



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 037 • 2nd SESSION • 41st PARLIAMENT

EVIDENCE

Tuesday, July 8, 2014

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Chair

Mr. Mike Wallace

Standing Committee on Justice and Human Rights

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• (1530)

[English]

The Chair (Mr. Mike Wallace (Burlington, CPC)): Welcome to the Standing Committee on Justice and Human Rights, meeting number 37. It is televised.

Pursuant to the Order of Reference on Monday, June 16, 2014, we are resuming our consideration of 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 consequential amendments to other Acts.

I want to welcome our witnesses. First, I want to let the committee know that we will be stopping with about 10 to 15 minutes to spare in this meeting to go in camera. There was a question about future witnesses and those who had been invited. I want to inform the committee, after my consultations with the clerk, how we will proceed further from here.

As witnesses today, we have Professor Christine Bruckert, Department of Criminology, University of Ottawa. From the Canadian Women's Foundation, Diane Redsky and Barbara Gosse are here. From Pivot Legal Society, Elin Sigurdson and Kerry Porth are both here. By video conference from Regina, we have Ed and Linda Smith, a family appearing as one delegation. And from SIM Canada we have Mr. John Cassells, street youth specialist.

With that we'll start in the order presented. Professor you have the first 10 minutes.

Prof. Christine Bruckert (Professor, Department of Criminology, University of Ottawa, As an Individual): Thank you.

Hello. My name is Chris Bruckert. I hold a doctorate in sociology from Carleton University and I'm a professor of criminology at the University of Ottawa. I have spent the last 20 years examining various aspects of the sex industry, including conducting research on street-based sex work, the in-call and out-call sex industry, male sex workers, and management.

I am pleased to be here and thank you for the opportunity to address the justice committee about an issue to which I have devoted much of the last two decades of my life.

As a researcher, I believe policy and law should consider the research evidence. However, given how in these committee hearings research on one population is being generalized to another, and given the number of questionable assertions being attributed to research, I thought it was important to start with a few comments on the need to be discerning consumers of research. This means examining the

research methodology employed. Where does the sample come from? Who is included? Who is excluded? Was it rigorous and ethical? And who funded the research?

It also, rather obviously, is imperative that the research be applicable. For example, the situation in Germany and the Netherlands, where they have legalized some aspects of the sex industry, are irrelevant in evaluating decriminalization. Legalization and decriminalization, such as we see in New Zealand, are simply not the same thing; therefore, any conclusions drawn from one model about the other are simply spurious.

Today I would be delighted to discuss the large body of solid and relevant social science evidence demonstrating that criminalization increases sex workers' vulnerability to violence; however, time is short, so I will simply refer you to Justice Himel's helpful analysis of the research in this area and, in some cases, its lack of rigour.

I'm going to focus most of my remarks on the material or financial benefiting from sexual service provision that reintroduces the "living on the avails" provision struck down by the Supreme Court of Canada. I will be restricting my comments to the issue of adult sex workers.

Yesterday and today, we heard youth prostitution, trafficking, and adult sex work being casually conflated. This is frankly surprising if not disingenuous, given that the law criminalizing the procuring, living on the avails of youth, and human trafficking was neither challenged nor struck down. It means that laws around adult prostitution are being framed in relation to very distinct and separate issues, those of youth and trafficking.

Much of what I'm saying is coming from large, multi-site research on third parties in the sex industry. I have deposited my written submission and a copy of a report in which some of these points are more fully developed.

All too often, in the absence of solid empirical evidence, stereotypes based on stigmatic assumptions and fueled by ideology persist, and third parties are cavalierly denounced as pimps, exploiters, and profiteers. The evidence tells us it is much more complicated.

Research tells us that third parties are men, women, and people who are trans, and that they fulfill a range of roles. They are, for example, receptionists, brothel owners, worksite providers, drivers, security persons, and mentors. All of these persons, if they were providing services within the context of commercial enterprise, would be criminalized under Bill C-36. Of course, anyone providing advertising services to a sex worker would be criminalized under the provision prohibiting the advertising of sexual services.

Why would someone work with or for a third party? This is a particularly salient question in the face of the prevailing narrative of sex workers as exploited victims in need of state intervention or rescue. Sex workers told us that working as an independent—essentially running their own small business—was neither viable nor desirable for everyone. It necessitates skills, assets, knowledge, and labour.

Now, I'm not suggesting that third parties are not sometimes exploitative, abusive, and violent: this too is a reality. There are, of course, laws of general application that address the egregious behaviour generally associated with pimping: assault, forcible confinement, sexual assault, to name a few. There are also, of course, as previously mentioned, laws against procuring and living on the avails of a youth for underage prostitution and human trafficking.

What I am suggesting is that we need to move towards a reasoned and respectful approach that is not detrimental to sex workers, and the broad brush strokes of this law criminalizing virtually all third parties will have a very significant harmful impact on sex workers. I want to highlight just a few.

It will decrease the ability of sex workers to access those services of third parties that improve their safety and security, such things as screening, maintaining bad date lists, collecting and verifying personal information, providing a deterrent presence, and hiring on-site or on-call security persons.

• (1535)

It is truly perverse to suggest that sex workers would be safer and more secure if working in isolation. It will also decrease sex workers' access to in-call venues, which empirical evidence has shown to be safer environments in which to provide sexual services.

Although prostitution has been removed from the definition of bawdy house, as per the Supreme Court decision, individuals previously defined as keepers—owners, managers and staff—are recriminalized through the receiving financial and material benefit provision. This also has implications for street-based workers. Research has shown that the provision of indoor spaces for sex workers who solicit on the street reduces violence. As the Supreme Court justices noted, “for some prostitutes, particularly those who are destitute, safe houses such as Grandma's House may be critical”.

The broad criminalization of third parties proposed in Bill C-36 will push the sex industry further into the shadows where unfair labour practices have the potential to flourish. At the same time, labour site abuse is enabled when criminalization excludes sex workers from human and labour protection. This exclusion contrasts sharply with the safeguards and avenue of redress available to sex

workers in New Zealand, where prostitution was decriminalized in 2003.

It will also diminish sex workers' access to the justice system and criminal justice redress. Quite simply, in a criminalized context sex workers are hesitant to turn to law enforcement for fear that they or their employer will be charged with prostitution-related offences. It will also criminalize sex workers as third parties.

The proposed receiving financial and material benefit provision is so broad that it will, like the living on the avails provision it replaces, certainly capture any sex workers who provide assistance to a third party. Any sex worker who answers the phone, books calls for an escort agency, locks up the massage parlour at the end of the night, or helps out another sex worker by renting her in-call location, would potentially be criminalized under Bill C-36.

Finally, the law endeavours to protect individuals, presumed to be women, from becoming or remaining sex workers. This legal paternalism hinges on the assumption that no reasonable person would wish to engage in sex work. As such, it reifies a profoundly judgmental image of sex workers working with or for third parties as deluded, incompetent social actors and bestows upon them a disempowering identity of hyper-vulnerable victims.

This is, of course, part of a larger discourse that draws on stigmatic assumptions to discredit and delegitimize sex workers as youth, as mentally ill, as drug addicted, or as simply unable to make the right choices. Then, paternalistically if somewhat illogically, frames criminal justice intervention as a reasonable pathway to salvation.

I started by speaking of the importance of evidence-based policy and have presented research findings on third parties. I want to take a few minutes to address some of the frictions I have seen in these committee hearings by speaking about logic and ethics.

We all agree that sex workers experience unacceptable levels of violence. Indeed, this is precisely the reason why Terri-Jean Bedford, Valerie Scott and Amy Libovitch challenged the prostitution laws in the first place. It does not, however, necessarily follow that violence is inherent to the sex industry and that risk cannot be mitigated. We need only compare the rates of violence, including the rates of fatal violence, between the street level that accounts for between 5% and 25% of the sex industry, and indoor work, where most sex work happens, to realize that context matters. Moreover, the fact that there is a risk of violence in any line of work does not mean we prohibit it completely. We ensure that workers have access to the laws, regulations and other protections that safeguard them from specific harms.

Yesterday the issue of choice emerged in a number of the panels. Of course, what constitutes choice is profoundly complex and subjective. It is disconcerting, however, when choice is reduced to a simple binary. Among other things, this erases the agency of social actors and negates the resilience of marginalized individuals operating in extremely challenging circumstances.

That said, it is certainly true that some sex workers would rather be working in other sectors of the economy and find themselves with severely restricted options. We would all agree that this is an unacceptable situation. It seems wholly illogical, however, to suggest that the solution is to remove the income-generating activity these women and men do have access to. One does not create options by taking them away. You most certainly do not create options by implementing a legal regime that puts people in harm's way.

• (1540)

I put forth that the solution is not found in criminal law at all but rather in anti-poverty initiatives and the provision of social, economic, and housing supports that deal with the underlying conditions that constrain personal and professional choices.

I'm almost finished.

