

Submission to the Senate Justice Committee C-36

August 2014

Personal Background

I am a sex worker. I worked for a number of years selling sex on the street in Montréal, Québec. I have also worked as a sex worker in indoor locations in Montréal, Gatineau, Toronto and Niagara Falls.

I am a Phd Candidate and *Trudeau scholar* at the University of Toronto researching sex work, violence, law and policy. I have researched human rights issues faced by sex workers, and in particular violence, in North America, Europe, Africa and Asia. My research has been cited in the *Harvard Law and Gender Review*, the *Lancet*, the *Global Commission on HIV and the Law* and by the *United Nations* among others and received an award from the Council of Foundations.

I was an expert in the development of the first ever *World Health Organization* Recommendations for Female, Male and Transgender Sex Workers (2013). I am co-author of the chapter on implementing laws, policies and programs to address violence against sex workers published by the WHO, UNFPA and UNAIDS (2013).

I was guest co-editor of a special issue of *The Lancet*, the world's premiere public health journal, on "*Sex Workers and HIV*" released at the International Aids Conference in July of 2014 (see appendix). In that same issue of the *Lancet*, I was second author with Michele Decker (lead author) of Johns Hopkins University, and a team of other scholars, of research entitled "*Human rights violations against sex workers: burden and impact on HIV*," a comprehensive review of the evidence regarding human rights violations against sex workers and an analysis of legal frameworks according to burden of rights violations. Our findings are based on a review of over 800 studies.

The findings of this research are of direct relevance to the legislation under discussion. I therefore present the main findings of this article below (Part 1). Following, that I provide a review of empirical evidence regarding the objectives of the legislation as stated in the preamble of reducing demand for sexual services and reducing the sex trade (Part 2) and of supporting those in sex work to report violence (Part 3). Though the preamble does not address the issue of violence against those in the sex trade, I address the empirical evidence of the impacts of similar measures on violence (including trafficking) against individuals in the sex trade (Part 3). I end with conclusions on the implications of the empirical evidence with regards to Bill C36 (Part 4) and my personal recommendations (Part 5).

1. Summary of Findings on Human Rights Violations Against Sex Workers and Legal Frameworks

A. Methods

We searched scholarly databases for keywords and terms related to sex work and human rights violations:

- PubMed, EMBASE, EBSCO, Global Health, SCOPUS, PsycINFO, Sociological Abstracts, CINAHL, Web of Science, and POPLINE
- Supplemented by expert nomination, manual review of relevant reference lists for sources.



We did a comprehensive review of:

- The prevalence of human rights violations perpetrated by both state and non-state actors
- Impact on HIV risk, infection, treatment and care, quantitatively wherever possible.

Lastly, we analyzed four common legal environments according to evidence of human rights violation and HIV burdens.

We prioritized primary data published in the past five years (2009-2014). We reviewed over 800 studies.

B. Findings on Human Rights Violations and Burden of Violations According to Legal Framework

High levels of human rights violations against sex workers by police were common across many contexts including experiences of condom confiscation, destruction or use as evidence of a “crime” by police; police extortion; unlawful detention; physical violence by police and sexual violence by police. A number of studies report significant levels of violence by non-state actors, such as perpetrators posing as clients, intimate partners and third parties.

Of particular note, are the exceedingly high levels- between 39% and 100% of sex workers- who reported that they did not consider they could report abuse to police. Criminalization of sex workers or of their clients was found to contribute to an antagonistic relationship with law enforcement that hindered sex workers’ ability to report abuse.

Evidence from multiple studies in multiple contexts indicates that perpetrators’ recognition of sex workers’ barriers to seeking justice creates a climate of impunity that fuels human rights violations, and in particular violence, by perpetrators posing as clients or clients, intimate partners and third parties.

Even when lawfully applied, punitive laws against sex workers, clients or third parties impede sex workers’ human right to protect their safety and health:

- Between 4-75% of sex workers had experienced arrest
- Sex workers’ experiences of arrest and imprisonment are associated with unprotected sex, STI/HIV symptoms or infection in 4 studies on 4 continents. Where measured, experiences of police raids were statistically associated with experiences of violence.
- Criminalization of sex workers or of their clients is associated with displacement to isolated areas.
- Where measured, experience of police displacement was statistically associated with experience of violence and experience of pressure not to use condoms.

