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Chair

Mr. John Maloney

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• (1740)

[English]

The Chair (Mr. John Maloney (Welland, Lib.)): I'd like to call the meeting to order. This is the 25th meeting of the Subcommittee on Solicitation Laws of the Standing Committee on Justice, Human Rights, Public Safety, and Emergency Preparedness.

Our first witness this evening is Madam Dufour, from the Université du Québec à Montréal. Bonsoir, Madam Dufour.

The general process is that you would give us a presentation of roughly ten minutes, which would then be followed by questions from our members of Parliament for seven-minute rounds, and then we'll go to approximately three-minute rounds.

I'd invite you start whenever you're ready, Madam Dufour.

[Translation]

Ms. Rose Dufour (Associate Researcher, Collectif de recherche sur l'itinérance, la pauvreté et l'exclusion sociale, Université du Québec à Montréal): Good evening, Mr. Chairman, ladies and gentlemen.

My position is rooted in field research that I have been doing for the past four years. The research report that I have brought with me has 646 pages. I will be tabling it at the same time as my brief.

It is difficult to make a presentation on the findings of this research in 10 minutes. Moreover, I believe that my position will without a doubt require an explanation of some of these findings.

First of all, I would like to say that I have been working with female prostitutes for the past four years. I help them take stock of their lives. This has enabled me to collect data to update the process leading these women into prostitution. I have looked at 20 life stories. I have reached what is referred to as the saturation point with respect to street prostitution and I have concluded that sexual abuse is the key factor explaining how someone becomes a prostitute. After working with these women for a year and a half, I then decided to investigate the johns. I examined 64 johns and, in doing so, I was the first person to conduct research in America on this subject. As a result of this research, I was able to define client types and update the systems categorizing prostitutes and prostitution. I will try to touch on this issue as well. After documenting the two main players in the prostitution system, I did a life history on two pimps to try and understand how others get into this line of work.

So there were three basic questions. First of all, how do women wind up turning to prostitution? My research budget was limited and therefore I was not able to work with male prostitutes. Secondly, why do men seek out prostitutes? Thirdly, how do people become pimps?

The answers to these three questions enabled me to define the ground zero for prostitution, namely the departure point of the systems producing prostitution.

How do women wind up turning to prostitution? My research showed that 17 times out of 20, namely in 85 per cent of all cases, the girls were repeatedly abused in their own family or in their immediate neighbourhood. In addition, I brought to light the fact that the little girl is abused, and since she does not define the conditions of sexual abuse, she is not able to say no to her abuser, generally someone she loves, who has earned her trust and is someone she wants to please. She does not give herself in this relationship: she makes her body available. That is exactly the type of relationship that exists between the prostitute and the john. She does not give herself, because to do so requires a sharing of intimacy, something that the child does not do and that the female prostitute does not do. She simply makes her body available.

In the prostitution relationship, the female prostitute goes through this same motion, namely making her body available. She has learned to be at the sexual service of someone else rather than at the service of her own needs. To be a prostitute means to have a public body, to no longer have a private body. In this sort of representation, the prostitute becomes, to some extent, the most abused of the abused.

I was also able to reveal how poverty is a part of the backdrop to prostitution. In examining the conditions of sexual abuse, I was also able to show that, in some instances, prostitution was the only option available to the abused person. This was because the individual internalized her identity as a prostitute, resulting from the words spoken during repeated sexual abuse and as a result of the exchange of money derived from the activities she was asked to perform.

In another group, there were four women who had no other choice but to become prostitutes, seven others for whom sexual abuse was the main reason leading to the prostitution and six others for whom the sexual abuse was related to the prostitution without however being the primary factor.

This is a very complex issue, and I cannot explain it to you in a few words. I can, however, tell you that the degree of relationship, the intensity of the relationships, the type of rapport established between the abuser and the abused does create a particular type of relationship.

• (1745)

Since the female prostitute is an abused person, I would recommend that this committee no longer view her as a criminal, but instead help her because she has been abused sexually. Most of these women are showing symptoms of post-traumatic stress syndrome.

I do not have time to debate this issue now, but I will do so in answering your questions. I would like to tell you how the practice of prostitution results in a gradual desensitization of the body, a loss of sexual desire and the total destruction of the sexuality of these women. Other consequences are obvious as well, but I do not have enough time to discuss them here.

With respect to the investigation of the johns, the research report contains five chapters which take an in-depth look at certain questions. Who are these men? Why do they go to see prostitutes and how often? What do they do with them? What do they have to say about female prostitutes, etc.?

I will only talk to you about the client types. The first slide shows client type according to motivation. The first category deals with timid johns. Twenty-three per cent of the clients are single men who are unable to have a relationship with women because they are too shy.

Contrary to popular thinking, men do not go to see prostitutes because of dissatisfaction with their sexual life as a married couple or couple, since only 15.6 per cent of the men cite this as a reason.

Another category is called the old bachelor. These are men who voluntarily choose to remain single or who are celibate. Not wanting to make a commitment is this group's characteristic.

The insatiable individual is a married man who says that he is fulfilled in his marital relationship but wants to have all women.

The secretive type represents 7.8 per cent of all cases. This is a john who has special requests to make of the prostitutes, requests that he would not make of his partner or spouse.

Four point six per cent of johns do not fall under any of these categories.

The second slide shows, not in terms of percentage but in terms of motivation, namely the reason why men seek out prostitutes, that in the first three categories, namely the timid ones, the dissatisfied and old bachelors, we have the gallant man, the man who loves women and wants to meet them. The consumer is simply looking for sex. He does not want to meet a woman, he is looking for sex.

• (1750)

Hence 51.5 per cent of the men have a man-woman relationship, whereas the men in the second category, the consumer old bachelors, the insatiable client and the timid men, hence nearly 40 per cent of the cases, are in a man-sexual object relationship; women are not subjects.

This is an interesting observation because it is conveying a certain prognosis of the situation. When the consumer old bachelor, the timid individual and the insatiable are misogynists, meaning that they hate women and are violent, they are already in a man-woman object relationship. We can see the danger.

In the first two cases, it is different. If the timid man, for instance, were to meet a woman with whom he could develop a relationship, he would stop turning to prostitution. Similarly, if the dissatisfied man were able to find a way to resolve his problem, he too would stop turning to prostitution. However, the man in the other categories, the old bachelor, the insatiable client and the secretive man, do not want this. For them, prostitution appears to be to some extent irreversible.

When you analyze the way the johns perceive prostitution and the prostitute, it is remarkable to observe that most of these men do not see the women that they solicit and pay as prostitutes.

The men questioned felt that there were three types of prostitutes. The hard-line prostitute, as they put it, is the street prostitute who began prostituting herself at a young age and is not able to leave the life behind. The needy prostitute is one who is poor, who has very few johns and makes very few demands, namely she asks less of her clients. Between the two is what they call the soft prostitute, the one who does this for pleasure. They do not think that she prostitutes herself for money.

In all cases, the men believe that the female prostitutes like sex and that they are prostituting themselves for this reason, which is completely false. I never met any woman, in the past four years, who was prostituting herself to fulfil her sexual desires.

The men feel that they are giving something sexually to these women, which is false. I believe that they now need to learn that they are doing nothing of the kind as far as that is concerned. The men are ignorant of the lives that these women have led, they are unaware of their tragedies, the reasons prompting them to get into prostitution. They are also ignorant of the impact that prostitution has on these women. Moreover, I noted that they were extremely sensitive when I explained the life history of the women with whom I was working. They were silent and moved by these questions.

As a result, my position with respect to the john is that we need to criminalize him and help him. The prostitutes are the shadow of these men, the shadow of the most odious side of these men. The client creates prostitution when he solicits minors and when he consumes prostitution offered by minors. In adult prostitution, the john has the desire and the money. The prostitute has the beauty and the ability to give him sexual enjoyment. He is in the dominant position because she needs this money. In adult prostitution, the john sustains prostitution by consuming it and he creates it when he solicits. If there were no johns, there would be no prostitution.

As far as family life is concerned, we are wrong to think that prostitution only involves the man who uses it. Based on some experiences I have had with families where the father uses prostitutes, I think that we should, on the contrary, observe that this practice has consequences for the entire family, and these consequences are not only financial in nature. Indeed, a family man's use of prostitution implies a certain perspective on women, which in turn has an impact on the entire family.

● (1755)

Legally, I feel that it has become important that we take a position with respect to the responsibility of the clients who create prostitution, not only by handing down sentences that are meaningful rather than symbolic, but also by handing down sentences that consider the behaviour and action of the clients with respect to the prostitute.

Not everything is acceptable in a relationship with a prostitute. My research paper describes how female prostitutes tell their clients what the limits are. For instance, sodomy is not commonly practised among prostitutes. Clients do break the rules, not only with respect to sodomy but also the use of excrement. Generally speaking, the focus is on, for example, the fact that the prostitutes are minors and the sentencing reflects this. Consideration is never given to the behaviour of the johns.

