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Chair

Mr. Mike Wallace

Standing Committee on Justice and Human Rights

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• (1300)

[English]

The Chair (Mr. Mike Wallace (Burlington, CPC)): Good afternoon, everyone.

This is the Standing Committee on Justice and Human Rights, meeting 33. We had meeting 32 not that long ago.

As per the orders of the day, pursuant to the order of reference of Monday, June 16, 2014, this is Bill C-36, an act to amend the Criminal Code in response to the Supreme Court of Canada decision in Attorney General of Canada v. Bedford and to make consequential amendments to other acts.

We have a number of witnesses. Welcome.

I'm going to introduce the witnesses and then we will proceed in the order presented on the agenda in front of us. Each organization only gets 10 minutes—it's not 10 minutes each but 10 minutes per organization—and then there will be the question-and-answer period.

Let me introduce the witnesses.

Walk With Me Canada Victims Services is here, with Mr. Hooper, who is the chair, and Ms. Nagy, who is the founder and a front-line victim care worker. We have the Canadian Alliance for Sex Work Law Reform; Émilie Laliberté and Naomi Sayers are here as spokespersons. We have the Criminal Lawyers' Association, with Leonardo Russomanno, criminal defence counsel, and Anne London-Weinstein, director on the board of directors. As an individual, we have Professor Benedet, from the University of British Columbia. As well, from the school of criminology at Simon Fraser University, we have Professor Lowman, who is joining us by video conference.

Welcome everyone. Each organization has 10 minutes.

First to start is Walk With Me Canada Victims Services.

Ms. Timea E. Nagy (Founder and Front-Line Victim Care Worker, Walk With Me Canada Victim Services): I'm a survivor of sex trafficking, and a founder and front-line worker for Walk With Me, an organization that has been working 24-7 on the ground with victims of sex slavery for the last four years here in Canada. Of these victims, 90% were Canadian girls between the ages of 15 and 21 who were rescued from domestic sex trafficking.

I originally entered the sex industry when I was forced into it by traffickers. Sometime after my rescue I went back to the business for a few months, responding to a huge financial crisis. I already knew

what I had gotten myself into and I voluntarily returned, but my choice to prostitute myself was to make a living, to avoid becoming homeless, and to be able to put food on my table.

In the media these days we hear the voices of women sex workers who demand their human rights be respected in their choice of work. Those women represent a small percentage of women in prostitution. Studies estimate the number of women voluntarily making an informed choice to do sex work is between 1% to 10%.

I speak for the other 90% of prostituted women and men whose voices are largely not being heard in this debate precisely because they are still trafficked and they are still forced to do this work. I speak for the 60% to 95% of women in the sex trade, based on numerous studies, who were sexually molested or assaulted as children. I was sexually molested between the ages of 12 and 17, and that background sets you up to be abused again.

I speak for the 70% to 95% of people who were physically assaulted while in sex work. My first encounter when I was sex trafficked was in a massage place where three Russian men entered the room, and I more or less just became meat. Three men started to take pieces out of me. I was lying on this very cold massage table and I closed my eyes and I looked up and I wondered if anyone had seen this and would anyone rescue me, only to find out later my so-called bodyguard was watching the whole thing on video.

I was indoors. It was safe. They paid for their services, but nobody told me the rules because I was new to it, so I was raped for about an hour by three different men.

I speak for the hundreds of Canadian girls I have met and talked to and rescued in the last four years who have been and continue to be raped, violated, and exploited against their will.

First of all prostitution is not a profession. It's an oppression. Ninety per cent of the time it's the only job in the world where you can go to work and every day there's a chance you could be killed or hurt by your employer, the johns, or the pimps. The dangers inherent in sex work are well documented in research.

Prostitution always involves the imbalance between a customer who pays to have their pleasure met and a person who is hired to act like a sex puppet. Prostitution is rarely if ever about two consenting adults. For example, a husband and father of three children is highly unlikely to go to his wife and kids and ask for their consent for daddy to be able to have unprotected sex that evening with a prostitute. Again, there are absolutely no laws protecting the wife and children from the ripple effects that come afterwards.

I speak for the vast majority of people in the sex trade for whom this is not a free choice among many choices but for whom it is indeed an issue of human rights, rights of liberty, equality, dignity, safety—all of which are being ripped from us on a daily basis.

