



**Brief submitted to  
STANDING SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL  
AFFAIRS**

***The Protection of Communities and Exploited Persons Act***

***POWER (Prostitutes of Ottawa-Gatineau Work, Educate and Resist)***

Founded in 2008, *POWER* (Prostitutes of Ottawa, Gatineau, Work, Educate, and Resist) is a volunteer-run organization by and for sex workers based in the National Capital region. Envisioning a society in which sex workers of all genders practice their profession free of legal and social discrimination, harassment and violence, *POWER* engages in public education, advocates for the human and labour rights of sex workers, supports health promotion efforts and participates in research projects.

In addition to our collective experiential knowledge as current and former sex workers, our understanding of the challenges confronted by sex workers is informed by our community engagement and our participation in a number of community-based as well as academic research projects. In 2010, *POWER* undertook a qualitative research to ensure we, as an organization, had a global understanding of the challenges confronting Ottawa-area sex workers. The report, *Challenges: Ottawa area sex workers speak out*,<sup>1</sup> presents the key challenges, issues and needs identified by a diverse group of sex workers. Notably one of the report's principal conclusions is that criminalization and stigma are the most significant factors undermining sex workers' ability to safeguard their health, safety, and well-being.

In light of this expertise, and from the perspective of those who would be most impacted if Bill C-36 were passed into law, we wish to bring forth three important points:

1. The proposed provisions in Bill C-36 recreate the statutes of the *Criminal Code* that were declared unconstitutional in *Bedford v. Canada*. In addition, this bill effectively criminalizes the *entirety* of the sex industry by rendering the act of purchasing sexual

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<sup>1</sup> Bruckert, C, and F. Chabot. 2010. *Challenges: Ottawa Area Sex Workers Speak Out* available at [http://www.powerottawa.ca/POWER\\_Report\\_Challenges.pdf](http://www.powerottawa.ca/POWER_Report_Challenges.pdf)

services illegal; this puts us, as sex workers, at further risk of violence, exploitation, and abuse.

2. The enforcement of laws criminalizing sex workers, clients, and/or third parties, far from protecting those of us who are sex workers, has a negative impact on our health, well-being, safety, and security. It also increases the stigmatization and marginalization we experience.
3. Law-makers need to take guidance from sex workers around prostitution law reform. Sex workers are not just another stakeholder group; these laws affect every aspect of our lives and we are profoundly impacted by the consequences of laws that put us in harm's way. We therefore call on the government to introduce a "Made in Canada" New Zealand Model.

Below we develop these arguments and provide illustrative narratives from sex workers.

**1. The proposed provisions in Bill C-36 recreate the statutes of the *Criminal Code* that were declared unconstitutional in *Bedford v. Canada*. In addition, this bill effectively criminalizes the *entirety* of the sex industry by rendering the act of purchasing sexual services illegal; this puts us, as sex workers, at further risk of violence, exploitation, and abuse.**

The Supreme Court of Canada (SCC) was correct in their unanimous landmark ruling. The status quo had failed by every measure, but most especially because of the harm caused to sex workers. After carefully collating thousands of pages of evidence and hearing interveners representing a range of stakeholders, the SCC struck down three key provisions of Canada's prostitution laws because they violated sex workers' constitutional right to life, liberty and security of the person. It is therefore paramount that any new laws must be constitutional and safety must be the first consideration.

Provision 213<sup>2</sup>, Provision 286.1(1)<sup>3</sup>, Provision 286.2<sup>4</sup>, and Provision 286.4<sup>5</sup> of the proposed Bill C-36 effectively criminalize the entirety of the sex industry, mirroring and even amplifying the documented negative effects of the impugned provisions. The evidence from Canada and throughout the world is indeed conclusive that criminalization of sex work has the following detrimental effects on us:

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<sup>2</sup> Provision 213: stopping or impeding traffic in order to offer, provide or obtain sexual services for consideration and Communicating for the purpose of offering or providing sexual services for consideration in a public place, next to a school, playground or daycare centre.

<sup>3</sup> Provision 286.1(1): prohibition against the purchase of sexual services i.e. "commodification of sex activity"

<sup>4</sup> Provision 286.2: "material benefit from sexual services".

<sup>5</sup> Provision 286.4: "advertising sexual services". The bill proposes to criminalize "everyone who knowingly advertises an offer to provide sexual services for consideration".