There are many complex and hybrid legal systems for addressing sex work. We chose to look at 4 common legal models and analyze them in terms of the evidence in our review. A detailed table detailing the analysis and the studies it references is found within the article in the Lancet issue in appendix. Full criminalization refers to systems where individuals who sell sex, individuals who purchase sex and any third parties are directly or indirectly criminalized or penalized. Partial criminalization refers to a system where any one or two of those different groups are criminalized or penalized.



The most severe and systematic rights violations documented in the literature occur within the contexts of punitive laws (full or partial criminalization).

The evidence in this review also indicates very clearly that partial criminalization, including models of partial criminalization, such as the so-called “Swedish” approach, in which the clients and third parties are criminalized but the sale of sex is not, create many of the same human rights and health harms to sex workers as full criminalization.

Furthermore, HIV prevention services in both full and partial criminalization are often severely hindered.

Decriminalization, as exists in New Zealand, is the only environment for which evidence indicates that the legal framework substantially enhances the rights of individuals who sell sex, and specifically, their ability to report violence.

2. The Evidence On Whether Criminalizing Clients and Third Parties Reduces Sex Work

The preamble of bill C 36 rests on the logic that prohibiting the purchase of sexual services and third parties in the sex trade will reduce sex work over all. There is no empirical evidence that substantiates this claim. While sex work on the street in Sweden went down following the ban in 1999, there is no evidence it went down over all¹. Furthermore, a decline in sex work on the street during this period was documented across cities all over Europe and North America with the advent of cell phones and the internet². The claim of a decline in sex work is repeated most recently in a methodologically flawed evaluation of the Norwegian law, however again, there is absolutely no rigorous evidence provided that supports the claim³.

Of note, according to the Swedish police and the Swedish governments’ own statistics, sex work remains widespread in Sweden. Stockholm has a population of 880 000. This makes it comparable to Ottawa without the suburbs (883 000) or Edmonton without the suburbs (810 000). These are the officially provided statistics on the extent of sex work in Stockholm *under the ban* on purchasing sexual services and third parties:

Number of estimated erotic massage parlours according to police:	250 ⁴
Number of estimated street prostitutes according to government:	180 ⁵
Number of websites selling sexual services primarily in the Stockholm area:	299 ⁶

Indeed, three government agencies assessed the law and found no evidence that prostitution had gone down over-all but evidence it had become more “hidden”. These are the:

¹ Dodillet S, Östergren P. The Swedish Sex Purchase Act: claimed success and documented effects. Decriminalizing prostitution and beyond: practical experiences and challenges; The Hague, The Netherlands; March 3–4, 2011.

² Criminology Institute of Stockholm University- Kriminologiska institutionen vid Stockholms universitet 2010.

³ The claim is based on a purported decrease in the visibility of street prostitution, however even these observations were methodologically problematic: Vista Analysis. 2014. *Sexjopslover er evaluert*. Oslo: Ministry of Justice. See D’Adamo, Kate. 2014. “*Nordic Model Defines “Success” as No Results, All Collateral Damage*” NYC: Sex Workers Outreach Project and PION. 2014. “Evaluating the Norwegian Prostitution Law” Oslo: Prostitutes’ Service Centres (PION). The framework for the evaluation was publicly criticized by the most prominent sex work researchers in Norway: <http://fafo.no/prostitution/131001-Lackofwill.pdf>

⁴ Swedish National Police Report on Prostitution <http://polisen.se/Aktuellt/Nyheter/Gemensam/april-juni/Har-kan-man-gora-stordad-i-det-lilla-/>

⁵ Swedish National Police Report on Prostitution, 2014

<http://polisen.se/Aktuellt/Nyheter/Gemensam/april-juni/Har-kan-man-gora-stordad-i-det-lilla-/>

⁶ 2010 Swedish Evaluation of the Law <http://www.government.se/content/1/c6/15/14/88/0e51eb7f.pdf>

Most recent statistics cited are for 2008.

⁶ 2007 Report by the Swedish National Board of Health and Social Welfare SoS (Socialstyrelsen)

-Sweden National Council for Crime Prevention
 -Sweden National Board of Health and Social Welfare
 -Sweden National Police Board⁷

According to a 2014 Swedish Police Report: “Most of the sex trade is currently conducted via the internet. None of the inspecting authorities have a complete picture of the scope (...).”⁸ The report further finds that clients have moved from in-call services to out-call services to evade police detection, thus moving sex workers to unknown and less-safe environments.⁹ The Swedish government’s 2010 evaluation of the law also found “an increased proportion of foreign women since the ban” with migrant sex workers now making up 50% of all street workers in Sweden (up from 30%).¹⁰ This finding troubles the claim that Sweden is no longer an attractive destination for commercial sex.

