



Decriminalize Sex Work

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## **Brief to the Senate Legal and Constitutional Affairs Committee**

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July 30, 2014

# **Bill C-36: Poisoned by Sexist Ideology**

**From the Foreward to *Whores in History*, by Nickie Roberts:<sup>1</sup>**

*I am wholeheartedly on the side of the unrepentant whore, the most maligned woman in history...in [this book she] speaks up to denounce and challenge her oppressors, and thereby overcome the centuries of lies, denial and stereotyping that have been her lot. Only when she is listened to by the rest of our society will women finally and irrevocably be able to end our division into Good Girls and Bad Girls.*

FIRST is a coalition of feminists that supports the rights of sex industry workers and advocates for the full decriminalization of adult sex work. We are guided by the fundamental principle that sex industry workers should have the equal benefit of human rights protections that are available to all members of Canadian society.

The position we take in this brief is to ask the Senate Committee to recommend that Bill C-36 be scrapped in its entirety because it cannot be salvaged even with amendments. The bill is unnecessary, unconstitutional, grossly punitive, and overbroad in its reach. It poses a serious danger to the safety of sex workers, and is also a far-reaching intrusion of government into people's privacy and sexual lives. Our brief primarily examines the Preamble that purports to justify Bill C-36. We show that it is based on false and sexist assumptions that renders the bill counterproductive and guarantees its failure.

## **About Feminism**

To help give some context for the positions taken in this brief, we would like to briefly explain what feminism means to FIRST. Feminism is the advocacy of women's rights and equality on the grounds that they should have the same political, social, and economic opportunities as men. Further, feminism is the belief that women should be afforded respect and dignity as autonomous and full persons in their own right, on a par with men. This means that women must not be defined solely or largely by their sexuality or child-bearing capacity, which are too often used to justify discriminatory laws that restrict their rights or limit their roles in society.

Feminism is not just about the fight for women's rights, however, because an egalitarian and progressive society benefits all. FIRST believes that everyone deserves equality, respect and dignity, regardless of their gender identity or sexual orientation. The feminism of FIRST also supports the rights and fundamental humanity of men, gays, lesbians, bi-sexual people, transgender people, and those who identify as either gender, no gender, or a third gender.

## Evidence Against Bill C-36 Is Overwhelming and Clear

Most of the briefs the Senate Committee will receive from sex workers and their allies will share a wealth of evidence and experience to show that Bill C-36 is both dangerous and unconstitutional. It will replicate most of the same harms to sex workers as the prostitution laws recently struck down by the Supreme Court. It will do so by pushing them out of safe indoor spaces (because of the advertising ban) and into the streets and to more isolated areas, and preventing them from taking safety measures such as communicating with or screening their clients.

The bill actually ignores and contradicts the evidence brought forward in the Bedford case. Ontario Superior Court Justice Himel, and later the Supreme Court, struck down the prostitution laws because they found it was the laws *themselves* that created an increased risk of violence because they prevented sex workers from taking safety measures. The courts found that sex work can be made significantly safer when sex workers are able to implement certain security measures and are afforded greater control over their working conditions. For example, indoor sex work is much safer than outdoor work.

In addition to Bill C-36 clearly violating sex workers' bodily security, life, and liberty rights, the evidence brought forward in other briefs will also show that Bill C-36 violates constitutionally-entrenched principles of free expression, liberty, and association; and that in countries such as Sweden, criminalizing the purchase but not the sale of sex has subjected sex workers to increased violence and harassment, and has failed to reduce sex work or trafficking.

Given the overwhelming evidence against the bill that is already available to the Senate Committee, FIRST would like to instead use our brief to expose the ideological biases, false assumptions, and sexism that underlie Bill C-36 as laid out in its Preamble.

## Preamble to Bill C-36 Exposes Its Sexist Ideology

The government appears to believe that changing the objectives and rationale of prostitution laws, from primarily protecting communities from the "nuisance" of prostitution, to protecting sex workers from the "inherent exploitation" of prostitution and the "social harms" of their sexual "objectification" and "commodification," will somehow immunize the new law from constitutional problems. We strongly disagree, on the basis that the bill is deeply sexist and discriminatory, thereby violating the gender equality clause in the Charter in addition to all the other constitutional violations.

