



Bill C-36 and the views of people involved in the Canadian sex industry

June 20, 2014: Summary of the legislation & our study

On June 4th, 2014 Justice Minister Peter MacKay introduced Bill C-36, the *Protection of Communities and Exploited Persons Act*. The draft legislation proposes a legal framework that criminalizes communication in public for the purpose of prostitution, the purchase of sexual services, material benefit, and the advertisement of sexual services.

A recent Angus Reid poll published in the Globe and Mail (11/06/14) shows that Canadians are not generally supportive of Bill C-36. Further, our collective research, including 24 years of work and more than 20 studies with thousands of adults involved in the sex industry, suggests that the majority of them do not support the criminalization of selling, buying, or third party involvement in the sex industry.

In this brief we focus on the findings from our recent national study funded by the Canadian Institutes of Health Research. Our research team involves a multisectoral group of scholars, trainees, knowledge users and collaborators who have worked with us for many years to raise public awareness. In the last 12 months we have researched the sex industry in six Canadian municipalities (Victoria, BC; Montreal, QC; Fort McMurray, AB; Calgary, AB; St. John's, NL; and Kitchener-Waterloo, ON). These sites were carefully selected so that key comparisons could be made on the main determinants of health and safety of people involved in the Canadian sex industry. Using well-established social science methods we selected respondents in a manner that represents as well as possible, the range of people and organizations involved in the industry. Our investigators have surveyed and conducted interviews with 218 adults who sell sexual services, 1252 adults who pay for sexual services, 30 spouses/intimate partners of sellers, 61 sex industry business managers, and 80 people involved with creating and enforcing laws and regulations affecting sellers, buyers, managers, and other third parties. We collected diverse samples that include Aboriginal and other minorities, people from all genders and sexualities, as well as indoor, outdoor, and independent sellers, and buyers in diverse venues. (<http://www.understandingsexwork.com>)

Certainly there are real issues and problems faced by the minority of people in the lowest end of the sex industry who tend to be disproportionately female, poor, Aboriginal, and suffer from mental health and substance (ab)use issues.ⁱ We can all agree that they definitely need to be provided assistance in various forms. We can also agree that stigma and discrimination are

common experiences of most people involved in the sex industry, which negatively affect self-esteem and hinder access to supports, including supports for those who want to transition out of the sex industry.ⁱⁱ However, the findings from our national study, the largest of its kind in Canada, suggest that the main provisions of Bill C-36 will result in a variety of harms affecting sex sellers, including the most vulnerable, as well as the parties with whom sellers engage.

We recommend instead treating the sex industry as any other industry and controlling it through existing human rights legislation, labour laws, and municipal regulations as a better alternative to the current proposed legislation. We also recommend, as others have internationally, harm reduction and health promotion policies that improve health, safety and wellbeing.ⁱⁱⁱ

Provision 213 (1.1): “Offenses in relation to offering, providing or obtaining sexual services for consideration.” Stopping or impeding traffic. Everyone is guilty of an offence punishable on summary conviction who communicates with any person — for the purpose of offering or providing sexual services for consideration — in a public place, or in any place open to public view, that is or is next to a place where persons under the age of 18 can reasonably be expected to be present.

Evidence

In *Bedford*, the Supreme Court of Canada unanimously struck down the communicating provision (s.213 (1) (c)) on the basis that it violated section 7 of the Charter of Rights and Freedoms.^{iv} Justice Himel’s Ontario Court ruling stated that Canada’s criminal code provisions deprive sellers of their “security of the person” and “liberty interests,” and increase their risk of violent victimization. Moreover, the Justice ruled that the laws operate in a manner that is inconsistent with the principles of fundamental justice.^v

The proposed amendment to 213 (1.1) will further undermine the capacity of street-based sellers to keep safe—Aboriginal sellers in particular—since they are disproportionately represented on the street.^{vi} Our team grant results indicate that Aboriginal people made up approximately one-quarter of all street-based sellers and just over a third of Aboriginal sellers were street-based (i.e., advertise on the street and/or deliver services on the street, in vehicles, or outdoors at least once a month). Our findings indicate that street-based Aboriginal sellers were significantly more likely than all other sellers to experience violence, including attack and robbery or attempted robbery in the previous 12 months.

Aboriginal groups across Canada have called for concerted action to reduce violence inflicted on Aboriginal women, including those involved in the sex industry. Provision 213, if made law, will do the exact opposite because it places limitations on the communication activities of street-based sellers and buyers while ensuring that these negotiations will most likely occur in settings that are regarded as outside public view.

