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Mr. John Maloney

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• (1745)

[English]

The Chair (Mr. John Maloney (Welland, Lib.)): I now call to order the 27th meeting of the Subcommittee on Solicitation Laws of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness.

Our guests this evening are Eleanor Maticka-Tyndale and Jacqueline Lewis from the University of Windsor, and they're combining their presentation also with Kara Gillies from the Toronto Prostitutes' Community Service Centre. As I understand it, the three of you are making a joint presentation over roughly a 20-minute period. Then from the Université du Québec à Montréal we have Maria Nengeh Mensah.

Thank you very much for coming. I would just advise the panel that we have a vote scheduled for 6:45. The bells will start to ring at 6:30, and we will adjourn the meeting at 6:40 so that we can walk down to vote, and it may be approximately half an hour before we get back. Unfortunately, it interrupts the presentation, but that's our life up here.

Professor Eleanor Maticka-Tyndale (Department of Sociology and Anthropology, University of Windsor): You will come back after the vote?

The Chair: Yes. We'll come back. Unless we finish up before 6:40, but it's not likely.

I would ask for the presentation to start, Eleanor or Jacqueline. Is it a PowerPoint presentation?

Professor Jacqueline Lewis (Associate Professor, Department of Sociology and Anthropology, University of Windsor): Yes, it is.

We'd like to thank the committee for inviting us here to speak today.

We'd like to begin with a brief history of each of the presenters in our group today. Since 1999, Dr. Maticka-Tyndale and I have completed three studies of sex work that focus on the impact of public policies on the health and well-being of sex workers. Ms. Gillies is a sex worker rights advocate. Currently she is the chair of the board for Maggie's in Toronto and the Ontario coordinator of the Canadian Guild of Erotic Labour.

The presentation we are making today is based on the findings from two studies. The first is *Escort Services in a Border Town*, and this study took place between 1997 and 1999. The second study we

are focusing on is *Canadian Public Policy & Health & Well-being of Sex Workers*, and this took place between 1999 and 2004.

Both of these studies involved collaboration with sex workers and community organizations. Data collected involved both the use of semi-structured interviews and the collection of policy documents relevant to sex workers' lives. The first was a case study of a Canadian city where the escort industry is licensed. The second involved a case study of the sex industry in two major Canadian cities. Across the two studies we spoke with over 150 sex workers and over 40 key informants, including members of the police services and community service provision organizations.

Our objectives today are twofold. The first is to use our research to examine how Canadian public policy, in particular the Canadian Criminal Code, impacts the health and security of sex workers. In order to develop an appropriate response, we need to be clear on how policy can reduce or enhance risks to health and security of the person.

Our second objective today is to propose guidelines for policy change.

In our research and in our presentation today we use the term "security" to refer to physical safety on the job and securing a safe work environment. Security pertains to rights to protection, health and well-being, and economic security. There are security issues for all sex workers, regardless of their gender or the venue in which they work. We want to make clear today that we are emphasizing security in our presentation as an essential prerequisite to health.

• (1750)

Prof. Eleanor Maticka-Tyndale: In the course of our research we learned about the ways the Criminal Code impacts on the ability of sex workers to maintain their own security. We also learned it often places sex workers in a paradoxical situation such that actions taken to enhance security often contravene the Criminal Code.

Section 210 of the Criminal Code, for example, criminalizes working from a fixed or permanent location, sharing a work location, or working for someone at a fixed location. However, street-based workers, escorts, and masseuses who bring their clients to a fixed location, such as a room they have rented or their own home, are in violation of this section. Despite this fact, working in space known to sex workers increases the control they have over the environment and consequently their personal security. In addition, workers reported to us that when a client is a guest in the worker's space, they tend to be better behaved.

Section 211 of the Criminal Code criminalizes referring clients to other in-call workers, establishing relationships with hotel concierges, taxi drivers, etc., for referral of clients. It also criminalizes transporting someone to a known sex worker establishment. In our research we found that sharing known clients and having people you trust refer clients, people such as taxi drivers and hotel staff with whom you've established a relationship, both enhance security.

In addition, strategies used by sex workers are also used by workers who have similar work environments, such as when they work late at night or in areas of the city that are considered less safe. For them, having someone you know give you a ride to work enhances your security. However, when those who provide you with transportation are at risk of being arrested and charged because they are transporting you for the purposes of sex work, this form of security enhancement no longer works to the benefit of those involved.

Section 212 criminalizes living with a sex worker. While there are health, security, and economic benefits from cohabiting with friends, partners, or family members, cohabiting with a sex worker is in violation of section 212 of the Criminal Code. In addition, having a manager or employer is also a violation of this section. But managers and employers, we learned, can enhance both the economic and physical security of sex workers. These people are responsible for advertising, for attracting clients, and for providing the work space, decreasing the cost to the sex worker. They can also enhance physical security by taking precautions and providing protection against aggressors. Third, referring clients to other workers violates this section, but again, as mentioned earlier, sharing known clients also enhances security.

Section 213 criminalizes sex worker-client communication in a public place, which includes using a cell or pay phone to make worker-client arrangements. In our research, sex workers spoke of how they and their clients were reluctant to take the time to fully work out expectations such as agreements on services to be provided, fees, and condom use before they moved to a private location. For sex workers this limited their ability to screen for potential bad dates, aggressors, and other risks in order to increase their security.

The measures sex workers take to enhance their security also conflict with other policies. In Quebec and Ontario and similarly in most other provinces, crime victim legislation provides for state-funded benefits to victims of certain crimes, such as those involving assault or violence. The law, however, excludes from coverage those victims who have committed a *faute lourde*, that is, an act that contributed to their own injuries or an act that indicates they were aware of the danger and could have prevented it but did not. This exclusionary clause has been applied to sex workers because the actions they take to maximize their security are taken to indicate they are aware their work is inherently dangerous, thereby constituting a *faute lourde*.

• (1755)

Information sharing among sex workers is a form of empowerment. It increases access to resources and helps sex workers identify situations of enhanced security or insecurity, but when police practices and zoning policies make it difficult for sex workers to

communicate with each other, they undermine the workers' abilities to exchange such information. When judges or police impose boundaries on workers' release or, as part of bail or sentencing conditions, prohibit sex workers from working in areas in which they were charged or arrested, the workers are forced into new neighbourhoods, isolating them from friends and colleagues, regular clients who maximize security, and familiar services and facilities that provide opportunities for information sharing and enhanced security.

Prof. Jacqueline Lewis: The paradoxes that sex workers face became evident in our data analysis. For each paradox the actions taken to maximize security also place sex workers in conflict with the Criminal Code.

The first paradox is security and isolation. Working in isolated, especially dark areas increases risks from bad dates and aggressors whose actions are made invisible by the isolation, and it decreases access to social support and information sharing, but it also decreases police and public attention and the likelihood of arrest.

The second paradox is about taking time to screen clients. Taking time to screen clients increases police attention and the likelihood of arrest. However, it also increases the likelihood of identifying potentially bad dates, aggressors, and other risks.

The third paradox involves working on an in-call basis or from a fixed work location. This form of work is unequivocally illegal as it contravenes section 210 of the Criminal Code of Canada. However, in-call is one of the safest ways to conduct sex work.

Ms. Kara Gillies (Chairperson, Maggie's: The Toronto Prostitutes' Community Service Centre): Thank you, and good evening.

Maggie's is a Toronto-based organization that is run not only for sex workers but by sex workers. This places us in the unique position of basing our policies and our understanding of sex work on actual lived experiences.

The findings of the STAR project reinforce our observations of the past 18 years that the criminalization of prostitution in all its forms causes extreme hardship for tens of thousands of women and thousands of men and undermines our security, our dignity, and our agency.

On a daily basis, those of us who support ourselves and our families through the perfectly legal practice of prostitution are forced to navigate a quagmire of conflicting and oppressive laws. These laws state that, first, we can't negotiate the terms and conditions of our services in a public and therefore safe manner; second, we can't establish, manage, or use regular and secure work sites, including our own homes; and finally, through the procuring laws, both our personal and professional relationships are subject to state scrutiny and serious negative sanction. In addition, this illegalization of our work and relationships positions sex work, and thereby sex workers, as criminal, and therefore unworthy of respect, and fair game for harassment and abuse.

All this for working people, overwhelmingly women, who are simply trying to make a living. It is not acceptable and it has to stop.

We understand that the committee has taken a particular interest in examining the ways in which the laws permit or even promote violence against sex workers, and certainly we have been addressing that today. However, it is imperative that the committee also recognize the broad, wide-ranging impact these laws have on our lives and work.

At the level of our most fundamental rights and freedoms, the criminalization of prostitution leads to incarceration and deprivation of liberty, and it is typically the most marginalized workers—specifically those who are migrant or street-based—who are most likely to be deprived of their freedom in this manner.

Further, the criminal courts frequently interfere with basic freedom of association by imposing bail or sentencing conditions that prohibit sex workers from interacting with friends or colleagues in the business.

Incarceration has another impact; that of interrupting workers' income generation, thereby undermining our economic security. The imposition of fines has similar repercussions.

Long-term economic security is also jeopardized through so-called "proceeds of crime" legislation that hinders workers' capacity to save or invest for our futures and indeed, the futures of our families.

Linked to the issue of economic security is the ability to access and maintain housing. Once again, incarceration and hefty fines regularly cause workers to fall behind in rent, leading to evictions. Also, provincial legislation typically allows landlords to evict tenants on the suspicion of illegal on-site activity, including prostitution. At the federal level, section 210, subsection (4) of the Criminal Code encourages evictions by threatening landlords with future charges.