Now on to morality, I implore you to listen to the organizations representing current sex workers who, in their submissions and presentations before this committee, are calling on you to abandon Bill C-36. Emily Symons told you this morning that sex workers have a voice. Please listen to them. Do not discredit, speak over, or endeavour to speak for them, but engage in a meaningful dialogue. Frankly, this is too important an issue and the implications too horrific to sacrifice the lives of sex workers on the altar of ideology. I'm going to conclude—and I'm going to conclude quickly—by quoting an open letter released on June 27 by religious leaders in British Columbia. Most of the 34 signatories are ministers of the Anglican Church. They write:

This is a moral issue. While we can debate the pros and cons of sex work in our Canadian society, and bring our religious beliefs to bear upon both sides of this question, we are all agreed that this proposed legislation does nothing to advance the welfare of sex workers and in fact, it increases the potential for dangerous situations. This is immoral.

The Chair: Thank you for your presentation.

Our next presentation is from the Canadian Women's Foundation. The floor is yours for 10 minutes.

• (1545)

Ms. Diane Redsky (Project Director, Task Force on Trafficking of Women and Girls in Canada, Canadian Women's Foundation): Great, thank you.

Good afternoon, and thank you for the opportunity to be here.

I would like to begin with acknowledging the Nishnawbe territory, which we all have the privilege of being on. I would also like to acknowledge the women and girls of sex trafficking, and their families. Some of them will appear here as survivor leaders and many are watching. We honour their voices.

I'm presenting this afternoon representing the work of the Canadian Women's Foundation to end sex trafficking of women

and girls in Canada by referring to the voices of trafficked women as much as possible.

My three key messages today are that Canadian Women's Foundation is currently the preeminent expert on sex trafficking in Canada; that while the government's proposed legislation does offer some promising advances related to sex trafficking, there is room for improvements for trafficked women and girls; and that women and girls who are survivors of sex trafficking have been silenced and their perspectives must be part of this discussion.

First, I want to clarify that the Canadian Women's Foundation's expertise is in sex trafficking, which we define as forced prostitution. We are not experts on consensual prostitution. We are here because we feel compelled to share what we know about sex trafficking in Canada and its connection to prostitution. There are girls and women across our country who are trafficked into forced prostitution and are prevented by their exploiters from being heard. We are focused on breaking this silence. We are shining a spotlight on the voices and the unique needs of trafficked women and girls who are in the sex industry against their will. It is our hope that you will learn from our expertise on sex trafficking to inform your decision on Bill C-36.

The mission of the Canadian Women's Foundation is to empower women and girls across Canada to move out of violence, out of poverty, and into confidence. Over the last 23 years, we have invested over \$40 million in grants to 1,300 community programs, including every women's shelter in Canada.

In 2012, the Canadian Women's Foundation formally launched a major initiative to help end sex trafficking. We invested \$2 million in this important work and it focused on six priority areas. You have some of that information in your package.

We had a national task force of 24 experts from across Canada. These experts included survivors, front-line community organizations, police, and representatives from legal, justice, policy, research, and national organizations, including an indigenous elder and the co-chair of the Government of Canada's federal national action plan to combat trafficking in persons.

We travelled to 10 cities across Canada. We met with over 260 organizations and 160 survivors of sex trafficking. We also organized two national round tables, one with service providers and another with survivors of sex trafficking.

We have also invested over \$800,000 in grants to fund grassroots community organizations, and we just launched a public awareness campaign about sex trafficking in Canada yesterday.

This fall, the Canadian Women's Foundation will be launching the task force's recommendations and the Canadian Women's Foundation's anti-trafficking strategy. This strategy is rooted in women's equality, and we'll be happy to share that strategy with you when it's ready.

Meanwhile, here are the few highlights of what we have learned.

Sex trafficking needs to be understood in the context of other forms of violence against women and girls, including domestic violence, sexual assault, the glorification of sexual exploitation, and the proliferation of child pornography, also known as child abuse images.

Sex trafficking is a deeply gendered practice. Most of the people being trafficked in Canada are Canadian women and girls, and most of the people who benefit or gain from their sexual exploitation are men.

Girls and women are being trafficked into and within Canada. Sex trafficking is connected to prostitution. Trafficked women and girls are forced into prostitution, often in the same locations, such as massage parlours, escort agencies, and strip clubs, and are advertised in the same publications by their traffickers.

Law enforcement officials told us that when the burden of evidence is too high to meet the threshold of Canada's new human trafficking legislation, they will fall back on the prostitution legislation to immediately intervene between a trafficker and a victim.

But although these issues are linked, we must never forget that trafficked women and girls have no choice, have no voice, and are victims of a crime.

Our comments on Bill C-36 are based on our expertise developed through the work of the task force and from survivors.

This bill does a few things to help protect trafficked women and girls. The legislation allows that sex trafficking and prostitution are connected, and proposes legislative changes to protect sex-trafficking victims. It acknowledges that trafficked women and girls require supportive services to exit.

● (1550)

The legislation also provides a few additional law enforcement tools related to sex trafficking, such as withholding or destroying documents, defining a weapon as anything to hold someone against their will, taking into consideration prior sentences for repeated trafficking-related crimes, and designating traffickers as long-term offenders, plus modernizing the procuring offence to align better with human trafficking offences, and increasing protection and prosecution for sexual offences against children under 16.

However, the legislation should be improved to better recognize the needs of women and girls who are trafficked. We would like to see a significant increase in funding of services. The \$20-million investment, and we've heard this time and time again, is not enough. There is no quick fix for services for trafficked women and girls, and we need to view this issue with the long term in mind, address the root causes, and support survivor-led initiatives.

We are deeply concerned for the potential of trafficked women and girls to be criminalized if they are forced by their trafficker in any of the criminal provisions within Bill C-36. For example, it is not clear how the complexities of women and girls who are trafficked can be protected when forced to be on the streets, or advertised online. How can we make sure victims of sex trafficking are not criminalized?

We'd also like to stress that trafficked minors under the age of 18 are victims of child abuse, and offenders should be prosecuted to the fullest extent of the law. Criminal provisions must reflect the seriousness of the harm done to a minor, and we recommend increasing sentencing for obtaining sexual services from a person under 18.

This is the most important part of my presentation, and this is a survivor voice of sex trafficking. Trafficked girls and women have been silenced by their exploiters. The Canadian Women's Foundation is committed to ensuring their voices are heard and their unique needs are addressed. Based on what survivors shared with us, this is a summary of a common sex trafficking experience.

Many survivors were recruited around the age of 13, often through betrayal of trust or a promise of a better life. One former trafficker bragged about how easy it was to lure, and recruit, and intimidate and control young girls into forced prostitution. One survivor told us:

I was in a room with a bunch of girls and we had to take our clothes off and they decided how much we were worth. I thought I was going to be a model. I was then taken to Calgary and forced and watched.

Another woman said, "For me it was an escape from an abusive household. I was 13. He was in his 30s."

Trafficked women and girls are victims of a serious crime. One woman shared a particularly harrowing story:

I was beaten and held in a hotel for 14 weeks. People watched as six large men dragged me down the street and then turned their heads away. The cops laughed at me. The traffickers lit my parent's house on fire and my mom almost died.

Another said, "They always talked about killing me—killing me, my sister, or my dog."

Many victims try to escape without success. One woman said, "I tried 10 times to exit, but didn't get out until I was 29 years old."

Another said, "It was the \$50,000 exit fee that stopped me from leaving."

Many survivors become trauma-bonded with their trafficker, seeing them as someone who loves them and who will protect them. We have to understand that this is how they survive. As one survivor said:

My (exploiter) found out what was tough about my life. They learned about my parents, my siblings and my school. They put it all together and used it.

By their mid-twenties, many survivors are discarded by their traffickers because they are considered too old, and because demand is higher for younger girls. At this point, one of three things typically happens. One, they enter the survival sex industry, exchanging sex acts for basic economic survival. Or they end their own life, or become part of the missing and murdered women and girls. Or they begin the long, hard road of recovery and rebuilding lives, which many women do, and achieve great courage, strength, and resiliency.

Almost all survivors of sex trafficking have criminal records and these criminal records make it extremely difficult to rebuild their lives, and can increase their vulnerability to be trafficked again. One sad but common reality for many trafficked women is that they grow old very quickly. Many suffer from terminal illnesses at young ages. Many are 40 years old and are literally dying.

The task force met with a national survivor round table. This was an extremely powerful experience. Formal consultation gave survivors of sex trafficking a dignified opportunity to share their stories and to be respected for their expertise on this issue. They had many messages for the task force and for all Canadians, but here are just a few examples.

Many survivors shared their experience of having to meet a daily quota set by their trafficker, or suffer extreme violence. They were forced to hand over all of their money to their trafficker.

• (1555)

Another survivor described her experience as repeated incidents of paid rape.

They also told us that they wished people knew what really goes on behind closed doors. They said that the men who purchase sex routinely force them into humiliating, degrading, and extremely abusive acts. They told us about services they need to begin and to sustain the long-term journey to rebuild their lives. They desperately need help but currently do not have it. As one survivor said, "When you exit, you stand alone".

One survivor was very blunt: "When you have guys in videos telling boys at school to have six bitches working for them, this is a system that needs to change." Survivors want men and boys to receive services that teach them how to respect women so they do not become exploiters. The long-term wish of the survivors we met is for a society where women and girls are valued, honoured, and respected.