There does not appear to be a perfect answer in this debate. The rights of some will be curtailed to support the rights of others. Sometimes that is what laws are forced to do. The only way they can be encouraged to seek help is by decriminalizing their part in prostitution and by creating an environment of safety and support that gives them viable exit options. The legislation attempts to do that.

Two groups of people are impacted most by this legislation. Prostitution advocates speak loudly and with resources behind them, but there is the other voice of those trapped and tortured that needs to be heard as well, and they deserve to be protected by this country.

• (1305)

Trafficked men and women and those who would rather do something else if they had a viable choice don't have the same voice. We need the Government of Canada to be that voice for them, and we believe that Bill C-36 is the legislation that will protect our most vulnerable.

Thank you.

The Chair: Mr. Hooper, do you have anything to add?

Mr. Robert Hooper (Chair, Walk With Me Canada Victim Services): Yes, Mr. Chair.

It looks like there's about three and a half minutes, so I'll try to be quick.

The Chair: You're absolutely correct.

Mr. Robert Hooper: Thank you.

On behalf of Walk With Me Canada, we support Bill C-36. We think that the abolition of the purchase of sexual services is germane to the ability to curtail human trafficking in this country. All of the research we have seen, both anecdotally and quantitatively, shows that demand is directly linked to trafficking. Therefore, we applaud the sections that criminalize the purchase of sex in this country, given that our front-line work is on human trafficking.

The second thing is that having the person delivering the sexual service criminalized is not something we can support in any great way, other than in the school or religious setting, as set out in Bill C-36. From our perspective, over 70% of the people who use our service come through a police link. Therefore, if there is no trust in that triangle of police, the person in the sexually exploited situation, and our organization, the exit strategy, in our view, will fail.

One of the things that is not covered in the bill, which is in our paper, is that we would like this committee to consider the recruitment of children. I'll give you three fast statistics from research that we have uncovered.

A study of nine countries says that 47% of people who enter prostitution do so at an age under 18. That's when they enter the work. A study recently released by the Alliance Against Modern Slavery says that at least 43% of people in Canada who enter are under the age of 18, and that includes a section on forced marriage.

There was a study done by the Canadian government, in 2004, that showed that the mean age of entry into prostitution in Canada was 14 years old.

Those studies are readily available, one of them being done in 2004 by the Government of Canada.

In our paper we've set out some very good reasons why this committee should consider an amendment much like the provincial sections for protection of children who are vulnerable, so that they can be apprehended—not criminalized but apprehended—by the authorities. We don't allow people to drink and smoke in this country at 14, but apparently they can enter prostitution. You can't vote and you can't drink. We can't see why there shouldn't be an amendment that would allow children under the age of 18 who are found in prostitution to be apprehended as children in need of protection.

The last thing in my time—I'm probably over—is the \$20 million. We want to encourage this committee to be serious about the money that's put into the exit strategy. When you compare Sweden and Norway, which are slightly different models, Norway put no money into exit and Sweden did. If you read the research, the results are very different for the exit strategy.

I would encourage the committee and the government to look at those issues and that we be very serious about it. I may be speaking from a bit of a partisan position, in that we're front-line workers—I'm not, but I'm the chair of a front-line worker organization, and certainly I've heard many versions on the subject of exit strategy. A holistic approach has to be taken, from re-education to recovery to counselling. There are lots of studies that say when you come out of a prostituted trafficking situation, it is similar to war veterans and post-traumatic stress disorder.

There isn't a difference between prostitution and human trafficking in our organization's view. The demand for prostitution is directly linked to the financial gain of traffickers. If there is no demand in this country, then it is our view that trafficking will be reduced, and maybe that will put us out of business. We'd be happy to go out of business, Mr. Chair, if that were the circumstance.

We have looked at it constitutionally, and we think this does meet the section 7 requirements.

We've had section 1, the notwithstanding clause, looked at by people in our organization, and we think Bill C-36 is sound. With the amendment regarding children, we support the legislation.

• (1310)

The Chair: Thank you very much. That was right on 10 minutes.

Thank you for those presentations from Walk With Me Canada Victim Services.

Our next presenters are from the Canadian Alliance for Sex Work Law Reform. The floor is yours.

[*Translation*]

Ms. Émilie Laliberté (Spokesperson, Canadian Alliance for Sex Work Law Reform): Good afternoon.