I would like to turn now to the negative impact criminalization has on sex workers' familial and work relationships. We have already outlined the multiple ways in which the bawdy house and procuring laws criminalize the people with whom we live, love, and work.

I will just add to this by stating that the designation of prostitution activities as criminal places sex workers at serious risk of losing custody of their children, and this is a fear that many sex-working women struggle with on a daily basis.

Another concern caused by criminalization centres on workers' ability to seek complementary or alternative employment. Like

workers in other sectors, people in the sex trade often move in and out of the business and may have other jobs or indeed other earning potential. But a criminal record, especially one for so-called morals offences, can bar people from accessing a diversity of work opportunities.

Continuing on the subject of labour issues, one of the most blatant impacts of criminalization is the negation of labour rights for workers in the sex trade. The criminalization of set work sites makes occupational health and safety guidelines difficult to develop or implement, and the criminalization of labour management relationships precludes sex workers from realizing labour protections before labour boards or in civil court. This leaves workers without the most basic of labour standards, such as the right to minimum wage, maximum hours, enforceable contracts, grievance procedures, and so forth.

We note here that not only are the procuring laws a hindrance to labour rights, but they are neither necessary nor appropriate for protecting sex workers against potential violence. There are plenty of criminal laws that directly address abuses such as fraud, confinement, or assault. Having special laws specific to sex-working women is not only infantilizing, but it also inappropriately shifts the focus from the abusive act itself to the work activities and life relationships of the victim.

● (1800)

Finally, criminalization impedes current and former sex workers' ability to travel and to cross borders. It also prevents workers from sponsoring foreign national partners or family members for permanent residency. For people entering Canada for employment in the sex trade, the criminalization of both prostitution establishments and employer-employee relationships renders legitimate work permits impossible. This positions most migrant sex workers as non-status and grossly increases their vulnerability to exploitation as well as to the risk of arrest, detention, and deportation.

We want now to quickly revisit the issues of physical security and violence against sex workers. As already discussed, the criminal laws increase the risk of violence by prohibiting a series of safety-enhancing measures. The law also reinforces the characterization of sex workers as aberrant and therefore, in some way, acceptable targets of derision and abuse.

Throughout these hearings, some members of this committee have expressed what I would describe as skepticism about this argument and have essentially questioned whether repealing the criminal laws would really eliminate all violence experienced by sex workers. Well, of course this is not our claim. What we are saying is that violence, especially targeted violence, would be substantially reduced. There are of course other factors in people's lives that increase their marginalization, and hence their vulnerability to violence; for example, poverty, racism, substance use, and street involvement. These are critical systemic issues that are distinct from sex work per se, and they need to be understood and addressed as such.

A gender analysis is pertinent at this point as well. Violence against women is systemic—indeed epidemic—in our society, and women in the sex trade are by no means immune. However, it must be noted that the preponderance of violence against women occurs in the home at the hands of a personal partner. We don't, however, jump to the conclusion that violence is therefore inherent in marriage or in dating, nor do we presume to combat the problem by criminalizing marriage or dating activities. It is equally untenable for us to continue to address violence against sex workers through the criminalization of the workers, the clients, and the management.

● (1805)

Prof. Eleanor Maticka-Tyndale: We suggest that any recommendations for change in law and policy fit with the recommendations put forth in the international agenda of the Network of Sex Work Projects and the Pivot Legal Society in their report *Voices for Dignity: A Call to End the Harms Caused by Canada's Sex Trade Laws*.

In line with these, we make six recommendations to assist the Subcommittee on Solicitation Laws in their deliberations and formulation of final recommendations. We believe our recommendations will help ensure that any new laws and policies enhance rather than undermine the health, security, safety, and well-being of sex workers.

Specifically, we recommend that sex worker participation in legal and policy decisions be ensured; that all sectors of the sex industry be considered when revising law and policy, not just street-based work; and that sex work be addressed as work rather than as criminal activity.

Ms. Kara Gillies: I think it is clear at this point that the current system of criminalization is not working, and we need to start to examine alternative approaches. This committee has already heard testimony about the various drawbacks of legalization models. Legalized systems are designed to place excessively restrictive controls on sex workers. Requirements for legal status are usually so strict and indeed discriminatory that the majority of sex workers are unable or unwilling to comply.

This results in a two-tiered system that excludes many workers, especially those who are most marginalized; for example, street-based, migrant, or substance-using workers. Meanwhile, those who are operating within the system are typically subjected to regulations that undermine their labour rights, as was formerly the case in Germany, or that outright violate their civil liberties, as remains the case in Nevada's system of curfews and identity cards.

Instead, we are calling for a decriminalization model. By decriminalization we mean the removal of all prostitution-related criminal sanctions, while ensuring that replacement regulations are not more restrictive than those imposed on other businesses. In the broadest terms, this would involve the extension or adaptation of existing labour or municipal codes to various sex trade sectors as well as the establishment of professional associations, colleges, unions, and so forth. Needless to say, within this basic framework there are many options that would be available for consideration.

Prof. Jacqueline Lewis: In light of these complexities, our fourth recommendation to the SSLR is to strike a working group to develop a Canadian model for decriminalization.

Our fifth recommendation is to ensure adequate sex worker representation on that working group.

Our final recommendation is that when we revise our laws and policies, we need to ensure that sex workers have the rights, protections, and respect afforded all Canadians.

Ms. Kara Gillies: In order to ensure that sex workers do indeed have these rights and protections, we want to put forward some basic tenets of decriminalization.

First is no licensing or registration of individual workers. This is unnecessary and has shown to lead to two-tier systems.

Second is no mandatory or contingent health tests. These are ineffective. They are poor public health policy and they raise very serious civil liberties issues.

Third, small groups of individual workers can work without regulation out of a business or residential establishment. This is what's often referred to as cottage-style industry and it is part of the current New Zealand approach. If larger establishments are to be regulated, the zoning, licensing, and other conditions must be similar to those for businesses of comparable size, hours of operation, and so forth.

Finally, if so-called red-light zones were to be established for street-based workers, their use must be non-mandatory and they must be based on improved access to services and amenities, not on containment or control. In larger municipalities multiple zones would be required in order to facilitate both access and use.

● (1810)

The Chair: Thank you very much.

Maria Nengeh Mensah, please.

[*Translation*]

Ms. Maria Nengeh Mensah (Professor-Researcher, School of Social Work, Université du Québec à Montréal): Thank you.

I think I may be repeating some points. First, honourable members, colleagues, ladies and gentlemen, I am delighted, albeit be at somewhat nervous, to be before you, and honoured to have been invited to contribute to the subcommittee's work.

I have been working in the areas of AIDS, determinants of health, women and the fight against marginalization and social exclusion since 1989. I have worked closely with the Canadian HIV/AIDS legal network and with Stella, an organization of which I have been a board member for six years.

We have worked together on projects that have had significant results and that I know the committee is already aware of. My research is done in partnership with community groups and aims to determine how the social and political environment can be conducive to the respect of human rights, including health and safety. I have studied the Canadian sociopolitical environment from various angles, the media, social workers, laws and policies, the feminist approach. All of these experiences and research projects form the basis of my comments today. We can get back to some points mentioned in my presentation during the question period.

For the time being, I would like to draw your attention to two points: first, structural determinants of health for street sex workers; second, possible courses of action leading to a reform of the Canadian Criminal Code.

My investigation entitled "*Healthy Public policy: Assessing the Impact of Law and Policy on Human Rights and HIV Prevention and Care*", which you received a copy, produced in 2002 with the Canadian HIV/AIDS legal network, allowed me to demonstrate the ways in which health-related policies and legislation may or may not have an effect as structural determinants of health. We identified the laws and policies which may be prejudicial to human rights, prevention, access to care, treatments and support for people with HIV. Amongst these laws you will find the Criminal Code sections which are the subject of this subcommittee's work.

As a reminder, determinants of health are individual and collective factors which have complex effects on health. Amongst other determinants you have income, social support networks, education, employment, working conditions, sex, etc.

Structural determinants, however, include the economic, cultural, legal and political context of a given society. Laws and policies bring structure to our environment. Kara and her colleagues have just discussed them at length. They determine options, influence choices, make up the physical and social context for individuals and groups. This is how they have a crucial effect, a structural effect perhaps, on prevention and HIV/AIDS care.

Conclusive evidence shows that criminalization has a direct and indirect effect on three things: first, the sex trade workers' vulnerability to HIV; second, the speed at which the HIV infection progresses towards AIDS; third, the ability to deal and live with HIV/AIDS.

This impact may be positive or negative. I will give you two examples.

In the United States, the Blankenship team demonstrated the three ways in which criminal laws and police surveillance increase the

vulnerability to and the incidence of HIV among sex workers and drug injection users in Denver and in New Haven.

First, they have a direct influence on the degree of risk they affect both the availability of protection, for instance condoms and new syringes, and the conditions under which their uses is negotiated.

Second, they have an indirect effect on risk because they increase a person's vulnerability to incarceration. Earlier we referred to detention as being a concern and a reality for street sex workers which also has an effect on their health habits.

Third, American legislation and policies have an indirect impact through their validation of stigmatization, racism, sexism and oppression—according to the authors—maintaining social inequalities, which are some of the most fundamental determinants of health in general and of vulnerability to HIV in particular.

