicated that Canadians were strongly in favour of the Bill. However, the online study upon which he based that conclusion was seriously flawed in terms of sampling and measurement. Contrary to the Minister of Justice's beliefs regarding Canadian opinions, a more scientific poll carried out by Angus Reid (2014) found that more Canadians (47%) opposed the proposed law than approved (35%) with 18% undecided. Unfortunately, the results of this survey were

not released by the Justice Minister until after the House of Commons Justice Committee hearings on Bill C-36 had been completed.

#### CLIENTS AS CRIMINALS?

It is important to note that one area of common ground among those holding differing views of prostitution is the consensus that clients of juvenile prostitutes should be criminalized as should those who force women to work as prostitutes and those who engage in trafficking. However, there is a major difference in opinion as to whether clients who do not engage in the above kinds of offenses should be treated as criminals.

There are a diversity of reasons to explain why clients visit sex workers. Some of these reasons are not generally recognized.

At the Guelph Sexuality Conference held in June --there was a session on Sex and Disability. In that session, parents of a severely disabled adult son said their son has not been able to attract a female partner. Thus, they sometimes take their son to visit a sex worker because they felt he should not be deprived of sexual pleasure with a woman because of his disability. Given this situation-- whom would the Justice Minister wish to see punished as a predator--The disabled son, the parents or both?

The reality is that there are many men who for various social and/or physical reasons are not able to attract a woman to have sex with. Thus, some of these men pay sex workers in order to be able to be able to access intimacy and engage in sexual relationships. Also, there are some men with sexual problems who are more comfortable seeing a sex worker about their problems than they are seeing a therapist.

Does it make sense to label these men as "predators" and "exploiters"?

At the same Guelph Conference, there were two sessions led by sex workers. These sex workers emphasized that they did not view their clients as predators. In fact, they said that almost all of their clients were respectful of them and the limits that they place on the types of sexual behaviours in which they were willing to engage. They also stated that they and most other sex workers often form friendships with regular clients.

These kinds of comments are commonly found in Canadian research surveys. For example, in a national survey of 218 sex workers, Cecilia Benoit and others (2014) found that most sex workers felt empowered rather than exploited and that most interactions with clients were seen as amicable and positive and not as violent or exploitative. The vast majority of sex workers agreed or strongly agreed that they feel empowered to set the terms and conditions when with a client.

In a 2011 Angus Reid survey regarding Canadian attitudes to consensual adult prostitution, 7% said that only clients should be punished, 1% said only prostitutes should be punished and 32% said both should be punished. However, 52% said consensual adult prostitution should be legal and 9% were undecided.

## CATEGORIES OF SEX WORKERS

In recent years the term sex worker has been increasingly used instead of the term prostitute to define a person who engages in sex for money. (In this Brief I am using the two terms interchangeably.) Most people who do sex work are women who have male clients, however, some also have female clients. Male sex workers have mainly male clients although some do have female clients. People who do sex work may either provide services at their location (in-calls) or at the client's location (out-calls)

There are different categories of sex workers. A major difference is between those who are street-based and those who work in-house. Within the in-house category, there are those who work independently and those who work for others such as in massage parlours or for escort agencies. In Canada, most sex work takes place in-house. Lowman and Atchison (2006) reported that only about 20% of Canadian sex workers were street-based.

It is important to note that when discussing sex work, most people tend to think of street-based prostitutes. Given their concern with victimization, radical feminists also focus more on street-based workers and especially on those who have experienced serious problems and wish to leave the streets. Thus radical feminists' conclusions about sex work in general are based mainly on their knowledge of this group.

On the other hand, most academic researchers study both street-based sex workers and all other categories of sex workers. In doing so, they often draw comparisons among the different groups. Not surprisingly, then, the conclusions of radical feminists and those of liberal feminists and most academic researchers regarding sex workers differ dramatically.

