

August 25, 2014

To the Chair and Members of the Standing Senate Committee on Legal and Constitutional Affairs,

Please find enclosed for your consideration the Waterloo Region Crime Prevention Council's (WRCPC) position on Bill C-36, the Protection of Communities and Exploited Persons Act. This position was approved at the Council's regular meeting on July 11, 2014 and received by the Community Services Committee of the Region of Waterloo at its regular meeting on August 12, 2014.

The Waterloo Region Crime Prevention Council (WRCPC) is a community collaborative with the mandate to engage the community in reducing and preventing crime, victimization and fear of crime. It is an advisory board to the Region of Waterloo and consists of 28 sector leaders plus ex-officio representing the community, social services, education, health, planning, justice, police and community partners. A list of current sector leaders is included.

We hope that as you review Bill C-36 you will consider the impact on local communities such as ours as well as vulnerable populations in our midst. Your response and questions are most welcome and can be directed to our office via Mary Anna Allen (Assistant to the WRCPC) at mallen@regionofwaterloo.ca or 519-883-2304.

Sincerely,



Chris Cowie
Vice-chair and current Acting Chair
WRCPC



Christiane Sadeler
Executive Director
WRCPC

Waterloo Region Crime Prevention Council (WRCPC)

Position on Prostitution Law Reform, Bill C-36

Adopted at the regular meeting of the WRCPC on Friday, July 11, 2014

Whereas the Waterloo Region Crime Prevention Council (WRCPC) has the mandate to advise, recommend and stimulate actions which reduce and prevent crime, victimization and fear of crime and address the root causes of crime; and

Whereas a preventative approach to complex social issues has been shown to have far greater sustainable positive outcomes than criminalization and enforcement; and

Whereas, it is at the local level that crime and victimization and fear of crime are most acutely felt; and

Whereas, as part of the WRCPC's mandate the Council reviews the impact of legislation such as the recently tabled legislation regarding the **Protection of Communities and Exploited Persons Act (Bill C-36)** on the local community and residents; and

Whereas, sex work is a complex social issue; and

Whereas, the Supreme Court ruled that several provisions of the Criminal Code of Canada governing the activities associated with prostitution are unconstitutional in that they violate section 7 of the Charter of Rights and Freedoms; and

Whereas, the selection of any legal framework should be based on the principle of the least amount of harm to the individual and community; and

Whereas, an evidence based examination of legal frameworks (decriminalization, legalization, criminalization, partial criminalization¹) and their impact on diverse populations should inform policy decisions; and

Whereas, the Criminal Code of Canada provides protection against sexual and physical violence, exploitation, human trafficking for commercial sexual exploitation, and other crimes against the person; and

Whereas, research shows that decriminalization of prostitution and its related activities most effectively provides protection of sex workers, including those who engage in sex work by choice and those whose social, economic and personal circumstances leave them little to no choice; and

Whereas, decriminalization is the policy that is most likely to create an environment where outreach and social supports to sex workers who wish to exit the sex industry will be successful; and

Whereas research-based evidence demonstrates that decriminalization:

- does not increase harm to individuals and communities
- does not increase the size of the sex industry
- does not result in an increase in human trafficking for commercial sexual exploitation; and

Whereas the criminalization of purchasers of sexual services and the criminalization of other activities associated with prostitution as proposed by Bill C-36:

- will not offer greater protection for communities or exploited persons than the current legislation
- will increase stigmatization, risk and harm to sex workers and purchasers
- will require significant additional resources for enforcement potentially at the expense of prevention

Now therefore be it resolved that

The Waterloo Region Crime Prevention Council supports decriminalization as the policy approach that

- offers the greatest potential for prevention through appropriate social supports
- according to research evidence produces the least harm and provides the greatest opportunities for safety;
- best aligns with the Charter of Rights and Freedoms and the concept of the common good; and

should be adopted as the Federal Government's response to the Supreme Court decision in Bedford.

1. "Decriminalization: is where neither sex work nor activities related to it are subject to criminal law. Instead, Occupational Health and Safety guidelines that recognize labour rights and responsibilities are in place to regulate the sex industry."

"Legalization: is when sex work is regulated – most often through criminal law – and strict requirements are placed on sex workers if they are to work legally."

"Criminalization (can be separated into two types): a. Prohibition: where the laws are designed to prohibit all forms of sex work including the buying and selling of sexual services... b. Toleration: where the buying and selling of sexual services is legal but there are laws prohibiting a variety of activities related to sex work that are judged to be harmful."

"Partial criminalization: is when it is legal to sell sexual services but illegal to buy them."