•(1815)

In Canada, the research of a number of experts whose testimony you have heard in this committee—I am thinking of Benoit, Brock, Lowman, Parent, PIVOT Legal Society and Shaver—helps us to understand how laws, non-criminal regulations and public policy have an effect on the health, safety and well-being of sex workers.

The research of Jacqueline Lewis and Eleanor Maticka-Tyndale as well as the STAR Project you have just heard about illustrate exactly how this works.

In short, scientific literature on the impact of criminalization and policies regulating prostitution demonstrates that sex workers are vulnerable to HIV because they have neither the means, the information or the authority to protect themselves and their clients. Those are direct negative effects.

Key informers interviewed as part of the investigation *Healthy Public Policy: Assessing the Impact of Laws and Policy on Human Rights and HIV Prevention and Care* also noted that criminalization has the indirect consequence of exposing people to different forms of abuse, discrimination and stigmatization. Those are the indirect negative effects.

We also know that it is preferable to react to HIV vulnerability through prevention efforts focusing on peer education rather than through regulating prostitution, that is, something similar to the approach of Maggie's and Stella, for example.

In light of these facts, it is advisable to improve our response to HIV/Aids through the creation of a favourable legal and political environment rather than one that is harmful to health. We must facilitate access to adequate and appropriate care and social services so that any sex worker, man, woman, transvestite, transsexual, can have access.

We must also ensure that international standards in human rights and basic freedoms apply to sex work and to persons engaged in it. In order to do so, the Government of Canada must be proactive in combating the stigmatization affecting sex workers. I am thinking of the myth that portrays prostitutes as dangerous women, bearing disease, corruption and immorality. How can this be done? To answer this question, I have three suggestions aimed at reforming Canadian criminal law.

First of all, I recommend repealing all of our legislation relating to prostitution. We should make a point of decriminalizing activities relating to adult prostitution, including the provisions on solicitation, communication, bawdy houses and living off the avails of prostitution. As was previously mentioned, we do have legislation in Canada that can be used to deal with a good many, if not all of the negative effects I referred to. For example, our criminal law contains legislation dealing with aggression: sexual aggression, criminal harassment, illegal restraint, abduction and so forth.

To those who would suggest partial decriminalization, my answer would be that criminalizing customers or the purchase amounts to criminalizing the exchange.

Secondly, I consider that it is absolutely essential for us to consult sex workers about the best way of regulating their activities. The document *Réponse au comité du Bloc québécois sur la prostitution de rue* (Response to the Bloc Québécois Committee on Street Prostitution), a copy of which you will be receiving shortly, illustrates a type of consultation process between decision-makers and sex workers concerning Bill C-339. It allows for a forum for the expression of the views and takes into account the criteria and concerns of sex workers.

To the proposal for a non-criminal regulation system for example, the organization Stella not only indicates how important it considers its participation to be in the development of this new framework, but it also provides a definition of the optimum conditions for engaging in sex work. The criteria are as follows. First of all, for such conditions to be optimum, they should include the safety of one's place of work, as well as matters relating to occupational health and violence towards sex workers. The second criterion is the visibility of sex workers, that is they should not be hidden away in some isolated place. It includes the right to public affirmation, that is to present oneself as what one is without any shame or contempt. The third criterion for optimum working conditions is the accessibility of services, the neighbouring services as well as social and health resources: sanitary toilets, transportation, food, lodging and communication services.

We expect that the Forum XXX to be held in Montreal at UQAM from May 18 to 22, 2005, will have a number of impacts. This is a unique and historic opportunity to find out the views of sex workers active in different legislative contexts, as well as their opinion about the most appropriate reforms and their impact on health and safety.

• (1820)

I would like to reiterate the invitation to members of the subcommittee to come and meet the speakers in Montreal, to find out more about this.

Thirdly and lastly, I propose the creation of a national education and awareness program on the reality of sex work, both for the population at large and for those more directly concerned with these issues in order to eliminate prejudice and combat discrimination towards prostitutes and others involved in sex work.

It has long been recognized that legislative reform is not sufficient in itself to bring about change. As part of a process, and I emphasize the term process, of reform, we must also define a certain number of initiatives aimed at eliminating stigmatization and marginalization of

sex workers, whether it be through action with the police, the courts or other bodies. It is urgent to sensitize and raise the collective awareness of Canadians on the determinants of the health of sex workers.

As an example or an inspiration, the Quebec Ministry of Education gave me a grant to develop and to offer this kind of training in cooperation with the organization Stella and the UQAM Community Service.

The purpose of this project is to find out the views of sex workers as well as other social agents on the determinants of health. We intend to provide training to those involved in community programs, social service networks, the health sector, politics—that is counsellors, as well as municipal representatives and provincial and federal members of Parliament—the law and the media.

It will be possible to provide training to these people on the determinants of health and they can thus become agents for change in their environment. This is what we would like to see for all Canadians.

It also seems to me that this kind of education and sensitization project should be made available at the national Canadian level.

That brings my presentation to an end. Thank you.

The Chair: Thank you, Ms. Mensah.

We shall begin our first turn.

[English]

Mr. Hanger, I know you have to leave, so please go ahead.

Mr. Art Hanger (Calgary Northeast, CPC): Well, I did and I came back. Now I'm here for the long haul, apart from the vote that will be taking place shortly. Thank you, Mr. Chairman.

All of you are academics. You're professors at the University of Windsor, some of you, and the university—

The Chair: At Montreal.

Mr. Art Hanger: You basically take the same tack. You expect this committee to start at the same framework where your presentations begin, and that is—and you can correct me; I may be paraphrasing here—prostitution should be considered like any other job. There should be no laws or regulation that would impact it. I believe that's correct. You said you didn't want to see any regulations around it. The stigma attached to prostitution would then fade off in people's minds, and we would all be just one big part of the business community.

Is that a paraphrase of where you're at?

[Translation]

Ms. Maria Nengeh Mensah: I do not think that we said that sex work is like any other job. It is criminalized work.

• (1825)

[English]

Mr. Art Hanger: This is where you want it to be.

[Translation]

Ms. Maria Nengeh Mensah: Are we saying that it would not be regulated under any type of law?

If we agree to recognize that sex work is work, then it must be subject to laws governing work in Canada. As for stigmatization, I think that I emphasized that legislative reform would be something proactive that would not eradicate stigma, but that it should be accompanied by an education campaign aimed at doing so.

[English]

Mr. Art Hanger: Part of your statement actually was framed such that criminalization causes the stigma, or at least part of it, but I think that's a very small part of it. Really, on the community side—and I might ask your expert opinion on this—people are generally not embracing the thought of a woman selling her body for money. You're indicating to this committee that there has to be an awareness campaign to change that thought in the community.

[Translation]

Ms. Maria Nengeh Mensah: I point out the distinction that people tend to make between the community and sex workers.

The distinction between the community and sex workers is not a proper distinction. People who are sex workers are part of the community, they are citizens. There is no doubt that discriminatory and disturbing attitudes will always exist but I think the role of the state is to curtail them as much as possible and therefore to attempt to improve relationships with those who are the most marginalized.

Is there acceptance of the fact that a woman or a man may sell sexual services? This committee's role may perhaps be to avoid straying into moral judgment and to deal with the issues, those that we are discussing today, from the point of view of citizenship and human rights.

[English]

Ms. Kara Gillies: I would say that certainly criminalization does not cause social stigma; however, it reflects and then reinforces stigma. When the state criminalizes so many aspects of our lives, the work and relationships, it sends a very clear message that we are somehow aberrant and not worthy of respect. That does directly lead to abuse and harassment.

Returning to your earlier question in regard to regulation, nobody on this panel is saying that it should just be an easy, breezy free-for-all. We are saying remove the Criminal Code sanctions and replace those with local bylaws, and codes, and regulations giving sex workers input into what that new system would look like, so that we avoid creating a new set of problems with a so-called legalized system, which in many ways could be just as oppressive as a criminalized one.

The Chair: Dr. Maticka-Tyndale.

Prof. Eleanor Maticka-Tyndale: It's a difficult name.

I would suggest to you that all the presenters today began from the perspective of dissatisfaction, in fact dismay, with respect to the violence that is perpetrated on sex workers in Canada. My understanding is that much of the impetus behind the formation of this committee was also dissatisfaction and dismay at the degree of violence that they experience and the deaths that are still so close at hand from Vancouver.

Our role and the task that came out of our research involved us in considering the part that the current laws play in contributing to, in

being in collusion with, the perpetration and the continuation of such forms of violence. This was our goal, to illustrate to you, based on the research that we have done and the life experiences and advocacy that Ms. Gilles has been involved in with sex workers, how the law exacerbates the situation rather than alleviating the situation.

The Chair: Last question, Mr. Hanger.

Mr. Art Hanger: Thank you.

I too am very concerned about the excessive number of women who have been murdered. I feel that a lot of the evidence that has been presented falls short of alleviating or fixing the problem. Legalizing it is not going to fix the problem. We have heard lots of evidence in front of the committee to say that if you legalize it or decriminalize it, whatever term you want to use, and then allow it to find its own level or course, or even regulate it thereafter, this would also create a lot of illegal...in fact, the so-called illegal prostitution levels go up. And that is the case with the Netherlands. We've heard that evidence here before the committee.

So I don't understand why you're suggesting that by removing all these laws, all of a sudden we're going to have a utopia when it comes to prostitution and they will all live safe lives.