My name is Émilie Laliberté, and I am a sex worker. I am here as the francophone spokesperson for the Canadian Alliance for Sex Work Law Reform.

Sex workers have not really been made the focus of these reforms, even though they will result in legislation that will have a direct impact on our working conditions and lives. Only three sex workers were at the table when Minister MacKay held private consultations on March 3. The minister made it very clear that he did not intend to consult with Canada's sex workers.

The content and terminology of Bill C-36, as well as the minister's statements on the matter, clearly show that the government is pursuing a moral objective above all else, by criminalizing a practice it deems shameful and exploitative, even when the adults who engage in the activity are consenting. Instead of using the extensive body of clear evidence demonstrating the detrimental impact of criminalizing prostitution, both here and around the world, as the basis for Bill C-36, lawmakers have opted for reforms that are ideologically based. They are also premised on the view that we are victims and should be treated like children. Lawmakers have failed to recognize our independence in making intrinsically personal decisions and our ability to consent.

This moralistic view has produced a bill—
[English]

The Chair: You just need to slow down a bit for our translators.

Ms. Émilie Laliberté: I'm sorry. We don't have much time so I'm going to keep this speed up.

• (1315)

The Chair: I'll give you an extra minute if you slow down a bit. How does that sound?

Ms. Émilie Laliberté: Thank you.

[Translation]

This moralistic view has produced a bill that, in its current form, in no way addresses the concerns raised by the Supreme Court of Canada. Nor does it comply with the spirit of the Bedford ruling, the intent of which was to allow the implementation of safety measures that are necessary to protect us.

On the contrary, the proposed reforms do the same harm and are actually more repressive because they target the sex industry as a whole. Consequently, we are being denied the ability to put any safety measures in place, not to mention our constitutional rights to equality, life, liberty and security, as well as freedom of expression and association.

Bill C-36 will produce the same harmful effects, or worse, because it upholds the objectives of the provisions deemed unconstitutional in Bedford.

Let's look at the impact proposed section 213(1.1) would have. Unlike the previous section, which applied to any public place, the new provision would apply only to a public place where persons under the age of 18 could be present. Given that young people under the age of 18 can be expected to be present in a wide variety of public places, the scope of the legislation remains very broad and could also extend to places where sex workers see their clients.

Mr. MacKay even said that the provision applied to hotels, even though they are places where sex workers conduct their business.

The result of the reforms will be virtually identical to that of the provisions deemed unconstitutional under section 7 of the charter. They will create dangerous conditions because they fail to take into account the movement of sex workers or their ability to communicate for the purpose of screening potential clients to protect themselves and establish clear agreements. The new legislation will not respect our constitutional right to life, liberty and security.

Now let's turn to proposed section 286.1. The effects that criminalizing our clients has on our lives and our work are already known. Clients were already subject to criminal offences under sections 210 and 213. What criminalizing clients does is increase violent behaviour. Sex workers linger on street corners longer, end up agreeing to take clients they would have otherwise refused and offer services that go beyond what they are capable of providing, and all for less money. And above all, they are subjected to more violent behaviour that can even result in their death. If this new section comes into force, clients will no longer tell us any personal information about themselves, a vital part of protecting ourselves from those who would do us harm. This approach goes against the Bedford ruling, because it criminalizes both our working and personal relationships, while violating our right to personal security.

New sections 286.2 and 286.3(1) are, to some degree, more restrictive versions of the previous offence of living on the avails of prostitution. The ability to work together and to hire security guards is, however, a key part of doing that. The provisions are far-reaching and violate not just our safety, but also the provision repealed in the Bedford ruling. Third parties are needed to ensure our safety, and they play an important role in helping us avoid isolation.

New section 286.4 could apply to sex workers who work together and jointly advertise their sexual services. Without newspaper, online and other types of advertising, we are left with very few ways of working safely in private settings, in addition to being even more isolated. Thus, the provision goes against the Bedford ruling, which clearly stipulates that our ability to work in safer indoor private locations is paramount in minimizing risks. Web sites where we post ads provide us with a wealth of information, including information on bad clients. They also allow us to talk to others about safety measures, conduct client reference checks and share information on third parties for hire and their services, all of which are vital to ensuring our safety.

[English]

Ms. Naomi Sayers (Spokesperson, Canadian Alliance for Sex Work Law Reform): Thanks, Émilie.