Moreover, I would like to point out that in a relationship with a prostitute, there is a convergence of two miseries: the misery of the female prostitute and the misery of the john. The john loses his dignity and his money and, in the majority of cases, as you can read in the report, the men are not satisfied with what they get in this relationship.

There is a great deal of work to be done in educating johns. I found that the gap between the women and the men was tremendous. The women, unlike their clients, know perfectly well with whom they are dealing.

As for the pimps, I only delved into the life histories of two of them. The purpose of the investigation was simply to assess the feasibility of the research. I did a life history on a female owner of a massage parlour and a male owner of an escort agency. I simply wanted to verify if, in their family life, they were already very close to prostitution, and that's what I found. I don't have an opportunity to go into this now, but I will if you so wish.

With respect to the pimps, my position is that all forms of pimping, including the hidden and hypocritical pimping that is carried on in the newspaper classified ads, must be criminalized. I observed that it is the classified ads in our newspapers which keep the functional prostitution system turning. The girls run their ads there, the clients find the telephone numbers they are looking for there, and the pimps use these ads to advertise the services they want to provide.

That summarizes my position. I apologize for taking up so much time. I will be tabling a written document.

[English]

The Chair: Thank you very much.

Mr. Hanger, for seven minutes, please.

Mr. Art Hanger (Calgary Northeast, CPC): Thank you, Mr. Chairman.

Thank you for your presentation here. I think you've brought up some very significant points. One of them, of course, centres around your research on the client.

You've interviewed 64 clients. Of course, you've also interviewed two procurers, as you pointed out, or pimps. But with the clients, looking at your chart here, table 19, I would assume from this research that you have gathered using the raw material of people themselves that the dangerous clients come on the far end of the scale here. I would assume that they're in the "insatiable" category and the "secretive" category. Am I correct in that?

● (1800)

[Translation]

Ms. Rose Dufour: Yes, I believe that you're right. In the consumer old bachelor category, we can see that these people have a different relationship with a prostitute. By definition, these clients are not necessarily dangerous, but they may be, because they have greater requirements.

[English]

Mr. Art Hanger: Yes.

Now, in your interviews with any of these individuals who use women in this fashion, did any of them admit to violent tendencies toward women?

[Translation]

Ms. Rose Dufour: Yes, we talked about physical and verbal violence. Generally speaking, the men said that they asked the women's permission when they wanted to use violent language or violent treatment. These categories, which I discussed with the men, included individuals who wanted to be dominated. That was the case, for example, of the secretive one.

For some of the other categories, the female prostitutes said something very different about their clients. They said, of course, that their clients asked for their permission when they wanted to use violent language and that they felt free to accept or refuse.

Generally speaking, a very violent client does not ask for permission. Over the past year, in the organization where I work, six women died as a result of violence inflicted on them by their clients. One of the women who participated in my research disappeared at the end of last summer. I can't find her.

[English]

Mr. Art Hanger: You really don't make any distinction here between what might happen on the street and what might happen in an escort service or a massage parlour or even—as one might classify all of them, with the exception of street prostitutes—bawdy houses.

[Translation]

Ms. Rose Dufour: Thank you for asking this question, which is extremely important. I focused on street prostitution because it is the most dangerous: the girls are more vulnerable, a great deal poorer, heavy drug users and very much alone. In Quebec City, contrary to Montreal, female prostitutes are less likely to have procurers. I therefore focused more closely on the street prostitutes rather than the escorts.

However, when I analyze their professional career path, if I can call it that, I can see that they generally start out as nude dancers, employees in escort agencies or massage parlours before they finally wind up on the street. In some cases, they began prostituting themselves when they were teenagers. Indeed, they start doing this generally at around the age of 13, 14 or 15. If my memory is accurate, that would apply to nearly 46 per cent of all cases.

I must say, however, that four out of the 20 women began later, at the age of 35, 37, 40 and 46. Needless to say, these women did not get into the trade in the same way. Generally speaking, the women were sexually abused when they were young. However, in these cases, other factors related to their family life resulted in their winding up on the street. In some cases, these women were solicited by clients; in other cases, they decided to sell their services on the street.

• (1805)

[English]

Mr. Art Hanger: You've had a good opportunity to talk to two groups of people here—probably three, actually—and it looks like you are participating in an organization whose objectives are to help young people who have fallen into prostitution to get out. So I assume you must be of that mindset, that it's not something that should be legitimized, and you do preventative work among young people, making them aware of the realities of prostitution.

[Translation]

Ms. Rose Dufour: I am not sure that I understood you well. I didn't have any interpretation.

[English]

Mr. Art Hanger: I can repeat the question.

You work with an organization whose objectives are to help young people who have fallen into prostitution get out.

[Translation]

Ms. Rose Dufour: No, not at all. The purpose of *Projet Intervention Prostitution Québec* is to accompany people who live on a daily basis in the world of prostitution and to help them. Our mandate is definitely not to get them out of prostitution. Should they decide to get out, we support them.

[English]

Mr. Art Hanger: I'll just make a point of clarification, Mr. Chairman.

I'm looking at this document that was submitted with your name on it, the *Projet*—

[Translation]

Ms. Rose Dufour: *Projet Intervention Prostitution Québec*.

[English]

Mr. Art Hanger: —Intervention Prostitution Québec. That's what their mandate is. So you don't agree with that mandate?

[Translation]

Ms. Rose Dufour: No, its mandate is not to get these people out of prostitution. I do not know what you have in your hands, I do not have it. The mission of *Projet Intervention Prostitution Québec* is to help individuals who are in prostitution and not to get them out of it.

[English]

Mr. Art Hanger: The project listed here is *Projet Intervention Prostitution Québec*. It says the project was created in 1984 in the city of Quebec to offer support and a comprehensive approach to young people with prostitution-related problems. The two main objectives are to help young people who have fallen into prostitution get out and to do preventative work among young people by making them aware of the realities of prostitution. That's what it says here. You don't agree with that?

[Translation]

Ms. Rose Dufour: I did not write that document. I do not know who tabled this document. The objective of the organization is not to get the people out of prostitution but to help them.

[English]

The Chair: Thank you, Mr. Hanger.

Mr. Ménard, please.

[Translation]

Mr. Réal Ménard (Hochelaga, BQ): First of all, I'm very pleased to meet you because the publication of your book in Quebec—I do not know what the situation is in English Canada—got a lot of people talking. It seems to me that you have made a major contribution. I have not yet read your book. That will be part of my summer reading, and I obviously hope that your book will enable me to gain as much insight into the issue as you have.

However, I am a bit surprised because I had read the work done by Professor Shaver, of Concordia University, and Colette Parent, who were in fact both subsidized by the Law Reform Commission of Canada. Obviously, 20 sex workers is a large sampling because this is a clandestine clientele, a clientele that is not always so willing to participate in this type of investigation.

Is your report scientifically conclusive? Perhaps you could give us your opinion on the matter. You certainly have a big sampling, given that this is a difficult clientele to reach.

What I find so surprising about your testimony is that you appear to be excluding the possibility that women go into sex work deliberately, for self fulfillment and with their freely given consent. In previous testimony, spokespersons for sex workers have given us this viewpoint. Personally, I know male escorts who do this work very willingly.

Do you not think that your assessment may have eclipsed a phenomenon that may exist, even though it may not be contained in your sampling?

Ms. Rose Dufour: For the past four years, I have been working daily at *Projet Intervention Prostitution Québec* with female prostitutes. I have also been to the Quebec Detention Centre. I have been meeting with female prostitutes for the past four years.

I do acknowledge that there is a difference between the street prostitute and the escort. The escort plays the role of a seductress, and the client is also in a relationship where there is seduction. Regardless of what the case may be, for the past four years, I have met nude dancers, escorts, street prostitutes, and none of them wanted prostitution to be recognized as a trade just like all the others. It is not a trade, because using one's sex as a work object is tantamount to making oneself an object.

• (1810)

Mr. Réal Ménard: In my opinion, there is a nuance that you are perhaps not making.

I am the MP for a riding in east Montreal. There are at least 100 or 150 sex workers that are known to the police department. My riding is next to the gay village, where we have the phenomenon of the escorts.

True, it is not a job like the others. You won't find much literature to say that this is so. However, when johns go to escorts, the end result is not always a sexual act. I know at least 20 johns who go there to fulfil their relationship requirements. I agreed with your categorization. People don't always seek out a sex worker for sex. Some people do this to fulfil emotional needs. Escorts, both men and women, have told me that people went to see them just to be cuddled or because they felt like talking. There are people who pay just so that they can talk.

I do not know if you could conclude that being a male or female sex worker involves only the fulfillment of sexual needs. I think that there are emotional needs. People who are terribly alone in life need these services. Could you envisage this possibility?

Ms. Rose Dufour: No, I cannot envisage this possibility because none of the women who prostitute themselves see it this way. I could bring several women here to testify, because it's up to them to say what their opinion is. As for me, I can only talk about the experience that I have had over the past four years.