From: (understanding) sex work: a health research & community partnership

Backgrounder for Waterloo Region Crime Prevention Council (WRCPC)

Position on Prostitution Law Reform, Bill C-36

July 11, 2014 (position adopted)

"Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."
(Canadian Charter of Rights and Freedoms, section 7)

Core principles of the Waterloo Region Crime Prevention Council (WRCPC)

The WRCPC rooted its conclusion in the following core principles:

- Do no harm.
- The right to safety is a human right.
- All laws must respect the Charter of Rights and Freedoms.
- Prevention through social and community development works.
- Addressing root causes is imperative for long-term sustainable social change.
- The inclusion of voices with lived experience always leads to the design of better solutions.
- Stigmatizing any population is harmful and ignores that all human beings have capacities that can be harnessed for individual and community well-being.
- We should strive for gender equality.
- Good policy is based in good evidence.
- There is a growing consensus that the prostitution laws of Canada have been ineffective in accomplishing what they set out to do.
- The status quo rarely gets us beyond the issues of today.

Analytical approach

The working group of the WRCPC examined the research evidence regarding the impact of various legal frameworks (including in different countries) on the populations affected by prostitution; namely those selling, purchasing, and managing sexual services as well as neighbourhoods, municipalities and the general public.

Complex social problems require comprehensive and holistic solutions and each part of the solution has to be seen in the context of others.

Key Elements of the Analysis

1. Prostitution is legal in Canada.

Prostitution is legal and always has been legal in Canada. However, several provisions governing activities associated with prostitution have been found to be ineffective and unconstitutional.

2. Prostitution is not an issue of morality.

- Our laws are based on a shared and evolving understanding of moral and ethical concepts regarding the common good. Since prostitution itself is not against the law, moral judgements about the social acceptability of prostitution are out of place in this debate. Furthermore, a focus on moral issues detracts from the development of pragmatic solutions to serious social problems and is likely to do more harm than good.

3. Prevention is essential and possible.

- Social interventions have been proven to be more effective and less expensive in the long run than enforcement. Effective prevention of exploitation and violence demands attention to root causes and these conditions cannot be changed by legislative responses only. Indeed, the law is insufficient as the only tool to deal with the complexities of communities, including the sex industry. There is a growing recognition (visible in programmes such as mental health courts) that we cannot enforce our way out of challenging social problems.
- While prostitution under the age of 18 remains illegal and is exploitation by definition, in the context of prevention, children and youth always deserve special consideration. Effective prevention requires appropriate and sustained commitment and resources beyond investments in the law and enforcement. Early childhood trauma, homelessness, persistent under-employment are just three of the root conditions that cannot reasonably be addressed through the Criminal Code.

4. Evidence indicates that different populations need different interventions.

- The people who are involved in and impacted by sex work and the circumstances in which sex work takes place, represent a very diverse spectrum. Sex workers are not a homogeneous group. Evidence shows that only approximately 20% of sex work is street based which is by far the most dangerous form of prostitution. A sizeable proportion (approximately 20 %) of sex workers are transgender or male.
- A diversity of life circumstances and motivations are present among sex workers. Some engage in survival sex work where choice is constrained by serious challenges such as addictions, poverty and homelessness. Others choose sex work as an occupation. Similarly, there is much diversity among clients who

purchase sexual services. Finally, there are differential impacts on community residents and neighbourhoods.

- Oversimplified definitions of all sex workers as exploited victims, all purchasers as “perverts” and all communities as negatively affected by sex work - do not recognize the complex and diverse spectrum of prostitution. Effective interventions are grounded in an analysis that is appropriate for the complexity of the issue at hand.

5. Gender inequality remains pervasive.

- Sex workers are not only female, however it is important to acknowledge that one reason why women are overrepresented in sex work speaks to their status in society. Beyond the sex industry this includes the persistent objectification of women's bodies, higher rates of victimization due to violence, and significant social and economic inequities.
- Gender inequality is a central issue but different policy approaches to prostitution lead to very different solutions. It is inaccurate, and viewed by some as paternalistic, to contend that all female sex workers are exploited victims and to deny that sometimes women choose sex work as an occupation. Instead, policy approaches such as decriminalization that focus on promoting human rights, harm reduction and the reduction of stigma, are the most effective to protect and promote the health and safety of all those involved in the sex industry.

6. Public involvement and consultation are critical.

- The WRCPC participated in the online public consultation in March 2014. Council at that time expressed the concern that this consultation process was flawed in a number of ways including an overly simplistic and narrow framing of questions. In addition, the consultation process did not allow for appropriate and adequate input by key stakeholders such as municipalities and organizations representing sex workers. Public education and engagement is an essential step in developing and implementing practical solutions that promote the individual and community good as defined by the Charter of Rights and Freedoms. Good public input is also based in good public understanding. The issues surrounding prostitution are so complex that the time frame of the consultation did not allow for meaningful public dialogue. The text of the Council's contribution to the federal survey appears in Appendix 1.

- Existing laws in the Criminal Code, labour laws, human rights legislation and municipal regulations are already in place to address problems that may negatively impact communities. A growing number of researchers state that where there are concerns, they can be successfully addressed through dialogue and mediation processes that involve everyone affected.

