

Brief on Bill C-36

Protection of Communities and Exploited Persons Act

An Act to amend the Criminal Code in response to the Supreme Court of Canada decision in Attorney General of Canada v. Bedford and to make consequential amendments to other Acts.

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Presented to: **Senate Committee on Legal and Constitutional Rights**

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Introduction

We thank you for this opportunity to present our views on Bill C-36, Protection of Communities and Exploited Persons.

REAL Women of Canada was federally incorporated in 1983 and is a non-denominational, non-partisan organization of women from all walks of life, occupations, social and economic backgrounds. We believe that the family, consisting of mother, father and children, is the foundation of society.

The prostitution issue is a matter that has long concerned REAL Women of Canada. Our organization made a presentation in 1985 to the Fraser Committee on Pornography and Prostitution in Canada; we made a presentation to the House of Commons Sub-committee on the Solicitation Laws in February, 2005; and we intervened in the recent Attorney General v. Bedford prostitution case.

Our concern with prostitution is based on the well documented harmful effects that it has on the prostitutes themselves. Prostitution also harms society, individual families, and adolescents who may misinterpret this activity as “easy” money, thus leading to a bottomless pit of pain and suffering for them.

No law on prostitution, whether to legalize it or to decriminalize (regulate) it, has made it a safe activity, and ultimately results in higher rates of human trafficking, sexual exploitation and violence.

We welcome that Bill C-36 makes an effort to protect vulnerable individuals, such as aboriginal women

and immigrants, by targeting the purchasers of sex. This is a laudable attempt to protect prostitutes who are usually involved with the activity because of past abuse, addiction, extortion, intimidation, human trafficking or poverty.

We are grateful that C-36 prohibits advertising this harmful activity. The exception to this prohibition on advertising is that prostitutes themselves will be permitted to advertise. The legislation, however, does not specify in what manner prostitutes may advertise their services. Will such advertising by a prostitute be permitted in newspapers, magazines or on the Internet? Will it be permitted on billboards, which could display eye-catching scantily clad women with their telephone number or online address? How can there be assurance that such advertisements will not be seen by those under 18 years of age? This aspect of the prostitute advertising services should be clarified in the legislation before it is passed into law.

We are pleased to see a genuine concern for our communities and the protection of our children from exposure to prostitution and its surrounding activities. Increases in penalties related to child prostitution are long overdue.

As many prostitutes have admitted, prostitution, illegal drugs and organized crime are found together. This is a burden that our society, and that our law enforcement and health care systems cannot economically support.

We continue, however, to recommend that prostitution itself be made illegal, because it is harmful to all those involved in this activity. These individuals must be rehabilitated to be more productive citizens. Programs to help sex workers get out of prostitution are a step in the right direction. Special courts,

similar to drug courts where the accused chooses between a conviction and rehabilitation could be used to this effect. Programs to help purchasers (john schools) have been helpful. Profiteers of this exploitation (pimps) would surely benefit from rehabilitation programs while under detention.

Good enough for other parents' daughters

Promotion of prostitution is often linked with a class system rooted in discrimination. Even those who profit from brothels live by a double standard. In Germany in 2002, the liberal left saw legalized brothels as a way to push out exploitative pimps. In 2013, one such profiteer, part owner of a large brothel, was interviewed on the German public broadcaster ARD. Surrounded by his four privately educated children in an upscale home, he was asked if he would be happy if either of his two daughters worked at his brothel. He turned pale, “Unthinkable, unthinkable” he said, “The question alone is brutal. I don't mean to offend the prostitutes but I try to raise my children so that they have professional opportunities. Most prostitutes don't have those options. That's why they're doing that job.” As he paused and looked away, he added “Unimaginable, I don't want to even think about it.” As with other European countries, a minority of Germany's 700,000 prostitutes are German citizens, the others come from poorer countries or countries experiencing political upheaval, where vulnerable women abound. See: Welcome to Paradise, <http://s.telegraph.co.uk/graphics/projects/welcome-to-paradise/>

This is reminiscent of the caste system in some third world countries where raping someone from a lower caste is acceptable but not within one's upper caste. This discrimination appears to be a characteristic of prostitution in the western world as well, as the most vulnerable in society serve the more wealthy. A Canadian former prostitute has described sex work as a bottomless pit of legalized rape.