As far as the pimps are concerned, what you're saying is true. The classification of clients shows that there are some clients, such as the timid ones, who will pay simply because they want to be touched by a woman or to smell her odour. But is this a reason which justifies our agreeing, as a society, that women should become merchandise in order to fulfil such a vision? Come on! The men themselves, when they talk about this issue, acknowledge that they have an economic vision of women and sexuality.

It is difficult to sum up in a few words, but in another aspect of the research, we could see that the men have an economic vision of marriage and of the relationship of the couple. Women do not have the same perception of a relationship.

Mr. Réal Ménard: May I ask a final question?

Ms. Rose Dufour: I'm here for that.

• (1815)

Mr. Réal Ménard: Rest assured that I will read your book.

As legislators, we have to make recommendations. From what I gathered from your preliminary remarks, you would be more inclined to advocate the Swiss model, which is to criminalize the johns but not the female prostitutes. Did I understand your recommendations correctly? If we had to base ourselves on a model, would you be closer to the Swedish model?

Ms. Rose Dufour: Yes, absolutely, because of the consequences of prostitution on women's bodies.

For example, I know a girl who has been working for an escort agency for 12 or 15 years now. She cannot get out of it. She would like to get out of it. She is desperate because she now has a relationship with a man and she would like to make a definitive commitment.

What do those women want? They want to form a couple with a man who will protect them and love them for what they are. It is absolutely impressive to see, in the research document, how little the men who are their clients know about these women's lives, they do not know them either as women nor as prostitutes. They only know them through sex. They are much more than that, however.

Whatever the kind of prostitution, all the women will suffer the absolutely disastrous consequence which is the total desensitization of their bodies. Even the escort girls and the hostesses have told me what kind of absolutely awful distress they are in. Actually, they do not feel anything anymore. Their entire sexuality is annihilated.

Mr. Réal Ménard: Do I have time for one last question?

The Chair: No.

Mr. Réal Ménard: I am sorry, I must leave, but until the next time.

Thank you.

[English]

Ms. Libby Davies (Vancouver East, NDP): Thank you very much, Madam Dufour, for coming.

I wanted to tell you that when we were in Montreal hearing witnesses, your book came up and in fact was very hotly debated. There were some people who thought your book was very good, and there were others, some of the sex workers there, who hotly disputed your book, but it was an interesting discussion.

It's a very complex subject. I consider myself a very strong feminist, so I certainly don't wish to see women exploited or commodified, but I find it interesting as to where we draw the line and where we say something is legal or illegal. For example, women are commodified or use their bodies if they're fashion models, even if they're exotic dancers or maybe other kinds of dancers. Sometimes women marry for money; I don't know whether that means they're commodified in some way.

I wonder, on a more philosophical basis, where you draw the line. It seems to be much more of a moral argument because it involves sexual activity. That's one question.

The second question, which I'm really interested in, is how you see the difference between street prostitution and off-street prostitution. We did hear from a lot of women, particularly in Montreal. Most of them were escorts but not all, and many of them put forward a point of view that they were there by choice. Not all of them but some of them did say that, and you were just speaking about the escort end of things vis-à-vis street prostitution. I just wonder, why do you see a difference there? Does it have to do with class or poverty? As you relate that back to more of a moral argument or commodification, then what is the difference?

[Translation]

Ms. Rose Dufour: I would first like to say that when I started my research, I did not look at erotic dancers as prostitutes. The first dancers I interviewed were the ones who explained that erotic dancing in front of a male audience was prostitution. They were using their bodies to get paid.

Since erotic dancing is now practised in booths, the situation has totally changed; it is disastrous now. Before, the girls danced on a stage and there was some distance between them and their clients. They were paid to dance. Today, they are the ones who have to pay to dance. They have to accept to go into a booth with their clients, otherwise they do not get any money. What happens in those booths? Fellations, amongst other things. It is not just touching, it is also sexual relations. The dancers tell me that even without the touching or the sexual relations, it is prostitution because they are using or exposing their bodies in exchange for money. Looking is touching.

In the context of the research I did with those girls, I saw that some fathers were incestuous through the intrusive way they had of looking at their daughters. I managed to show—I am thinking of Marion's case, here—that the damage caused by the sexual abuse of an incestuous father was absolutely dramatic. And yet in that case, he never penetrated his daughter. He touched her, licked her and looked at her intrusively. I would encourage you to read that story which is absolutely pathetic. Sexual abuse is not just a matter of sexual relations.

To marry for money, you say? Some men did talk about that during interviews. It does exist, of course. There are also men who marry women who have money. In the context of her marriage, the married woman does not compare herself to a prostitute in any way because she is founding a family, giving birth to children, educating them, making good citizens out of them and so on.

How can we define prostitution? It is an exchange of sex for money, without regard for the wishes or needs of the person committing the prostitution. That person is not there to fulfil his or her sexual desires. On the contrary, she is setting them aside to serve the other one. That is what sexual abuse has taught her to do.

• (1820)

[English]

Ms. Libby Davies: Does that mean women in marriages who provide sexual services and are maybe not satisfying their own needs or are doing it unwillingly are also prostitutes?

[Translation]

Ms. Rose Dufour: Sorry, I was distracted. Would you mind repeating your question?

[English]

Ms. Libby Davies: You say prostitution is where the prostitute herself is not being satisfied, where it's against her wishes. That happens to women in marriages. Are they prostitutes?

I really don't understand where your definition begins or ends. The way you define it, it's very broad. Are you saying we should not allow exotic dancing?

[Translation]

Ms. Rose Dufour: In my opinion, the fundamental difference lies in the fact that the woman prostituting herself makes her body available. In a loving relationship, there is an exchange and a sharing of intimacy. The fact that some people cannot have that kind of experience within their marriage does not change that definition for all that.

In the prostitutional relationship, there is an exchange of sex for money without regard for the needs or wishes of the person prostituting herself and there is no emotional or relational commitment by the client. To my knowledge, in a couple's personal relationship, there is an emotional and relational commitment by the partners. That is not the case in the commercial and prostitutional relationship.

I will say it once again: the consequences of prostitution for those women are totally dramatic. I am not the one who invented those consequences: the women themselves have drawn up the list and described them.

[English]

The Chair: Thank you, Ms. Davies.

Dr. Fry.

Hon. Hedy Fry (Vancouver Centre, Lib.): Thank you very much, Ms. Dufour.

I wanted to carry Ms. Davies' concerns a bit further.

First and foremost, we've heard from so many women in our travels who said they would like to be able to choose to be a sex trade worker. Some of them have told us they also have a loving relationship with somebody else. They live with that person, they go home to that person, they have that relationship. They do this because they believe they are providing a service. Some of them believe, in terms of the shy person who needs to be held or a disabled person who can't find someone, that this service can be a good one. Many of them believe after a while that they are providing a service. They detach themselves as they provide this service, possibly in the same way that many people detach themselves when they provide services. Physicians try to detach in some way from a patient when they provide a service, especially if that patient is dying. In order to provide good service, you have to make sure you are doing the right things for the patient. You tend not to allow yourself to become too emotionally attached to the patient—where your judgment can be impaired. There are cases where people detach themselves. We heard that from women.

You said you've never met such women. We have met such women. The question that Ms. Davies is asking, and that I wanted to ask as well, is that sometimes it seems there are those of us who believe we can make victims out of people who do not say they are victims. They say, "We do not choose to be victims. We want to make choices. If this is a choice, why would you tell me that I am a victim? Why would you tell me what I should and should not be doing, and how I should and should not feel about myself?" We've heard that.

The second piece I'd like to ask you about is you talked about the Swedish model being one that you thought was a good model. But we get into this conundrum, this hypocrisy, in that you're saying a woman cannot be criminalized for selling sex, but you criminalize the man for buying it. You've created a situation in which the woman cannot do her job, because she's still engaging in a criminal act when she engages with a man who is doing a criminal act. We've read reports from women in Sweden who said they felt quite cut off from going to the police to seek help for a violent client, because they couldn't say they were doing this, because in many ways this was wrong. I mean, you can't have one half of a person being a criminal and another half not being a criminal. It's actually not a logical thing to do. Many of them were worried that their children would be taken away from them. In fact, they had no recourse for protection when they needed it from a violent client. So they didn't think the Swedish model worked.

Those are the two questions that I'd like to ask you, because there seemed to be other arguments than yours, from women who work in the trade.

• (1825)

[Translation]

Ms. Rose Dufour: Four years ago, I was saying the same thing as you; I held the same prejudices that you do because I did not have the experience in the field, because the girls themselves were telling me what advantages they saw in prostituting themselves. It took me four years of intensive work just to define the phenomenon. It took me four years to understand what the consequences of prostitution were, but especially what the fundamental mechanism was that meant that in the prostitution relationship, those girls were reproducing the situation of their sexual abuse, although unconsciously. When you talk things over at length with them, they say that they do not want to remain prostitutes. I do not know any who want to.