Response to Bill C-36: The Protection of Communities and Exploited Persons Act

- Most elements of the WRCPC position statement and resolution as well as the backgrounder were developed prior to the tabling of Bill C-36 in anticipation of new legislation. However, Bill C-36 did nothing to alleviate but rather exacerbated many of the original concerns. Concerns more directly brought on by the proposed legislation are noted below.
- A hasty and inadequate consultation process, (and an insufficient examination of current research evidence) by the federal government has resulted in proposed legislation that does not address nor remedy the serious problems with several provisions of the previous legislation that were struck down by the Supreme Court of Canada in the Bedford ruling. Many legal experts and scholars expect Bill C-36 will be challenged and also be ruled unconstitutional. Not improving upon the previous legislation in terms of constitutionality alone would be a waste of limited resources.
- Prostitution has always been legal in Canada. The new legislation proposes to criminalize additional aspects of prostitution including the purchase of sexual services. This punitive response is contrary to the research evidence about protecting those involved in the sex industry. There is a substantial body of national and international research evidence demonstrating that criminalizing either sellers or purchasers of sexual services has serious and harmful impacts on the safety of sex workers, particularly the most marginalized and at risk population of street-based sex workers. These harmful impacts include displacement to more isolated and dangerous areas, decreased ability to implement safety measures such as screening clients, decreased access to police protection, and increased risk of physical and sexual violence.

Appendix 1

The WRCPC Response to the Public Consultation on Prostitution-Related Offences in Canada

1. The Waterloo Region Crime Prevention Council (WRCPC) agrees with the Supreme Court of Canada's decision in Bedford and the principles upon which the ruling is based, including the principle of fundamental justice whereby "the state cannot deny a person's right to life, liberty or security". The WRCPC also agrees that the social, economic and community situations have significantly evolved since the criminal code offences regarding prostitution were passed and need assessment with regards to their impact in the current times.
2. Good data make for good policy. The current public consultation process is flawed. The questions are overly simple and too narrow to do justice to the complexity of the issues. The space allotted for providing a response is accordingly severely limiting. Public consultations that restrict responses mostly to yes/no answers cannot foster a balanced or knowledge based conversation.

For these reasons, the Waterloo Region Crime Prevention Council has chosen to provide its feedback to the current public consultation solely in Question # 5 as the only open ended aspect of the consultation.

3. The WRCPC believes that any legislative response to the Supreme Court of Canada ruling in Bedford should be based on the following key principles:
 - a. The law should provide the maximum protection to any vulnerable population including those in the sex trade.
 - b. The law should work in combination with provisions of viable alternatives for those wanting to leave the sex trade; and appropriate prevention activities to prevent sex trade involvement for those who do not make it a choice.
 - c. Solutions should balance individual rights with the well-being and common good of neighbourhoods and communities.

We urge the government to undertake a broader, more inclusive, and more meaningful consultation and dialogue that would effectively involve key stakeholder groups such as persons with lived experience, municipalities, community agencies and others. We also urge the government to review local and national research, international good practices and carefully consider the multiple and systemic roots of the sex trade.

Waterloo Region Crime Prevention Council Sector List 2014:

Regional Council:

Jane Mitchell
Todd Cowan

Rural Representatives:

Jim Olender
Shayne Turner

Local Police:

Doug Thiel

Education: Junior Kindergarten to Grade 12:

John Shewchuk
Peter Rubenschuh

Education: Post Secondary

TBD

Restorative Justice:

Chris Cowie

Mental Health:

Don Roth

Addictions:

Jennifer Mains

Neighbourhood Development:

Laurie Strome
Joe-Ann McComb (Courtney Didier on leave)

Community Development:

Christine Bird

Family Support:

Pari Karem

Community Health Centres:

Bill Davidson

Domestic Violence Response:

Mary Zilney

Business:

Andrew Jackson

Focus Populations:

1. First Nations, Metis & Inuit: TBD
2. LGBT: Judith Lodi (Sue Weare on leave)
3. Persons with Disabilities: Sharon Ward-Zeller
4. Youth: Marla Pender
5. Older Adults: Irene O'Toole

Community at Large:

Frank Johnson

Barry Cull

Felix Munger

TBD

Research and Evaluation:

Mark Pancer

Ex-officio Members/Alternates:

Regional Chair: Ken Seiling

Commissioner of Social Services: Douglas Bartholomew-Saunders

Acting Chief of Waterloo Regional Police Service: Steve Beckett

Alternate: Shaena Morris

Medical Officer of Health: Dr. Liana Nolan

Alternate: Sharlene Sedgwick Walsh

Executive Director of Family and Children's Services: Alison Scott

Alternate: Pat Gillies and Lisa Doran

Chair of Waterloo Regional Police Services Board: Tom Galloway
Alternate: Peter Ringrose

Crown Attorney: William Wilson
Alternate: André Rajna

Warden of Grand Valley Institution for Women: Nancy Kinsman
Alternate: Elizabeth Vitek

Manager of Legal Services Waterloo-Wellington: Angela Vanderheyden