More specifically, our results indicate that Provision 213 will impede street-based sellers’ ability to keep safe while working by criminalizing essential safety strategies they commonly employ when negotiating sexual transactions with buyers. This includes screening potential buyers, engaging in extended discussion of terms, and obtaining payment upfront. In our study, sellers were presented with a list of 14 work safety strategies, and asked to report on how often they employ each of the strategies while selling sexual services. Screening prospective buyers is a strategy usually or always employed by virtually all (90%) of the

sellers we interviewed, followed closely by getting money up front (82%).

When we asked buyers to elaborate on the type of precautions they took, almost 70% reported that they too employed safety precautions when visiting sellers. Many detailed the importance of establishing clear and open communications with sellers in order to obtain clear and detailed information. These important safety strategies will be impeded by the new legislation which encourages pressured transactions out of public view to avoid prosecution.

Our research suggests that only by creating conditions where sellers and buyers are free to negotiate and secure payment without fear of prosecution will the harms identified in our research and affirmed by Justice Himel and the 9 judges in the SCC be reduced.

Provision 286.1(1): “Commodification of sexual activity.” Obtaining sexual services for consideration. Everyone who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person is guilty of (a) an indictable offence and liable to imprisonment for a term of not more than five years ...

Evidence

The terms “commodification” and “sexual service” have not been defined in the proposed legislation, leaving open the possibility that providing any favours, not just money, for sexual services would also be criminalized – including sex for shelter, food, and so forth. Sellers who are the most vulnerable – those who are street-based, Aboriginal, have substance use problems, etc., will be the most negatively affected. Furthermore, this new provision criminalizes everyone in any place who purchases or communicates in order to obtain “sexual services”. The provision is based on the assumption that commercial sex relationships in Canada are by nature unequal, with sellers forced to engage, and buyers in control of the interaction.

This assumption is NOT confirmed by our study. We asked the sellers about their perceptions of power relations in their general interactions with buyers. Most sellers (81%) agree or strongly agree that they feel empowered to set the terms and conditions of the service when with a buyer. Almost two-thirds of sellers (65%) agree or strongly agree that they usually get their way when they have a disagreement with a buyer and over half of sellers (52%) agree or strongly agree that they do what they want when with a buyer. Only 12% agree or strongly agree that buyers have more power in their relationship.

In order to more fully understand how power and control operate within commercial sex relations we asked buyers an identical set of questions about perceptions of power and control. Over half of the buyers (57%) we spoke to agreed that sellers they see have more say about the terms of service than they do, while only 18% of buyers felt that they had more say than the seller; the remaining 26% of buyers felt that both parties had about the same level of control. When we asked them to consider the power dynamics more generally, 45% of buyers agreed that the sex sellers they visit have more power in the relationship, 35% felt that power was more evenly balanced (i.e., a neutral stance), and only 20% felt that the sellers they see have less power than they do.

The proposed legislation is not only based on a false assumption that transactional sex relationships in the Canadian sex industry are—by their very nature—unequal (with sellers forced to engage in an interaction controlled wholly by buyers). The proposed legislation will

also make it impossible for sellers and buyers to ask for police help, whether they've been victimized or witnessed/suspected someone else has been victimized.

As with the other provisions discussed above, our research suggests that new legal provisions must avoid the criminalization of everyone in any place who purchases or communicates in order to obtain sexual services. Avoiding such legislation will keep open communication between sellers and buyers, maintain cooperation in the majority of interactions, and encourage those in need or danger to seek help from service organizations and the police.

Provision 286.2: “Material Benefit from Sexual Services.” Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 286.1(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years. The proposed law states that those in “legitimate living arrangements” or those with “legal or moral obligations” to sellers are not guilty of this offense if they can prove that to be the case...

Evidence

This provision places the onus on sellers and their intimate partners to prove to the courts that they have “legitimate living arrangements”. This phrase is not defined in the proposed legislation. It is especially worrisome for street-based sellers and their partners without access to secure housing. Bill C-36 also proposes changes to the Canada Evidence Act that would allow prosecutors to “compel or subpoena” wives and husbands to testify against their partner.

Over 70% of sellers' spouses/intimate partners we interviewed worked 20 hours a week or more at a paid job. These relationships do NOT fit the stereotypical depiction of partners as pimps parasitically living off the avails of prostitution. Furthermore, the majority of partners we interviewed said that Canada's prostitution laws and the accompanying stigma of living with someone engaged in selling sexual services left them isolated and alone. The majority of them also stated that they have a weak, or very weak, sense of belonging in their communities. Moreover, over 50% of partners reported being discriminated against by law enforcement officials. Although 48% of partners reported being the victim of a crime (abuse, assault, theft, or threats) as an adult, only 12% of those say they contacted police and filed a report as a result.