- The sex industry is driven underground where we are less able to control the conditions of our work and are at greater risk of serious violence and exploitative working conditions;
- We are less able to clearly communicate with our clients about our services, our boundaries and our safer sex requirements (e.g., insisting on condom use);
- We not only suffer the implications of criminal records but also experience increased stigma. This means we experience discrimination, inequality, social exclusion and diminished economic options;
- We confront increased barriers accessing health services and social supports and;
- Our relationship to the police is adversarial, making it more difficult for us to access police protection when we are victims of crime. This also undermines our ability to support others who may wish to access police protection if we are, for example, being abused, trafficked, or exploited

*Provision 213: Communicating for the purpose of offering or providing sexual services for consideration in a public place.*

The reworded Provision 213 will recreate the same harms that resulted in the SCC *Bedford* ruling as it reinstates most key elements of the previous legal regime. In real terms, this means sex workers, especially those of us who solicit clients on the street, are unable to implement the following safety enhancing measures because they increase the likelihood that we, or our clients, will come to the attention of the police:

- Working in groups or pairs;
- Working in well-lit and populated areas;
- Taking the time to screen clients and reject those who raise ‘flags’ because they are, for example, intoxicated, rude, or simply make us feel uncomfortable;
- Taking the time to negotiate safer-sex practices as well as explaining what services we are, and are not, offering before entering a client’s car;
- Taking the time to evaluate the interior of a vehicle before entering, and;
- Consulting bad-date lists.

Three sections of the Criminal Code were ruled unconstitutional because they, “forced prostitutes to choose between their liberty interest and their right to security of the person”<sup>6</sup>. Working under criminalization indeed forces us to negotiate the thin line between implementing potentially life saving security measures and avoiding criminal charges. Considering the most recent amendment of this section, it is important to bring attention to the fact that working in well-populated areas drastically increases the likelihood of, even unknowingly, finding oneself

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<sup>6</sup>Bedford v. Canada, 2010 ONSC 4264

near a park, a school or a daycare centre (at any hour of the day or night) which means sex workers face the same exact dilemma they did under the previous regime.

***“I have to go to certain places, certain areas, at certain times that are not necessarily the safest but where you are less likely to get arrested. You get yourself in situations where you are less likely to be safe and protected”***

Mallory, Ottawa area street-based worker  
Challenges Report, 2011

***“I work alone and I work in areas where there are not a bunch of girls [...] People are not seeing me. I don’t have another girl watching me. I can’t do that.***

Lauren, Ottawa area street-based worker  
Challenges Report, 2011

The promise of 20 million dollars in funding for exiting services, ostensibly to provide tangible support to those who wish to transition out of the industry, seems disingenuous in light of the prohibition of communicating in public to sell sexual services. In effect, the new legislative regime will continue to create barriers for those of us who wish to transition to work outside of the sex industry. Having a criminal record has a profound impact on peoples’ lives including reducing our ability to transition into mainstream employment and retain housing:

***“Getting arrested, it destroys your name, any chances of moving on. You try to hide from police all the time and clients are afraid as well”***

Ottawa area street-based worker  
Response to Online Public Consultation, March 2014

***Provision 286.1(1): prohibition against the purchase of sexual services i.e. “commodification of sex activity”***

The harms that will flow from the criminalization of communicating in public are further exacerbated by the blanket criminalization of the purchase of sexual services. Criminalizing our clients effectively ensures that we are working in a criminalized context – we cannot work legally in an illegal sector.

Criminalizing clients will not deter people from selling sexual services and certainly does not increase our safety. It will, in fact, have the opposite effect. A recent study in the prestigious *British Medical Journal* (BMJ) (open) clearly demonstrates the devastating impact of the criminalization of clients has on the safety and security of sex workers in Vancouver. The research findings are consistent with what street-based sex workers in Ottawa are saying about the impact of law enforcement targeting our clients. When clients are criminalized many good clients of street-based sex workers are displaced indoors where there is less risk of criminalization. This leaves the most vulnerable and marginalized of us with less clientele. As a

result we have to stay out on the street longer to earn the money we need – this increases our contact (and tension) with other community members.