In conclusion, over the last three years, our work to end sex trafficking has been extremely challenging, but it has brought many gifts. One of the greatest gifts has been the opportunity to learn from 160 women who have shared their experience with us. Time and again, despite the odds, despite the fact that the system which we created actually worked against them, they have found the strength and courage to rebuild their lives. In fact, they are giving back by sharing their experiences with us, in hopes that together we can find solutions. It is vital that we hear and honour their voices.

I would like to conclude with the words of a survivor of sex trafficking: "Just try hard not to give up on us like everybody else in the world has".

Megwetch. Thank you.

The Chair: Thank you very much for that presentation.

Our next group presenting is Pivot Legal Society.

The floor is yours.

Ms. Kerry Porth (Chair of the Board of Directors, Pivot Legal Society): Good afternoon. My name is Kerry Porth, and I am a former sex worker.

Given the nature of some of the discussions that have been going on, I feel it necessary to tell you that I did sex work in the context of profound addiction, poverty, and occasional homelessness.

Currently I am the chair of the board of directors for Pivot Legal Society, and for six years I was the executive director of a small charity located in Vancouver's Downtown Eastside that offers support to street-based sex workers.

In my capacity as a policy expert with extensive knowledge of the law and the evidence, I can tell you with no uncertainty whatsoever that Bill C-36 will cause great harm to sex workers across Canada.

I come to you from the community of the Downtown Eastside, a neighbourhood well known for its struggles to overcome poverty, addiction, and violence. Today I bring to you a clear message from the members of Sex Workers United Against Violence who are women, mostly aboriginal, who live and do sex work in the Downtown Eastside.

They want me to tell you they reject Bill C-36 in its entirety. They have much more to tell you and have therefore asked me to extend an urgent invitation to you, the members of the justice committee, to visit them in Vancouver so they can share their vision of a future where the human rights of sex workers are respected, where they do not feel hunted and hounded by law enforcement, where their clients are not targeted, and where they can conduct their work in dignity and safety.

Far from protecting sex workers, this bill will replicate all of the harms of the laws that were struck down in the case of *Bedford v. Canada*. But Bill C-36 goes even further by adding new laws prohibiting the purchase of sex, advertising sexual services, and redefines the former communication law in a way that prevents any communication between sex workers and their clients.

Pivot recently released a report entitled "My Work Should Not Cost Me My Life", a copy of which has been sent to each of you and additional copies can be provided upon request. The report examines a recent shift in enforcement strategies employed by the Vancouver Police Department away from arresting street-based sex workers towards actively pursuing their clients. While this practice has been in operation for approximately five years, it became the official policy of the Vancouver Police Department in January 2013.

The Pivot report is based on research conducted by the gender and sexual health initiative at the University of British Columbia that resulted in a peer-reviewed study published in the prestigious *British Medical Journal*.

The BMJ Open study married findings from Sweden and other countries where the ban on purchasing sex has been implemented and demonstrate that when either party to a sex work transaction is criminalized, sex work continues to be pushed underground into a shadowy world where exploitation and violence can and do occur.

Sex workers who participated in the study report when police target their clients, they must take steps to avoid detection by law enforcement such as working in areas that are darkly lit and underpopulated, where they face risks due to their isolation. Clients have become nervous and are often scarce these days, but a sex worker who has stood on a corner for six hours and hasn't made any money cannot simply give up for the day and go home.

Many of the sex workers who participated in the study stated they are having to stay out far longer and in more desperate circumstances due to the shift in enforcement. In addition, clients who are now nervous and stressed by the fear of police pressure workers to get into their vehicle quickly or to follow their vehicle into a dark alley before negotiating the terms of the transaction. The ability to negotiate, to clearly communicate with a client prior to agreeing to a transaction, is a critical safety measure for sex workers that they are now forced to abandon.

Rushing negotiations limits the sex worker's opportunity to assess the potential client for signs of intoxication, to look for weapons or restraint devices, or to check a bad date sheet. Suggesting these sort of precautions will not prevent any violence is the same as saying to women all across Canada that all of the safety precautions they take will not prevent violence.

The client's fear of a potential sting operation means sex workers have to waste precious time needed to conduct a safety assessment trying to convince the client she is not a police officer. Historically, sex workers have had an extremely adversarial relationship with police, resulting in an extraordinarily low rate of reporting violence and exploitation. Shifting the focus of enforcement from sex workers to their clients will not change this.

For street-based sex workers who already live and work in extremely challenging circumstances, the income they earn from sex work is their livelihood. Please do not take it away from them.

• (1600)

I have no recommendations for amendments to Bill C-36. Instead, I suggest that this committee reject this bill in its entirety and allow the current laws to fall on December 20.

I further recommend that the government initiate a mature, national discussion that prioritizes the voices of those who have the most at stake in considering the future regulation of prostitution in Canada. I urge you to please listen to what sex workers are telling you.

Thank you.

The Chair: Thank you for that presentation.

Our next presenters are—

Ms. Elin Sigurdson (Lawyer, Pivot Legal Society): No, I'm going to—

The Chair: Oh, you want to say some more? I'm sorry.

Ms. Elin Sigurdson: Yes, we're sharing our time.

With Ms. Porth, I also speak on behalf of Pivot Legal Society and Sex Workers United Against Violence society. I'm a lawyer who has represented SWUAV over the last more than 10 years in their legal efforts to decriminalize sex work.

The committee is here because the Supreme Court of Canada struck down a series of harmful laws in the Bedford case, but so far this week we haven't heard very much about the case. There are some clear principles in Bedford that must govern the enactment of any new law that makes criminal laws on sex work, and those principles must guide this committee. We'll deal with three of these.

First, there's a principle from Bedford that says that a criminal law that gets in the way of a sex worker's taking steps to improve the safety of her work is unconstitutional because it interferes with the security of the person. The Supreme Court of Canada found this in relation to the communicating law and said that if the law had stopped one person from taking basic steps to avoid being picked up by a serial killer, that harm was established.

There, the law was the former communicating law, but this bill proposes to enact that exact same law essentially without any meaningful amendment. Yesterday in the hearing, there was actually a good amount of consensus among witnesses with different views on how to legislate in this area about the communicating provision, saying that it is in fact unworkable for various reasons: it's vague, it's contrary to Bedford, it's harmful to sex workers, and it's probably unconstitutional.

In Bedford, the court similarly concluded that a law that overreaches its purpose and captures third parties who provide helpful assistance and not harmful exploitation is unconstitutional, again because it gets in the way of a sex worker's right to take the necessary steps to improve the safety and the dignity of her work. But with Bill C-36, the procuring and the materially benefiting provisions are still going to isolate sex workers and will mean that they are unable to enter into business relationships that are deemed part of a commercial enterprise, even if those relationships are safety-enhancing. This is exactly what the court was concerned with in Bedford when it struck the "living on the avails" provision. This new law resurrects that concern.

The second principle from Bedford that must guide you is that access to indoor spaces is safer. The courts at all levels agreed in the Bedford case that being able to work indoors is less dangerous, based on all of the evidence. This is because it allows sex workers greater control over the conditions of their work and their environment and allows them access to more safety strategies. Yesterday, comments were made in the hearing suggesting that it doesn't matter whether sex workers get to work indoors, because sex work will be dangerous wherever it takes place, because the cause of the harm is the purchaser, not the laws that restrict their operation.

But with respect, those points are incorrect both in fact and in law. These arguments were rejected by the Supreme Court. The courts all agreed that indoor work is safer, after considering a massive record of expert evidence.

Furthermore, the court determined that the law doesn't have to be the only cause of the harm; it has to have a sufficient causal connection to the harm. The principle is that Canadian laws cannot contribute to the dangers faced by sex workers. This law will do that.

The third principle that I highlight is that the laws must be understood as working together as an interlocking scheme. In Bedford, the court expressly directed the government that, if it decided to legislate in this area, it must do so with an understanding of how all the laws worked together. To properly understand how this legislative scheme will work in practice, you can't just look at the potential effects of one provision without understanding how it will interact with another.

With Bill C-36 you must think about how, for example, the advertising restrictions and the criminalization of the purchase of sex are going to work together. We say that together those mean that sex workers will not be able to work indoors.

So I urge this committee to examine that decision and consider these principles and come to the same conclusion that I do, which is that Bill C-36 does not comply with the word or the spirit of Bedford.

Some 220 lawyers and legal academics have written to this committee and to the government and have expressed their concerns that the bill risks breaching a number of charter rights. This committee must remember that you have an important constitutional purpose: lawmakers are required to ensure that laws are consistent with the constitution before enacting them, and you must take the time necessary to do that. Canadians are trusting you to ensure that you do not pass another law that makes the same mistake of putting sex workers into grave or graver jeopardy. But with this bill, the government is acting with unjustified haste and without sufficient consideration. Doing that is creating a new and even more harmful and unconstitutional legal regime.

Bill C-36 will not stand up to constitutional scrutiny on that basis, because its provisions are over-broad, they are vague, as has been the subject of much discussion in this committee, and they create harms that are grossly disproportionate to their objectives.

