

On December 20th 2013 the Supreme Court of Canada (in *Canada (Attorney General) v. Bedford*) struck down three key prostitution laws - *Criminal Code* s. 213(1)(c), communicating in public for the purposes of prostitution; s. 210, being an inmate, owner or operator of a bawdy-house;^a and s. 212(1)(j) living on the avails of another's prostitution. The Supreme Court of Canada deemed that:

The three impugned provisions, primarily concerned with preventing public nuisance as well as the exploitation of prostitutes, do not pass Charter muster: they infringe the s. 7 rights of prostitutes by depriving them of security of the person in a manner that is not in accordance with the principles of fundamental justice.^b

The Bedford decision pivoted on compelling social science and testimonial evidence^c that criminalization increases sex workers' vulnerability to violence by "forc[ing] prostitutes to choose between their liberty interest and their right to security of the person as protected under the *Canadian Charter of Rights and Freedoms*".^d

When the justices of the Supreme Court of Canada^e suspended the declaration of invalidity for one year the Government of Canada was afforded an opportunity to introduce an enlightened human rights approach that foregrounded the safety, security and well-being of sex workers. Instead it chose to table Bill C-36, the *Protection of Communities and Exploited Persons Act*^f - an ideological stew beginning with a preamble that expresses concern about "the risks of violence posed to those who engage in it [prostitution]"; nods to second wave feminists by condemning the "objectification of the human body and the commodification of sexual activity" before reiterating a commitment "to protecting communities from the harms associated with prostitution".^g Rhetoric aside the legislation itself will reproduce the same harms the Supreme Court of Canada found to be contrary to the *Charter of Rights and Freedoms* – indeed on July 7, 2014 over 200 Canadian lawyers signed an open letter to expressing concern that "the criminal regime proposed by Bill C-36 is likely to offend the *Charter*".^h

Sex workers and their allies in the academy, legal sector and health care field have been quick to condemn the legislation that imposes the master status of 'victim' on sex workers then wields the blunt instrument of criminal law to 'save' them. Sex workers maintain that the proposed legal regime will push the sex industry further into the shadows, restrict sex workers' access

to important safety strategies and have significant and profound negative consequences on sex workers' health, security, equality and human rights.

The law will not, however, have a uniform effect on sex workers – the most marginal street based sex workers will most certainly feel the impact most profoundly. It is this population of sex workers, representing just 5-20% of the industry,ⁱ who are disproportionately the targets of predators, experience violence from multiple sources,^j and who will, if the past is any indication of the future, continue to be the focus of law enforcement initiatives.^k The prohibition against the purchase of sexual services (provision 286.1(1)) will increase sex workers vulnerability to violence by undermining their ability to implement important security strategies. Independent research evidence from Sweden^l and Norway^m has confirmed that this regulatory approach displaces street-based sex workers into ever more isolated areas resulting in extremely dangerous working conditions. A recently completed peer-reviewed report in Vancouverⁿ came to the same conclusion. Vancouver researchers also noted that, when police are actively pursuing clients, sex workers spent a greater number of hours soliciting on the street and are more likely to take chances with questionable clients.^o

Moreover, the law will inhibit frank discussions between sex workers (regardless of sector) and clients about services and safer sex practices – a necessary precondition to consent. In this criminalized context clients will resort to ambiguous 'code' language in an attempt to circumvent the law with miscommunication being the foreseeable result. There are likely also to be a real and tangible impact on sexual health and social inclusion: in Sweden, sex workers report less access to social services, reduced access to condoms, difficulty securing and retaining housing, increased stigma and adversarial relationships with police.^p

Finally the *materially or financially benefiting from prostitution* provision (286.2) will deny (predominantly indoor) sex workers access to the services of third parties that improve their safety and security including screening, maintaining bad date lists, collecting and verifying personal information, providing a deterring presence, hiring on-site or on-call security persons.^q Under the new law incall venues, the very spaces empirical evidence has shown to be safer environments in which to provide sexual services,^r will once again be criminalized: although prostitution has been removed from the definition of "bawdy house" individuals previously defined as "keepers" (including owners, managers and staff) are defacto criminalized.^s It seems truly perverse to suggest that sex workers will somehow be safer and 'protected' by being compelled to work in isolation.

Bill C-36 will not eradicate the sex industry – indeed it does not endeavour to do so – however the large body of Canadian and International research evidence provides compelling evidence that the unintended consequence of this legislation will be a perfect storm of danger in which all sex workers, regardless of sector or method of working, will confront increased risk of violence, have reduced access to harm reduction mechanisms, experience heightened stigma and be subject to even greater social/civic isolation. Each and every provision in this law increases sex workers’ vulnerability – collectively they create conditions that will almost certainly result in tragedy. Sadly it would appear that Canadian sex workers’ lives will continue to be sacrificed on the altar of ideology.

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NOTES

^aThe court struck prostitution from the definition of “common bawdy-house” in s. 197(1) of the *Criminal Code of Canada* as it applies to s. 210.

^bCanada (Attorney General) v. Bedford SCC 72 at preamble

^cJustice Himel reviewed over 25,000 pages of evidence.