Of course, I know what you are saying and I also hear that kind of talk.

[English]

Hon. Hedy Fry: What you're really saying is that these women don't know what they want, they don't know what they feel, and that you know, and we know better.

[Translation]

Ms. Rose Dufour: No, I am not saying that.

[English]

Hon. Hedy Fry: I'm a physician, and I can tell you that I have to accept what my patient tells me as being their reality. It is not up to me to decide that I know better than them what they should do and how they should feel. If someone tells me over and over that they

think they would choose to do this for certain reasons, who am I to say they should not? "I don't think you should feel that way. I know you are wrong, that you are not in touch with your feelings." That strikes me as being a bit paternalistic. It's a system where you get to say to people that you know better than they do, how they feel and what they want out of life.

[Translation]

Ms. Rose Dufour: There is what the girls say and there are the results of a scientific analysis based on scientific criteria. Science is supposed to allow us to go beyond the prejudice and appearances. Of course, all this research is based on what those women have said. There are only 20 and that is not a statistical sampling. For this kind of qualitative research, we use a principle of data saturation which means that at a given point, we do not obtain any new data. I can tell you that in the case of those 20 women, the data I obtained concerning street prostitution reached the saturation level. Not having the funds available to do it, I did not undertake exhaustive research with the women working as erotic dancers or in escort agencies. As for those with whom I did work, I came to that conclusion and I consider that is the position I must take.

I am perfectly aware that my recommendations may seem surprising, but I think that is the direction to take. I have held many conferences since the work appeared and, to date, I have been very touched by men's attitudes. I find they are showing a lot of sensitivity concerning the conclusions of the research, especially concerning their view of the prostitute and prostitution as I described it.

During interviews, men also said that they want prostitution to be recognized as a job the same as any other and that is why they were participating in the research. I would then ask those who were fathers if they would agree to their daughter or their son becoming a prostitute. None of them were. I wonder if you would agree to your daughter becoming a prostitute. If she can turn to prostitution, then all women can.

You have doubtless heard about the e-mail I have received and that I could forward to you. It is a situation in Holland where prostitution is recognized as an occupation. An unemployed woman was offered a position in an escort agency. She wanted to refuse and said it did not suit her but she was told that it is an occupation like all the others and if she refused that work then she would lose her unemployment insurance benefits.

In conclusion, I would say that in my opinion, the 21st century's challenge is going to be human dignity. Debates like the one we are having on the status of prostitution as well as others on the sale of organs, human cloning and the right to euthanasia as a way of dying with dignity, are hot subjects of capital importance for human dignity.

This afternoon, while I was walking along Confederation Boulevard, I saw an enormous sculpture where it was written that all humans are born equal in dignity and rights. The 20 women I worked with were not born under conditions that allowed them to develop their dignity. I do not think that prostituting oneself enhances one's dignity.

I am not sure that I have done full justice to the contents of this brief in speaking here today. So I would ask you to read it.

Thank you.

• (1830)

[English]

The Chair: Madam Brunelle, do you have any questions?

[Translation]

Ms. Paule Brunelle (Trois-Rivières, BQ): Ms. Dufour, it's very interesting to hear you talking about sexual abuse as the key to a pattern, a sale. You say that the prostitute who has a public body doesn't have a private one anymore. It's the first time I hear that kind of thing. This leads you to say that we should decriminalize the female prostitute because she's a victim. Now, in that case, I wonder if you can get out of prostitution, because you're going to wind up with post-traumatic stress syndrome. I'd like to hear a bit more on that. What can we do, as lawmakers?

It's hard to generalize. You're defining one kind of woman, one kind of prostitution. There are all kinds of other things. There certainly have to be some measures to support them. We have to change the law. It's hard for me to make distinctions in all of this.

Give me a bit more clarification on the post-traumatic stress these women are suffering.

• (1835)

Ms. Rose Dufour: I'll take the example of four girls who had no value except on the sexual level and who were victims of abuse. For some, sexual abuse started at the age of four. I'm thinking of Jo-Annie, who became a victim of abuse at eight and whose mother was herself a prostitute.

Before, I said that 17 times out of 20 they were victims of repeated sexual abuse over the years, sometimes by many different people within the family or their close environment. However, I did forget to mention that 20 times out of 20 the mother/daughter relationship shows a deficit and is a problem. In some families, there's a structural system that produces prostitution when the father is the abuser, the daughter is abandoned by her mother and the mother denies whatever sexual abuse or incest the father or brothers are engaging in. There's really a structure. In some cases, like the first four, insulting words are used during the abuse. The child is paid with money, candy, clothes and so on. In those cases, she internalizes a prostitute's identity. So she has no possible alternative. She can only become a prostitute.

In other cases, you don't have that internalization of the prostitute's identity, which is something I witnessed with six girls, who have a sort of leeway. At least, they're not as badly affected. There is a possibility they might not become prostitutes. However, in those cases, I did notice that they were very close to prostitution, they lived in an environment close to prostitution and they were very poor. Actually, prostitution is a phenomenon directly linked to women's poverty. The background to prostitution is always the need for money.

In 12 of the cases out of 20 I saw that the person who introduced the girl to prostitution was a girlfriend. These are extremely lonely women. When I'm talking about poverty, I'm not just talking about

economic poverty but also about affective poverty. These women are lacking affection. This is relational poverty and social poverty. These are women who are extremely alone, women who have lived in foster homes. The foster home doesn't allow the person to integrate because it doesn't build links or social networks.

Socially speaking, I've seen how dramatic it is when the social programs end when they reach 18 years of age. When I'm talking about the end of a social program, I'm not talking about welfare which is actually assured, but rather about the supervision, the emulation, the aid and the support that are generally offered. At 18, those girls wind up alone in the street without supervision. So they're immediately roped in by the prostitution system. In some neighbourhoods where prostitution is widely practised, when a woman is very poor the temptation is great because she has become very familiar with prostitution which is a familiar and daily thing.

Ms. Paule Brunelle: Some groups that were trying to reintegrate these women into society, including in Vancouver, said that this could take between five to ten years. That may be the reason why the woman that you have described needs to make herself whole.

Ms. Rose Dufour: The work required to restore oneself is enormous. Since this research report was published, I have been concerned with only one thing. How can I support these women? How can we help these women to find a way out of prostitution?

I made myself available to help them and try to understand how they manage. I have no research budget. I am doing this out of a personal sense of commitment, because I am interested and concerned.

The women have told me that it is much more difficult to get out than it is to get in. According to what I have read, one year of prostitution requires seven years of rehabilitation. Of course, in financial terms, money is an important aspect. But these women are not getting rich. According to popular wisdom, prostitutes can make a good living, but it is as if they were dealing with Monopoly money. It is dirty money, which is very quickly wasted.

Of course, there are exceptions. I have met some women who have used this money to find a way out, but always in very special conditions. They had already begun the process, for one reason or another. Otherwise, they do not tend to save their money.

Also, drug and alcohol use is part and parcel of the profession. They drink or take drugs beforehand in order to go through with it, during, so as to be able to do it, and afterwards, in order to forget. Afterwards, these women bathe compulsively. But they cannot wash away the soiling.

• (1840)

[English]

The Chair: Thank you, Madam Brunelle.

Madam Dufour, our time has expired. We very much appreciate your appearance here this evening. You certainly have presented a view perhaps a little different from what we've heard, and that's what we need, a little bit of balance. Merci.

[Translation]

Ms. Rose Dufour: Thank you.

[English]

Mr. Art Hanger: I didn't quite get the position of Ms. Dufour on one or two of our issues that we talked about here. Number one, does she consider the solicitation laws jeopardizing?

The Chair: You have to make it very quick, Mr. Hanger, please.

Mr. Art Hanger: Yes.

Do you consider the solicitation laws as creating danger for street prostitutes? Since the committee has gone beyond all that and has gone into the whole issue of bawdy houses, should all the bawdy house laws, living off the avails, and other laws be stricken from the books?

[Translation]

Ms. Rose Dufour: I did not hear the translation.

[English]

The Chair: Repeat the question again, Mr. Hanger, please.

Mr. Art Hanger: It's a point of clarification. It has been said that the solicitation laws have driven prostitutes into dangerous places and therefore should be removed from the books, and that the bawdy house laws should be removed from the books, and living off the avails of prostitution should be removed from the books as well. What is your opinion on that?

[Translation]

Ms. Rose Dufour: I hesitate to comment on the act, since I do not have it in front of me. I would say that, in my opinion, soliciting someone for the purpose of prostitution, whether it be the pimp or the client, must be criminalized.

Ms. Paule Brunelle: But the woman is not a criminal.

Ms. Rose Dufour: I have to be consistent with the process that I have uncovered, which is that in prostitution, the woman reproduces the dynamics of sexual abuse by making herself only physically available, since, mentally, she becomes dissociated. I do not think she is a victim, but I believe that she needs help.

I explained this much more clearly in my brief.

[English]

The Chair: We have the second part of the question regarding bawdy houses.