We've also heard testimony from an RCMP officer, a former vice squad inspector, that the off-street prostitution is not really all that much safer than the on-street prostitution. He still has not solved three cases of prostitutes who were involved in escort services out of the city of Calgary alone. He's no longer in Calgary investigating those crimes, but they remain unsolved—cold cases.

So to take it off the street isn't solving the problems, and I don't understand your logic when you and others have presented these statements to say that things are going to be better. I don't see it, and the evidence to the contrary really has not been presented.

● (1830)

Ms. Kara Gillies: If I may respectfully submit something, I think you have confused and conflated the very different and distinct models of legalization and decriminalization. I agree with you completely. The models of legalization as they operate in, for example, the state of Nevada, the state of Victoria in Australia, or indeed the Netherlands have not alleviated violence or improved human rights significantly, because, as I mentioned earlier, there is a two-tier system created from that approach. The closest we have to a decriminalization model is in New Zealand, and granted, it is rather new, and many excellent studies have already come out of that initiative.

Can we guarantee there will be no violence? Of course not. What we are saying is that we anticipate at least a reduction in the violence. And on top of that, criminalization clearly isn't working. Legalized models clearly aren't working. We need to stand up and be strong, and bold, and try something new.

In terms of your comments regarding on-street versus off-street prostitution, I think you are correct in assuming that violence is not limited to street-based workers. That is one of the reasons in our presentations today we have looked collectively at the various Criminal Code sanctions that prohibit sex work and other sex-work-related activities with the understanding that collectively they serve to undermine our security and our agency.

The Chair: Are you finished?

We have a few more minutes, if you wish, Madam Brunelle—unless, Dr. Maticka-Tyndale, you have a comment?

Prof. Eleanor Maticka-Tyndale: Can I add to that? I would suggest that given the situation in Canada today, we do not have firm research evidence in either direction, so that the evidence you have heard from police officers, RCMP officers, and others speaks only within the context of the current system. So if they speak to you of violence, of death, they are speaking within the current existing system, which is exactly what we said, that the current system isn't working. There are huge amounts of violence.

In our recommendation, we don't say immediately move to a particular model or set of laws. What we recommend is that a working group be struck to develop a Canadian model, but that this model be based on decriminalization, because the only evidence from research we have is that the current model contributes to violence and death. The other evidence that is beginning to come in from New Zealand is that a decriminalization model may—may—decrease the violence and death. But I would suggest to you—and I've taught research methods for over 30 years in Canadian universities—that we do not have the kind of evidence that you claim we have, or anyone else claims we have, that decriminalization will increase violence. It does not exist. Anyone who tells you that it exists has never learned how to do research.

• (1835)

The Chair: Madam Brunelle, it's up to you. We can adjourn now or you may get a question in, but you may not get all the answers.

[*Translation*]

Ms. Paule Brunelle (Trois-Rivières, BQ): Let me begin.

Good afternoon, ladies. I am pleased to meet with you today. Thank you for coming. Your presentations were very clear and complete.

I have questions about your recommendations. You say that we must be sure to include sex industry workers as participants in legal and political debates. Could you please clarify this for me?

And then, when you speak of setting up a working group to develop a Canadian model for decriminalization, have you gone any further with this? Do you have a model in mind? Have you any original solutions to propose for the Canadian model?

[*English*]

Prof. Jacqueline Lewis: We think it does need to be an original solution. It needs to be a Canadian model. That's why we said Canadian, and not to adopt some other model that's already been put in place somewhere else. We're a unique country. We have unique issues of our own tied to the geography and particular forms of sex work that occur here, so we feel it has to be a Canadian model. The

form the decriminalization will take is something that we think the committee needs to come up with. We feel that sex workers need to be integral members of that committee, because without them being members of that committee, you can't have the kind of input that they can provide as to what the real problems are with the various models that might come up. I think they can raise issues that you might not hear if those voices were silent.

Prof. Eleanor Maticka-Tyndale: In the very brief time we have available before you have to leave, I want to say that essentially, as my colleague said, there is no existing model about which we would say, absolutely, this will work in Canada perfectly. We don't know. We're encouraged by the fact that in New Zealand sex workers were part of the formulation of the new set of laws and policies. To date, they appear to be working well. They appear to be solving many of the problems that have been pointed to here and in other places. We're not saying it is the ideal solution. It's a relatively new solution and it may work very well in New Zealand and not in Canada, and that's why it needs to be examined by a working group. That would be a place to start to look.

[*Translation*]

The Chair: Ms. Mensah.

Ms. Maria Nengeh Mensah: I think that sex workers should participate so that their interests and concerns are fully included in the entire process. When thinking of a Canadian model, for instance, this committee should include the participation of sex workers. Likewise, if the study goes on and if some practices need to be evaluated, then sex workers should also be consulted.

I think that consultation can be done in various ways. We must also consider that these persons have no experience in developing model regulations and things like that. When including sex workers as participants, we must also make sure that the process is user-friendly for them. These people have been marginalized. No doubt, they will need some convincing before they participate.

Ms. Paule Brunelle: Ms. Gillies, you mentioned using the Canada Labour Code. But when it comes to imposing standards, some sex workers do not want that. Registration, paying taxes and other fees becomes compulsory, and they do not want that. Nonetheless, in your basic principles for decriminalization, I see that you have written that there should be no licensing or registration of individual workers.

Without licences or registration, how can we enforce anything that looks like a labour code?

●(1840)

[English]

Ms. Kara Gillies: First, in response to your initial question, certainly in any work sector you're going to get groups of workers who are resistant to some degree or any degree of regulation; sex workers are no different. I think it is a false assumption, however, that sex workers as a larger community are resistant to ideas such as paying taxes. Indeed, in the STAR project one of the things we uncovered was that many working women and men would like to be able to pay taxes and increase their economic security because it does open up other financial options for them. Economic and financial struggles are a serious consideration for sex workers, because in many cases our earnings are considered proceeds of crime.

In response to your query in regard to the issue of licensing of individual workers, what we are proposing is that there be licensing of owner/operators and licensing of larger establishments. However, licensing of individual workers has certainly in other regions proved to be ineffective, largely because the business can be very transient. People come and go. It can be part-time, occasional, contingent work. Also, as Art pointed out, stigma is not going to disappear overnight, and certainly in the short term many workers would be hesitant to go forward and be licensed or registered, when (a) they don't know if the laws are going to change the next day, and (b) they know it could have a negative impact on, for example, other areas of employment, housing, custody of children, and so forth.

I would also pose the question as to what the benefit would be of individual licensing or regulation, other than to once again impose highly restrictive conditions upon the working people. An alternative would be membership in something like a professional association for self-employed workers or membership in a union for those who are working for third parties.

The Chair: I think at this point I'll suspend the proceedings until after the vote. We'll be back as quickly as we can. It could be anywhere from 20 minutes to a half hour, but we'll get back here soon. It's only down the hall.

Thank you very much.

●(1842)

_____ (Pause) _____

●(1914)

The Chair: We'll now reconvene the session, and Madam Brunelle has *une petite question*.

[Translation]

Ms. Paule Brunelle: We were discussing your recommendations and I was wondering how, without a work permit, we could enforce standards like those in the Canada Labour Code?

Regarding this matter, Ms. Gillies, you said that those who run establishments should have licences. But I do think that there should be some kind of registry for sex workers. Otherwise, I do not see how they can receive benefits from employment insurance or from the Quebec pension plan. People must at least register for the system to work. I do not know what you have to say about this. Perhaps I misunderstood you.

●(1915)

[English]

Ms. Kara Gillies: I would say that if you look across a variety of labour sectors, you will find that not all groups of workers are licensed or registered. For example, wait staff are not registered or licensed.

Some people do belong to unions or professional associations. For example, in Ontario we have a college of registered massage therapists. But belonging to a professional association is quite different from being registered with the state. I think that because sex workers, certainly in a Canadian context, have had such a negative relationship with the state in terms of oppressive laws and indeed oppressive municipal licences, there is a fair degree of justifiable concern that licensing of individual workers would become another means of oppressive state control. If instead we looked at licensing owner/operators, that is how labour codes and occupational health and safety standards would be enforced.

In New Zealand they have adopted this style, so individual workers remain unregulated and unlicensed. Indeed, up to four individual workers, as long as they are operating autonomously, can ply their trade out of a set location, but the minute it becomes more than four workers or the minute those four workers are employed by a third party, then the owner/operator is subject to licensing and regulation.

[Translation]

Ms. Paule Brunelle: Ms. Mensah, I would like to talk to you about health.

I read your most interesting report. Among other things, it says that there are many cases of HIV and sexually transmissible diseases, which is mainly due to the fact that clients are on hard drugs. That, and not prostitution, would be the main vector for spreading HIV. Have I really grasped the meaning of this report?

Is there a sound body of research to support what you say?

Ms. Maria Nengeh Mensah: Yes. There is an abundance of documentation on the frequency of HIV and other infections transmitted through blood, such as hepatitis, among intravenous drug users.

In the report, I wanted to draw a distinction between the risk of infection due to the intravenous use of drugs, and the risk incurred by the sex trade. In fact, public opinion confuses these two things. In 2000, I carried out another study with people from the Centre-Sud district of Montreal, where there are many prostitutes and addicts in the streets and public places. All participants associated prostitution and drug addiction and could not see how one could exist without the other.

Now, as we study the epidemiological data on HIV, we realize that HIV among sex workers mainly occurs through unsafe practices with non-commercial partners. Concretely, this means that sex workers are more likely to catch HIV from spouses than from clients.

My report mentions this confusion between drug addiction and the sex trade, because this also contributes to stigmatization. We must try to see the difference between these two things.