Provision 286.2, which presumably targets exploitative third parties by criminalizing material benefit, contains provisions ensuring that persons who enter employment or contract relationships with sex sellers in the context of commercial establishments (286.2.5.e) are criminalized. Our research with sellers indicates that 25% of them work in commercial establishments which include in-call and out-call escort agencies and massage parlours. Female sellers are more likely to work in organized commercial settings compared to males. Compared to other sellers, those who sell services in commercial establishments have significantly higher rates of employing essential safety strategies while selling sexual services, including checking in with someone, having a driver, having an alarm or panic button, and having a security camera.

We interviewed 61 persons in our project on “managers”. At the outset of the study, we defined them as persons who earn an income from providing direction to sex sellers in their jobs, including training, hiring, monitoring, disciplining, and setting workplace standards. We learned that the most common activities performed by managers included maintaining advertising, coordinating transactions by screening inquiries from buyers prior to additional screening by the seller, maintaining service sites, arranging support (drivers, reception), and assisting in resolving conflict. Half of the managers reported having a municipal license for their business, with the most common reason for not having a license being that it was not required by municipal laws.

The majority of managers (59%) identified as female. Further, 71% of female managers and 17% of male managers were currently working or had formerly worked as sellers. In addition, 63% reported being in a relationship and 65% reported having one or more dependents in their care. These individuals do NOT resemble the stereotype of a “pimp”. Additionally, there is considerable overlap between the seller and the person who organizes the commercial sexual transaction.

Male or female, these individuals fulfill many roles that enhance the safety of sellers, including obtaining a lease or renting a space, attaching their identity to a municipal business license, screening potential buyers, and arranging assistance for sellers from coworkers or drivers, among other key functions. Over 90% of managers indicated that they ensure sellers have someone close by, have an organized check-in, arrange money up front, screen buyers, and have access to a phone.

People who manage sex industry businesses also develop advertising. The content is most often prepared or approved by the seller with someone else in the business who assumes the responsibility for paying for website development, fees, and maintenance. All of these activities would be illegal given 286.2.5e (as well as 286.4).

While the majority of sellers in our study worked independently or in small informal networks, some chose to work in managed group environments because they valued the supports provided. These supports allowed them to readily separate their work and personal life while also enhancing safety and security. Provision 286.2.5e, which criminalizes material benefit by third parties in commercial enterprises, will impede the functioning of this female-dominated seller model.

Our research suggests that decriminalizing third parties related to the sellers of sexual services will provide a context in which the safety and health of sellers can be increased. The violence and exploitation, which Provision 286.2 aims to address, will be better dealt with through targeted criminal code provisions already available regarding kidnapping and forcible confinement (279), physical assault (265, 267, 268), sexual assault (272, 273), threats (264), extortion (346), theft (322), harassment (264), and human trafficking (279.01), and through provincial laws governing labour and occupational health and safety, and through municipal by-laws governing business licensing, zoning, safety, and health.

Provision 286.4: “Advertising sexual services.” Everyone who knowingly advertises an offer to provide sexual services for consideration is guilty of: (a) an indictable offence and liable to imprisonment for a term of not more than five years; or (b) an offence punishable on summary conviction and liable to imprisonment for a term of not more than 18 months.

Evidence

This is a completely new provision that criminalizes advertising sexual services in Canada. It is a move that, if implemented, will significantly impact sellers’ ability to keep safe in off-street venues.

In our study, sellers were asked about where they advertise for potential buyers. A large majority of sellers (72%) reported that they advertised sexual services online (in online classifieds, sex worker advertisement websites, agency websites, or dating websites) at least once a month in the past 12 months, and 59% of them advertised sexual services online at least once a week. Approximately 18% advertised in a newspaper at least once a month. Our results indicate that advertising online or in print media greatly enhance the safety of sellers because it is a first step in identifying the terms of the sexual transaction and because it establishes a means for communicating that allows for screening and discussion of terms and conditions. Furthermore, sellers who advertised on popular industry advertisement websites more frequently reviewed aggressor lists and those who advertised online or in a newspaper more frequently recorded buyer's information and maintained a blacklist. Advertising sites also provide a means for other sellers, researchers and health professionals to reach people in the sex industry.

As with the other provisions discussed above, our research suggests that avoiding the criminalization of everyone in any place who purchases or communicates in order to obtain sexual services will keep open communication between sellers and buyers, maintain cooperation in the majority of interactions, and encourage those in need or danger to seek help from service organizations and the police.

