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The Protection of Communities and Exploited Persons Act: Submission to the Standing 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

Submitted by Sue O'Sullivan, Federal Ombudsman for Victims of Crime
October 22nd, 2014

Office of the Federal Ombudsman for Victims of Crime



The Office of the Federal Ombudsman for Victims of Crime (OFOVC) is an independent resource for victims in Canada. The Office was created in 2007 to ensure the federal government meets its responsibilities to victims of crime.

Victims can contact the Office to learn more about their rights under federal law and the services available to them, or to make a complaint about any federal agency or federal legislation dealing with victims of crime. In addition to its direct work with victims, the Office also works to ensure that policy makers and other criminal justice personnel are aware of victims' needs and concerns and to identify important issues and trends that may negatively impact victims. Where appropriate, the Ombudsman may also make recommendations to the federal government. Our mandate relates exclusively to matters of federal jurisdiction and enables the Office:

- to promote access by victims to existing federal programs and services for victims;
- to address complaints of victims about compliance with the provisions of the *Corrections and Conditional Release Act* that apply to victims of crimes committed by offenders under federal jurisdiction;
- to promote awareness of the needs and concerns of victims and the applicable laws that benefit victims of crime, including to promote the principles set out in the *Canadian Statement of Basic Principles of Justice for Victims of Crime* with respect to matters of federal jurisdiction, among criminal justice personnel and policy makers;
- to identify and review emerging and systemic issues, including those issues related to programs and services provided or administered by the Department of Justice or the Department of Public Safety and Emergency Preparedness, that impact negatively on victims of crime; and
- to facilitate access by victims to existing federal programs and services by providing them with information and referrals.

Essentially, the OFOVC was created to assist in giving victims a voice at the federal level in Canada and in promoting and encouraging the enhanced treatment of victims in Canada. As the Office's mandate relates to victims, and not to punishment or effective offender management, questions pertaining to the efficacy of building safe communities through either criminalizing or decriminalizing prostitution remain outside the direct scope of its work and expertise.

That being said, the OFOVC is of the view that in many cases, the issue of prostitution may involve various types and levels of victimization and, as such, respectfully submits the following points for consideration.

Prostitution and victimization

Understanding the links between prostitution and victimization is a complex task. While there is no consensus on the factors that may lead a person to become involved in the sex trade, it is clear that there are groups of persons working in the sex trade industry who are, in fact, victims. In 2005, the RCMP made a conservative estimate that approximately 600 women and children are

trafficked into Canada each year for sexual exploitation alone¹. Given this, we must ensure that the laws in place in Canada respond to this reality and are able to properly offer a safe environment in which a victim may come forward without fear of prosecution.

The Office has heard human trafficking victims speak to their mistrust of law enforcement and the feeling that if they had come forward as a victim, they may not have been believed or worse, arrested. It is clear that these fears pose a significant barrier to victims seeking the protections they are entitled to and, as a result, not only are we failing to protect the most vulnerable, we also likely do not have a clear picture of the level of abuse and victimization related to the sex trade industry.

In addition to direct victims who are forced into the sex trade, research has shown that a “disproportionate number of people involved in prostitution experiences sexual abuse in childhood”². While this is not directly relevant to the question of criminalization, it does demonstrate a significant correlation between abuse or victimization and its potential long-term effects. With that in mind, it becomes clear that we must prioritize ensuring that those who are victims of crime have the supports they need not only in the immediate aftermath of a crime, but over the longer term in order to promote safe and healthy communities.

It is also important to note that while victimization may be a factor for some sex trade workers, we cannot make the assumption that all those who choose to work in the sex trade do so as a result of abuse or coercion. The Office has met and spoken with sex trade workers who very clearly articulate that they do this type of work by choice and do not appreciate the assumption or insinuation that they work in the sex trade as a result of their circumstances or coercion.

Prostitution and safety

Regardless of the circumstances for entering into sex work, research suggests prostitution poses increased safety risks to those involved. In addition to often cited anecdotal evidence, a 1995 Juristat study found that “between 1991 and 1995, 63 known prostitutes were murdered. Almost all were female (60); 7 of them were juveniles aged 15 to 17. Most deaths were related to the trade. 50 prostitutes were thought to have been killed by clients, and 8 by pimps or in a drug-related incident.”³

¹ Oxman-Martinez, J., Lacroix, M. & Hanley, J. 2005. *Victims of Trafficking in Persons: Perspectives from the Canadian Community Sector*. Department of Justice Canada: Research and Statistics Division. http://www.justice.gc.ca/eng/rp-pr/cj-jp/tp/rr06_3/rr06_3.pdf

² 2004. Julie Cool. *Prostitution in Canada: An Overview*. Library of Parliament: PRB 04-43E <http://publications.gc.ca/collections/Collection-R/LoPBdP/PRB-e/PRB0443-e.pdf>

³ 1995. Doreen Duchesne. *Street Prostitution in Canada*. Juristat: 85-002-XPE, 17(2). <http://www.publications.gc.ca/Collection-R/Statcan/85-002-XIE/0029785-002-XIE.pdf>

While some argue that victimization is caused because the industry is inherently harmful to the women and men who work within it, others argue that victimization is a bi-product of the laws which create dangerous working conditions for the people involved, arguing that the *“restrictions on prostitution put the safety and lives of prostitutes at risk, by preventing them from implementing certain safety measures— such as hiring security guards or ‘screening’ potential clients— that could protect them from violence.”*⁴

Further, research suggests that this vulnerability is most concentrated in marginalized populations, including Aboriginal women. *“A study of prostitution in Québec noted that minority and Aboriginal women were also over-represented in prostitution in Montreal, and that these women were more likely to face greater violence from clients.”*⁵

It is well known that many sex trade workers do not feel that their safety is adequately considered, or that the laws and policies in place necessarily provide a safe avenue for reporting crimes and abuses when they happen. With these barriers in place, many crimes will go unreported and victims may not seek the protection and support they need.

The safety of those involved in the trade must be a priority in considering the changes proposed by Bill C-36. Regardless of the reasons or circumstances for entering the sex trade, the OFOVC encourages this Committee to make all efforts to reduce victimization by ensuring in its amendments that sex trade workers are provided with the same rights to security and safety as all Canadians.

Conclusion

In conclusion, while the issue is complex, the OFOVC strongly encourages the Committee to consider the points outlined here and to ensure that any amendment to Bill C-36 provides:

- equal and unbiased safety protection for all Canadians, including those who are involved in the sex trade industry ;
- measures to offer protection to those who are forced into the sex trade; and
- supports for the individuals who choose to exist the sex trade.

On behalf of the OFOVC I respectfully submit these points for your consideration and would be pleased to answer any further questions you may have.

⁴ December 20th, 2013. Judgements of the Supreme Court of Canada.
<https://www.documentcloud.org/documents/979787-ags-v-bedford-lebovitch-and-scott.html>

⁵ 2004. Julie Cool. *Prostitution in Canada: An Overview*. Library of Parliament: PRB 04-43E
<http://publications.gc.ca/collections/Collection-R/LoPBdP/PRB-e/PRB0443-e.pdf>