●(1605)

We urge this committee and Parliament to reject this bill. It would cause the same and potentially graver harms to sex workers as those under the laws that have been struck down. We're not just warning you about the law's flaws in academic legal terms. These are flaws that will result in violence and tragedy for the community of sex workers I represent, women who have faced horrendous forms of violence as a result of Canada's prostitution laws. I know that is not an outcome that anyone in this room would like to see.

The Chair: Sorry I missed your hand. You were sharing your time. I'm sorry I missed that.

Thank you to the Pivot Legal Society.

Next, by video conference from Regina, is the Smith family. The floor is yours for 10 minutes.

Ms. Linda Smith (As an Individual): Thank you very much for this opportunity to speak today. We are honoured to be here.

I'm going to take just a few minutes to tell you our story, and then Ed will speak more directly to Bill C-36.

In 1990 our daughter Cheri Lynn Smith died. She was murdered. She was 18 years old and six months pregnant. We loved her very much and miss her every day. Our home was a happy one. As a child growing up, she did well in school, played organized sports, played the flute and the piano, and was in the school band and the city youth choir. Her natural leadership abilities were noticed and encouraged in the various groups she was involved with.

After grade 11, during the summer, Cheri attended the Regina exhibition with her brother and some friends. There she met a young man. He was 18 and she was 17. A few days later she told us she was in love with him and was leaving home to be with him. She said she would be back home for the start of school, her grade 12 year. We tried everything we knew to convince her not to leave, but she went with him anyway. She had no idea what he had planned for her.

Just a couple of days later she found herself in downtown Edmonton selling her body to men who used and abused her. In fact, her very first trick gave her a beating and stole her money. This was cause for the first of many beatings she took from her pimp. This is how he controlled her. He would romance her with sweet words, gifts, and sex, and then give her a beating and tell her it was her fault. Then she would do anything she could to gain back his favour. Many times she told us, "I love him. He needs me. I'll do whatever it takes to keep this relationship going." He decided where and when she worked, how much money she had to make, even who she could talk to.

At the beginning, to be sure that Cheri would be dependent on him, he took her from her home town, Regina, and put her out on the unfamiliar streets of Edmonton, where she knew no one to call for help. He moved her to Calgary, Winnipeg, back home to Regina, and finally to Victoria, B.C., each time to isolate her from us, her family.

Cheri became pregnant while prostituting. She had no idea who the father was or even when she had become pregnant. By this time she had chlamydia, a sexually transmitted infection. She was malnourished and worn out. She believed, naively, that once the baby came she wouldn't have to work anymore, that her pimp would get a job and she would have the happy home she desperately wanted. So she still wouldn't leave him and come home.

The police apprehended Cheri in Calgary and Winnipeg. Because she was under age, they just sent her home. Then her pimp came and got her. We received no help, no advice or direction from the police to help her.

Finally, when she was working in Regina, she was caught in a sting operation. She was arrested and charged with solicitation. We were so hopeful that on her court date the judge would put her in our custody, but Cheri didn't appear at court. Her pimp had moved her to Victoria, where again she knew no one who could help her and was cut off from us. In her phone calls home she was sounding more and more unhappy and talked about coming home, but then she disappeared.

On June 4 one of the young prostitutes who knew Cheri reported to the police in Victoria that she was missing. The police didn't believe her. Later the girl brought in Cheri's wallet and some personal correspondence. Then they drew up a missing person file on her. That's all they did. They didn't contact us. But the young prostitute did phone us to tell us that she didn't know where Cheri was and that she was very worried.

I went out to Victoria, looking for Cheri. I met the young girl who had called us, her pimp, and some other very young girls and their pimps. No one knew where Cheri was. I met with the police. My appearance seemed to stir them into action.

•(1610)

About four weeks later, on September 9, Cheri's body was found. The autopsy showed that she died on June 4. She had been beaten to death. Of course, her unborn child died with her.

No one has ever been charged with her murder, but it's still being investigated.

My hope is, as you have listened to our story, that you heard two things: firstly, we could do nothing to help our daughter get out of prostitution; and secondly, that she was psychologically controlled by her pimp, that she was not able to make the decisions needed to free herself.

Our tragic experience is not an anomaly. There are many parents like us, trying to help their daughters. There are many Cheris out there, controlled, abused, disposable.

Please do all you can to help them.

Thank you.

Mr. Ed Smith (As an Individual): I also want to thank you for this opportunity to speak before this committee.

Since the death of our daughter we have tried to do what we can to help those who are being sexually exploited. We have tried to warn children about the danger of predators who are trying to recruit them into the sex trade. We have tried to educate men about the damage they do to the sexually exploited women and children, and to themselves, when they pay money for sex.

When the news of Cheri's murder hit the media, we began to receive many calls from parents who had children at risk or who were already involved in prostitution. Girls in high school were being "tricked out" over the lunch hour. Others were prostituting themselves out of party houses on weekends or evenings. We often felt helpless when parents pleaded with us about how to rescue their child.

To try to warn these girls and other children at risk, Linda developed a presentation that she delivered over 800 times in schools

to grades six, seven, and eight students. In the evenings we would meet with their parents to alert them to known places where girls were being procured, and to look for warning signs that might indicate their child was at risk.

Unfortunately, there were very few resources available for parents to help them intervene on behalf of their teenage children.

Since Cheri's death I have participated as a speaker in over 100 John schools in Regina and Saskatoon. I talk about the heartache that our family has experienced as a result of Cheri being sexually exploited and murdered.

I hear women who are survivors of the sex trade share about the terrible things that have happened to them. Many were forced into prostitution as children, some as young as eight years old. Their self-esteem and dignity have been destroyed by the abuse they have endured at the hands of men, men who feel that because they paid for her, they can do whatever they want to her.

These women weep as they remember other women they have worked with who have gone missing, been murdered, committed suicide, or died of a drug overdose. These former prostitutes declare how much they hated what they were doing, but they felt trapped by their drug addiction or the threats of violence from their pimps if they didn't make enough money. These women are not criminals, they are victims and deserve protection.

Bill C-36 will help provide that protection by offering the resources to give them an exit strategy. At the John schools I see men who are buyers of sex openly admit that their use of prostitutes is doing great damage to themselves and their families as they try to hide this dark secret they are living with. Many of the men tearfully ask for forgiveness as they realize the harm they are doing to the women they are abusing.

The harsher penalties in Bill C-36 aimed at the purchasers of sex and the traffickers will make men think twice about purchasing sex, and deter the trafficker from what in the past has been easy money for them, with very little risk.

A sad fact is that if men were not willing to pay money for sex, our daughter would still be alive today. She would not have been a target for a trafficker who needed money to buy his drugs.

The world of prostitution destroys lives physically, spiritually, emotionally, and mentally. Bill C-36 will help protect innocent victims while deterring those who would prey on the most vulnerable in our society.

Thank you, again, for allowing us to speak in support of Bill C-36, which addresses an issue that is so close to our hearts.

•(1615)

The Chair: Thank you, Mr. and Ms. Smith.

Our next presenter is from SIM Canada, Mr. Cassells.

Mr. John Cassells (Street Youth Specialist, SIM Canada): Thank you, Mr. Wallace, and thank you to the committee for inviting me to speak.

Thank you as well to Ed and Linda Smith for sharing from your personal tragedy.

I began my career as a youth worker in 1984. One of the first young people I worked with hitchhiked away from her small town in British Columbia and her broken home life there and was forced into prostitution on the streets of Edmonton at 12 years old.

Since that time I've walked alongside countless young people as they have broken free from prostitution. I've designed and overseen outreach programs and support groups for those who have been trapped in that lifestyle. In my work I've had the opportunity to study and understand the workings of the Canadian sex trade. I speak from personal observations that I've made in my work both in Ontario and British Columbia. This is real-world experience that spans three decades.

I've observed that when young women and men remain involved in prostitution or connected with the street culture, they commonly view prostitution as normal. Given the opportunity to distance themselves from that lifestyle, the vast majority shift to an abhorrent view of the sex trade, recognizing it as extremely harmful. This phenomena must be considered as we listen to witnesses who represent current prostitutes, and therefore we should pay particular attention to former prostitutes who have distanced themselves from the street and progressed on their journeys of healing. These women have a much greater perspective.

I'm a supporter of Bill C-36 and I'm not fully satisfied with it in its current state. The preamble of the bill creates a long-overdue paradigm shift. It helps Canadians from all walks of life to view the prostitute from a well-informed perspective. She is worthy of dignity and those who would seek to exploit her are in the wrong. It clarifies that the protection of an exploited person needs to be the priority.

Then Bill C-36 addresses the buyer, the client, as one who perpetuates the processes of an industry that destroys young lives. I applaud the bold move to make buying sex illegal in Canada. I support the government in its recognition that the exploitation of minors is inseparable from the adult sex industry. In Canada right now a high demand for paid sex creates business opportunities for human traffickers. Their most common prey is female and under 18 years of age.

I agree with the added protections Bill C-36 will give to these young people, including those at risk of exploitation by the production and distribution of child pornography. If it is a priority to safeguard Canadian young people against the horrors of the sex trade, you must pass Bill C-36, but there are some important changes that need to be done.