***“If we see cops around, that means we have to refuse dates until they leave or have to go hide. That’s a bad thing because then we don’t get the money that we need. We have to wait longer out in the cold. The longer you’re out there, the more chances you have to run into a psycho”***

Ottawa area street-based worker

Response to Online Public Consultation, March 2014

Our ability to screen clients is further reduced when clients are trying to avoid arrest. Clients will simply not wait, and risk being criminally charged, while we screen them – assessing, for example, if they are intoxicated, or on a bad date list, or if there is someone hiding in the backseat. In order to earn our living, we must get into cars quickly. At that point, our control is obviously diminished. It also increases our risk of violence from predators. Here the distinction between clients and predators is important - predators target us because they know we are less likely to report an assault to the police and if we do, it is less likely to be taken seriously. They carefully prepare their attacks and know that they can assault us with virtual impunity when criminalization reduces our access to police protection (see point #2 below):

***“I have had two or three bad dates in over 15 years, one said he wouldn’t pay and had planned it all. If they are going to attack you, it’s not arresting our good clients that will change that, those who want to hurt us, they plan it”***

Ottawa area street-based worker

Response to Online Public Consultation, March 2014

### ***The importance of incall sexual service provision spaces***

The Supreme Court of Canada accepted the significant body of research and our experiential knowledge that working indoors significantly reduces the risks of violence we confront. Therefore, any measures that create barriers to us working from indoor locations does not serve the purpose of protecting vulnerable individuals. By criminalizing clients and third parties, as well as imposing limits on advertising, Bill C-36 creates significant barriers to us working in safer incall settings. It will also make it much more difficult for us to screen our clients:

***“Bill C-36 will kill people. We are going to die because of this. If my clients are criminalized I will not be able to ask for identifiable information when they book appointments with me. I usually ask for their real first and last name, their telephone number, and their home address. Who is going to give that to me now? Also, where am I going to advertise my services if it’s illegal? I use a lot of third party website and pay to have my advertisements posted. I post about what I do***

***and don't offer, my rates, and my boundaries. How am I going to communicate that to clients now?"***

Caroline Newcastle  
Indoor-based escort in Ottawa

**2. The enforcement of laws criminalizing sex workers, clients, and/or third parties, far from protecting those of us who are sex workers, has a negative impact on our health, well-being, safety, and security. It also increases the stigmatization and marginalization we experience.**

The criminalization of the sex industry, be it via prohibitions against communicating for the purposes of offering a sexual service or via prohibitions against the purchase of sexual services, or both, will foster an adversarial relationship with police services:

***"The cops in Ottawa pick up clients now in the sweeps but they still harass us, ask for our names, 'what are you doing here', tell us to get off the streets. The relationship is no good, they still harass us, there is still violence from police and threats even though they say they only target clients now"***

Ottawa area street-based worker  
Response to Online Public Consultation, March 2014

This antagonistic relationship between us and the police makes it difficult for us to turn to the police if we, or someone we know, is victimized:

***"I've been raped twice. This one time, I was just coming out of an alley, I had just been raped, I have been hit over my head with a brick. My head was gushing blood. I flagged a cop and he told me to call my own fucking ambulance. He called me a fucking crack whore and told me he had no time for me. Then he left"***

Beth, Ottawa- area street-based sex worker  
Challenges report, 2011

In Ottawa we also see that a disastrous effects of criminalization on relationship with law enforcement as it contributes to the construction of us as 'criminals'.

***"They don't like us, they think we're dirty, they think we're bad for the community [...] let's just say that they don't treat you very nicely. They treat us like we're pieces of shit"***

Bianca, Ottawa- area street-based sex worker  
Challenges report, 2011

We see this disregard for our safety and well-being, informed by stigmatic assumptions, reflected in policing tactics used by law enforcement to regulate the sex industry. As a case in point, during the week of January 20, 2014, as part of a national initiative against human

trafficking, *Ottawa Police Service (OPS)* officers posed as clients and booked appointments with numerous sex workers working indoors in the Ottawa area. During this *Operation Northern Spotlight*, the interactions began with a male police officer posing as a client to book an appointment with a sex worker. Several police officers then appeared at the sex worker's place of work, ostensibly to ensure that no coercion was taking place. The unintended, but very real, impact of this was to intimidate sex workers, violate their right to privacy and put their confidentiality and safety at risk. While no victims of human trafficking were found during this law enforcement initiative, sex workers from Ottawa experienced intrusive visits with their homes being searched and information about them being collected. This type of deceitful tactic only worsens the already strained relationship between sex workers and OPS. The actions of the officers involved, and of the OPS more generally, further contribute to our distrust of law enforcement officials, thus making it harder for us to access police services and certainly undermines our confidence that we will receive adequate and equitable services:

