Introduction

My name is Naomi Sayers, founder of *South Western Ontario Sex Workers (SWOSW)* who is a member of the *Canadian Alliance for Sex Work Law Reform*. I am an Indigenous woman and former sex worker from Northern Ontario with experience in working in both Northern and Southern Ontario. Both as an individual and as a member of *SWOSW* and *Canadian Alliance for Sex Work Law Form*, I will make it clear from the outset: Bill C-36 will create more harms in the lives of sex workers, especially Indigenous sex workers or sex workers in Northern parts of Canada. As a result, I do not support Bill C-36 or the use of other criminal laws that target sex work.

More specifically, this brief is in response to the Department of Justice's (DOJ) Technical Paper entitled, "Bill C-36, *Protection of Communities and Exploited Persons Act*" (July 2014) as it is the most recent discussion of Bill C-36 and provides insight as to how Bill C-36 is to be applied and interpreted. I will argue that Bill C-36 presents several contradictions to itself and to the *Bedford* decision. As a result, Bill C-36 should <u>*not*</u> be enacted. This brief is informed entirely by my lived experiences as an Indigenous sex worker.

Material Benefit

When I was eighteen years old, I began working as an escort for an agency in Northern Ontario. At that time in my life, I was actively searching for new employment and not long afterwards, I found employment a local escort agency. I was not coerced to join this escort agency. I was not recruited at my local high school. I was actively looking for work that accommodated my schedule and my goals: I wanted to graduate by the time I was nineteen and I wanted to graduate on the honour roll. I was also not forced to do anything that I did not want to do while working for the agency. The benefits of working at an agency are immense. Some of these benefits include the following:

- Being able to set my own hours and focus on my schooling
- Having someone else coordinate, screen, and book clients
- Having someone drive me to and from an in-call location
- Having someone act as security in case a client did not want to pay for my services up front or in case a client did not want to use protection
- Having someone else advertise for me by placing ads on behalf of the agency

Before Bill C-36, it was a criminal act for a sex worker to hire security, to hire a driver, and it was a criminal act to pay someone to post my advertisements. This same person who posted my advertisements also responded to all calls and inquiries about my services. They also screened all potential clients before a date was scheduled and confirmed. They had detailed information on all returning clients and collected relevant information on new and potential clients. Within the context of my experiences, everything that made it safe to do sex work was also criminal. Bill C-36, as explicitly stated in the DOJ's Technical Paper[1], also prevents hiring security within these contexts. Thus, Bill C-36 puts sex workers' safety and lives at risk by only permitting the selling of sexual services in very limited context.

Even though Bill C-36 intention is to target exploitative situations, it also creates those situations by forcing sex workers to work alone. Chief Justice outlined that when sex workers are forced to work alone, increasing the risk of harm, or are forced to work with people prepared to break the law, "it increases the reliance on pimps [and] it creates the risk of severe violence from pimps and exploiters."[2] Bill C-36 is creating the harm in sex work. Chief Justice also emphasized that third party harm does not negate the role of the state in creating the vulnerability in the lives of sex workers.[3] Bill C-36 must take into consideration the lived realities of sex workers and center the discussions on sex workers' safety and security, which is the spirit of the *Bedford* decision.

Aside from being forced to work alone or to rely on pimps and exploiters to evade criminal persecution, the ability to also screen clients will be significantly hindered. The likelihood of violence occurring will increase as more predators see this as an opportunity to prey on the exploited, which include young Indigenous women, like myself. This point is further emphasized with the tragic examples of Robert Pickton who preyed on the vulnerable women of Vancouver's Downtown East Side and John Martin Crawford who preyed specifically on Indigenous women who also engaged in the selling of sexual services.[4] Further, sex workers will be forced to take on less desirable and more

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[1] http://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p1.html (page 8).
[2] http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do (para 21).
[3] http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do (para 89).
[4] http://www.ammsa.com/sites/default/files/html-pages/old-site/bookreviews/JustAnotherIndian.html

aggressive clients who do not respect their boundaries or limitations on sexual services. Thus, Bill C-36 increases the risk of violence.

When we criminalize either the buying or selling of sexual services, individuals will feel less inclined to seek out safety and security in the event violence does occur. Individuals will feel less inclined to report acts of violence because they are still engaging in criminal activities. The Technical Paper presents the contradiction inherent within Bill C-36: the Bill says that one can engage in the selling of sexual services and that sex workers will not be arrested if they are engaging in these activities in a very limited scope.[5] Yet, the Technical Paper also tells us that the Bill does not condone the selling of sexual services.[6] We should gently remind ourselves that sex workers engage in the selling of sexual services for a number of reasons. Despite what we may feel or believe about sex work, people will continue to do sex work. The objective of *any* response to *Bedford* should be centered on the safety and security of sex workers, and not to criminalize their safety and protection measures.