As it stands, Bill C-36 can be expected to create a modest decrease in the demand for paid sex. Given the level of violence perpetrated against countless young people, more than a modest response is warranted. The effectiveness of Canada's new prostitution laws will be borne out in the hands of our police agencies and in our courts. Right now Bill C-36 to some degree actually plays into the hands of human traffickers, and I'll explain how that is.

The Supreme Court ruled unconstitutional soliciting in public, running a brothel, and living off the avails of prostitution. It's important that these provisions remain in place, yet Bill C-36, with some limitations, legalizes all three.

•(1620)

While the intention is to protect the interests of the victims in the sex trade, it actually creates some opportunities for pimps and buyers to continue to operate with a low risk of being criminally prosecuted. Under the proposed laws, the prostitute will be allowed to solicit in public. Since the buyer, who also solicits in public, will be an easy caller, street prostitution if controlled by police enforcement will only continue to decrease.

Under the proposed laws, the prostitute will be allowed to operate a brothel. The challenge for a seller of sex would be to decrease the likelihood of police interference with the buyer. In-call prostitution would move out of the hotels and more and more into residential neighbourhoods where you and I raise our families. Paid sex in massage parlours will probably remain very strong. It may in fact increase. Out-call prostitution will flourish.

These changes would protect the buyer, but not the prostitute. As a result, the demand for paid sex will remain very strong. That is counter to the objectives of Bill C-36, and we must not allow that. Under the proposed laws, living off the avails of prostitution will be legal within certain parameters. Human traffickers will claim status as roommates, as common-law husbands. In terms of their business involvement, they will claim to be no more than drivers or bodyguards. They will in reality still control the minute-by-minute movements of the prostitute. This will actually strengthen the position of the pimp because he will be more difficult to prosecute. That, too, goes against the objectives of the bill. We must not allow that.

Two weeks ago a detailed study by Max Waltman at Stockholm University was published in the *Harvard Journal of Law and Gender*. The purpose of the study was to assess evidence arguments and inequality in *Bedford v. Canada*. Mr. Waltman writes:

This article assesses the evidence relied on by courts to strike down the laws, finding that evidence was misrepresented and misvaluated, thus did not support their decision. By invalidating these provisions, Canada will expose prostituted people to predators while protecting their exploiters. Their decisions overturn previous precedents that shielded prostituted people from abusive pimps, and violate Canada's commitment to promote equality among historically disadvantaged people,

As it stands, Bill C-36 heads us in a very positive direction, and its major flaws can easily be rectified, at least from my layman's perspective as a youth worker. There's a very strong move to ban all manner of advertisements for prostitution. If you allow the prostitute to advertise herself, she will do that, and in a high percentage of cases she will do that because she is being forced to make money for her pimp. We will see at best a small decrease in such advertising, but you can expect the advertisements will become even more explicit.

Ladies and gentlemen, there are countless teenage girls and young women being trafficked right now in Canada's sex trade. Some will die in the commission of prostitution activities. Many more will die by causes linked to prostitution. All will be profoundly harmed.

If you wish to significantly decrease prostitution in Canada, and the violence that accompanies it, you will need to remove the immunity for prosecution of the prostitute and you'll need to keep the present definition of "common bawdy house", including in that definition that it is a place that is kept for the purpose of prostitution. Doing so will most effectively serve the interests of those who are exploited and in harm's way. These necessary adjustments will not forfeit the wonderful work of people like MP Joy Smith who have brought the abolitionist ideology to the forefront of discussion.

•(1625)

The intent of the legislation, as stated in the preamble, emphasizes those clear objectives. This approach should reasonably satisfy the many who seek legislation patterned after the Nordic model and still give those who enforce the laws the tools to accomplish those objectives.

Give us a Canadian model of prostitution legislation, but one that will be effective in stemming the demand for paid sex, thereby saving our young people from human trafficking.

The Chair: Thank you, sir, for your presentation.

We'll now go to the question-and-answer rounds. Our first questioner, from the New Democratic Party, is Madam Boivin.

[*Translation*]

Ms. Françoise Boivin (Gatineau, NDP): Thank you, Mr. Chair.

Thank you to everyone here today, as well as the members of the Smith family, who are joining us via videoconference.

[*English*]

My first words will be for you guys.

Nobody can even fathom the idea of what you went through, but through both of you, I have the feeling that your daughter was here with us at the time you were speaking. I don't remember, I think it was 800 presentations, Ed was saying that you did, Ms. Smith. I'm in awe that you picked yourself up and decided to do something about it. For that, I really salute you.

At the same time I was listening to your story, I was thinking of another one that I heard not too long ago but in another context. It was not the one on the prostitution bill but on the missing and murdered aboriginal women. I went with some of my friends from the U.S. Embassy to visit a reserve not too far from my riding in Gatineau, in Maniwaki, an Algonquin reserve where two young girls

completely disappeared on September 6, 2008. Police think they might have been grabbed for prostitution, which could be likely. Their mothers are not removing any hope from their hearts .

Sometimes you might hear things in Regina that the bad opposition parties really support all the johns, and this and that, and the people who human traffic. That's not true. They're simply trying to find the balance and the right way to do things. I really wanted to convey this to you, so at least you can share this a bit in your neck of the woods.

For me, when I look at the legislation, I look at it in its entirety. I heard your message about the police not reacting when you were talking to them. That's exactly what I heard from the mothers of Maisy and Shannon, that they were not taken seriously. When I see the number of times we have asked for a national inquiry and keep hearing, "Well, we don't need a national inquiry because we know what the problem is", but we don't fix it. That's kind of sad.

But at the same time we have to careful not to—how do I say that —

[*Translation*]

mix things.

My apologies, but I'm having trouble coming up with the right word in English. No doubt, the interpreters will find the right expression.

•(1630)

[*English*]

Human trafficking and prostitution. So all the examples that I'm hearing here, through the committee, I take with all the other examples of those who have been trafficked and end up in prostitution. We have to address this. It's a complex issue; it's not as simple as one, two, three.

To Mr. Cassells, you might like the preamble. Enjoy it, because when the law is adopted, except for those geeks like me who like to go back, not many people will see the preamble. It won't be part of the criminal section. That's very important because for a lot of people we hear it here. They talk a lot about the preamble, but for lawyers it's going to give an impression of the story behind certain dispositions and it will be interpreted in different ways. Take two lawyers and they will interpret it very differently, so don't put too much hope on a preamble, please.

At least I will give you credit, you're honest. Abolition is the way to go. I find that interesting because France, which has been quoted as being a place that is thinking about the Swedish and Nordic model, just today decided to remove criminalization of the client. Imagine, the client. They were going through the Nordic model. Why? I'll mention what their decision was.

[*Translation*]

I am going to switch to French. I apologize, but these comments were made in France, where they speak French like me.

They refer to the fact that the provisions aren't coherent from a legal standpoint, because allowing prostitution in France—

[English]

Mind you, all of you who are listening to us, prostitution will not be made illegal by Bill C-36. The Conservatives have not said that.

[Translation]

and doing away with sanctions against solicitation can't be reconciled with penalizing clients.

That's what they said. France is currently deliberating the issue and the discussion is at the committee stage of the process. Working out the appropriate provisions isn't easy.

I'd like to ask the lawyers here what they think of that reasoning in France's decision. What do they make of the fact that the problem can't be solved simply by criminalizing one half of the equation? Basically, either no one is breaking the law or the law is hypocritical.

[English]

Racolage is "solicitation".

•(1635)

The Chair: I think that was a question for Pivot Legal Society.

Prof. Christine Bruckert: I'm not sure either.

The Chair: She's a criminologist, not a lawyer.

Elin.

Ms. Elin Sigurdson: I think it's quite correct that you can't look at a single aspect of the law and not understand how it's going to work with the other aspects. The notion of this law, as we've heard from members of the government, is that it wants to abolish prostitution entirely.

One thing we know from the evidence is that criminal law has been the major policy choice for dealing with the social concern of prostitution around the world. It has not been eradicated anywhere. What I think Canada really wants to deal with is the social issues that give rise to people entering prostitution or sex work, and those are not well dealt with by a tool such as the criminal law.

This bill is supposed to come with \$20 million of funding. I remind everyone that the \$20 million is not actually attached to the bill. When this bill is passed, that \$20 million doesn't materialize.

Ms. Françoise Boivin: It is over five years.

Ms. Elin Sigurdson: It's over five years. It's insufficient, and it's not going to do the things that people might imagine it will do to provide services and opportunities and strategies for people not to enter prostitution.

If this government wishes to address the issues that lead to people having economic circumstances, for example, that cause them to want to enter the sex trade, they should do things such as address our social safety net, which is insufficient. In Vancouver, for example, social assistance is about \$600; if you want to rent a one-bedroom apartment in Vancouver, it's about \$1,000. I don't see the government there addressing the primary thing that leads people to enter into subsistence sex work.

In that sense, you can't look at this bill as actually achieving one of its major goals. And deciding that criminalizing the purchase is the strategy does not remove the barriers to sex workers' achieving more safety, having better relationships with police, or being able to seek out other opportunities. It just does not do that.

The Chair: Thank you for those questions and answers.

Our next questioner, from the Conservative Party, is Monsieur Goguen.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): Thank you, Mr. Chair.