We are aware that Provision 286.5.b indicates immunity for those who advertise their own sexual services. However, it is not clear that the exceptions noted in 286.2.4 for third parties who “legitimately” derive a benefit receive a similar exception in relation to advertising. Many sex sellers obtain support with online advertising from web designers, photographers, friends, coworkers, and agency managers (reception and owners) since online advertising is both time consuming and requires specific expertise. Therefore, we are concerned that in practice, Provision 286.4 will impede sellers’ access to advertise their own services because they will not be able to obtain common services and assistance required without triggering the sanctions outlined in 286.2.

As with Provision 213, our research suggests that avoiding the criminalization of advertisements for sexual services will increase the safety of sellers and others involved in the sex industry.

Summary & recommendations

Our national research results indicate that the main provisions of Bill C-36 will impede the use of safety strategies employed by sex sellers. It is based on false assumptions regarding the makeup of the sex industry in Canada and the experiences and motivations of sellers, their intimate partners/spouses, buyers, and managers. Currently, people involved in the Canadian sex industry are reluctant to contact the police if in danger. Only 22% of the sellers who reported any incidents of victimization while working in the sex industry in the previous 12 months ever contacted the police and only 16% filed a police report in connection with their victimization. The proposed legislation will make sellers feel even more wary about asking the police for help.

On June 4th, 2014, Justice Minister Peter MacKay announced "\$20 million in new funding, including funds to support organizations dealing with the most vulnerable. Assistance will be provided to those who want to leave this dangerous and harmful activity; therefore, there will be an emphasis on funding programs that can help individuals exit prostitution." We support this initiative since it will be helpful for those who wish to stop selling sexual services and we maintain that such supports should be provided regardless of exiting intent. However, the vast majority of those we surveyed are not in this situation. Along with this type of assistance, we recommend that Canada decriminalize commercial sex relationships and use existing human rights, labour laws, and municipal regulations to protect the health and safety of all people involved in the Canadian sex industry.

BIOS

Chris Atchison is a Research Associate in the Department of Sociology at the University of Victoria. He has been researching people who purchase sexual services and working in a supportive capacity with sex work(er) researchers and outreach organizations since 1995. During this time he has been the lead investigator on three major studies of clients, acted as co-investigator on three additional studies of health and safety in the off-street sex industry, and provided research counsel or assistance on six other projects focusing on sexual service providers and community attitudes toward prostitution. Over the last 18 years, Chris has interviewed close to 3000 clients and spent 100s of hours immersed in physical and virtual communities where sellers and buyers interact conducting micro-ethnographic research. His work was presented as part of evidence in the Bedford case, and has been used by municipal and provincial task forces and special committees. He has also been involved extensively in committees and working groups formed to study and develop social and health policy as well as legal and regulatory approaches to addressing issues related to the sex industry in Canada.

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numerous awards for her scholarship and community outreach activities. Most recently, she was made a Fellow of the Royal Society of Canada (2013) and Fellow of the Canadian Academy of Health Sciences (2013). She is currently leading the CIHR-funded project: “Team Grant on contexts of vulnerabilities, resiliencies and care among people in the sex industry”. E-mail: cbenoit@uvic.ca

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economy. His current research examines historical changes in Canadian rural communities, rural-urban interdependence, comparative regional policy in Canada, rural immigration, the impacts of wildfires on communities, and the factors contributing to the health and safety of people working in the sex industry. Details can be found via <http://billreimer.ca>.
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Dr. Frances M. Shaver is a professor in the Department of Sociology and Anthropology at Concordia University. Over the last 30 years she has interviewed over 400 women, men, and transgender sellers and worked with colleagues on diverse projects, including *Female, Male and Transgender Prostitution in the Tenderloin*; *Sex Work as Service Work: Integrating the Dark Side of the Service Industry*; *Sex Work as Service Work: Comparing Sex Workers and Hospital Workers*; *Work, Restructuring, Health, and Policy Implications: The Sex Trade Environment*; the *Sex Trade Advocacy and Research* project (STAR), and the *Understanding Sex Work* project. She acts as a knowledge mobilizer as well as a scholar and has appeared before and/or written briefs for Government Committees (including the Special Subcommittee on Pornography and Prostitution (1984) and the SSLR Subcommittee (2005)); Departments of Justice (Ontario, Québec, Canada), and a variety of NGOs. She also prepared affidavits for two recent court cases challenging the constitutionality of Canadian prostitution laws: *Bedford, Scott & Lebovitch v. AG Canada*, 2007 and *Sex Workers United Against Violence (SWUAV) & Kiselbach v. AG Canada*, 2007.
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