If criminalization reduced sex work, one would expect that decriminalization would result in a large increase in sex work. However, a large study in New Zealand found no increase in sex work following decriminalization.¹¹

3. The Evidence Regarding the Criminalization of Clients and Third Parties and Impacts on Violence and Ability to Report Violence

There is no evidence that trafficking in the sex trade has diminished in Sweden under partial criminalization¹². Despite claims by a recent Norwegian government evaluation in favourable to the government’s position, that it “probably” has, there is no empirical evidence to support this claim either¹³. Sweden has had relatively stable numbers of trafficking convictions prior to the ban and this has been consistent following the ban (15 to 44 cases per year).¹⁴ In fact, both the Swedish National Police Board’s Evaluation of the Law in 2001 and the Norwegian Ministry of Justice Evaluation of the Swedish Law in 2004 reported that the criminalization of clients rather than help combatting trafficking, had created an obstacle to prosecuting traffickers and “coercive pimps”¹⁵. Anti-trafficking advocates and service providers from across Europe, including the well-known LaStrada Network, have similarly denounced the criminalization of clients and third parties arguing that

⁷ RPS (Rikspolisstyrelsen) 2001. Rapport. "Lag (1998:408) om förbund mot köp av sexuella tjänster. Metodutveckling avseende åtgärder mot prostitution." Av Nord, Anders och Rosenberg, Tomas. Polismyndigheten i Skåne. ALM 429-14044/99. 2001. POB -429-4616/99 SoS (Socialstyrelsen) 2000. "Kännedom om prostitution 1998-1999." SoS rapport 2000:5.

BRÅ (Brottsförebyggande Rådet) 2000. Brå rapport 2000:4. "Förbud mot köp av sexuella tjänster. Tillämpningen av lagen under första året." Brottsförebyggande rådet. Stockholm.

⁸ Swedish National Police Report on Prostitution, 2014

<http://polisen.se/Aktuellt/Nyheter/Gemensam/april-juni/Har-kan-man-gora-stordad-i-det-lilla/>

⁹ Swedish National Police Report on Prostitution, 2014

<http://polisen.se/Aktuellt/Nyheter/Gemensam/april-juni/Har-kan-man-gora-stordad-i-det-lilla/>

¹⁰ 2010 Swedish Evaluation of the Law <http://www.government.se/content/1/c6/15/14/88/0e51eb7f.pdf>

¹¹ Abel, G. et. al. 2007. The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers.

<http://gup.ub.gu.se/records/fulltext/140671.pdf>. See also Strathdee, S. et al. 2014. *Myths and Realities*. Lancet “HIV and Sex Workers”.

¹² See full police trafficking statistics by year in: Dodillet S, Östergren P. The Swedish Sex Purchase Act: claimed success and documented effects. Decriminalizing prostitution and beyond: practical experiences and challenges; The Hague, The Netherlands; March 3–4, 2011.

¹³ Vista Analysis. 2014. *Sexjopslover er evaluert*. Oslo: Ministry of Justice. See D’Adamo, Kate. 2014. “*Nordic Model Defines “Success” as No Results, All Collateral Damage*” NYC: Sex Workers Outreach Project and PION. 2014. “Evaluating the Norwegian Prostitution Law” Oslo: Prostitutes’ Service Centres (PION). The framework for the evaluation was publicly criticized by the most prominent sex work researchers in Norway, among other things, for NOT including any measure of the law’s impact on trafficking: <http://fafo.no/prostitution/131001-Lackofwill.pdf>

¹⁴ See full police statistics by year in: Dodillet, S. and Östergren, P. 2011. The Swedish Sex Purchase Act: Claimed Success and Documented Effects. <http://gup.ub.gu.se/records/fulltext/140671.pdf>

¹⁵ RPS (Rikspolisstyrelsen) 2001. Rapport. "Lag (1998:408) om förbund mot köp av sexuella tjänster. Metodutveckling avseende åtgärder mot prostitution." Av Nord, Anders och Rosenberg, Tomas. Polismyndigheten i Skåne. ALM 429-14044/99. 2001. POB -429-4616/99 and Purchasing sexual services in Sweden and Netherlands. Norwegian Ministry of Justice and Police Affairs 2004. <http://www.nswp.org/sites/nswp.org/files/PURCHASINGSEX.pdf> (accessed June 25, 2014).



criminalization “drives the sex industry even more underground, which results in... significantly lower chances of identifying individuals who have been trafficked”¹⁶.