Thank you to all the witnesses for coming today, and certainly to the Smith family, I offer my deepest sympathy. It is quite an experience to have lost one's daughter. Thank you for all your work on this important file.

Ms. Bruckert, I took your testimony to say that you believe Bill C-36 would criminalize the provision of all and any services to prostitutes. My reading of the bill doesn't sustain that whatsoever.

As a matter of fact, Bill C-36 would not prevent those who sell their sexual services from entering into any legitimate commercial relationships as long as they enter into those relationships on the same basis, the market value, that anyone else would enter them; for instance, in hiring an accountant, renting a spot from a landlord, having a pharmacist, a security company—any of the services available—providing, according to my reading of the bill, that those people do not coerce the person into paying them, such as by giving them drugs to force them to pay them.

You've probably read the act, I imagine.

Prof. Christine Bruckert: Oh, yes.

Like the case with living off the avails, people who provide services... It was always the case, under "living off the avails", that if you offered services that were not related to the sex work, you were not criminalized. The baker, the doctor were never criminalized even under the previous—

Mr. Robert Goguen: This would include the security guard. This would include the receptionist.

Prof. Christine Bruckert: No, it wouldn't—not if it occurs within a commercial enterprise.

Specifically, the law says:

286.2(5)(e) received the benefit in the context of a commercial enterprise that offers sexual services for consideration.

What I understand—and I believe this is the understanding of lawyers who have looked at this—is that if an individual is providing services, including perhaps driving and a receptionist service to an independent sex worker, that person would in fact benefit from the exemption.

But for anyone who provides those services within the context of a brothel, a massage parlour, even a collection of several sex workers working together, that would be a commercial enterprise and it would be criminalized.

•(1640)

Mr. Robert Goguen: It would be criminalized, in my reading, if it were exploitive. However, if it were entered into on the basis of a fair market value, I would direct you—if you have a copy of the act there

Prof. Christine Bruckert: I do.

Mr. Robert Goguen: Great.

—to proposed paragraph 286.2(4)(d), which is the exception, and I'll read it for your benefit:

in consideration for a service or good that they do not offer to the general public but that they offered or provided to the person from whose sexual services the benefit is derived, if they did not counsel or encourage that person to provide sexual services and the benefit is proportionate to the value of the service or good.

The fair market value....

Of course, proposed subsection 286.2(5) goes on to create an exception if somehow they have coerced these people: if they've threatened them, if they have abused them, if they have provided them with a drug, if they have somehow caused them to do it as a result of violence. So—

Prof. Christine Bruckert: Or if they received the benefit in the context of a commercial enterprise that offers sexual services for consideration....

Mr. Robert Goguen: Prostitution where they are being coerced, but not in the context—

Prof. Christine Bruckert: No.

Mr. Robert Goguen: Well, I take exception. We'll have to agree to disagree but that's clearly not reading what the act says.

Prof. Christine Bruckert: Well, proposed paragraph 286.2(5)(e) says:

received the benefit in the context of a commercial enterprise that offers sexual services for consideration.

That's one of the exemptions.

Mr. Robert Goguen: No, I believe your reading is mistaken.

I'd like to go to Ms. Sigurdson.

Yes, of course, organized brothels are exploitive, and that doesn't mean that you can't hire a bodyguard and you can't hire an accountant. It does not mean that you cannot hire a driver if you're paying fair market value, and they're not coercing you. That's the reading there.

I pass to Ms. Sigurdson. You're saying that this act is not a response to Bedford. I would challenge you on that. I would say it's a challenge to Bedford, and it's not only a challenge to Bedford, but also goes further than that in the sense that it's now a paradigm shift. Prostitutes are now being treated as victims far more than ever before, which is a major social change of thought.

The Supreme Court of Canada, Justice McLachlin, said:

Concluding that each of the challenged provisions violates the Charter does not mean that Parliament is precluded from imposing limits on where and how prostitution may be conducted, as long as it does so in a way that does not infringe the constitutional rights of prostitutes....

You've told us that in your view the restrictions on advertising would somehow render it impossible for the prostitutes to work inside. But are you aware of the exception that provides that prostitutes can advertise, providing that it's for their own services? How would that stop them from going inside?

Ms. Elin Sigurdson: That would stop them from going inside because one of the problems with that provision is that, like the provision you were discussing with Professor Bruckert, it's not actually well-defined what the government intends to capture by that provision.

Like many portions of this bill, this is a very vague law that has the potential to be interpreted very harmfully. Canadians are entitled to know the law that they are operating under. But it's not clear in the communicating provisions what it means to be in a place where people under 18 might be. It's not clear what type of advertising is captured. It's not clear what a "legitimate relationship" is. It's not clear, actually, what "sexual services" are, as defined in the act.

In terms of the advertising provision, if a sex worker is not able to advertise effectively, and that includes being able to communicate the terms of his or her services, describing the types of work that he or she is willing to do.... As the discussion in the committee has shown, some members are pretty clear that the advertising that's captured includes advertising where a sex worker says expressly what he or she is willing to do.

Mr. Robert Goguen: But you would know that the canons of interpretation in criminal law would be interpreted very restrictively in favour of the accused.

My suggestion to you is that if the prostitute cannot design a web page, the exception that is provided in proposed paragraph 286.2(4)(d) would exactly entitle someone to hire someone to do the web page for them, provided they paid fair market value and no more than anyone else would get in an ordinary commercial context, and provided that the person does not somehow coerce the person to buy their services in creating the web page.

•(1645)

Ms. Elin Sigurdson: And provided that the service is not provided in the context of a commercial enterprise. So we don't know that a sex worker operating independently as a person who advertises her services is not a commercial enterprise. She's making a commercial benefit from selling her sexual services.

The provision you're discussing is one of the elements of the vagueness of this law that makes it unworkable in a way. There have been government lawyers at the committee who have said that it's possible, that we wouldn't be able to render any convictions under these laws, because it would be difficult to make out the elements of proof required.

I do know the canons of legal interpretation, and the first canon is that when you read a piece of legislation, the words that are written are the first guiding information about how you should understand the law. Here the guiding information shows that there's a lot of pieces of information about how this law is going to work that we don't have. That means that there's a lot of discretion.

Mr. Robert Goguen: A prostitute could sell her own services, provided that she's not being coerced as a result, and benefit as a result, provided she's not being coerced or threatened. She could run her own enterprise and hire those whom she wishes to help her, provided it's at a fair market value. All of this is provided that she is not being coerced, threatened, or somehow gotten to take drugs so that's she's forced to pay for them.

That is my understanding of the act.

Ms. Elin Sigurdson: That's not what the exception of the commercial enterprise says though. If that's what the government intends—

Mr. Robert Goguen: I believe that's what it does say.

Ms. Elin Sigurdson: —it should make clear that the material benefits section, where it says—

Mr. Robert Goguen: Proposed subsection 286.2.

Ms. Elin Sigurdson: —received the benefit in the context of a commercial enterprise that offers sexual services for consideration, falls under the exception. Subsection 5 does not apply to a person who commits an offence under section 1 if that person received the benefit. It simply says “commercial enterprise”.

If the government intends it to mean a coercive commercial enterprise with certain features, the government is entitled to legislate that clearly, but as it stands this is a vague provision.

The Chair: Thank you very much. I love a couple of lawyers going at it, but it's time to move on.

Our next questioner from the Liberal Party is Mr. Casey.

Mr. Sean Casey (Charlottetown, Lib.): I want to stay with the same topic, with a little bit of a different angle because it appears that there are at least a couple of members of Parliament on the other side who seem to be confused about advertising and hosting advertising.

Dr. Bruckert, this is for you. Ms. Sigurdson, feel free to chime in.

If a sex worker advertises in a newspaper, a website, or a phone service, subsection 286.4 basically finds that the newspaper, website, or phone service has committed a criminal offence. My friends over here would have you believe that there is an out. Is the out or the exception for a fair market value transaction available to a newspaper, website, or phone service in those circumstances?

Prof. Christine Bruckert: My understanding of the provision about advertising sexual services is that anyone who provides that service... The sex worker would not be criminally charged with doing the advertising, but there would be no place for her to legally advertise. This is the problem. We're trying to figure out where she could legally advertise. Are we going to have a situation where people are putting cards up in phone booths? It's not even clear if that wouldn't be communicating in public, so that becomes even another grey area.

One of the things Emily Symons was speaking about this morning was the fact that by prohibiting advertising you're also taking other things away from sex workers. They can advertise, but they advertise on places like CERB. Those places offer sex workers spaces where they can communicate, where they can share information on bad dates. So not only are you denying them the ability to advertise, but you're actually taking away a security mechanism as well.

For me, it's very clear that sex workers can advertise, but they won't have any place that will accept their posts.

Ms. Elin Sigurdson: That's exactly how I read it as well, that the party that would be captured under that provision would be the host of the advertisement, not the sex worker herself. It would be the entity, or the website, or the newspaper publisher who would be captured because they are doing the service in the context of the commercial enterprise.

Mr. Sean Casey: Thank you.

Back to you, Dr. Bruckert.