Street-based sex work is associated with far greater problems than are other kinds of sex work. Some street-based workers, especially those who are younger and less educated (Shaver, 2005), are controlled by pimps who typically use physical force to as a means of control. Compared with other people who do sex work, street-based workers are more likely to have experienced sexual abuse, have more psychological problems, and are more likely to be addicted to drugs. They are the most at risk for experiencing abuse and violence from clients. They are also far more likely to be targeted by serial murderers such as in the well known case of Robert Pickton in British Columbia. Street-based prostitution is also considered more of a nuisance than other categories and most Canadians believe that it should be prohibited (Angus Reid, 2011). It is likely that providing treatment for mental health and substance use issues, as well as support for those living in poverty, would do more to improve quality of life for these women than would criminalizing sex work.

## VOLUNTARILY CHOOSING SEX WORK

At the June Sexuality Conference held at the University of Guelph—one of the sessions was led by a sex worker who used to work as a paramedic. However, an accident resulted in a physical disability—so that she could no longer work at a regular job. She decided to engage in sex work so that she could have a decent standard of living. She said that she liked sex work and especially that it provided more freedom for her with respect to choosing her hours than did other jobs.

There are also some women are on welfare or in low paying jobs who choose sex work to provide greater opportunities for their children. Sex work is also chosen by some university and college students so that they can afford to pay their tuition. These women do not want jobs that pay only the minimum wage.

These are not isolated examples. As shown in other Briefs submitted to the Senate Committee, researchers such as Cecilia Benoit, Francis Shaver, John Lowman, Chris Atchison, and other-- in surveying hundreds of Canadian sex workers-- found that many people who do sex work choose to do this work because of the greater economic benefits, and the greater autonomy including the flexibility in choosing working hours. Additionally, there are some, including university graduates who say they enjoy sex work more than other options that are available to them. In a panel presentation at the Guelph Sexuality Conference, one of the women doing sex work said she felt it was a privilege to bring joy, intimacy, and pleasure into the lives of her clients who would otherwise not be able to access these in their daily lives.

DO MOST CANADIANS SUPPORT OR NOT SUPPORT THE JUSTICE MINISTER?

**John Lowman and Christine Louie 2012 have done an extensive review of Canadian attitudes toward prostitution. They concluded that recent Canadian public opinion surveys do not support the views of the Justice Minister regarding Bill C-36. While most believe that street prostitutes should be prohibited and almost all (96%) agree that the purchase of sex from a person under the age of 18 should be illegal-- most Canadians do not believe that consensual adult prostitution should be illegal. (Lowman and Louie (2012, p.256)**

#### SUMMARY

This brief has highlighted three main issues concerning Bill C-36. The first discusses the rationale behind the Justice Minister's choices regarding the Bill. The second offers an explanation for differences in people's response to it. The third discusses the proposed criminalization of all clients who have consensual sexual relationships with adult sex workers. The fourth presents factual data to support the reality that many off-street sex workers have made a conscious, voluntary decision to do sex work.

In choosing the radical feminist perspective toward prostitution, as embedded in the Nordic model, **the Justice Minister has completely disavowed the findings of the Supreme Court of Canada that prostitution is not inherently exploitative.** He has not seriously considered models such as the liberal feminist one displayed by New Zealand's decriminalization of prostitution. He has also rejected the predictions of most sex workers, liberal feminists, and academic researchers regarding the harmful effects that will occur as a result of his proposed amendments in Bill C-36 to those who do sex work. Finally, he has disregarded the findings of national surveys which demonstrate that most Canadians do not support his views-- particularly with regard to his proposal to harshly penalize clients who pay to have sex behind closed doors with consenting adult sex workers.

In closing I wish to note that several other Briefs presented to the Senate Committee have provided well reasoned evidence and arguments as to why the Senate should reject Bill C-36. The statements in this Brief are intended to compliment these and give further evidence as to why Bill C-36 should be rejected.

## REFERENCES

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