• (1920)

Ms. Paule Brunelle: This may be partly due to current opinions about the sex trade. People think that prostitutes need drugs in order to ply their trade.

I have one final question.

I am interested by what you say about the need to avoid confusing things. You said that this is a human rights issue and not a moral issue. I agree with you, but should we not supplement your recommendations with a campaign to raise public awareness and explain things so as to dispel people's prejudice? Stigmatization is most often due to prejudice. As we toured Canada, we saw that people perceived these things in very different ways.

Should we recommend a campaign similar to the one against drunk driving? Basically, this kind of campaign could be useful. If prostitution were to be eventually decriminalized, people should be given a better understanding of what the sex trade is really about.

Ms. Maria Nengeh Mensah: This is also my point of view. Even before raising the decriminalization issue, we must consider our attitudes towards sex workers, women, sexually active beings and sex in general. This is a very broad issue, but this is what your committee has to debate. This recommendation may not be directly within the mandate of this committee, but I think that it is a very important one.

Ms. Paule Brunelle: Thank you.

The Chair: Thank you.

Mr. Ménard, you have seven minutes.

Mr. Réal Ménard (Hochelaga, BQ): Thank you.

Prostitution was the first issue that I became interested in when I was elected in 1993. I was elected in October; but, in September, a march for clients was organized in my neighbourhood by a CLSC employee. Throughout my entire public life, I have read about this issue. I do not claim to be any more knowledgeable than the next person, but I am certainly seriously interested in understanding this phenomenon. The first thing that I tried to avoid was to take a moral stand on the issue: that sort of judgment is not a part of our mandate. In my opinion, the main issues include sex workers' safety and peace within our communities.

However, there is something that does disturb me a little in the discourse that we often hear about prostitution. And I must admit that your remarks have not shed a lot of light on the subject for me. I agree that prostitution should be decriminalized, insofar as it should be removed from the Criminal Code and the system of offences changed. Furthermore, I would rather agree that two people who decide to have sexual intercourse, in a spirit of mutual respect, should not be subject to any legislative framework.

However, I think that organizations such as Stella have not gone far enough in thinking about how to eradicate irritants in the community. You cannot claim on the one hand that prostitution is legitimate work and on the other that there should not be any regulatory framework. That is just not possible. It is not just any odd

job, but neither is being a member of Parliament. The same is true of bakers, printers and so on and so forth. No one job is the same. And what is more, when it is your job, you probably think it is the best job in the world.

I have three questions to ask you.

In this committee, many people have recommended that we emulate the Swedish model. Although, Kara, you have talked more about the New Zealand model. I would like you to tell me what you like about that model.

Should we decide to decriminalize prostitution tomorrow morning, what would we do to eliminate the irritants at the community level? Quite obviously, the presence of four or five sex workers in a community has its repercussions, including from a client patronage standpoint. How can we ensure that peace and order is maintained? From what I have read, none of your recommendations raised this issue.

Ms. Rose Dufour, who has done research on this issue, appeared before our committee. Having conducted interviews with 20 people, she admitted—and this is saying a lot—that she was actually reconsidering what she thought about prostitution. Some people, including academics, refuse the very premise that one can be a sex worker and find self-fulfillment professionally.

What would you say to that?

• (1925)

[English]

The Chair: Does anyone want to reply?

Dr. Maticka-Tyndale.

Prof. Eleanor Maticka-Tyndale: You raised several issues, so I think it will take a while for us to work through them. In terms of the irritants in the community, perhaps I could address that.

When we speak about decriminalization, this does not mean there are no expectations regarding the conduct of the business of sex work. There's a physician who has his office in his home just up the block from me. I find it exceptionally irritating that my children, and now my grandchildren, cannot ride their tricycles and bicycles up the street because there's constantly traffic on that street coming to and from the physician's office. Yes, that's an irritant. If a sex worker were to engage in a business in my neighbourhood with constant cars to and fro blocking the street, making it impossible for me to go for a walk with my dog, or my children to ride their bicycles, that would be an irritant.

But I would like to see both the physician up the block from me, as well as a sex worker who might be working in a house up the block from me, to have certain expectations made of them regarding how they use public space for the coming and going of their clients. This would seem reasonable, and it is not contrary to our recommendation of decriminalization. Obviously, the irritants in the community would have to be addressed under a decriminalization model, and those would have to be explored as part of the model.

I think Kara might have something more to say along those lines.

Ms. Kara Gillies: Certainly most municipalities do have bylaws addressing issues such as home-based businesses. When we start to look at larger establishments, certainly I can't even begin to imagine a brothel that would have the same degree of traffic as, for example, a large fitness centre. So when municipalities start to look at issues of zoning and regulation, they would have to take into account the size of the business, the hours of operation, the amount of traffic, and so forth. What we are saying, however, is that any regulatory model devised for and applied to sex trade establishments should not be more oppressive than or more morality based than those applied to other types of businesses.

In regard to the New Zealand model, I understand that your research analysts do have more hands-on information perhaps than I do with me at the moment, but certainly it was a process that took several years. Sex workers were involved, along with politicians, and researchers, and community members. Essentially, what they have done in New Zealand is remove almost all of the sections in the criminal code, although they did retain provisions around exploitation and abuse and youth and children. It was then up to local regions to develop zoning and licensing. However, individual sex workers, up to groups of four, are permitted to work without that degree of state regulation.

[Translation]

Mr. Réal Ménard: That is what the Fraser Committee recommended.

[English]

Ms. Kara Gillies: Yes, although one of the differences with the Fraser committee is that it was only up to two workers, and it specifically recommended that those workers operate out of a residence. The concern we have on that regard is that, first, it then prevents women from having private and personal lives. Women who might be living in shelters, hostels, with roommates, with personal partners, wouldn't be able to operate under those particular provisions. And then by saying that two women have to work out of a residence, it then puts people in a position of having to share accommodation with a colleague if they want to take advantage of the safety provisions. So we would alter that somewhat and say up to two or perhaps three women working out of a venue.

● (1930)

[Translation]

Mr. Réal Ménard: I understand.

Ms. Maria Nengeh Mensah: Coming back to what I said a little earlier about the Swedish model, I would like to add that this model takes for granted some of the aspects of the sex trade. Clearly, the sex trade would disappear if the demand for it was eliminated. From what I understand of sex work, which requires a social network, criminalizing the demand or the purchase is tantamount to criminalizing the exchange itself. In my opinion, that model is a sham.

Also, my research experience with Centre-Sud neighbourhood groups has shown me that one of the major irritants was tainted needles. People referred to specific parks and street corners where tainted needles were often found. And yet, these syringes are often more associated with drug use than sex work. I think that when you

consider potential measures, you must ensure that the distinction is made between these two things.

Perhaps sex work can be considered an urban, commercial reality just like some Canadian streets where there are a number of cinemas and other types of entertainment. That might be one solution to consider when it comes to regulating the industry.

Mr. Réal Ménard: The main irritant for fathers, for example, is the fear that if certain areas are reserved for five or six sex workers, their daughter or wife may be solicited. In this kind of area, some clients mightn't necessarily make the distinction. When it comes to needles, you're right: they probably don't have much to do with the problem. On the other hand, how can you explain the fact that when prostitution pops up in a neighbourhood, this type of irritant rears its head? I don't think that you raise this issue in your recommendations. And yet, in my opinion, this would be the main irritant. So, in fact, this is a problem that needs to be tackled. I don't think that people necessarily cast a moral judgment on this.

Ms. Maria Nengeh Mensah: On the matter of irritants, let me come back to Eleanor Maticka-Tyndale's idea regarding an awareness campaign about transactions. The fact that neighbourhood residents are disturbed by consumers of this type of service may indeed constitute an irritant, however it is possible, in my opinion, that the sex trade may be pushed deep underground thereby making it well-nigh impossible to find out whether such services actually exist. I think that this phenomenon is linked to people's perception and their awareness. Achieving one's full potential as a sex worker may seem inconceivable to some academics, but I think one needs to keep a neutral opinion of sex trade work and realize that just like with any work, certain conditions can help people reach their potential.

From what I understand, such conditions have a lot to do with simply respecting human rights. It has been determined that respecting human rights is a crucial factor in ensuring health and safety. In my opinion, you have to admit that sex workers, just like people that work in any area, should be able to feel secure in the fact that their rights are respected. I believe that you've heard a lot of testimony covering a breadth of experiences in the sex trade.

The problem with some analyses is that they reduce sex work to nothing but a negative experience, that is suffering, hardship, and so on. Of course there is suffering and hardship, but one also needs to acknowledge that there are number of people, including male and female transsexuals and transvestites, who say that they're happy with their lives at this particular moment in time.

● (1935)

The Chair: Have you finished?

[English]

Go ahead, Madam Lewis.

Prof. Jacqueline Lewis: I just want to add some caution. You talk about the Swedish model and that the committee has heard a lot about it and that it's what's being suggested. There are a number of problems associated with the Swedish model. There are actually four documents that speak in quite detailed fashion about these problems that are associated with it. There's the National Council for Crime Prevention, the National Board of Health and Welfare, the National Police Board, and the Norwegian working group. They've all produced reports that document the problems with the model. A lot of them are very much tied to the problems we identified today.

You see it with our system already. When we start criminalizing the men, what can happen is that you don't necessarily see a decrease in violence against women. They haven't found that. They've found more of a trend that instead of there being a decrease in prostitution, it becomes more invisible. When we talked about invisibility today, we talked about the problems associated with invisibility.