I know you were here this morning when we heard the chief of the Calgary police say that a conviction under a summary offence does not result in a criminal record. I don't know if you shared my reaction, but I'd be interested in yours first. Secondly, can you share your experience on what actually does happen when there's a sweep or when people involved in the sex trade are criminally charged

• (1650)

Prof. Christine Bruckert: We did research here in Ottawa with POWER, the sex worker rights group, where we looked at what happens here in Ottawa. What we found with the street sweeps is that, first of all, you have to look at the way they police. They lay charges for soliciting, but they also lay charges for a series of other events. What ends up happening, though, is that a sex worker gets taken in and gets held. A client will often get released with a promise to appear, but the sex worker gets held. That means she's actually detained. If she's detained until her bail hearing the next morning, that means she is fingerprinted. There is a record of her detention.

If she gets released, even if she gets charged and say she gets a summary conviction—and I do believe there's a criminal record from that—what ends up happening here in Ottawa and many other cities across Canada is that the sex workers have red zones imposed. These are essentially zones where they're not allowed to go. It becomes, of course, a revolving door. Sex workers breach their red zone conditions and then they become charged with breach of conditions. Breach of conditions is a summary offence, and then they do end up with a criminal record. It goes on like that.

Here in Ottawa we happen to have a very high rate, in fact, I think possibly the highest in Canada, and certainly the highest in Ontario, of breach charges. But the consequences of breaching are very high. Also, I thought it was quite interesting that the police chief spoke a great deal about helping victims, but then towards the end of his conversation he spoke about the need to police and to control the nuisance. That's certainly the mentality, and you do have a lot of over-policing, so sex workers are charged with loitering. They're charged with soliciting. They're charged with a series of different things, which make it very difficult for them to ever get out of the criminal justice system.

I'm not sure if that answers your question.

Mr. Sean Casey: Thank you.

Ms. Sigurdson, first of all, thank you for this letter of July 7 with the 220 signatures raising concerns about the constitutionality of the bill. I have a practical question with respect to a constitutional challenge, because I realize you and your firm were involved directly in the Bedford case, and that the Bedford case actually started in 2006-07 and the laws were struck down in late 2013. Being a lawyer, you can appreciate a hypothetical question. I want you to assume that this bill is going to pass; that the offer of amendment isn't genuine; that it will pass without amendments; that it will receive royal assent in December of this year; and that, as the Minister has rightly anticipated, it will be challenged. What happens after that? How long do we live with this bill that you and 219 of your colleagues think is constitutionally flawed before it gets its due as well?

Ms. Elin Sigurdson: The course of these things can take years. The Bedford case and the case that I was also involved in, brought by Downtown Eastside Sex Workers United Against Violence, took seven years. So a brand new case could conceivably take up to that long.

I think that two things to point out in that regard are, first, that the government should take very seriously the fact that this could be subject to challenge because of the responsibility to act constitutionally. But also because the burden of making a new constitutional challenge shouldn't be put on sex workers, civil society, and advocacy groups who are genuinely concerned about the validity of this law, I think the government should revisit its position on advancing this to the Supreme Court of Canada on a reference.

I think the other thing to note in that regard is the December 20 one-year stay period. That isn't a drop-dead deadline for the government to be able to legislate. What happens on that day is that three harmful laws will fall, but it doesn't mean that government is precluded from being able to make law in relation to prostitution. So I say that it's the responsibility of this committee first, and of the government, to ensure that what is being passed passes muster because lives are at stake. This is a really important policy issue that we could be leaders on, but this bill isn't a leadership bill. This is a bill that is going to take us far back.

•(1655)

The Chair: Thank you, Mr. Casey, and thank you for those questions and answers.

Our next questioner is Mrs. Smith from the Conservative Party.

Mrs. Joy Smith (Kildonan—St. Paul, CPC): Thank you.

I just wanted to clarify something. Ms. Boivin said that the French assembly rejected the bill. Actually, the French assembly passed the bill on November 29. It was the French senate that rejected it today. They gutted the bill in committee.

Going on, I have two questions, one for Mr. and Mrs. Smith and one for Diane Redsky.

Linda and Ed Smith, you wrote me a letter. I just give you my profound condolences. The story of your daughter is a story I've heard a lot across this country. It's very common.

You said something very profound in your letter to me in support of Bill C-36. For the first time in Canada we are going after the

predators, the johns, and the pimps, and making the purchasing of sex illegal. Do you think that would be very beneficial to Canada? Can you answer that for me?

Ms. Linda Smith: Sure. I will offer my two cents' worth.

The man who pimped our daughter was known to the police. He was known to be connected to criminals in other places in Canada. He was part of a collaboration of criminals who were running girls. Yet she would not testify against him because he was her lover boy. He controlled her from that perspective.

When we brought forward his name to the police, they started to look for Cheri on the streets of Regina and caught her in a sting. But it was Cheri who was arrested, not her pimp.

To our knowledge, none of the men who bought our daughter have ever faced any charges for using her. And this is our daughter. We feel very strongly that the buyers of sex need to be penalized for their abuse and degradation of women and girls.

Mrs. Joy Smith: Thank you so much for your advocacy. And thank you for going into the schools with this awareness program and for working with the johns on this.

My time is limited. I now have to go to Ms. Redsky.

I have to say that the foundation has done amazing things. Congratulations for that event yesterday. The awareness of human trafficking is going to be donated voices of girls who are actually trafficked all across this country.

I have two questions.

The foundation's task force heard from many stakeholders, including police and community-based organizations. I would like you to comment. First of all, were there any minors? In this committee we heard that....

I'm starting to think, just follow the money, whoever is getting money from this. We hear "Oh, there's nobody under 18." I would like to hear what the task force heard.

Also, you mentioned that the \$20 million proposed for the bill is inadequate. I know that the Canadian Women's Foundation is a funder in this area, in its private and public partnerships. Is the foundation looking to continue work in this area, and if yes, how do you see your role?

•(1700)

Ms. Diane Redsky: Okay. Well, thank you.

First of all, the Canadian Women's Foundation's task force is deeply concerned about what we learned of what's happening in Canada, particularly to vulnerable youth. Youth are specifically targeted by traffickers. The more vulnerable you are, the more you're targeted. I would also say that any girl can be at risk for trafficking.

We've learned through our consultations with the 260 organizations and 160 survivors that what is common is that they were first recruited and lured and trafficked as young as 13 years of age. That is critically important to the work that we're doing.

There's also this misconception in Canada that young women and girls who are forced into prostitution are to blame for their own sexual exploitation. That's part of the big shift that also needs to happen.

We also learned that there's a huge opportunity to look at the child welfare system, and have that consistent across Canada, because that contributes to the little or no safety net for minors when we're looking at safety and protection.

We did release a campaign yesterday. I just want to read one of the voices of the campaign. It is a campaign to donate your voice called Give My Voice. This is a campaign to raise awareness of the realities of sex trafficking. We focused on minors because they are the most vulnerable, and we all really need to have all hands on deck when it comes to protecting young people.

The campaign is designed with quotes given that people can read. This is one of the quotes. This a common reality for young people:

I met him on a subway last year at the beginning of grade 9. He was cute. We started going to parties and I tried drugs with him. Then one day he told me I had to repay him for everything. I didn't have any money, so he forced me to do things with other men. I didn't want to do it, but he says he'll hurt my family if I don't.

The importance of that is to raise awareness about the complexity of the coercion and the force and the intimidation that young people, as young as 13, are experiencing at that age, and which then carries on.

I'll quickly comment on the funding piece, because that is critically important. The Canadian Women's Foundation, since we started working on sex trafficking in Canada just three years ago, has invested \$800,000 into the issue. We learned a lot about what's there and what's not there. We know that a \$20-million investment may be the beginning, but it's not enough.

Also, we see it as an opportunity for the Canadian Women's Foundation to partner with governments and other foundations. In fact, we were doing that as we were going along the way. While the \$20 million sits there—and we would love to see more of it—it is not just a government issue but an issue that affects all Canadians. There's an opportunity for the private sector and other funders to be involved on this issue to end sex trafficking in Canada.

The Chair: Thanks very much. Thank you for those questions and answers.

Our next questioner, from the New Democratic Party, is Madam Péclet.

Ms. Ève Péclet (La Pointe-de-l'Île, NDP): Thank you very much, Mr. Chair.

To all the witnesses, thank you very much for your testimony.

[*Translation*]

As my colleague so eloquently explained, France's Senate—to elaborate on what she said—has just decided to get rid of the part of

their prostitution legislation that criminalizes those who procure sexual services. Be that as it may, let's put it aside for a moment.

One of the reasons the senators wanted the legislation examined in greater detail was that the resources deployed to go after johns could be far more effective if they were used to combat procuring, human trafficking and sexual exploitation. That may be what prompted them to study the provisions of the legislation in greater detail.

My question is for Ms. Redsky.

What is your take on that idea?

• (1705)

[*English*]

Ms. Diane Redsky: About having more studies on criminalizing...?

Ms. Ève Péclet: Well, no. Actually, one of the reasons they decided to strike down one of the articles of the law that was criminalizing clients is that the resources would be more fruitful or effective if they were given to fight prostitution and human trafficking. I simply want your input on that statement.