^dBedford v. Canada, 2010 ONSC 4264 at 3

^eThis was somewhat counterintuitive given that the justices of the Supreme Court recognized that “the prohibitions against bawdy-houses, living on the avails of prostitution and public communication for purposes of prostitution in place in their present form leaves prostitutes at increased risk for the time of the suspension — risks which violate their constitutional right to security of the person” Canada (Attorney General) v. Bedford SCC 72 at 168

^fBill C-36: 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, 2014. The proposed legislation reintroduces *Criminal Code* provisions struck down by the SCC – sex workers will continue to be criminalized for communicating in public albeit now only near schools, parks and playgrounds (provision 213) and third parties will be criminalized under provision 286.2 which prohibits deriving material benefit from prostitution. The law also introduces new provisions that criminalize advertising sexual services (provision 286.4) and the purchase of sexual services (provision 286.1(1)).

^gPreamble to Bill C-36: 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 amendments to other Acts, 2014.

^hAvailable at <http://bccla.org/wp-content/uploads/2014/07/LetterC36.pdf>

ⁱCanada. The Challenge of change: A study of Canada's criminal laws prostitution laws, Report of the Subcommittee on Solicitation Laws; Report of the Standing Committee on Justice and Human Rights, 2006. Ottawa: House of Commons of Canada

^jBruckert C, Chabot F. 2010. Challenges: Ottawa Area Sex Workers Speak Out available at http://www.powerottawa.ca/POWER_Report_Challenges.pdf

^kAccording to Statistics Canada, in 2007, 94.5 % of all prostitution related charges were classified as "prostitution other", in 2006 the rate was 93.6% and in 2006, 94.7%. Statistics Canada classification of "other prostitution" is presumably limited to s. 213 as it excludes charges under the bawdy house provisions s. 210 and s.211 and procuring s. 212, 170, 171. (source, Statistics Canada. Uniform Crime Reporting Survey. Ottawa: Statistics Canada, 2006 and 2007)

^lLevy J, Jakobsson P. Sweden's abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden's sex workers. *Criminology and Criminal Justice* 2014;p.1-15 Available at: <http://lastradainternational.org/lsidocs/3049-Levy%20Sweden.pdf>, Dodillet S, Östergren P. The Swedish Sex Purchase Act: Claimed Success and Documented Effects, 2011. Available online: <http://myweb.dal.ca/mgoodyea/Documents/CSWRP/CSWRPEUR/The%20Swedish%20Sex%20Purchase%20Act.%20Claimed%20Success%20and%20Documented%20Effects%20Dodillet%20&%20Ostagen%20May%202011.pdf>.

^mIn Norway, researchers also found that violence against sex workers increased following the enactment of a similar law. See Bjørndahl U, *Dangerous Liaisons, A report on the violence women in prostitution in Oslo are exposed to.* (Oslo: Municipality of Oslo, 2012) at 5. Available at: <http://prosentret.no/wp-content/uploads/2012/06/FARLIGE-FORBINDELSER.pdf> (Norwegian) <http://humboldt1982.files.wordpress.com/2012/12/dangerous-liaisons.pdf> (English translation).

ⁿKrusi A, Pacey K, Bird L, et al. Criminalisation of clients: reproducing vulnerabilities for violence and poor health among street-based sex workers in Canada—a qualitative study. *BMJ Open* 2014;4:e005191.

^oKrusi A et al, (ibid) *My Work Should Not Cost me My Life.* Pivot Legal Society, Vancouver. Available at http://www.pivotlegal.org/my_work

^pLevy J, Jakobsson P. Sweden's abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden's sex workers. *Criminology and Criminal Justice* 2014; p.1-15 Available at: <http://lastradainternational.org/lsidocs/3049-Levy%20Sweden.pdf>. Dodillet S, Östergren, P. The Swedish Sex Purchase Act: Claimed Success and Documented Effects, 2011. Available online: <http://myweb.dal.ca/mgoodyea/Documents/CSWRP/CSWRPEUR/The%20Swedish%20Sex%20Purchase%20Act.%20Claimed%20Success%20and%20Documented%20Effects%20Dodillet%20&%20Ostagen%20May%202011.pdf>

^qBruckert C, Law T. *Beyond Pimps, Procurers and Parasites: Mapping Third Parties in the Sex Industry*, 2013. Document has been submitted and is also available at [http://www.nswp.org/sites/nswp.org/files/ManagementResearch%20\(4\).pdf](http://www.nswp.org/sites/nswp.org/files/ManagementResearch%20(4).pdf).

^rSee for example Lewis J, Shaver F. *Safety, Security and the Well-being of Sex Workers STAR Report*, 2006. Available at http://web2.uwindsor.ca/courses/sociology/maticka/star/pdfs/safety_and_security_report_final_version.pdf; see also *Canada (Attorney General) v. Bedford*, 2013 SCC 72 for a discussion on the ways incall locations increase security for sex workers.

^sA review of case law undertaken for the Management Project revealed police frequently laid charges under Criminal Code sections 210 & 212(1)(j), the living on the avails provision the current law replaces.