***Whereas the Parliament of Canada has grave concerns about the exploitation that is inherent in prostitution and the risks of violence posed to those who engage in it;***

The Supreme Court did not find that exploitation is "inherent" to sex work. That is a belief derived from right-wing and "radical feminist" activists who morally disapprove of prostitution. The testimony from such people had to be discounted at the Ontario Superior Court trial because it was ideologically-driven and not evidence-based. Further, as noted above, the courts found that the laws themselves increased the risk of violence to sex workers, which this objective disingenuously ignores.

The false assumptions behind this objective are that most sex workers do not choose to do sex work, and that all are exploited. Sex work is a job, and like any job, people often decide to take a job to earn money, not necessarily because it's something they want to do. But it's still a choice, and most sex

workers will tell you they indeed chose their job from amongst other options. Many do enjoy their work too. It's often overlooked that sex work is about much more than sexual services, and also commonly involves counselling, therapeutic healing, massage, intimacy, socializing, companionship, and other aspects that occur normally in human relationships.

While many sex workers work independently and are skilled entrepreneurs, others prefer to be employed by or have a contract with an agency, which frees them from managing the administrative and business side. This should be their choice, but Bill C-36 will force all sex workers to work independently. No other criminal law compels workers in a particular profession to work only for themselves and not an employer or agency, based on the underlying belief that the job (and employers and agencies) is inherently exploitive. This sounds ridiculous because it is, but the notion seems to gain sudden currency when it comes to a job that involves women having sex. We know from the media and Parliamentary discussions around the bill that the biggest concern is around "protecting women." This reveals the paternalistic and anti-sex basis of Bill C-36, since no other profession is criminalized in this way, and significant numbers of sex workers are male or transgender.

Why does the government only want to "rescue" female sex workers from "exploitation"? We submit that it's because Bill C-36 is rooted in historical sexism and antipathy towards sexual expression especially by women. While purporting to discourage prostitution and help exploited sex workers, the Bill actually reinforces the same social structures that support and stigmatize prostitution in the first place – the division of women into "good girls" and "bad girls", the taboo against sexual promiscuity or even sexual pleasure for women, and the demonization of men and their sexuality.

***Whereas the Parliament of Canada recognizes the social harm caused by the objectification of the human body and the commodification of sexual activity;***

This objective is based on a puritanical moral view. The government might as well say that sex *itself* causes social harm.

Sex naturally involves the "objectification of the human body" to at least some degree. An integral part of sexual attraction is to feel physical desire towards another person, based on their physical attributes and biological gender characteristics. Part of what makes sex "hot" and exciting for many people is the objectification of each other's bodies. It is a natural part of sexual pleasure for persons of any gender, and of course is not limited to men "objectifying" women.

Of course, sexual activity is highly variable, ranging from an expression of deep love in a committed relationship, to a casual encounter between strangers. But sex is also a commodity, as can be seen everywhere in modern media and advertising. And most sex has at least some transactional elements attached to it. Patriarchal marriage is historically based on women's agreement to stay sexually monogamous with one man and produce babies for him in return for economic security. Our modern society's negative attitude towards promiscuous women is really a legacy of patriarchy and the male need to guarantee paternity of children by controlling women's sexual behaviour.<sup>2</sup>

We believe that what radical feminists and the drafters of Bill C-36 object to is the refusal of female sex workers to remain within traditional sexual boundaries. The bill is simply another iteration of the age-old desire to control women and their sexuality.

***Whereas it is important to protect human dignity and the equality of all Canadians by discouraging prostitution, which has a disproportionate impact on women and children;***

It is naïve in the extreme for the Conservative government to believe that any criminal law will discourage or reduce prostitution. No society has ever been able to eliminate prostitution, for good reason. Sex is a basic human urge, and everyone should be entitled to a satisfying sex life, not least because it has many health benefits.<sup>3</sup> However, many people are unable to satisfy their needs with a regular partner or “free” recreational partners. For example, a significant proportion of those who pay for sexual services are lonely, widowed, elderly, disabled, socially withdrawn, unattractive, obese, or have other issues that make it difficult for them to obtain human intimacy in typical ways. Others may have strong sexual desires (the human sex drive exists on a continuum) that lead them to seek additional sex or different experiences that they can’t obtain from their partner or others.