My name is Naomi Sayers. My group is South Western Ontario Sex Workers, which is a member of the Canadian Alliance for Sex Work Law Reform. I am an indigenous woman from northern Ontario and a former sex worker with experience in working both in northern and southern Ontario. I will elaborate on how Bill C-36 negatively impacts indigenous women, and will finish with recommendations for moving forward.

We make it clear from the outset that we do not support Bill C-36 or the use of criminal laws that target sex work. We propose, instead, a process that meaningfully includes people who work in the sex industry, and that includes labour and regulatory measures that prioritize safety.

Canada's greatest social injustice is the issue of missing and murdered indigenous women. Other witnesses will argue that the criminal laws against clients and third parties will protect indigenous women from going missing and murdered. We argue the opposite. Not only does this flawed argument ignore the fact that not all missing and murdered indigenous women do not work in the sex trade, it also ignores the fact that they experience institutional and systemic violence as indigenous women, especially the state's role in making a sex worker vulnerable to violence, such as Chief Justice McLachlin highlighted in her decision.

Wally Oppal, in his missing women inquiry report, also recognizes this when he states that the marginalization of women is due to the "retrenchment of social assistance programs, the ongoing effects of colonialism, and" —I emphasize—"the criminal regulation of prostitution and related law enforcement strategies."

The Chief Justice reiterates the harmful effects of criminal regulation of prostitution when she states that the criminal laws not only impose conditions on how prostitutes operate but also the laws "go a critical step further, by imposing dangerous conditions on prostitution". This reminds us to respect the spirit of the Bedford decision and that our objectives need to prioritize the health and safety of people working in the trade, not the elimination of the industry.

The criminalization of clients, in Bill C-36, has devastating impacts for indigenous women who rely on income generated from prostitution, particularly in the context of inadequate housing, social services, or education. Indigenous women will seek out clients in more dangerous areas, and clients will rush negotiations, putting women at risk. The isolation and inability to screen clients for safety contributes to the rising violence against sex workers. Indigenous women are already targeted by aggressors, as seen for over 20 years in Vancouver's Downtown Eastside. The Chief Justice wrote, "If screening could have prevented one woman from jumping into Robert Pickton's car, the severity of the harmful effects is established."

Trafficking has also been raised in the discussion of the bill. While exploitation happens in the context of trafficking, Bill C-36 does not distinguish between exploitation and prostitution. It assumes that prostitution is exploitation. The Chief Justice highlighted that the old laws were overbroad and that conflating prostitution with human trafficking does an injustice to the victims of exploitation.

The Global Alliance Against Traffic in Women, an organization that prioritizes trafficking victims, highlights that criminalizing clients diverts precious resources from protecting victims of trafficking who urgently need help into a politically contested and futile anti-prostitution campaign, and that criminalizing clients ignores the structural issues that cause forced labour, thereby distracting from the government's responsibility to victims of exploitation.

Consequently, we argue for the use of current existing criminal laws that address exploitation rather than reframing prostitution as exploitation, itself. More importantly, Bill C-268 made further amendments to the Criminal Code to combat human trafficking related to children. This bill received assent on June 29, 2010. As the Global Alliance Against Traffic in Women asserts, conflating exploitation with prostitution ignores structural issues contributing to forced labour and diverts resources away from victims of exploitation and toward a highly politicized and futile anti-prostitution campaign.

We argue that we need to adopt a model respecting Canadian values entrenched within the charter. We recommend adopting a rights-based approach, like the New Zealand model, to protect the most vulnerable and marginalized groups in society. In 2003 prostitution was no longer regulated by criminal law in New Zealand. The trade is regulated through labour laws and occupational health and safety standards. New Zealand's sex workers find it easier to report incidents of violence to police, with police taking reports of violence seriously. Additionally, since 2004 New Zealand maintains their tier 1 ranking status, the highest and most favourable status for combating trafficking, as reported by the United States' 2013 Trafficking in Persons Report.

We should focus on investing into resources, social supports, and sex worker-led organizations that work directly with sex workers to protect the safety of sex workers. The goal should be to ensure the safety and protection of all women in the trade by utilizing already existing Criminal Code sections.