There are also the issues tied to the fact that the women say the good clients go away and the bad clients are the ones who are out there, and that there is less money to be made; so people will take more risks in an attempt to make some money because there's less money to be made on the street.

[Translation]

Mr. Réal Ménard: Are you talking about Swedish services? The four documents were drafted by the Swedish police force. Are you talking about Swedish organizations?

[English]

Prof. Jacqueline Lewis: Three of them were developed by Swedish councils. One is by the Norwegian working group, which is a report, *Purchasing Sexual Services in Sweden and The Netherlands*.

[Translation]

Mr. Réal Ménard: Could you table a copy with the committee? I saw an article in *Le Devoir*. The author, named Guillaume, I think, made vitriolic remarks about the Swedish model. I, on the other hand, am very much looking forward to the symposium. A panellist will be there, a man, I think. I'd like to read about the Swedish model, but not in Swedish.

[English]

The Chair: Madam Maticka-Tyndale.

Prof. Eleanor Maticka-Tyndale: To pull together some of the things that have been said both about the irritants and about the different models, the difficulty is that, to a great degree, the discussions that are occurring are occurring only with knowledge about what's going on in Canada and under the existing Canadian model. Then when we envision another model—for example, the suggestions that have been made about decriminalization—you quite rightly, Monsieur Ménard, raise the issue of community irritants and how will they be dealt with. Well, we don't know what kind of community irritants will arise.

It'll come back again to the need for research or the need to carefully examine research that has already been done. Various models have been tried around the world to deal with sex work. New Zealand has one model that is very different from any other that we've seen anywhere else. Canada has a model. The United States

has a model. Sweden, you've already raised, has yet another model. There has been documentation on several of these models about how they work—what's good about them, what's bad about them—and I would suggest that rather than imagining what might happen if Canada were to take up a particular form of law or policy related to sex work, what would be more useful is to look at how those are working or not working in the regions where they already exist.

[Translation]

Mr. Réal Ménard: Thank you.

[English]

The Chair: If I could follow up on that, we have different models, which you've referred to tonight—Sweden, the Netherlands, Germany, New Zealand, and Australia. Could you help us, as you know it, with the pros and cons—what's good about them and what's bad about each of those jurisdictions that may assist us in our deliberations here? That's quite a bit of—

• (1940)

Prof. Eleanor Maticka-Tyndale: Right at this moment?

The Chair: Yes, to the best of your knowledge.

Prof. Jacqueline Lewis: I would say that the Swedish model, from what we've seen of it—because a lot of documentation is in Swedish and so you have to read reports of the report—is very similar to the issues we talked about today, issues of security. We talked about the paradoxes that sex workers face, the invisibility concerns for physical safety. This commission came about as a result of concern for violence against sex workers.

What they find is actually that the risks are greater. Violence increases in those situations when you criminalize the clients. The industry becomes more clandestine. The workers are able to network less. The clients are not willing to give evidence to the police to help them apprehend someone who is abusing sex workers because they're afraid—because it is illegal—that they will then be charged.

So it actually makes things worse than what we currently have here. From what I've read, it sounds like a worse situation. We'd just be magnifying things. Everything we said today would increase if we brought in the Swedish model.

As for the credibility of the reports, when you look at who wrote them—the National Council for Crime Prevention, the National Police Board—you would think you would hear something different from them. You're actually hearing something very similar to what we've already stated.

Ms. Kara Gillies: It's also important to acknowledge that the Swedish model is not only problematic in terms of its practical application but, I would suggest, in terms of its underlying philosophy as well. The Swedish model was not developed based on needs assessments or consultations with sex workers or community groups. It's based on a very clear and specific ideology that positions sex work as equal to violence against women, and therefore, by extension, clients and management are the perpetrators of that violence.

Looking for a moment at Canada's procuring laws, I have to say that there are many academics who are prepared to consider the decriminalization of the women themselves, but not the third parties who may be involved. The response from many sex workers is that, like other groups of working people, we aren't all able or willing to work independently. By failing to acknowledge that and to legitimize third-party involvement in the sex trade, we are buying into the assumption that the exploitation of sexual labour is somehow substantially different from and more repugnant than the exploitation of any other type of labour. I would put forward to you that unless we are stepping back and critiquing capitalist systems at large, the reality is third-party involvement in a multitude of businesses can be helpful to many people in many different contexts.

When it comes to criminalization of clients, while we do not have a Swedish model here in Canada, we have seen in different jurisdictions law enforcement tactics that choose to target clients more than sex workers. Even for those individuals whose sole concern is the well-being of the sex workers, this has proved to be an untenable approach because, as Jackie has pointed out, when you reduce the client base, you therefore make it harder for sex workers to maintain their level of income, and workers end up taking greater risks and working longer hours in order to make the money they were making before to support themselves and their families.

I think too, on a level of principle, we have to step back and question, once again at the most basic level, why do we want to criminalize consensual sexual activity? What business does the state have in the bedrooms and in the sexual activities of our populations? I think it sends a very disturbing and negative, indeed sex-negative, message to say that purchasing sexual services is inherently negative and undermines our communities and our well-being; whereas, in reality, sex is central to and pertinent to who we are as humans, and not everybody is able to access that in a non-commercial manner.

Many sex workers will say that we provide a valuable service, one that is heartening and enlightening and advances people's well-being in a very holistic manner. Some sex workers, of course, are just making a buck like everybody else. We'll observe a variety of experiences of the sex trades within and between different sectors. But the reality is that all of us are making money. We're supporting ourselves, we're supporting our families. And we ought to be able to do that in as legitimate a means as possible. Unfortunately, the current Criminal Code provisions deny us that right and indeed that responsibility.

• (1945)

The Chair: What about the situation in the Netherlands—pros and cons, good and bad?

Prof. Eleanor Maticka-Tyndale: Actually, one of the documents we have submitted is a report that Dr. Lewis and I produced in conjunction with our escort research. There we did review the Netherlands, the United States—specifically Nevada and other states—and Canada. This was before New Zealand had come on the scene. You have a lot of documentation on the Netherlands in that report. Because we've moved on to do other work, I don't have it at my fingertips and I would hesitate to state specifics.

But I would suggest that among all of the models, if we are interested in a model that can deal with labour conditions and make

them as positive as possible—security issues, safety issues, as well as issues raised by local residents—a serious look should be taken at the New Zealand model. I can tell you from the people I know in New Zealand that they don't like community irritants any more than Canadians do and would not tolerate community irritants any more than Canadians do. And yet New Zealand seems to have come through with a form of policy and legislation that satisfies community residents and also appears, so far, to be best able to reduce the kinds of issues we raise around security, economic, physical, emotional—whatever angle—and health concerns as well. So this model, I would suggest, is well worth looking at.

Ms. Kara Gillies: I can address the situation in the Netherlands in very general terms. For a long time there was a common misunderstanding and belief that in the Netherlands there was some form of legalization or decriminalization. That was not the case; it's just that in certain districts prostitution was "tolerated". A few years ago, the government brought in their new brothels act, and at the time, sex workers organizations such as The Red Thread were supportive of these measures, because they were under the assumption they would lead to better working conditions, labour rights, labour codes, and an advancement of their economic and social standing.

Unfortunately, that proved not to be the case. Sex workers there found themselves subjected to a legalized model whereby they had all the responsibilities but none of the rights of other working people. Sex workers reported that they were unable, for example, to take out loans or open bank accounts; they were unable to find adequate day care. They were being told when and where and how to work and how much to charge, and yet despite being treated like employees—as indeed happened in Germany as well—they didn't have any of those rights, and the state wasn't following through with its end of the bargain in terms of benefits and related issues.

Currently, sex workers in the Netherlands are unionizing. They are networking with one of the larger unions in that country in order to overcome some of these barriers and start to realize an improvement in their working conditions and be able to realize their basic labour rights.

The Chair: Dr. Fry, are you prepared to—

Hon. Hedy Fry (Vancouver Centre, Lib.): I want to apologize to the witnesses. We went to vote, and then I had to do something called the late show, which means I'm supposed to sit in the House and answer questions on behalf of the minister, so that kept me. I just finished and I just came back here.

I'm very interested in and have heard from very many people about the concept of decriminalizing; however, I'm one of these people who do not believe there is such a thing as a silver bullet. If you were to suggest decriminalizing—and I can understand the merits of it—what are the other pieces you think should be put together as part of a holistic or comprehensive strategy that would address some of the overarching concerns that, say, women in the sex trade face? One would be things like, first and foremost, how you help women not get into the sex trade because they're put into survivor sex, or they're being exploited, or whatever. How can we prevent that?

Secondly, if there is a group who chooses to do this and then wishes to leave, do you see holistic strategies as part of a plan for helping them exit, if they so choose?

I think your idea of stigmatization is a very important one. How do you perceive that we can do this? Would you see a public education campaign? Would you see something in which sex trade workers actually speak out?

Then, we've heard from a lot of people who are concerned, saying that what you do by decriminalizing is legitimize. I don't necessarily buy into that argument, but there has to be an answer for those people who say then that what you say to everyone is that this is an okay thing for you to do, and therefore they might think, "I'm going to choose to do this as my profession one day".

It's just that I think there need to be some answers for some of those things. And as for the concept of this being part of a comprehensive strategy, how do you see that strategy unrolling?