Conservatives may believe that sex outside marriage is immoral, but it would be wrong and foolhardy to impose this morality on everyone. Human sexuality cannot be repressed or restricted, at least not without harming the society and the individual. Sexual satisfaction appears to reduce anxiety and aggression, as shown in studies that found pornography reduced rape.<sup>4</sup> Similarly, it’s likely that prostitution serves as an important safety valve for society, reducing violent crimes, saving marriages, and promoting social stability.

The government’s objective to discourage prostitution assumes that sex work lacks dignity and is a symptom of inequality. Those assumptions simply reflect moral distaste for transactional sex, and have nothing to do with protecting vulnerable persons. This particular objective is also premised on sexist beliefs. Sex workers (but only females) are assumed to be passive victims, while their customers (but only men) are assumed to be predatory criminals. This victimology along gender lines is offensive to both women and men. In reality, most sex workers are in pretty good control of their transactions and clients, while clients are mostly ordinary men (and some women) who are respectful to sex workers and comply with their expressed wishes and limits.

Although the phrase “women and children” is commonly used in our language, it’s unfortunate because it sets up women as needing special protection like children. By lumping women in with children, the phrase in this objective acts to deny women’s independence and their ability to take responsibility for themselves. But women are free adults with full constitutional rights, not children or mental incompetents. They are not a sub-class of people who need to be saved even from their own decisions.

***Whereas it is important to denounce and prohibit the purchase of sexual services because it creates a demand for prostitution;***

It is only “important” to “denounce and prohibit” the purchase of sexual services if you have a moral belief against casual sex or transactional sex, and you think it’s your business to poke your nose in peoples’ bedrooms and prohibit private activities between two consenting adults.

The wish to suppress “demand” for prostitution comes straight from the Bible of radical feminists, who naively believe that prostitution can and should be abolished. This ideology also demonizes men and male sexuality. Some radical feminists even liken sexual intercourse to violence against women because of the penetration, and say that women sex workers are “victims” with “no choice.” Such ideas are an

offensive negation of women's sexual autonomy. Women can and do seek out sexual activity and have the right to do so whether for free or not. Men and transgender people have the same right.

When radical feminists say women sell "themselves" or their "bodies", they reduce women's worth and identity to their sexual parts and sexuality. When they say men feel "entitled" to sex, "demand" sex, and "exploit" women to get it, they're saying that most men are predators and their sexuality is a negative and destructive force to be controlled, while women's sexuality is something special that requires societal intervention to prevent it being sullied. These are patriarchal and sexist beliefs that reinforce the gender divide by erecting an even higher and more hostile wall between the sexes – also evidenced by how radical feminists tend to "other" and demonize transgender people. Unfortunately, the drafters of Bill C-36 have been listening to radical feminists and based the law on their destructive beliefs.

Bill C-36 is actually quite breathtaking in its full-fledged return to Victorian mores, as if the government thinks it can roll back the sexual revolution of the 20<sup>th</sup> century and put everyone back on the "straight and narrow", especially women. The only thing missing from the bill is a clause requiring sex workers to wear chastity belts.

But wait... there *is* a chastity belt, of sorts. Bill C-36 will put sex workers' bodies under lock and key because customers will be legally prohibited from accessing them. This means that Bill C-36 *itself* is objectifying and commodifying women's bodies, in the service of moral purity. This hidden objective is the only way to make sense of a law that is completely idiotic on its face. The idea of criminalizing half of a transaction is so absurd and unworkable that it would insult the intelligence of the Senate Committee members for us to explain why. Just imagine if farmers were allowed to grow fruit trees and sell fruit, but it was illegal for anyone to buy it!