Again, if criminalization reduced trafficking, one might expect it to increase following decriminalization. However, in New Zealand, despite multiple investigations, there has not been a single case of trafficking in the sex trade detected by police since 2003¹⁷.

Of direct concern with regards not only to trafficking, but other forms of violence, a study in Sweden found that 50% of sex workers interviewed found it more difficult to seek help following the criminalization of clients than before¹⁸. In a separate evaluation of the law in Sweden, sex workers reported that they “feel they are hunted by police” and have less trust in police than before.¹⁹ Indeed, Sweden’s approach of considering sex work as incompatible with “dignity” institutionalizes discrimination against sex workers with grave consequences, such as the removal of their children if they disclose their sex work to authorities within the context of reporting abuse²⁰. In Norway, sex workers report that the law- and resulting antagonistic relationship with law enforcement-have made it harder to report violence or abuse against them²¹. Similarly, in Vancouver, under a policy of criminalizing clients not sex workers, sex workers still reported that a persistently conflictual relationship with police continued to block their ability to report abuse against them²². In contrast, in New Zealand, following decriminalization, a study of over 700 sex workers found that a majority reported that decriminalization had made it **easier** to get help from authorities.²³ New Zealand is the only country where evidence indicates that the legal framework has made it easier for sex workers to report violence.

Research in Norway by the network of support centres for sex workers found that the criminalization of clients and third parties had made sex workers *more* dependent on third parties, thus making them more vulnerable to abuse and coercion²⁴. Furthermore, this dependency is reported to have resulted in sex workers retaining a smaller share of their earnings²⁵. Similarly, Sweden’s National Board of Health and Welfare that posited that “pimping” in the sex trade may have increased following the ban²⁶.

There is no data which allows a methodologically rigorous quantitative comparison between rates of violence in Sweden or Norway pre and post-ban. However, recent research in Norway found that extremely high levels of violence against sex workers in the three years following the ban, with 59% of sex workers having experienced

¹⁶ La Strada International. Ahead of the vote in the European Parliament on the Report of the Committee on Women’s Rights and Gender Equality on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI)). Amsterdam: La Strada International, 2014

¹⁷ New Zealand Ministry of Justice. 2014. Trafficking. <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/13-trafficking> (accessed June 25, 2014).

¹⁸ Riksförbundet för homosexuella, bisexuella och transpersoners rättigheter. Osynliga synliga aktörer. Hbt-personer med erfarenhet av att sälja och/eller köpa sexuella tjänster. Stockholm: Riksförbundet för homosexuella, bisexuella och transpersoners rättigheter, 2011 (in Swedish).

¹⁹ Skarhed Commission Report, Sweden 2010. <http://www.government.se/content/1/c6/15/14/88/0e51eb7f.pdf>

²⁰ See the case in Sweden of Eva Marree Smith Kullander (“Petite Jasmine”) who lost custody of her children when social workers found out she did sex work in the course of her reporting spousal violence. Custody was granted to her violent ex-partner who killed her in 2013 when she sought to exercise her visitation rights.

²¹ Vista Analysis. 2014. *Sexjopslover er evaluert*. Oslo: Ministry of Justice. See Also: PION. 2014. “Evaluating the Norwegian Prostitution Law” Oslo: Prostitutes’ Service Centres (PION).

²² Krüsi, A., et al. “Criminalisation of clients: reproducing vulnerabilities for violence and poor health among street-based sex workers in Canada—a qualitative study.” *BMJ open* 4.6 (2014): e005191.

²³ Abel, G. et. al. 2007. The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers. <http://gup.ub.gu.se/records/fulltext/140671.pdf>

²⁴ Oslo City Report on Prostitution 2012. <http://prosentret.no/wp-content/uploads/2012/06/FARLIGE-FORBINDELSER.pdf> (original Norwegian text). English translation:

<http://humboldt1982.files.wordpress.com/2012/12/dangerous-liaisons.pdf>

²⁵ PION. 2014. “Evaluating the Norwegian Prostitution Law” Oslo: Prostitutes’ Service Centres (PION).