Mr. Art Hanger: For clarification on the bawdy house law, there's been a push because of an effort to suggest that the solicitation law be removed from the books; then prostitution could go indoors and it's a safer environment. Not only are there people arguing that point, but the homosexual community is also arguing that point, that the bawdy house laws be stricken from the books.

•(1845)

[Translation]

Ms. Rose Dufour: I cannot answer that question because I am not sure that I understand the full meaning of what you are asking. I do not agree with having tolerance zones, if that is what you are getting at.

[English]

Mr. Art Hanger: No, it's not so much whether or not you agree with the zones of tolerance but rather—

Ms. Libby Davies: On a point of order, I know at least two members of the committee have to leave at 7:30, which is meant to be the end of our meeting, and we're now 15 minutes into what should be the time for our second witness. If we're going to have an ongoing discussion, maybe the researchers can follow up with some written question if there needs to be a clarification. I'm just worried about the time.

The Chair: We also started late. We're still within the hour.

Mr. Hanger, I think we're going to have to move on to our next set of witnesses.

Mr. Art Hanger: That's fine.

The Chair: I wonder if you could speak with our witness during the quick change we're going to do.

Thank you, Madam Dufour. *Très bien, merci.*

We'll just pause for 30 seconds to allow our next panel to take their seats.

•(1845)

(Pause)

•(1847)

The Chair: I'm wondering, in view of Ms. Davies' comments that she and I believe Dr. Fry have to leave, if we would extend to them the courtesy of letting them take the opening rounds. We'll go in the opposite direction, if that's okay. *Pas de problème? Très bien.*

Our next set of witnesses are from Egale. I'd like to welcome Laurie Arron and Stephen Lock. Thank you very much.

Mr. Arron, I understand you're going to commence and then turn the discussion over to Mr. Lock. We have roughly ten minutes for our presentations, to be followed by questions and answers of roughly seven minutes, and if we have time, we'll go to a second round of three-minute questions and answers.

Go ahead, sir.

Mr. Laurie Arron (Director, Advocacy, Egale Canada): Thank you.

Honourable members of Parliament, my name is Laurie Arron, and I'm the director of advocacy of Egale Canada. Egale is Canada's national group working for equality and justice for lesbian, gay, bisexual, and trans-identified individuals and their families.

Egale appreciates the opportunity to make submissions on the important issues being addressed by the subcommittee. Egale's submissions will be focused on the indecency provisions of the Criminal Code, which have been used to target lesbian, gay, bisexual, and trans-identified bathhouses. We call that LGBT for short.

I'm here today with Stephen Lock, a member of Egale's board who lives in Calgary and who has a great deal of knowledge of the impact of the Criminal Code on the gay community. Our presentation will include the following: first, the nexus between solicitation laws and laws criminalizing private adult consensual sex; second, the nature and history of gay bathhouses and the impact of the Criminal Code on them; third, an overview of laws criminalizing private adult consensual sex; fourth, charter problems with criminalizing private adult consensual sex; and fifth, Egale's recommendations.

First, the nexus between solicitation laws and laws criminalizing private adult consensual sex. Canada's solicitation laws do not exist in a vacuum. They are inextricably linked with the regulation of sexual morality generally. Egale believes it's important for the subcommittee to examine this larger social and legal context and to make recommendations that will move Canada away from the imposition of the sexual morality of some on the lives of others and move us towards a society with greater respect for personal autonomy and a realization that the scope for healthy sexual activity is much larger than that permitted under the current Criminal Code.

Laws and policies that regulate sexual behaviour have long been used against lesbian, gay, bisexual, and trans-identified people and have done us great harm. In large part this is because LGBT sexuality was considered immoral. It is quite evident from the current equal marriage debate that many Canadians still consider LGBT sexuality to be immoral. It is also clear that the charter requires that our laws not be based on this sort of negative judgment of LGBT people.

The fact that lesbian, gay, and bisexual people are subjected to harassment, discrimination, and violence because of who we are sexually attracted to means part of our coming-out process is looking deeply at our sexual desires and activities. We struggle with the societal homophobia we have internalized. Finally, if we make it through that struggle, we recognize our sexuality is not something inherently immoral or evil but rather something that can be a healthy and joyful part of who we are. It is that perspective that informs Egale's presentation today.

Egale has developed five guidelines through which we evaluate the regulation of sexual activity, and these can be found in our submissions on page 3. We offer these to the subcommittee as sample criteria that could be used to evaluate legislative options.

One, in general, any prohibition of sexual activities must be justified on specific and compelling grounds.

Two, equality: when laws or policies that regulate sexual behaviour are justified, they must be written and applied equally to all.

Three, community standards: sexual activities should not be prohibited merely because they offend community standards or are considered immoral by others.

Four, the harm principle: where there is reasonable expectation of privacy, sexual activities between consenting adults that do not harm others should not be prohibited.

Five, sexual abuse: Egale recognizes and affirms the need to protect against the harm caused by sexual abuse and in particular sexual abuse of children and adolescents. In so doing, government should educate and empower adolescents to make healthy sexual choices.

The second part of our presentation deals with the nature and history of bathhouses and the impact of the Criminal Code. Egale's experience and expertise in respect to bawdy house laws lies mainly in dealing with raids on gay bathhouses, which Mr. Lock will speak about shortly. Gay bathhouses serve a specifically sexual purpose. In a bathhouse it is possible for people to simply be sexual with each

other with no pretence of any other purpose. There is no courting and no expectation of anything to follow. There is mutual understanding among the participants. There is free and informed consent.

Although the Criminal Code's impact on bathhouses is the focus of this submission, Egale also wishes to make clear that we support an end to the criminalization of all private adult consensual sex that does no harm, regardless of the sex, gender identity, or sexual orientation of the participants.

My colleague Stephen Lock will now provide a brief overview of the nature and history of gay bathhouses and their uneasy relationship with the police.

● (1850)

Mr. Stephen Lock (Member, Board of Directors, Egale Canada): Thank you for hearing us. I'd like to give a quick overview of a typical gay bathhouse, the physical environment, and then talk a little bit about the impact of bawdy house charges on those charged.

From conversations over the years with those who do not attend such establishments, whether they be gay or lesbian themselves or heterosexual, the most common assumption made is that upon entering such a premise, one is immediately presented with sex occurring. Such is not the case at all. All such establishments have controlled entry. This is as much for protection against harassment or actual violence directed towards patrons as it is for better controlling the collecting of money for the rooms, lockers, distribution of towels, etc. There is usually at least one door that one must be buzzed through before gaining access, and frequently there's more than one door. Upon entering the premises, there's often a lounge area, foyer, or coffee bar situated immediately within the entrance, with the rooms and lockers further on. So the way in which a bathhouse is set up is very controlled, and hence, in our view, private.

The impact of bawdy house charges on individuals cannot be stressed enough. For simply being on site at the time a raid occurs, an individual can be criminally charged. The individual does not have to be shown to have been engaging in any illegal or indecent acts in order to be charged. The mere fact that the individual is present is enough for that individual to be charged with an offence.

The damage this does is incalculable. In the instance of the raid on Goliath's in December 2002 in Calgary, one individual among the 13 men charged had merely dropped by on his way to work, to return a music video he had borrowed from a friend of his who worked at the coffee bar. He'd stayed for a coffee and a chat before leaving for work.

Another individual, Terry Haldane, the one man who refused to opt for alternative measures and who planned, before his charges were stayed 23 months later, to launch a charter challenge to these laws, experienced stress, anxiety, panic attacks, depression, and fear. He landed in the hospital twice with anxiety-related issues following a heart attack he'd suffered a year before the raid. Haldane was advised by his lawyers to resign from a neighbourhood community health and safety committee, on which members of the vice unit also sat, so as to not compromise his case.

One of the men originally charged as a keeper, and who worked the front door on a part-time basis to put himself through college, was terrified his career working with street-involved and at-risk teens would be jeopardized. His charges were eventually dropped, but not for several months.

The manager had to resign due to medical issues arising from the ordeal, and continues to suffer panic attacks. The owner is terrified the police will return, is currently in debt, has lost close to \$250,000 worth of business, and is seeing a therapist.

Of the 13 men charged, 12 opted for alternative measures in order to safeguard their private lives, their careers, their families, and their perceived standing in the communities in which they lived. Most of these men were closeted. Several were heterosexually married with families, and several of them were from visible minorities. While not typical of gay bathhouse patrons, a significant number of men who patronize these establishments could be described as closeted. Their only connection to the homosexual male community is attending a gay steambath or sauna.

As no gay bathhouse in Canada had been raided in 23 years before Goliath's, there was an understanding that these establishments enjoyed, at the very least, a tacit approval, and that such establishments were safe. To have that safety violated creates enormous stress and emotional upheaval in the men caught in such raids, as well as within the community itself. Bathhouses have operated for years as legitimate businesses. They pay taxes, have valid municipal permits, contribute to the community, follow applicable labour laws, and supply an important and needed service to the homosexual community.