Of course, the government's objective as noted before is to discourage prostitution, but any attempt to do so is doomed to failure because it's really no different than trying to discourage sex itself. The objective says that the purchase of sexual services "creates a demand for prostitution." But the purchase of sexual services is motivated by unmet sexual needs, so what it "creates" is sexual satisfaction, which in turn leads people to want sex again and again. Those things are apparently what the Conservative government wants to prohibit.

If the government was really interested in discouraging and reducing prostitution, the best strategy would be to embark on an educational campaign that promotes more sexual freedom for women. That's because prostitution has declined markedly over the last century or two as women's sexuality became less restricted. In puritanical 19th-century Europe and America, it's estimated that 5.5 per cent of women were working as prostitutes at any given time. Today's estimate is 0.3 per cent of all women.<sup>5</sup> Therefore, the best way to "end demand" for paid sex (if that's what we want to do) is to continue our path towards more sexual freedom, especially for women. Instead, Bill C-36 is doing the exact opposite – putting "chastity belts" on sex workers by criminalizing their clients. It is fundamentally an anti-sex bill, not an anti-prostitution bill.

***Whereas it is important to continue to denounce and prohibit the procurement of persons for the purpose of prostitution and the development of economic interests in the exploitation of the prostitution of others as well as the commercialization and institutionalization of prostitution;***

Obviously, no-one should be “procured” against their will for any purpose, but such crimes are already covered by laws against trafficking, kidnaping, rape, slavery, and coercion. In situations where a woman decides to enter sex work because a successful sex worker friend encouraged her, or because she had a consultation with a brothel owner and thought it would be a good fit for her, then why should the persons who helped and advised her be criminalized? If a local sex worker co-operative offers training and orientation to new sex workers, why should the co-operative be criminalized?

Career options counselling, job training, continuing education, “work safe” programs, and the like are all respected industries in our society. Why should sex workers be prohibited from benefitting from them? Under Bill C-36, the government would compel sex workers to not only work completely alone without employers or contracts, but also compel them to shoulder the responsibility for their safety and working conditions with little or no outside help or advice. Not only is this situation unheard of in the working world, it contributes hugely to the isolation of sex workers and an increased risk of violence and exploitation. Bill C-36 will thus accomplish the exact opposite of its supposed objective to protect sex workers.

This objective also suffers from the false assumption that there’s some kind of unbridgeable distinction between procurers (i.e., “pimps”) and sex workers. In reality, it’s common for sex workers to help each other out, share a workplace or clients, operate or assist with an escort business, advocate for their rights, organize, etc. The infamous “pimp lobby” that radical feminists complain about is led and staffed by large numbers of current or former sex workers. So the claim that Bill C-36 is not going to criminalize sex workers themselves is absolute nonsense.

It is only “important” to “denounce” the willing entry of people into sex work if you’re morally opposed to transactional sex. “Denouncing” sexual behavior on moral grounds serves only to marginalize people and put them at greater risk of exploitation. This objective also wants to denounce and prohibit “the commercialization and institutionalization of prostitution.” The government seems oblivious to the fact that prostitution has been a well-established commercial institution for thousands of years. Bill C-36 will do nothing to change that.

***Whereas the Parliament of Canada wishes to encourage those who engage in prostitution to report incidents of violence and to leave prostitution;***

As in any job, some sex workers would prefer to be doing something else, in particular those involved in survival sex work on the streets, who also may need help to transition. But most sex workers are not in that position. They simply want to be able to work as safely as possible, and have better control over their working conditions.

It’s true that some sex workers may be more motivated to report violence if they don’t fear arrest, but unfortunately that won’t be the case under Bill C-36. Sex workers will be subject to ongoing harassment by the police in attempts to target their clients, as well as arrest under procuring laws (for working together or helping each other) or immigration laws, as has happened in Sweden.<sup>6</sup> Under Bill C-36, sex



workers can also still be arrested for communicating or advertising in certain circumstances. Sex workers will not go to the police when they are afraid of being arrested themselves.

The objective of encouraging sex workers to report violence is hypocritical and insincere, considering that Bill C-36 will do nothing to decrease the risk of violence and will probably increase it.