²⁶ SoS (Socialstyrelsen) 2000. “Kännedom om prostitution 1998-1999.” SoS rapport 2000:5.



violence *in that period alone*²⁷. The study further found that the framework of partial criminalization directly impeded sex workers' ability to exercise their safety or what the researchers called "survival" strategies such as screening clients, working together or working from a known indoor location²⁸.

There is no data which allows a methodologically rigorous quantitative comparison between rates of violence in New Zealand pre and post-decriminalization. However, 64% of sex workers said that their ability to refuse a client had increased post-decriminalization.²⁹

4. Implications of the Evidence for Bill C36

Despite the justification of C36 expressed in the preamble as a necessary measure to reduce the sex trade, there is no empirical evidence that criminalizing clients, third parties or sex workers reduces sex work.

Contrary to the stated aim in the preamble to C36 of encouraging individuals in sex work to "report violence", the empirical evidence indicates that the proposed bill stands to create significant and systemic barriers to sex workers' ability to report violence. The evidence indicates that legal frameworks that criminalize clients and third parties produce major obstacles to individuals in the sex trade reporting violence and getting assistance when needed and to the prosecution of violent offenses against people in the sex trade, including trafficking. The criminalization of sex workers is also a well-documented barrier to sex workers' ability to report violence³⁰.

When sex workers are unable to access police protection without fearing arrest and detention, harassment of themselves or of their clients, or raids on their work place it creates a climate of impunity for violence and abuse against them, which in turn, fuels such violence and abuse³¹. This, as we have seen most clearly in the Oppal Inquiry has direct implications in terms of fueling and fostering the most severe violence against sex workers: murder³². However, it has ramifications that extend to all other forms of violence including trafficking. The RCMP's 2010 Report on Trafficking cases in Canada found that the majority of victims of trafficking in the sex trade had been consenting sex workers prior to being targeted for forced sex work and confinement (trafficking)³³. In other words, in Canada, sex workers' inability to report violence to police likely fuels trafficking as well.

The evidence is also very clear that criminalization of sex workers, clients and third parties impedes sex workers' from taking life-saving safety measures and working in safer environments³⁴. This legislation places sex workers at a high risk of violence.

²⁷ Oslo City Report on Prostitution 2012. <http://prosentret.no/wp-content/uploads/2012/06/FARLIGE-FORBINDELSER.pdf> (original Norwegian text). English translation:

<http://humboldt1982.files.wordpress.com/2012/12/dangerous-liaisons.pdf>

²⁸ Idem.

²⁹ Abel, G. et. al. 2007. The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers. <http://gup.ub.gu.se/records/fulltext/140671.pdf>

³⁰ Decker M, Crago AL, et al. 2014 *Human rights violations against sex workers : burden and HIV effects*. The Lancet

³¹ Decker M, Crago AL, et al. 2014 *Human rights violations against sex workers : burden and HIV effects*. The Lancet

³² Oppal, W. Missing Women Commission of Inquiry. <http://www.missingwomeninquiry.ca/reports-and-publications/>

³³ RCMP. 2010. *Human Trafficking in Canada: A Threat Assessment*. Ottawa: RCMP-GRC.

³⁴ Decker M, Crago AL, et al. 2014 *Human rights violations against sex workers : burden and HIV effects*. The Lancet



Lastly, the empirical evidence is very clear: the most systemic and systematic human rights violations against individuals in the sex trade occur in contexts of full or partial criminalization³⁵. Bill C-36 is consistent with frameworks that fuel and foster violence and other human rights violations against sex workers.

Recommendation

The senate should oppose Bill C-36 in its entirety and should instead take an evidence-based approach to supporting the safety, liberty and health of those in the sex trade by introducing legislation consistent with the New Zealand model of decriminalization that:

1. Strikes down prior criminal records for offenses under the sections of the criminal code struck down in *Bedford v. Canada*.
2. Prohibits discrimination, including in social health and welfare services, against individuals who sell sex (including those who choose not to stop selling sex).
3. If the senate feels that the current anti-trafficking legislation is insufficient to address forced sex work, the senate can consider looking to New Zealand's approach of introducing a new offense of "forced prostitution" that carries a 14-year prison sentence (on par with our trafficking sentences).
4. Much like the New Zealand Prostitution Reform Act of 2003 the guiding objective of such legislation should be to ensure sex workers' human rights and occupational health and safety. Although in a Canadian context, much of the occupational health and safety guidelines will fall to provinces, there is still the possibility for federal legislation to take a clear stand on sex workers' human rights.

³⁵ Idem.