Even though Bill C-36 aim is to protect victims from exploitation and/or prevent exploitative situations, it does so at the expense of the lives of women. Bill C-36 also creates the environment for exploitation to flourish by only allowing sex work to occur in very limited contexts. For instance, I have experienced sexual assault outside the context of sex work and despite this fact, policing agencies and other professionals blamed this violence and the effects of this violence on sex work. I felt ashamed. Following this, both as an Indigenous woman and a sex worker, I did not *and* would not go to the police for protection. I was forced to rely on third parties, specifically organizational crime networks, for safety and protection. We have a responsibility to protect women and Bill C-36 abandons women who are being forced or coerced into prostitution.

Human Trafficking

Multiple sources, including the RCMP and Canadian Federal Government, cite the increase in human trafficking as a social issue within Canada. Discourses and legislation surrounding human trafficking are troubling for sex workers in Northern

[5] http://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p1.html (page 8).
[6] http://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p1.html (page 8).

Ontario, including Indigenous sex workers. One of the key issues across various reports is the definition of human trafficking itself.

The RCMP uses a two-part definition stemming from two different pieces of legislation, the *Immigration and Refugee Protection Act* (*IRPA*), and the *Criminal Code of Canada* (*CCC*) (RCMP 2010: 6). The key difference between these pieces of legislation is how they attempt to identify human trafficking victims themselves. On one hand, the *IRPA* attempts to identify human trafficking victims at an international level, meaning the crossing of an international border (RCMP 2010: 8). On the other hand, the *CCC* identifies human trafficking victims as being "uniquely Canadian" and unique to "vulnerable, economically challenged and socially dislocated sectors of the Canadian population" (RCMP 2010: 8).

The use of the *CCC* definition is an attempt to target those populations in socially dislocated regions. These specific regions are characterized as regions with excessive resource development, specifically northern First Nations (Campbell 2008: 66). In addition to the *CCC* definition targeting specific regions and specific populations within Canada, a human trafficking victim does not have to be consensual or non-consensual in the elements that surround human trafficking; thereby, removing agency from the victim (RCMP 2010: 43). In *Human Trafficking in Canada*, the RCMP has identified that human trafficking victims and human trafficking perpetrators may share the same ethnic background (RCMP 2010: 1). Therefore, the *CCC* definition potentially criminalizes relationships between a sex worker and their family members. For example, family members of similar ethnic background of sex workers and who also share the same residence or who are also receiving material benefit (food/clothing/shelter) from the sex worker's income might be subjected to charges under section 279.01 (1) and 279.02 of the *CCC*. In the context of Bill C-36, it will also potential criminalize relationships between a sex worker and their family members under the material benefit sections. Many sources also describe domestic human trafficking victims, particularly those of an Indigenous background, as young, Indigenous, female and moving from Northern to Southern parts of Canada in search of employment (Public Safety Canada 2013a: 13; Public Safety Canada 2013b: 5; RCMP 2013: 14 and16).

The RCMP has also assumed that sex workers may not identify themselves as victims of human trafficking (RCMP 2010: 38). Therefore, it is the criminal justice system and its definition that defines who is the victim (or the perpetrator). Even if a sex worker does not agree with the label of being a victim or being trafficked, he/she may be forced to see herself as a victim in order to access adequate health or social services. Definitions of domestic human trafficking limit the sex worker's freedom of choice, and potentially criminalize personal/familial relationships of the sex worker. This type of oppressive legislation removes agency from sex workers by applying the label of human trafficking victim even before all elements of alleged human trafficking are met, and targets sex workers in the North, specifically Indigenous sex workers.

In the context of Bill C-36, prostitution is defined as an inherently violent activity and as a form of sexual exploitation. As a result, prostitution is also seen as being "intricately linked" to human trafficking.[7] Bill C-36 also cites that Indigenous women and girls are "disproportionately represented" in prostitution.[8] Yet, Bill C-36 does not distinguish between exploitative and non-exploitative situations especially by those who are disproportionately represented in prostitution. Based on definition alone and through the enactment of Bill C-36, *all* Indigenous sex workers would be seen as victims even if they do not identify as a victim themselves, like myself (young, Indigenous, female and moving from the North to the South in search of employment opportunities). Bill C-36 creates victims where there may be none.

While I am not dismissing the experiences of others, I am calling attention to the issues of defining prostitution as inherently violent, as a form of sexual exploitation and as being intricately linked to human trafficking. Bill C-36 diverts valuable resources away from *real* victims of human trafficking toward aggressive and futile anti-prostitution campaigns. If Bill C-36 would like to fight against instances of human trafficking, it should utilize already existing sections of the *CCC* and the *IRPA*.