Historically, there's always been mistrust on the part of the gay, lesbian, bisexual, and trans-identified community towards the police, and many within the GLBT community and on the Calgary Police Service had worked hard to bridge that mistrust. The damage to the relationship between Calgary's GLBT community and the Calgary Police Service is profound and very likely irreparable.

● (1855)

As lesbians, gay men, and bisexuals go through the coming-out process, as Mr. Arron indicated, many of us examine our attitudes and our sexuality and our approach to that sexuality and do so on quite a profound level. This often leads, certainly on a community level, to an understanding of our sexuality as being a healthy part of who we are.

The activity that goes on inside gay bathhouses hurts no one, and the sexual activity that occurs there should not be criminalized in the absence of demonstrable harm.

Thank you.

The Chair: Thank you very much, Mr. Lock.

Are you going to continue, Mr. Arron?

Mr. Laurie Arron: Yes, if that's okay.

● (1900)

The Chair: Very quickly. We've exceeded our ten minutes.

Mr. Laurie Arron: Have we? Okay. I'll try to get through this quickly.

There are three provisions of the Criminal Code that impact LGBT bathhouses. The first are those dealing with common bawdy houses. The second area of the Criminal Code that's used to target bathhouses is paragraph 173(1)(a), which targets indecent acts done in any public place. The problem here is that the definition of public place includes places that are completely out of the public view, like bathhouses, as Mr. Lock mentioned. This results in the charter problem of being legally over broad. Also there's no definition of indecent act or acts of indecency in the Criminal Code, and courts have a great deal of discretion in making this determination.

The third provision of concern is section 159, which singles out anal sex for particularly harsh treatment and makes it legal only in certain limited circumstances, which do not include bathhouses. Section 159 was ruled unconstitutional by the Ontario Court of Appeal in 1995 and the Quebec Court of Appeal in 1998. Yet Parliament has failed to repeal it. There's simply no reason for the Criminal Code to single out this particular sexual act, especially when singling it out has the effect of stigmatizing gay and bisexual men.

There's been an evolution in Canada's laws relating to the regulation of sexual activities between consenting adults. Originally these laws were based largely on standards of morality, and over time courts have signalled the shift away from community standards and towards harm. However, in practice, judges often substitute their own conservative views of what is harmful to determine if something is indecent. This leads to a second charter problem, the problem of vagueness, and the public's inability to reasonably determine where the legal line is between permitted and criminal sexual activities.

Given the ways in which gay establishments continue to be targeted by the police under the bawdy house laws, it is only a matter of time until a constitutional challenge is launched. This challenge will be based on violations of section 7 and section 15 of the charter. The indecency laws will be challenged as violating section 7 of the charter because they interfere with liberty in a manner that is not consistent with the principles of fundamental justice. Liberty is implicated whenever people face jail sentences for reasons that are unjust. These reasons include failure to respect individual autonomy, being arbitrary, being vague, being overly broad. Egale believes that the provisions prohibiting bawdy house indecency and private indecent acts suffer from all these problems and that the anal sex provisions suffer from all except vagueness.

I believe I have covered why they fail to respect autonomy and why they are vague and overly broad. They are also arbitrary because they penalize acts that harm no one.

One often cited principle in relation to section 7 in the charter more generally is that the state will respect choices made by individuals and to the greatest extent possible will avoid subordinating these choices to any one conception of the good life. This statement by the Supreme Court means that the charter protects individuals from the values of others being imposed on them for no valid reason, which is the case here.

In the context of consensual sex between adults occurring within conditions of privacy at bathhouses and other LGBT establishments that are out of the public view, there is simply no evidence of a risk of harm to society.

I won't go through the section 15 problem in detail, except to say that given the stigma surrounding homosexuality, community standards are inherently biased against lesbian and gay and bisexual persons. Judging sexual behaviour by such standards will inevitably result in adverse treatment.

I'll skip to our recommendations.

In our view, Parliament should proactively review and repeal or rewrite the indecency laws and should repeal the anal sex provision. Parliament need not and should not wait for individual litigants to challenge these unjust laws, but should instead take immediate action to remedy the situation and lift the cloud that hovers over these otherwise lawful establishments. It's Egale's view that Parliament should complete the evolution away from imposing the morality of one person on the life of another and towards a view that respects personal autonomy and only criminalizes adult sexual behaviour where there is specific and compelling justification and based on real evidence.

Thank you for the opportunity to make these submissions. We look forward to answering any questions you have.

The Chair: Thank you, Mr. Arron.

Dr. Fry, for seven minutes, questions and answers, please.

Hon. Hedy Fry: Thank you very much.

What would you propose that one would do if you looked at the definition for public place at the moment? How would you see that definition changing so that it would not apply to a bathhouse where obviously private consensual activity is going on? Have you any specific definitions you would like to give to the words "public place"?

Mr. Laurie Arron: We haven't crafted any alternative wording for your review. We'd be happy to do that, but you probably have more lawyers at your disposal than we do. The important thing, though, is that the part about the public having access as a right is not the issue. The issue is whether it is out of the public view and whether the public has any ability to see what's going on, without knowing, without making that conscious choice to see what's going on. So I would say delete the part about the public having access as a right and define it as a place where the public can view what is going on.

Hon. Hedy Fry: That puts me in mind of the recent case that came up where the couple across the street was looking into the bedroom of the other couple with a pair of binoculars and didn't like what they were doing and accused them of indecent acts. Of course,

the court threw it out and said that somewhere along the way there has to be somewhere that, even though it's in the public view, the public has to recognize that it's also a private establishment.

The other question that I want to ask you is about the bawdy house law. As you well know, the bawdy house law is applied to where more than two people are selling sexual favours. Do you feel then that the bathhouse sells sexual favours? Do you feel that in every instance a bathhouse could be viewed...? I'd like to just get at why it is that bathhouses are raided, if they are a club or a place where people go to have coffee, to meet, etc., and may or may not have sex. That doesn't sound to me like a bawdy house, where you know what you go for is to buy someone, to have sex.

That's one of the things I wanted to ask. Do you agree that the bawdy house law should be completely repealed, so that in fact there can be a place with regard to safety for people to go to have sex, having heard—and I don't know if you heard—the last presentation with regard to the risky behaviour, or the riskiness, of being a street prostitute? What do you think about a bawdy house, period, being something that could be defined in a way that people could be safer?

•(1905)

Mr. Laurie Arron: First of all, I must say that Egale has not taken any position on prostitution or commercial sex. Before doing that, we would need to consult with those affected, including sex workers, club owners, patrons. This is a costly and time-consuming process and we're a small organization, so we just have not had an opportunity to consider that. But I would say that the guidelines that Egale has developed—the five guidelines that I mentioned—I think would be helpful in making that determination. We just haven't been able to look at the facts and the evidence and the impacts in that situation.

I would say, though, that in terms of the provision regarding indecency in the definition of the common bawdy house, there's no requirement whatsoever for money to change hands. In fact, in gay bathhouses, generally money doesn't change hands. That's not the point. The point is it's a place where people go not to earn or pay money but to engage in consensual sex.

So that part should be repealed, because there are other provisions that deal with public indecency, indecency that is really in the public view, that is not behind closed doors. It's our view that sex that takes place behind closed doors should not be criminalized without a specific and compelling reason, and we don't see that certainly in the case of bathhouses.

I guess it's up to this committee to decide whether there are any circumstances where there is a specific and compelling reason to criminalize, where there is clear evidence of harm, and if the committee finds that, then to recommend that the bawdy house provisions be more carefully tailored to those situations.

Hon. Hedy Fry: I have one last question, then.

We've heard a lot from many people coming to present to us. We've been to talk with a lot of people across the country. We have not had a lot of presentation with regard to male prostitution, or men who sell sex to men. We always hear this being personified as women who are selling sex, or women who are victims. I think that might be something that one would like to hear a little more about.

Do you think you could furnish that for us at the moment? What is the causative factor, what are the reasons? Do men who sell sex on the street, or boys—I think we all agree about child and youth—do they have the same causative factors? Do they do it for the same reasons? Is it for survival reasons, is it for addiction? Are the reasons all the same, or are there different causalities for this for men, as opposed to women?

Mr. Stephen Lock: Again, Egale has not had an opportunity to examine that due to resources. We are a small organization, and there's enough on our plate in the gay and lesbian and bisexual and trans-identified community to deal with as it is.

Setting that aside, from some of the work I've been involved with in Calgary, there certainly does seem to be a causative difference between males who are working the streets and females. The dynamic seems to be somewhat different. I'm not fully familiar with the causative aspects. There have been very few studies done on male prostitution in North America generally, and only one that I'm aware of in Canada, by a Dr. McIntyre in Calgary. That book is supposed to be coming out sometime in the fall, I believe.

• (1910)

Hon. Hedy Fry: Thank you.

The Chair: Libby Davies, please.

Ms. Libby Davies: Thank you very much for coming.