• (1950)

Prof. Jacqueline Lewis: I'll start by talking about some of the protections that still could be available for sex workers—the issues of violence that this committee was very concerned with. If we take all the laws that pertain to sex work out of the Criminal Code, we still will have laws protecting people from criminal harassment, from uttering threats, from assault, from assault with a weapon, from aggravated assault, from kidnapping, from forcible confinement. We still will have those laws that can easily be applied. We don't need specific laws to protect people, whether they're women, men, or transgendered people. We don't need specific laws; we can use these laws to protect people.

Ms. Kara Gillies: In fact, sex workers will be better able to be protected under those laws because they don't have to fear sanctions due to the criminalization of their work. Certainly right now a lot of sex workers are hesitant to report abuse or assault to the police, because the police are in the untenable position of on the one hand being told they need to protect sex workers, but at the same time being the ones who enforce the criminal laws.

There were multiple sections to your question. One of the things I wanted to pick up on was leaving the business. I have worked full-time in the sex trade for 15 years, part-time for a good three to four years prior to that, and I have to say, throughout all those years—my long tenure in the field—the vast majority of women I've met have left the business. But they didn't require special programs or exiting strategies; they simply, like other working people, moved on to other areas in their lives. I think when sex workers find they don't have other options open to them, it's often because of other life

circumstances, such as street involvement, such as substance use, such as extreme poverty. Those are the factors that are limiting, not sex work itself.

The one factor that is specific to sex work that does prevent people from exploring other options is the criminalization and the impact a criminal record has on people's opportunities for future or complementary employment.

Prof. Jacqueline Lewis: I would even say that right now, if workers want to move off-street in Windsor, where we did a study of the escort industry, you cannot get an escort licence if you've had a conviction for a prostitution-related offence in the last few years. So who's going to get to move off the street, even if they wanted to?

Hon. Hedy Fry: We've heard that.

Prof. Eleanor Maticka-Tyndale: And that's a common requirement in all municipalities in Canada that licence escort work—that you not have a record of prostitution offences.

Ms. Kara Gillies: I would also suggest that under a decriminalized system the formation of professional associations and unions would then allow sex workers to share resources, share strategies, and build their own foundational community. In India, the DMSC is a sex workers' organization with over 60,000 members in Calcutta. They offer an enormous array of services, including literacy programs, and they have their own credit union, and they have their own regulatory council, one of the primary purposes of which is to prevent violence, to reach out to younger people and, if necessary or desirable, point them in alternative directions. Time and time again, we see that this so-called peer approach, empowering workers as workers, as women, is a most effective way to overcome and combat problems with security.

Prof. Jacqueline Lewis: I would say education is also very important, and not just educating the public, but educating workers. We found in municipalities that license sex work that their hands are really tied. They have to pretend it isn't sex work, that escorting is just escorting, and therefore they can't provide the kind of information people need so that they can conduct their work in a safe manner.

In Windsor, when we were conducting our study, a number of the agencies were busted and were charged. And they learned: let's not provide condoms; let's not provide them with any information; let's not ask any questions about the sexual services they'll provide or not, because if we do, we're going to get charged for violating the Criminal Code.

One of the things we came up with from the STAR research project—working together, the whole team—which we submitted today as evidence, is a series of information pamphlets to provide sex workers with information. We need a lot more of that out there. That's just a tip of the iceberg of what's needed.

•(1955)

The Chair: Do you have a comment?

[*Translation*]

Ms. Maria Nengeh Mensah: I would like to come back to the awareness and education campaign. In my view, it is the winning component of the proactive reform strategy of the Criminal Code. The campaign would target the general public. However, people who work directly or indirectly with sex trade workers should also be given information and made aware of the issues involved, and sex workers' associations should also ensure that training is ongoing, if I can put it that way.

My work in the field, my research and the experience I have gained have helped me to realize to what extent prejudices disappear when people are made aware of the diversity of places and practices within the sex industry, as well as how sex workers are affected by their wide variety of experiences. I was going to say that it is miraculous, but in fact, it is fantastic. People are taught that sex workers are just like you and me. They have roles and aspirations, and they provide services. When people finally understand that there is more than one way of dealing with this situation, that is a fair accomplishment right there.

[*English*]

Hon. Hedy Fry: There is a question I wanted to ask.

We travelled across the country, and I was listening to a person who was running an “escort service”. She had been a sex trade worker herself. She basically said that she took 50% of the take from the women who worked with her. I asked her what she provided for the 50% that she kept. She said phone service. I said, “So you provide nothing else? I think that's exploitation”.

My question is this. In the case of the licensed workers, like massage parlours and escort services and stuff, are there any clear sets of criteria and guidelines that would prevent a person from exploiting the workers? I think we would be naive to believe that a sex trade worker herself or himself would not necessarily exploit others. I'm just wondering, do you have to fulfill certain criteria? Are you audited? Do you have to provide certain services for the money that you keep? Is there anything like that, or is it just a vicarious kind of business where everyone makes their own rules as they go?

Ms. Kara Gillies: Right now, everybody makes their own rules as they go because of criminalization. Certainly what we foresee for the future is a system under which we can develop codes of conduct, we can be audited, and owner/operators will be licensed and regulated.

When you ask about the morality or the exploitation involved with the escort agency owner taking 50% of the earnings, personally, as a sex worker, I'd rather work for that woman, give her 50% of my money and still walk away with \$100 for an hour's worth of work than go down the street and work at, say, a fast food restaurant owned by a multinational corporation that brings in billions of dollars of profit per year, pays me minimum wage, and still fights unionization. I think when we look at issues of exploitation, we have to put it within a broader context.

Hon. Hedy Fry: I don't think it excuses it, though.

Ms. Kara Gillies: It doesn't excuse it. However, if we aren't criminalizing the multinationals, let's not criminalize the owners and

operators in the sex trade. Let's instead look at other measures whereby sex workers gain more control and more autonomy through decriminalization, through the formation of professional associations, and through the development of unions for people who are working for third parties. The union movement certainly has done a lot for many groups, multiple groups of working people, and we would like to see the same opportunities for those of us in the sex trade.

•(2000)

The Chair: Madam Brunelle, do you have a question?

Go ahead. Do you have a comment, Doctor?

Prof. Eleanor Maticka-Tyndale: I would like to add to the comment regarding the agency owner and the 50% and what else does she provide. The difficulty right now is there's very little else that she can provide. If she provides a driver, then that driver is running the risk of being charged with transporting. If she provides information to her workers about how to handle clients who are difficult, about sexually transmitted infections, about negotiating with clients, she is liable to be charged under the Criminal Code. So there's very little right now, with the current law, that an agency owner can provide, other than a telephone service, without running the risk of violating the existing Criminal Code, and that's something that was learned very blatantly by agencies and workers in Windsor a few years ago, when Windsor brought in licensing of escort agencies and escorts.

Initially, the workers and the agency owners saw this as a very positive move, saw it as legitimizing the work that they did, and some of the agency owners really did bring in very progressive, very labour-positive policies, as we would call them. Those were precisely the agencies that were then taken up in the sweep of agencies, because they immediately could be seen as recognizing that the work their workers did involved the exchange of sex for money, not just going on a date, and consequently they were in violation of the Criminal Code.

So it becomes difficult. I'm not saying that—

Hon. Hedy Fry: This is a fickle system, really.

Prof. Eleanor Maticka-Tyndale: It is, absolutely.

Prof. Jacqueline Lewis: After some of the owners were arrested, they asked for a meeting with the municipality, and they invited me to come to the meeting. At the meeting, the city clearly said that all you can provide is an answering and referral service. That's all you provide. They don't work for you; you work for them, and it's an answering and referral service.

Prof. Eleanor Maticka-Tyndale: And that's all you can do without violating laws.

Prof. Jacqueline Lewis: But there was nothing about the amount you can take or anything like that.

The Chair: I have a question.

We've heard time and time again that neighbourhoods don't have a prostitution problem, they have a drug problem. How would you feel your organization, with labour and unions and situations like that...? How is that going to mix with the low track, where predominantly the drug problem is? Will they even be able to respond to some of the suggestions that you've given us for improvements?

Ms. Kara Gillies: As we've discussed already, certainly there are groups of individuals who, in addition to working in the sex trade, are facing other challenges in their living circumstances—people who are street involved, people who have substance use issues, and so forth. So certainly there is going to be a small percentage of people for whom some of these strategies will not immediately result in an improvement in their lives, except that they won't have to be constantly fleeing from the police, spending time in jail, losing their housing, losing their income, and having their lives disrupted through the process of criminalization.

When I mentioned earlier that economic security and access to housing can be negatively impacted by criminalization, it is precisely these groups of marginalized workers who are most likely to be subjected to law enforcement and therefore most likely to have a hard time developing economic or indeed physical security.

I think that additional factors have to be addressed as distinct phenomena—that we do in this country have terrible problems with people being under-housed, lack of affordable housing, poverty, racism, archaic drug laws, and so forth—and I don't think we are going to be able to have a silver bullet, as Hedy Fry described it. We're not going to be able to solve all our problems all at once, but certainly moving forward and past criminalization is a good first step, and even the workers who are most marginalized and face the greatest degree of discrimination will no longer have to worry about the impact of a criminal record, the impact of avoiding police detection, the impact of being incarcerated.

● (2005)

Prof. Eleanor Maticka-Tyndale: This also overlaps with the issue that Ms. Fry raised with respect to survivor sex. Survivor sex is not just sex work. It's a particular kind of problem and an issue, and changing or keeping the Criminal Code statutes that deal with prostitution as they are is not going to solve the problem of survivor sex. There's a multiplicity of issues and problems here.