● (1320)

Despite what people may feel about prostitution, the reality is that people will continue to work in the sex trade. In the context of Bill C-36, they will be at risk of more violence. Bedford demonstrated this risk. We hope the government will recognize this and prioritize health and safety.

The Chair: Thank you very much for that presentation from the Canadian Alliance of Sex Work Law Reform.

Our next group of presenters is from the Criminal Lawyers' Association.

Ms. Anne London-Weinstein (Director, Board of Directors, Criminal Lawyers' Association): On behalf of both of us this afternoon, we did not think it reasonable to expect a lawyer to only be able to speak for five minutes—

Some hon. members: Oh, oh.

Ms. Anne London-Weinstein: —so he'll be encompassing my comments as well.

The Chair: Thank you very much.

Mr. Leonardo S. Russomanno (Member and Criminal Defence Counsel, Criminal Lawyers' Association): She's already taken 21 seconds of my time.

Some hon. members: Oh, oh.

Ms. Anne London-Weinstein: But who's counting?

Mr. Leonardo S. Russomanno: I'd like to thank you, Mr. Chair, for having us here. It's obviously very important that we have this dialogue on a very important piece of legislation.

The Criminal Lawyers' Association focuses on the constitutional aspects of Bill C-36, and in particular whether it may survive a section 7 or a section 2(b) freedom of expression constitutional challenge. On that basis, we are opposed to this legislation. In our view, Bill C-36 is bad policy and bad law. The evidence that was heard at the application level that was unanimously accepted by the Supreme Court of Canada is indisputable. That evidence is unchanged with respect to Bill C-36 and what it seeks to do. Regardless of the loftier legislative objectives of Bill C-36, the same harms remain when one takes the approach of asymmetric criminalization, in my respectful view.

In advocacy in our court rooms, lawyers like to think about facts as whether they are challengeable or indisputable. When you have facts for evidence that cannot be moved, that's indisputable, then you have to absorb that evidence. You can't ignore it. It comes to mind when we look at the evidence that was heard in the Bedford application and that was unanimously accepted by the Supreme Court of Canada.

It's beyond a shadow of a doubt that criminalizing the sex trade contributes to harm for sex workers. We're talking about the most vulnerable people in our society, especially when it comes to sex workers who are in the street, and this legislation does absolutely nothing in my view to address that problem.

The objectives that are stated in Bill C-36 are quite different from what was seen in the Bedford case. Instead of a primarily nuisance reduction objective that we saw in previous legislation, we have these loftier objectives of eradicating prostitution itself, of discouraging people from entering the sex trade, of protecting sex workers themselves, of encouraging sex workers to go to the police when they suffer from acts of violence. This bill is trying to eradicate the sex trade itself.

Something that doesn't connect with me is that it's trying to protect sex workers by driving them underground, by pushing them into the dark alleyways, by pushing them away from public view. There was already evidence about what means sex workers employ to protect themselves. For example, communication and how sex workers screen potential clients to avoid potentially dangerous situations. The provisions in Bill C-36 in my view do not do anything to address these harms, and the harms will continue.

Now we have a new setting where we have the same ill effects, but we have loftier objectives. So I'm going to try to word this in terms of a section 7 challenge, because that seems to me a primary avenue of challenge. As we know in the previous legislation there was a challenge under section 7 on the basis of gross disproportionality and overbreadth. So we look at any section 7 challenge in two parts. First, does the legislation deprive the applicant of life, liberty, or security of the person? In my view, it's established fact that criminalizing the sex trade does deprive sex workers of their right to security of the person.

Now we look at whether or not that is how it's related to the objectives of the legislation. So under the previous legislation we had, for example, for communicating in public or keeping a common bawdy house, the objectives of reducing nuisance in neighbourhood disruptions, and the court reached a rather easy conclusion in my view that when you compare those two, when you compare the objective of reducing nuisance to the effect of actually contributing to the harm that's visited upon sex workers, that's just no contest. The court found very easily in my view that the effects were grossly disproportionate to the legislative objective.

Now we have a loftier set of objectives, which we've seen in the academic literature, and we've drawn heavily upon in our research. Academics have referred to the InSite decision, the safe injection decision, when looking at the principle of fundamental justice of arbitrariness. So once we've established that there's been a deprivation of security of the person, is that deprivation in accordance with the principles of fundamental justice? In my view, this legislation is vulnerable to a challenge on the basis that it's not only grossly disproportionate to the albeit loftier objectives, but it's also arbitrary. In other words, the goal in no way bears any relation to the effects.