Actually, just on that point very quickly, judging by the hearings we've held across Canada, I would say that certainly one of the most marginalized groups facing the most discrimination, whatever the causes are, would be the transgendered community in terms of the sex trade. It was really quite alarming to hear some of the stories of discrimination and the difficulties faced by that community.

But I'll leave that, because I want to come back to the five points you make. They are very helpful, because I think we're really looking for the principles. There's so much around this issue that it's really important to cut through and think about what principles we are actually debating here, and I think you've identified some of them.

I would agree that the community standards issue has been hugely problematic. We often throw around the phrase “community standards”. Well, whose standards, in what community, and for what purpose? So I agree, the idea that there's this community standard, that somehow, just because some people are offending some other people, that's a community standard, and something becomes illegal....

I would agree that the harm principle is really important, but it's very interesting to note, just looking at your brief, that in applying the community standard, the harm principle was actually part of that in this court case in 1993. To me, it raises the question of whether we then need to define what we mean by “harm”. I mean, this also can be interpreted quite widely.

At the end of your brief, you talk about what you would like to see abolished in terms of the various sections. You say, “Sexual activities should only be prohibited if there is a risk of harm”, which I would generally agree with. I think this is about sorting out what is consenting and what isn't, and what harms there are or are not. But do we actually need to define that further?

I didn't know about this court case, but clearly they used the principle of harm to link it back to a community standard. I wonder if you've given that some thought in terms of whether we actually need to define that further.

Mr. Laurie Arron: While the courts have talked a good game in terms of harm, what we often see is that it comes down to judges' own perspectives and what they view as common sense. They make factual determinations without any real evidence. I think that's where the problem is.

You may have heard about the Labaye and Kouri cases in Quebec. There were two sex clubs in Montreal raided in similar-fact situations. They were both heterosexual sex clubs. The Quebec Court of Appeal, in these two separate cases, handed down a decision last summer on exactly the same day. Both cases had three-judge panels, and two of the three judges were the same, but they came out with diametrically opposed decisions. The swing judge went a different way on the two cases.

So when you look at the reasons, you'll see that the factual differences really are not what the case turns on. It's really just that different judges have different views of what's harmful and what's not harmful.

I think the important thing is not to try to say, well, here's what Parliament thinks is harmful and here's what Parliament thinks isn't harmful, but rather to impose standards of proof. That way, one cannot simply make an argument that appeals to a judge's common sense, which often does go back to morality. Acts would be considered harmful only when there is proof of that.

Ms. Libby Davies: Okay. I'm not even sure what “standards of proof” means. One can get really involved in this.

What happens under the bawdy house law, in bathhouses, is not because money is being exchanged, it's because it includes “and indecent acts”, right?

• (1915)

Mr. Laurie Arron: That's right.

Ms. Libby Davies: So to get back to Dr. Fry's point, it's not the money, it's the “indecentcy”. If we further define it, that there's a standard of proof, I think you need to elaborate on that a little bit.

Mr. Laurie Arron: For example, in the Labaye and Kouri cases, one of the things they identified was risk of sexually transmitted diseases. Whenever there is sex, there is risk of sexually transmitted disease. To say that if it occurs in certain situations then we're going to worry about that harm and if it occurs in other situations we're not, and to say that the risk of sexually transmitted diseases should prevent sex in these circumstances and not in these other circumstances, seems quite arbitrary. One of the judges said that the reason the acts complained of were indecent was because of this risk. They said “Here's the harm, I can point to harm, therefore this is indecent.” In our view, that's not good enough.

Ms. Libby Davies: Do I have time for one other short question?

The Chair: Yes, very short.

Ms. Libby Davies: Just to flip it on the other side, when you say “should only be prohibited if there is a risk of harm”, do we rely then on other laws to determine that? For example, if somebody is being violated, if they're being abused, if it's something around slavery that's going on—which we have had some testimony about—is the position of Egale that if we strip away these sections, there are other provisions that would then adequately cover what's going on in terms of abuse or other harms that are being created?

Mr. Laurie Arron: We have not identified any harms that go on in bathhouses or any harms that go on anywhere that's charged with acts of indecency or indecent acts. The reason that we put the harm principle in is because we don't have the expertise to say there is no situation in which there is no harm, no real harm. So we would recommend the repeal of the indecency sections of the bawdy house laws and the indecent acts section, unless this committee identifies some specific and compelling harm associated with those activities.

The Chair: Thank you, Ms. Davies.

Madam Brunelle.

[Translation]

Ms. Paule Brunelle: Good evening, gentlemen.

Of course, we are talking about provisions regarding indecency. But indecency is one of the hardest things to define. Some people see it one way; others see it differently. For us, one thing is certain, and that is that it is difficult to see what Canadian society has become.

With respect to public baths and saunas, how widespread is this phenomenon? Do all large cities have them?

[English]

Mr. Stephen Lock: Most urban areas in Canada and the United States have at least one gay steam bath or sauna bathhouse, sometimes more. There are two in Ottawa.

[Translation]

Ms. Paule Brunelle: I see.

I am told that these establishments are legal. In that case, why were there police raids? Do you think the police are abusing their power, or is it because there was prostitution going on in these public bathhouses and saunas?

[English]

Mr. Laurie Arron: The reason the police raided these places and charged them under these provisions is because these provisions exist. As Stephen mentioned, there were no raids for many, many years. It's one of these laws that's on the books that really shouldn't be used, certainly not in this context. Yet somebody makes a complaint or some police officer decides of their own accord that there's something that violates section 210 of the Criminal Code, and in they go. That's the problem.

There is no valid reason, as we see it, and certainly nothing for the good of society, in charging anybody in these establishments.

• (1920)

[Translation]

Ms. Paule Brunelle: You mentioned the case of the swingers club in Montreal that will go before the Supreme Court. All day long, and

even very early in the evening, there is more and more sexual content on television. And it is increasing on the Internet as well.

In spite of that, do you feel that our society has become more homophobic and moralizing?

[English]

Mr. Laurie Arron: No. I think in fact society is moving in the other direction. Certainly in the cases of Kouri and Labaye—the cases going to the Supreme Court shortly—it's not homophobia because they're heterosexual acts in those cases, and they take place behind closed doors.

I think the important thing here is that we are dealing with laws that in our view violate section 7 of the charter, and in a gay context, section 15 of the charter. I think this committee has to not only take into account what Canadians want but also take into account that Parliament should do its best to ensure that its laws comply with the charter.

The Chair: Mr. Hanger, for seven minutes, including questions and answers.

Mr. Art Hanger: Thank you, Mr. Chairman.

As you folks were going through your presentation I was thinking of throwing this into the mix of things that we already have to think about when it comes to prostitution and the like. By the time I shake it all up and throw it out on the table like a bunch of dice, there's nothing there, in the sense that every law that deals with sexual abuse or sex in some fashion would be eradicated if we were to look at all of the requests and recommendations that are set forward by those presenting their case. This is no exception.

You want to see the bawdy house law struck down. I can relay all kinds of reasons why you shouldn't, but this is your presentation and you want that removed. Specifically you want section 159, which deals with anal sex, removed, and you want the indecent acts removed. The question then remains, as you pointed out, is this for the common good of the community? I'm talking about the broad community. I have difficulty understanding how that can be for the common good of the community, broadly. It does not make our community of Canada any better by striking down these laws. It may be for a special reason that you see, but we have to look at things in a much broader context than that.

I'm just wondering what we should leave on the books if the committee is going to listen to those. Sometimes I wonder if this list of presentations that we've heard over the last.... How many meetings have we had?

Ms. Libby Davies: Twenty-five.

Mr. Art Hanger: Twenty-five. Is this more like a stacked deck of let's get rid of all of the laws? Yes, they all centre around morality. In fact, that's what it used to be called in the Criminal Code.

Fill me in, gentlemen. What do we leave on the books after we get rid of everything here?

Mr. Laurie Arron: Certainly we're not suggesting that Parliament repeal all sections of the Criminal Code dealing with sexual activities. What we're saying is that when activities take place behind closed doors, between adults, consensual behaviour, that it should not be criminalized.

We do leave the door open in our recommendations in saying that if there are specific and compelling reasons to leave these laws in or to tailor them rather than repeal them, then you should do that. If there are any specific and compelling reasons, it's up to you to find them; certainly we haven't found any.

The laws that we are recommending be repealed still leave a lot of room. They don't deal with non-consensual behaviour. They don't deal with sexual abuse. They don't deal with sex in public. They don't deal with anything involving children. I think they are quite a tailored set of recommendations in terms of what Parliament should repeal or rewrite.

In terms of section 159, there have already been two provincial courts of appeal, Ontario and Quebec, that have struck this provision down. In regard to that section, I think it's important for the public good that Parliament be seen to be respecting the charter. I think it's incumbent upon Parliament to repeal that section.