***And whereas the Parliament of Canada is committed to protecting communities from the harms associated with prostitution;***

This objective brings back the original rationale for the prostitution laws, to prevent “nuisance” in communities. It will also bring back the same problems as under the old law. Sex workers will be targeted by the police, stigmatized by the public, and pushed into isolated areas and away from commercial or residential areas where they are safer. The sentiment behind the objective is that prostitution should be invisible – which is precisely why dozens of sex workers were brutally murdered on a pig farm in Coquitlam BC. This objective will continue making it easy for serial killers to target sex workers.

Sex work is a fact of life, and sex workers are an integral part of our society. They perform an indispensable public service and contribute much to our economy. Many thousands of Canadians are sex workers and they are regular human beings like everybody else. They are just trying to make a living and need safe places to live and work like any other person. You probably have friends, neighbours, or co-workers who are sex workers or used to be sex workers, and you don’t even know it.

Instead of denying these facts, or acting horrified at the thought of sex workers “plying their trade” in public or in the house next door, how about we just get used to it? How about we start respecting sex workers and give them the rights and recognition and dignity they deserve? Sex workers should be *more* visible, not less visible. That’s the only way to reduce stigma and improve their safety.

It’s sex workers who need protection from harms inflicted by communities, not the other way around. Bill C-36 not only denies them that protection, but gives license to the police and public to persecute and isolate them.

## Conclusion

The Preamble to Bill C-36 reveals a litany of false assertions, sexist paternalism, and anti-sex moralizing. It has nothing to do with protecting sex workers from exploitation or violence, and will in fact subject sex workers to more of both.

Sadly, we predict that the Conservative government won’t even give a damn when sex workers continue to be murdered, because our analysis of Bill C-36 shows that this law is really about controlling and punishing sex workers and their clients. Let’s not forget that the federal government’s position in the Bedford case was that sex workers themselves are responsible for the risk of violence they face because they choose to enter a risky profession.<sup>7</sup> Nothing has changed with the introduction of this bill and its dishonest objectives (which suddenly pretend that sex workers don’t choose their profession).

Bill C-36 purports to protect women but is profoundly sexist. It manages to be both paternalizing and punitive towards women because it is a reflection of the ancient Madonna/Whore dichotomy. Under this law, “good girls” will be saved from exploitation by leaving prostitution, and “bad girls” who stay will

be punished and subjected to arrest, stigma, and violence. The law and its proponents are unconcerned with male sex workers, who apparently don't need saving and maybe not even punishment. Transgender workers probably won't be as lucky, since they too are subverting the natural order of things, just like bad girls.

Bill C-36 is an utter hypocrisy and a travesty of justice on every level. **We ask the Senate Committee to recommend that Parliament scrap the entire bill.** Instead, Parliament should completely decriminalize sex work, so it can be treated like any other job, allowing sex workers to access the protections of labour law and criminal law like all other workers and citizens. Existing laws already prohibit trafficking, underage prostitution, exploitation, and violence.

The government has no place in the bedrooms of the nation. It's wrong to use the criminal law to control or punish adults for engaging in consensual sex, simply because their sexual choices offend the morality of certain interest groups. Homosexuality and birth control was decriminalized in 1969. Abortion was decriminalized in 1988. Gay marriage was legalized in 2005. It's finally time for sex work to be decriminalized too.

## About FIRST

FIRST (Decriminalize Sex Work) is a coalition of feminists that was founded in 2007 to articulate and promote the feminist position in support of sex worker rights and the full decriminalization of adult sex work. We are a public advocacy group and serve as an ally for sex workers and sex-worker led groups, although many of our members are active or former sex workers. FIRST has about 200 signed-up members, as well as almost 2,200 members on its Facebook page.

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  - 7 Globe and Mail (editorial). *Prostitution laws create extreme risks for women in the sex trade*. Thursday, June 13, 2013. <http://www.theglobeandmail.com/globe-debate/editorials/prostitution-laws-create-extreme-risks-for-women-in-the-sex-trade/article12526483/>