Preventing Harms

Another issue with Bill C-36 is the discussion of the harms of prostitution. While the Technical Paper lists harms as reason to deter prostitution, it only loosely references

[7] http://openparliament.ca/committees/justice/41-2/32/peter-mackay-1/
[8] http://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p1.html (page 3).

violence or exploitation. A more appropriate response to deterring harms from occurring would be utilizing already existing sections of the *CCC* that reference specific harms.

If the aim of Bill C-36 is to deter prostitution by reducing the demand, Bill C-36 is doomed to fail in achieving this goal as per the Technical Paper's definition of sexual services for consideration or acts of prostitution. If the definition of a sexual services for consideration or act of prostitution is defined as physical contact or sexual interaction or other intimate acts (like self-masturbation) in tandem with receiving consideration[9], then policing these acts are virtually impossible. The nature of prostitution is intimate in nature. Within the interpretation of Bill C-36 in the Technical Paper, it assumes that one has to be caught in the act in order to be charged with such offences: one has to be *literally* physically touching another person or engaging in a sexual activity with their own self or with someone else. If this is how these offences are to be interpreted, then Bill C-36 will push sex workers further to the periphery as both sex workers and clients will seek to avoid criminal persecution. As previously noted, the *Bedford* decision also stated that third-party violence does not negate the role the state plays in creating vulnerability in the lives of sex workers.[10] Bill C-36 contradicts this finding and contradicts itself with making its goals practically impossible to attain.

Due to the intimate nature of prostitution and the definition of acts of prostitution, preventing the harms associated with exposure to children are nearly useless. Children would have to be present when these acts were taking place. If the purpose of the criminalization of public communications for the purposes of selling sexual services is to prevent the exploitation of children, then children would have to walk around with their eyes closed in order to avoid risk being witness to communication between adults. Children cannot possibly interpret the reasons for adult communication in public and criminalizing public communications for the purpose of selling sexual services is essentially of no purpose. We should be protecting our children from potential exploitation. Yet, Bill C-36 does not distinguish how these potential harms may arise.

Further, the RCMP states that prostitution is taking place "behind closed doors" which creates the clandestine nature of prostitution (RCMP 2013: 6). The criminalization

[9] http://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p1.html (page 5).
[10] http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do (para. 89)

of prostitution creates the clandestine nature of prostitution through the criminalization of public communications for the purposes of selling sexual services. Outdoor sex workers, who make up five percent of the entire sex trade (POWER 2012: 5), are greatly impacted by these laws as was demonstrated by *Bedford*. It is criminal to negotiate boundaries and screen clients in public and outdoor sex workers will be greatly impacted by these laws. Also, though outdoor sex workers only make up five percent of the entire sex trade, over ninety percent of all prostitution arrests in Canada were under the communication law (POWER 2012: 5). Bill C-36 creates vulnerability in the lives of the most marginalized of sex workers and it will recreate the same harms outlined in *Bedford*. Consequently, Bill C-36 is a complete contraction to itself and a contraction to *Bedford* by creating this vulnerability in the lives of the most marginalized sex workers, especially Indigenous sex workers, who make up twenty percent of all outdoor sex workers (POWER 2012: 5).

Conclusion

In the discussions surrounding Bill C-36, we must be reminded that *Bedford* did not touch human trafficking laws or laws that can be used to protect victims against specific harms. If the goal of Bill C-36 is to prevent prostitution's harms, then it should target the source of those harms and not prostitution itself. Prevention of harms occurring means attacking the cause of the harm and if this is the case, then a response to *Bedford* would translate to increasing social supports to prevent poverty; increasing access to education to prevent lack of education; and increasing access to harm reduction models to help with respect to substance-use issues.[11]

Even though Bill C-36 aim is to protect victims from exploitation and/or prevent exploitative situations, it does so at the expense of the lives of women. Bill C-36 also creates the environment for exploitation to flourish by only allowing sex work to occur very narrowly. Sex workers would be forced to work alone and forced to rely on alternative sources for protection and safety. As a result, Bill C-36 will create unsafe environments by forcing sex workers to rely on third parties to evade criminal persecution and forcing sex workers to rely on organizational crime networks for safety and protection. These environments will create the conditions for exploitation, violence

[11] http://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p1.html (as per "entry points into prostitution" listed on page 3).

and coercion to occur, especially involving those individuals who feel like they cannot leave the industry at any time. Creating the environments for exploitation to flourish is a complete contradiction to both the intention of Bill C-36 and the *Bedford* decision. With the above mentioned, Bill C-36 should *not* be enacted.

Sources

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