As I mentioned, there is no reason to single out any particular sexual activity. There's nothing about that particular sexual activity that harms the public, so why should that particular activity be singled out when there are a host of provisions that deal with all sexual activities, including that one? Why should it be set aside for particularly harsh and constraining treatment?

● (1925)

Mr. Art Hanger: I think the final say in this is what the public would like to see, not the courts. I know there's a tendency in this country to always go to the charter. To me, the charter covers a myriad of sins. It's been used by politicians to do that very thing.

I have a problem with that personally. I'm willing to listen to what the court has to say—certainly as parliamentarians we should and must—but ultimately the public must have its say. Really, who has the final word?

Mr. Laurie Arron: I think it's important that Parliament respect the law. I think if Parliament wants to maintain section 159 in the Criminal Code, it should amend it to insert the notwithstanding clause.

Mr. Art Hanger: The notwithstanding clause on section 159, anal intercourse?

Mr. Laurie Arron: Right, because it's already been struck down. I think the other provisions will be struck down, but they haven't been at this point.

Mr. Art Hanger: Maybe. I think what this country really needs is a good sound debate on all of these issues.

A voice: That's what we're doing.

Mr. Art Hanger: I beg to differ on that. I think this has been more to do with some agendas that want to move things along, but there hasn't been a good sound public debate, and I believe it has to go there.

You talked about a legal line. Explain more about this legal line—the public's view...

Mr. Laurie Arron: What I was getting at there is the concept that the laws have to be written in a way that makes it clear to the public when actions cross over the line into criminal behaviour. Because an

indecent act is not defined, and because judges often impose their own personal morality or their own personal perspective on things, it's very difficult to know when one is crossing the line. That's a basic tenet of our laws, that they have to be written so they're not unreasonably vague.

Mr. Art Hanger: Indecent act: a guy standing on a street corner masturbating as a family drives by with young kids in the car—is that an indecent act?

Mr. Laurie Arron: That is taken care of by section 173. I could look it up, but I won't waste your time. There are sections in there that have to do with public indecency. What we're talking about here is not public indecency. So your illustration shows that there are other provisions in the Criminal Code to deal with things like that.

Mr. Art Hanger: It's an indecent act.

Mr. Laurie Arron: Sorry?

Mr. Art Hanger: It's an indecent act. I've used the charge myself, as a former police officer.

Mr. Laurie Arron: But there's a difference between indecent acts—or what you refer to as indecent acts—in private and indecent acts in public. In public it's very easy to see the harm, as you pointed out.

We're not suggested you should be able to do whatever you want in public view. We're saying that behind closed doors, consenting adults should be able to engage in whatever sexual activities they want, unless you can show us clear and compelling reasons why there's harm.

The Chair: Thank you, Mr. Hanger.

Next we'll have three-minute rounds.

Ms. Fry.

● (1930)

Hon. Hedy Fry: I think you've been pretty clear. As Libby says, those five principles are pretty good ones for us to look at, and the concept of harm is one that we need to talk about very clearly, because harm could easily be.... Even if it is in a private place, harm is violence. Harm is exploitation by putting somebody in a private place to engage in something they don't wish to do. The slavery Libby talked about, exploiting people because they've become drug-addicted, people doing survival sex—those are the kinds of things we want to talk about as harm.

The issue of STD is a very good one, because an STD is harmful, but if we're going to suggest that one reason to raid and shut down a bathhouse is because of STDs, I think there are a lot of adolescents going around who should be raided, because many adolescents don't take care of themselves with regard to sexual activity and STDs, never mind contraception.

So I think you're absolutely right. They're good policies to think about, good principles to look at. I don't really have a question, other than to say that the principles are important for the committee to apply to what we see as harm, and where we see that line being drawn.

Mr. Laurie Arron: On something like sexually transmitted diseases, if that is the harm identified, the law should be written to target that harm and not just say that the harm may exist in a hundred places and we're going to pick one or two to criminalize.

In gay bathhouses there tend to be safe sex literature, and condoms. It tends to be a safe sex environment. So target the harm in the best way possible. Don't make it overly broad, and don't do it in a way that is vague or arbitrary.

The Chair: Thank you, Ms. Fry.

Ms. Davies.

Ms. Libby Davies: First of all, I think we have had an incredible debate. We've had some very interesting witnesses on all sides of the question, not just one side, and we have really challenged a lot of the traditions and so-called moralities that these laws flow from.

But just picking up on Mr. Hanger's point, he says that what the public says sort of has to go. I would like you to respond to that, because I think it's really easy to talk about the public out there, but I don't know who that is. Is it 32 million people? We get back to this idea of what a community standard is, and it's very subjective.

I gather from what you're saying that it's based much more on a perspective of people's rights and choices, relative to making sure harms aren't created. So how do you respond to this idea of what the public has to say?

Mr. Stephen Lock: In the case of the keepers in Goliath's, a study was done by a PhD candidate at the University of Calgary in cultural anthropology. He surveyed the surrounding belt-line neighbourhood in downtown Calgary. He had a series of questions in a random survey, properly conducted, and asked residents about their attitudes toward a variety of commercial and social situations in that neighbourhood. He asked how they felt about various retail outlets, bars, gay bars, and the gay steam bath.

I don't have the figures in front of me, but a significant number of those who responded had far more problems with the presence of street prostitution and drug markets in that neighbourhood, and police response, than they did with the presence of a bathhouse they didn't even know was there before.

Mr. Laurie Arron: If I might add, look back to 1969, when homosexuality was decriminalized. At that time, in all likelihood, most Canadians did not approve of homosexuality. Yet it was done, and Pierre Trudeau at the time said the state had no place in the bedrooms of the nation. I think that principle underlies our submissions here—that what goes on in private is not the public's business, unless there is some harm.

Even if you think it is the public's business, going as far as criminalizing behaviour—there are penalties short of criminalizing—that doesn't harm anybody, just because some people don't like the idea of it going on, even though it doesn't affect them at all, is wrong.

● (1935)

The Chair: Madam Brunelle.

[*Translation*]

Ms. Paule Brunelle: When we toured the country, I was struck by the different attitudes and level of tolerance from region to region. Neither Montreal, Toronto, Halifax nor Vancouver were the same.

Have you noticed regional differences when it comes to the application of section 210, which deals with bawdy houses?

[*English*]

Mr. Laurie Arron: We haven't noticed any. I think the data is so discrete. We've had several raids in Toronto and Montreal—probably some of the most open parts of society. We've also had a raid in Calgary. So I don't think you can see that correlation. A lot of it just has to do with non-systemic factors, shall we say.

[*Translation*]

Ms. Paule Brunelle: You said that the raids were as a result of a public complaint or over zealous police officers. It may be that the situation could vary according to how much the local citizenry is willing to tolerate. That would make it even more difficult to achieve consistency in amending certain provisions of the act. That is what I meant.

[*English*]

Mr. Laurie Arron: Again, we're suggesting you get away from the whole concept of community standards, and focus on harm. So I don't think there is any problem with applying a national standard in that sense.

The Chair: Mr. Hanger is next, for three minutes, please.

Mr. Art Hanger: You write in your submission, on page 10:

Given the stigma surrounding homosexuality, community standards are inherently biased against lesbian, gay, and bisexual persons. Judging sexual behaviour by such standards will inevitably result in adverse treatment.

I think you rightly describe community viewpoints, but to consider them as biased, I suppose that's one way of describing it, but I think there are many concerns there in the public overall. Certainly you're going to run into biases, but they may have other concerns besides their possible dislike for homosexual behaviour. What do you think those other concerns could be?

Mr. Laurie Arron: I think people have all sorts of moral perspectives. Some people, for example, think that all sex outside of marriage is immoral. I don't think that means that if the majority of Canadians think that, we should criminalize all sex outside of marriage. The point of that statement is that our experience has been that laws get applied in an unequal fashion. If that behaviour were between a man and a woman, police would turn a blind eye to it, but if it's between two men it will result in arrests. So that's part of it.

● (1940)

Mr. Art Hanger: Excuse me one moment, sir.

I understand the statement you're making, but I'm wondering if that statement is backed up by something. You say that the police might turn a blind eye to a heterosexual couple doing certain things, but they won't to a homosexual couple. Is that something you have determined to be accurate beyond anecdotal instances? Is it backed up by more than just that?

Mr. Laurie Arron: We've definitely seen it, although we haven't seen it so much in the context of bawdy house laws, because the data is so thin in respect to bawdy house laws.

Mr. Art Hanger: Okay, thank you.

The Chair: Is that it?

Mr. Arron, Mr. Lock, thank you very much for appearing before this committee tonight. We certainly haven't had this perspective brought forward to us. We appreciate your contribution. Thank you.

Just for the committee's edification, there was a logistical problem with Madam Dufour's translation device. She was tuned into the English only, and her mother tongue is French. That's an explanation of some of the difficulty she was having understanding you, Mr. Hanger. We apologize for that, and we'll try to ensure that this doesn't happen again with our witnesses. As I said, these things are difficult to learn at the best of times.

That will conclude our evening. Thank you.

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