***“I want the police to stop booking workers under false pretenses. I want them to sit down with organizations who work with workers, and to come up with better ways to liaise with the sex working community. I want them to train their officers better in terms of identify possible victims of human trafficking, but also in their approach to workers who feel ill at ease and intimidated because of the power dynamics that occur when four men appear at your doorstep and you are not fully dressed. There is no need for four officers for one worker; there is most certainly no need for all four to remain when they've identified the worker is alone. When the general population statistics report that between 1 in 3 to 1 in 4 women have experienced sexual assault, sending four male officers to a single female's location is not making us feel safe or safer. It's not making us trust that the police have our best interests at heart. And if they are truly working to 'protect' workers in Ottawa, then they need better resources for us. They need to properly identify themselves and leave business cards, not scraps of paper with their last name and a phone number”***

Quinn, Incall sex worker, Ottawa

**3. Law-makers need to take guidance from sex workers around prostitution law reform. Sex workers are not just another stakeholder group; these laws affect every aspect of our lives and we are profoundly impacted by the consequences of laws that put us in harm's way. We therefore call on the government to introduce a “Made in Canada” New Zealand Model.**

It is troubling that the proposed provisions of Bill C-36, as well as the Bill's preamble, construct us as victims in need of state rescue, and thereby further entrenches a discourse that justifies a lack of dialogue and consultation about what would enhance our safety.

In light of the recognition by the Supreme Court of Canada that prohibitionist laws contribute to the violence experienced by sex workers in Canada, is it now time to, rather than repeat the

mistakes of the past, embrace a contemporary approach to addressing this complex social issue in our communities – one that prioritizes safer sex work and safer communities for all.

The sex industry is diverse, as are sex workers. That said it is noteworthy that we at *POWER* join all other sex worker-led organizations in the country in calling on the government to reject Bill C-36 in its entirety. This, of course, begs the question, what legislative approach do we advocate for? We, like other sex worker organizations, are calling for a “Made in Canada” New Zealand model. Such a decriminalization approach is a critical step towards creating safer and more equitable societies and safeguards our human rights.

In 2003, New Zealand introduced the *Prostitution Reform Act (PRA)* and the result was neither a more robust sex industry nor increased numbers of sex workers. Nor was there an increase in human trafficking. The PRA did, however, have a marked effect in safeguarding the sex workers’ human and labour rights. Prior to the enactment of the *PRA*, New Zealand sex workers, like Canadian workers, were laboring in a criminalized sector, and were therefore vulnerable to coercion and exploitation by managers, pimps, and clients. Research has shown that, as a result of the PRA, sex workers are empowered to negotiate safer sex practices and that in instances of exploitation or violence, their improved relationship with police meant they accessed police protection.<sup>7</sup> Below are a series of testimonials from members of the New Zealand Prostitutes Collective<sup>8</sup> that speak to the impact of decriminalization:

***“I’m an indigenous, Maori sex worker in New Zealand. I’ve worked for 6 years in brothels, and for myself with other friends, who are also sex workers, from a shared apartment. It’s much easier to have these choices of places to work. I like that I can choose where I can work from, and don’t have to hide away somewhere dodgy to avoid the cops. I’m not any database held by the cops about sex work.”***

***“I like that decriminalization means that I can choose to turn down clients that I don’t want to see, for any reason, and my boss can’t pressure me. I don’t have to worry that a client may be an undercover cop so I can be up-front about what our expectations are, such as using condoms.”***

***“My clients know that they have to behave, or they can get into trouble because I will call the cops and they will come and help me. I also really like that my clients aren’t scared of being raided, so things are more relaxed, and easier to manage.”***

***“I’ve had clients who have come from countries where it’s illegal to be a client, and they have been on edge, scared, and difficult to manage.”***

***“I like that I can talk with other sex workers, and share information and stories with them”.***

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<sup>7</sup><http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/documents/report.pdf>

<sup>8</sup> Quotes courtesy of the New Zealand Prostitutes Collective.

In conclusion, we call upon the Senate to reject Bill C-36. We also call upon the Senate Committee to engage in meaningful consultation and open dialogue with sex workers to develop a legislative approach that respects our constitutional right to life, liberty, and security of the person.

This past July, the Justice Committee proposed an amendment to Bill C-36 calling for a Commons review of the law, five years after it is enacted. Five years is too long, as will be the next constitutional challenges that are bound to be mounted following the adoption of Bill C-36, as we will continue to face the real and harsh consequences of an approach that pays not heed to the overwhelming evidence supporting the decriminalization of sex work as the best approach to uphold the human rights and the safety of sex workers, which in turns contributes to safer communities for all.

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