Ms. Diane Redsky: I think there are a lot of opportunities to generate revenue for services to eradicate sex trafficking in Canada. There are a variety of ways within provinces, within municipalities, to raise revenue. Again, our expertise is on sex trafficking and looking at ways in which we can use systems that currently exist. In one province we heard only yesterday that there is a human trafficking act under which there is an opportunity for a victim to sue their trafficker. There's also civil forfeiture, which is an opportunity to use those resources and put them into services.

Ms. Ève Péclet: Great. Thank you very much.

My second question would be for Ms. Sigurdson. My colleague talked a little bit about the letter that you signed with 239 other eminent lawyers or organizations. I would like you to elaborate on this letter and its content and what brought together all 240 people to write to the Prime Minister on his approach.

Ms. Elin Sigurdson: The letter expresses our concern that the bill as designed is not going to achieve positive effects, but is actually going to have unconstitutional effects in much the same manner that the laws before Bedford had. I think this is a rallying call for people in the legal profession for a number of reasons. One is that many of us are very concerned about ensuring that our laws aren't used to make the lives of marginalized people much worse.

Another is that there's a real need for us as a society, and for you as parliamentarians, to have a very strong focus on the rule of law. One of the principles of the rule of law means taking the guidance of the Supreme Court of Canada on what it said was really, really problematic about the old laws, and making sure that this doesn't carry over into the new provisions. This letter essentially states that the combination of laws advanced is going to result in the exact same problems.

Ms. Ève Péclet: Thank you very much.

I think it's very important because we've seen that over and over again with the government presenting bills that they pretend will help vulnerable people, but actually know are unconstitutional. In effect they've taken vulnerable people hostage, knowing that the law will be contested before the courts so vulnerable people and victims won't have justice. We saw that with Bill C-13 on cyberbullying, where the real victims of cyberbullying will actually not get justice because we already know that this law is going to be contested before the courts.

I think it's an important point that we all share the same vision of wanting victims of sex exploitation and human trafficking to be helped, but even the Minister said it in front of the committee that he thinks his law will be contested. So I think it's an important point to raise, no matter which side we sit on, that victims won't have justice until the government listens to legal opinions or opinions of organizations.

My last question would be for Mr. Cassells. It's actually about the same question I asked Mrs. Redsky, that the French Senate said the resources given to the police to criminalize johns would be more effective if they were given to fight human trafficking and prostitution. What would you say to that?

• (1710)

Mr. John Cassells: I think it is a very important issue, to go after those who would intentionally exploit our young people—the pimps and the traffickers for sure. At the same time, you don't want to put all your eggs in that basket; you don't want to focus completely on that, because if you can reasonably cut down on the demand.... We have seen in other places in the world demand cut in half over the course of a decade, and when you have that happen, you have to understand that in Canada, our most vulnerable people who are drawn into the sex trade are most commonly teenagers, and their young lives are destroyed. If we can take the countless number of these and cut it in half, that would have a huge humanitarian impact on our own soil.

Yes, I agree, let's continue to strategize as to the best procedures to bring the traffickers to justice. At the same time, if we can make the problem half as big and are going to have half the number of traffickers and half the number of exploited young people, that's certainly the way to go.

The Chair: Thank you for those questions and answers.

Our next questioner, and I think our last one for this panel, will be from the Conservative Party.

Ms. Ambler.

Mrs. Stella Ambler (Mississauga South, CPC): Thank you.

Mr. Chair, I'd like to share my time with Mr. Dechert.

The Chair: It's your time. You do what you want.

Are you going first, Mr. Dechert?

Mr. Bob Dechert (Mississauga—Erindale, CPC): Just briefly, I want to ask a question of Ms. Sigurdson.

Ms. Sigurdson, you took us through the material benefit provision and you mentioned proposed paragraph 286.2(5)(e)—receiving a benefit “in the context of a commercial enterprise”—and said that it

is going to make a prostitute who sells her own sexual services guilty of an offence. But you didn't mention proposed section 286.5, which says:

(1) No person shall be prosecuted for

(a) an offence under section 286.2

—which is the material benefit provision—

if the benefit is derived from the provision of their own sexual services; or

(b) an offence under section 286.4

—which is the advertising provision—

in relation to the advertisement of their own sexual services.

Then, for further clarification, proposed subsection 286.5(2) says:

No person shall be prosecuted for aiding, abetting, conspiring or attempting to commit an offence under any of sections 286.1 to 286.4 or being an accessory after the fact or counselling a person to be a party to such an offence, if the offence relates to the offering or provision of their own sexual services.

We also have proposed paragraph 286.2(4)(d), which says that anyone can supply any service to another person who is providing sexual services in cases in which that service is proportionate or the fee paid “is proportionate to the value of the service or good” provided.

Why would proposed section 286.5 be there, in your view, if the purpose of the government were to make the selling of sexual services by an individual prostitute illegal?

Ms. Elin Sigurdson: Let me clarify my answer.

First of all, I don't think what I was describing was a sex worker being susceptible to charges. The question from Mr. Goguen was about what is stopping a sex worker from being able to advertise. The answer is that a person she is retaining to do the advertising—and we were discussing a web designer or a web service—would be someone, as you're indicating, who could be hired in the context of normal terms of a commercial exchange. The problem is that under proposed section 286.5, proposed section 286.4 does not apply to those who are providing those services in the context of a commercial enterprise.

If that sex worker is deemed to be conducting a commercial enterprise—

Mr. Bob Dechert: A commercial enterprise, for your edification, refers to an organized brothel, a massage parlour, a strip club; it is not the individual prostitute providing her services or a cooperative between two, three, or more prostitutes working together in their own space, where they're sharing expenses equally. That's what you're not understanding, and to say anything different would, in my view, be absurd.

Ms. Elin Sigurdson: I understand that this is your vision, Mr. Dechert, but if that vision is not actually expressed in the legislation, who is to say that it is—?

• (1715)

Mr. Bob Dechert: Perhaps you could suggest how it could be clarified, but I think it's pretty clear. As a person who practised law for 25 years, I think it's pretty clear. We have a difference of opinion; I appreciate that. I just wanted to point out for the record that there is an exception there.

I'll pass the time back to Ms. Ambler.

Thank you.

Mrs. Stella Ambler: Thank you.

Thank you to all of our witnesses for being here today.

Ms. Sigurdson, you expressed the opinion that we should let the law fall on December 20. I'd like to know if that's your personal opinion, the opinion of the Pivot Legal Society, and/or the opinion of the 200 lawyers who signed this letter?

Ms. Elin Sigurdson: I share that opinion with my colleague Kerry, and I want to ask Kerry if she would like an opportunity to speak to that.

That is my opinion and the opinion of the Pivot Legal Society.

Mrs. Stella Ambler: Thank you. I do appreciate it, but I don't have much time left. I just wanted to know what you were referring to.

I'd like to know if you and the Pivot Legal Society disagree with the premise of putting johns and pimps away, and the principle of criminalizing the buying of sex, which is what this bill does.

Are you opposed to that principle?

Ms. Elin Sigurdson: Yes, we are opposed to that principle, on the basis that it's going to recreate the same harms that came up in Bedford.

Mrs. Stella Ambler: Thank you.

My next comment is to the Smith family. I'd like to thank you for being here. I'd also like to thank you for telling the story of how your daughter was taken in by someone who represented himself like that. I had heard stories like that, but this was the first story we've heard at this committee. From what I hear, that's how a number of young girls do become involved and are taken in.

As the mother of a 19-year-old daughter, I heard your story and thought, "There but for the grace of God, go I", and my family too. I want to thank you for the bravery and courage that must take, and for the work you've done in your daughter's name.

Also, thank you for bringing a picture to show us that she was a beautiful girl, and that she is still very much a part of your family.

Do I have time to ask a question to the Smiths?

The Chair: Yes, one more minute.

Mrs. Stella Ambler: Mr. and Mrs. Smith, I wonder what you think about the argument that we will never eradicate prostitution. I'm sure you could just answer that, if you don't mind. Do you think we should not bother trying and let the law fall, and let the chips fall where they may and hope that it all works out?

What do you think about that?

Mr. Ed Smith: Well, let me speak to that.

From our experience, seeing all the destruction and damaged lives in our years of trying to work with people who are caught in this trap of prostitution, realistically I realize we will never eradicate prostitution completely. Having said that, we need to do everything we can to give hope to the people who are trapped. So often it's a story of despair that we hear. We need to fight and do everything we can to set the captives free.

Thank you.

Mrs. Stella Ambler: Thank you very much.

The Chair: Thank you, Ms. Ambler, for those questions.

Thank you for those answers.

I want to thank the witnesses for coming today.

We will continue the discussion on this bill tomorrow and the next day. We'll be dealing with clause by clause, and we're going to have a discussion on that in the future.

Thank you very much for all of your input. It's been an excellent panel.

With that, I am going to recess for about three minutes while we clear the room, and then we will go in camera. We're going to review two things: one is a request that came to me about witnesses, which I want to clarify; and then what we're doing in the future, based on the letter and the e-mail you sent about clause by clause.

We will do that in two minutes.

[Proceedings continue in camera]

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