However, what it will do is not add to the problems that already exist by giving people who have particularly difficult circumstances the risk of also having a criminal record. It also makes it much easier to leave this kind of situation, because it becomes much harder for someone else to threaten you, as there's one less thing you can be threatened with. But it won't solve the problem.

The Chair: We've found that in these large urban centres the police in the prostitution areas act more as protectors than enforcers. They suggest to us that if prostitution is decriminalized, there's no point in their being in those areas; therefore, they won't be there to protect the sex workers from whatever is going on. They refer especially to children who are being exploited.

What are your comments on that?

Prof. Eleanor Maticka-Tyndale: There are laws prohibiting exploitation of children already on the books, so why do we also have the prostitution laws?

The Chair: I appreciate that, but if the police are then assigned to another detail....

Prof. Eleanor Maticka-Tyndale: I would hope—

The Chair: I would hope so, too.

Prof. Eleanor Maticka-Tyndale: As a mother and a grandmother, I certainly would hope that the safety and well-being of Canada's children are important areas for the police to be involved in, wherever that may be—not only with children who, for some reason, find themselves on the street, under whatever circumstances those are.

The Chair: I appreciate that too. I just don't have the confidence. If there is no police presence, would some of these abusers continue to abuse?

Prof. Eleanor Maticka-Tyndale: We could also say that it would reduce the amount of time the police have to spend enforcing the existing statutes. If those statutes weren't there, it would free up their time to deal with precisely the kinds of problems you're addressing.

Again, we don't know unless we do the research. We do have illustrations from other countries. We could take a look at how it's working there and whether it's comparable to the way it might work in Canada; otherwise, we're guessing.

The Chair: Yes.

Kara.

Ms. Kara Gillies: It would also build trust between sex workers and law enforcement officials. I don't know from whom you were hearing this particular analysis, but certainly in the city of Toronto, I would estimate that the majority of sex workers are very leery about the police. The police are the last group of people they are going to call for assistance. But if we get rid of the criminal laws, suddenly the police are better positioned to act as protectors as opposed to enforcers. It may indeed be the case that many police perceive themselves to be serving and protecting, but that isn't necessarily how it's experienced by the people within the sex trade.

Prof. Jacqueline Lewis: Can I make one observation?

The Chair: Yes.

Prof. Jacqueline Lewis: In the most recent study we did, in talking with police officers and doing the interviews, we did come across police officers who do want to protect, but some ideas of protection are very different from what I would personally consider to be protection. I remember one officer telling me—and he was a higher-up officer—that as soon as they see somebody new on the street, they bust her and they bust her and they bust her and they bust her until she's gone off the street. I asked him if he'd ever thought that maybe he'd put her in such an awful position that she was in a worse situation in terms of the industry. He said no, he'd never thought of that. He never thought that all the fines and the jail time had put her possibly in the hands of somebody who was really exploiting her, because she's trying to avoid the police now to make sure they don't find her. He had never thought of that, and I was really amazed that he hadn't. He just thought the solution was to keep arresting them, and that would eventually scare them off the street.

• (2010)

The Chair: Thank you.

Go ahead.

[*Translation*]

Ms. Maria Nengeh Mensah: I am not sure I understand the example which was just given. However, it seems clear to me that the role of the police is also to protect sex trade workers, just as it protects every other citizen. If you want to put a stop to these activities, it might be best not to apply the Criminal Code. Sex trade workers should absolutely be protected when, for instance, they are victims of violence, abuse or other such behaviour.

I am not sure I understand what the problem is as presented. Nevertheless, it seems to me that there is a perception that sex trade workers are always victims. People do not seem to realize that as long as their activities are not decriminalized, sex trade workers probably won't call the police even when they really are being victimized. I agree with what Kara and the others have just said. In fact, I believe that decriminalization would lead to the creation of alliances with the police officers and with the entire monitoring system. In fact, this system could be based in the community. Some neighbourhoods would be monitored.

[*English*]

The Chair: Dr. Fry.

Hon. Hedy Fry: The chair's question was fairly.... I heard that in Vancouver. The police in Vancouver have a very different attitude, because they realize the women who were killed were killed because many of them knew what was going on; but they couldn't go to the police and tell them, because they would be picked up for soliciting, so they just shut up. I think the police...at least, the one I was driving around with told me they were so appalled to find out that stood in the way of getting information, etc., that they decided to do an outreach. Driving around, they would see them on the street corner, and they knew all the women by name. They'd ask if they got their hair cut today, or whatever, and just drive on. But I think what they said, which sounded to me like a bit of a catch-22 situation, is that they know the women on the street, and the women know the police are there to help them now—they're there, they drive past, they talk to them, and they have built a relationship with them. The police don't enforce the law at all in the way they used to, because they

realize it was actually more dangerous when they were the enemy than when they became friends.

They did say there was one thing the law did. If they saw somebody on the street who they thought looked underage, or who they felt was new and might be a young person—because that's obviously illegal, and we all think it should continue to be—they had no way of going to that person and taking them in, finding out their age, finding out where they came from, and helping them out, if they didn't have some tool with which to do it. To just walk up to a young person on the street and pick them up for no reason would have created a problem. It sounded to me as though they would be stuck without a tool if you took this tool away.

I'm wondering if there is some other tool one could offer to the police so they would be able to pick up some of the young people on the street whom they would like to pick up and rescue and do some things with. At the current time, they don't have a tool—and the tool of criminality is not the one we all agree with. At the same time, they are thinking mostly of the loss of this tool, especially with young people, mostly with young people.

Prof. Eleanor Maticka-Tyndale: It's quite interesting that what the police in Vancouver are saying is that we need a law so that we don't enforce the law so that we can do what needs to be done.

Hon. Hedy Fry: It's convoluted. Is there something else they can have?

Prof. Eleanor Maticka-Tyndale: That's something that needs to be considered and deliberated. I certainly know that in the four cities I've lived in, young people who are “on the streets” in unusual locations or various hours, whether or not it has anything to do with a “known area of prostitution”, have been stopped by police and asked about their comings and goings and what's going on. That didn't seem to ever prevent that from happening. I'm not sure why they wouldn't be able to do that. When a young person is out on their own, particularly at nighttime, it is a common practice. I've lived in Montreal, Calgary, Windsor, and, very briefly, in Toronto. In all places, because I do research with young people throughout my career, and my husband has worked with young people, we know of young people who have been stopped and asked their comings and goings—do they have a home, do they need help—which is what I think you're talking about. It had nothing to do with their presence in a “known area of prostitution”, because that wasn't the case.

So I'm not sure about their dilemma.

• (2015)

Hon. Hedy Fry: I think it's in areas of known prostitution where there is a person they think is underage but are not sure is underage. I think the police, rightly or wrongly, feel that the only way to protect that kid is to get them off the street and take them somewhere where they can be helped and looked after.

Young people have said that's not what happens, because they go back and get beaten up by the pimp or the guy who is feeding them drugs or whatever. I think the police are saying that sometimes when they stop a young person on the street, if they're out late, that's okay, but they see them in known areas, see them picking people up, and see that this person is young. That's a criminal activity, but they can't prove it unless they get this person and find out their age—go look them up on a computer or something—and then suddenly find out they're young. Then they can charge—not the young person, but the person who was picking them up or something.

Prof. Eleanor Maticka-Tyndale: There are minimum ages in labour codes for a wide variety of jobs, and below a certain age you can't work in a wide variety of areas. I would assume that under decriminalization and from a work perspective, the same would apply with sex workers, that below a certain age you would not be “eligible” to work in this field, and as a consequence the same approach could be taken.

Hon. Hedy Fry: Currently they're not eligible to work in this field, but I think the police are basically saying that if they see a young person on the street in an area where they are soliciting openly and they're not sure about the age.... They are now not picking up people who are over age because they're wandering by; they're leaving them alone. But for persons who are underage, they need a tool to stop that person.

Do you see what I mean? It's sort of a catch-22 that they're in.

Ms. Kara Gillies: I would suggest that it is more of a social services issue than a law enforcement issue, and that there are very good reasons why the police can't just stop people willy-nilly and ask them their age or question them. We're talking about some basic civil liberties.

When young people are given a variety of options, some may choose to leave the streets, some may not, but I think the most

positive and effective approach is to apply a social service and assistance model and an empowered model as opposed to one of criminality.

Once again, the officers with whom you've been speaking are operating under the current criminal model. If we did not have that, then certainly one of the things a working group could examine is how to provide a variety of options for underage street-involved persons. In such a circumstance, perhaps, social service workers or even other sex workers would go out and say, “Hey, how are you? Are you okay out here? Can I get you anything?” and so forth. While it might seem effective to have the police seize people, incarcerate them, “rescue” them, the reality is that until people are given other options, and until people are ready to move on, they're going to be back on the street again anyway.

So I think a more effective approach, albeit perhaps a more challenging one, is to look at improving general life and work circumstances and expanding options for young people instead of narrowing them further. Oftentimes when we talk about youth involved in the sex trade, we are understandably so focused on removing them from the business that we don't stop to think about what their other options are. When people are engaged in sex work because of a limited number of options, it's the limitation of the other options that is the problem, not sex work itself. We don't do anybody any favours by restricting people's limited choices even further. We certainly don't do people any favours by incarcerating them.

● (2020)

The Chair: Okay. I think we've exhausted all our questions, as I look around.

Thank you very much for being with us this evening. We all very much appreciate your input and we certainly enjoyed it.

The session is over.

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