See: India's feudal rapists, National Post, June 9, 2014

Rather than help young destitute women, girls and young men, some choose to sexually exploit them. This does not reflect the best in Canadian traditions and should not be facilitated by liberalizing prostitution laws. Bill C-36 is a step in the right direction and we are grateful for it.

Technological changes

Our concerns were confirmed in a US study on prostitution, released on March 12, 2014. This study, conducted by the Urban Institute, focused on the underground sex trade in US cities. According to this report, the illegal sex trade has been transformed in recent years by technological and cultural influences. The Internet, in particular, is the way sex-trade kingpins now carry out most of their business. This has resulted in prostitution decreasing in the streets, but increasing online. For example, the Internet has made it easier for pimps to recruit young girls, who naively believe that job offers are legitimate and normal “business”, since they have social-media presence.

Legalization has been unsuccessful

Legalized prostitution has not worked in countries which have tried it. For example, Amsterdam had to shut down one third of its brothels because of the involvement of criminal organizations and drugs. 90% of Spain's prostitutes are not native Spanish women but from less advantaged countries in Africa, South America and Easter Europe. New Zealand decriminalized prostitution in 2003. The New Zealand Government Report of the Prostitution Law Review Committee, released in 2008, found that prostitutes were experiencing increased violence and pressure as a result of legalization.

The Nordic Model raises concerns

In this system, prostitution itself remains legal but the purchase of services by “johns” constitutes the offence.

Applying this model to Canada, however, would appear to give rise to several legal concerns:

1) Nordic Model contravenes the Supreme Court of Canada decision in *Bedford*

The Supreme Court of Canada, in the *Bedford* case, held that since prostitution was legal in Canada, prostitutes must be protected from harm by way of legal brothels; the ability to negotiate sexual contacts (soliciting); and the employment of bodyguards (pimps).

That is, the Court held, that in accordance with s.7 of the Charter, prostitutes were deprived of their “security of person” contrary to the principles of fundamental justice, and that since prostitution was a legal activity, therefore its harm had to be reduced by legalizing brothels and living off the avails of prostitution.

However, the Nordic Model, as applied in countries where prostitution is legal, has required that brothels and living off the avails of prostitution remain illegal. Consequently, the Nordic Model in its entirety, would be in contravention of the Supreme Court of Canada decision in the *Bedford* case.

2) Nordic Model likely to be challenged

If the Nordic Model became law in Canada, it would also likely be legally challenged under the Charter of Rights. That is, a charge against a male purchaser of sex (john), would inevitably result in a challenge under s.15 of the Charter on the basis that the law was discriminating against men on the basis of sex, and s.28 of the Charter, which provides that: “Notwithstanding anything in the Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.” A charge against only the male would also likely lead to challenges pursuant to s.7 of the Charter in regard to its provision that everyone has the “right...to liberty and security of the person”, and s.2 (d) “freedom of association” in the Charter.

That is, the Nordic Model, if implemented in Canada, will inevitably lead to the government being required to defend the law in the courts, ending up in the Supreme Court of Canada, which will ultimately decide the constitutionality of such a law.

Make Prostitution Illegal

The legal challenges could be avoided by making prostitution illegal on the basis that it is harmful to women wherever it takes place (a house, apartment, massage parlour or strip club) and is harmful to society. Brothels should be made illegal as should living off the avails of prostitution, since bodyguards, in effect, are pimps whose activities have been shown to be highly detrimental to the safety and human rights of prostitutes. Soliciting for prostitution is always dangerous as there is no safety in “negotiating” with a prospective client and then entering his vehicle to be transported to an isolated place.

If the law makes prostitution illegal, such a law would be saved by s.1 of the Charter of Rights, since there would be little difficulty in proving that prostitution is harmful, and that making it illegal is a “reasonable law” that can be justified in a free and democratic society.

Harm to prostitutes is extensive. Such harm includes high rates of post-traumatic disorder, ill health, rape, and physical and verbal abuse. According to the Fraser Committee, the mortality rate for prostitutes is 40 times the national average. It is unlikely that this has improved over time.

Criminalizing prostitution would also avoid the troubling complications that arise from some of the provisions of the Charter of Rights.

Summary of Recommendations

Advertising by prostitutes requires clarification

Internet involvement in prostitution requires special oversight

The Nordic Model will lead to court challenges

Prostitution itself should be illegal