• (1325)

The goal of public safety, the goal of encouraging sex workers to report incidents of violence to the police, is in no way going to be realized. The evidence is clear that when sex workers are not permitted to communicate—this is a primary mechanism that they use to protect themselves—for those who are most vulnerable, those who are in the street, that is going to contribute to the danger. That will lead to a finding of arbitrariness, in my view.

This is something that an academic mentioned in an article recently in *The Globe and Mail*. Kyle Kirkup, who is a lawyer and doctoral candidate at U of T wrote, "Got a complex social issue? There's a prison for that". That is the overriding sense that I get from this legislation. The criminal justice system is a very blunt tool, and it's simply not equipped to deal with this very complex social issue.

The other challenge that is ripe for reconsideration is under subsection 2(b), freedom of expression. This was last challenged in a 1990 case—the prostitution reference. The Supreme Court, in Bedford, has indicated there is a possibility that cases that have been previously decided by that court may be reconsidered when faced with new facts and arguments.

When one looks at a subsection 2(b) challenge, you are really looking at what underlying value can be seen from the form of expression. The kind of expression that we're looking at, communicating in public, is protective expression. This isn't just commercial speech. Again, the evidence is very clear. Sex workers communicate in order to protect themselves. In my view, this goes to the core values that underlie the freedom of expression that we are all supposed to be guaranteed.

It comes down to whether it would survive a section 1 challenge. In my view, it would fail to do so on the basis that it's not proportionate at all, that it will further contribute to the harms visited upon sex workers.

How does Bill C-36 protect the most vulnerable in our society? It doesn't do that. In my view, it simply adds to the harm that's visited upon sex workers.

What is the evidence? The evidence is that it contributes to the harm. As a society, I think we have an obligation to protect those who are most vulnerable. Bill C-36 utterly fails to do that.

Thank you.

•(1330)

The Chair: Thank you, sir, from the Criminal Lawyers' Association.

Our next presenter is Professor Benedet, who is here as an individual but is from the University of British Columbia.

Professor Janine Benedet (Associate Professor, University of British Columbia, As an Individual): Thank you very much.

I'm here today as a law professor and also as a lawyer who has spent the past two decades researching, teaching, and advocating for sex equality under Canadian law, with a particular focus on sexual violence against women and girls, including prostitution.

As the chair mentioned I am currently a faculty member at the UBC faculty of law and a member of the Ontario and British Columbia bars, and I provide pro bono legal services to women's groups. I represented a national coalition of seven women's groups in their intervention before the Ontario Court of Appeal and the Supreme Court of Canada in the Bedford litigation.

I'm here to testify in support of the provisions of Bill C-36 that criminalize the purchasers of sex and also criminalize exploitative profiteering from the prostitution of others as well as advertisers.

I'm also here to oppose the provision that criminalizes those who communicate for the purpose of selling sex in areas where young people are likely to be present. I've read the provisions of Bill C-36 closely, and overall I would say this bill represents and reflects a very positive and fundamental shift in our collective thinking about prostitution, moving away from thinking about prostitution as a question of mere morals or nuisance and toward an understanding of prostitution as a practice of sex inequality and a form of violence and exploitation against women and girls.

I think the government has recognized correctly in my view the overwhelming evidence that the global prostitution industry is not primarily a series of individual contractual exchanges between equal parties, but a profitable industry that profits from the outsourcing of sexual subordination of the most disadvantaged women and youth among us.

Unfortunately some criminalization has been maintained for women on the street in this bill who are disproportionately aboriginal women, and this provision I would say is inconsistent with the thrust of the rest of the bill.

Let me say a few things in particular about proposed section 286.1, the provision that would criminalize the purchase of sex. I want to be clear here constitutionally that when we talk about security of the person, the person who is criminalized by this provision is the john, the buyer, and his security of the person is not

at issue here through this criminalization. He's the source of the danger to women.

I think one of the important features of this provision is that it has been grouped with offences against the person in the Criminal Code, which makes clear that the act of buying sex in any location is a criminal act that is a form of exploitation and violence. I think that strengthens its constitutionality. That was not the case in the prior version of the code where the prohibitions on johns were partial, location-based, and grounded in nuisance concerns.

The argument I hear raised most often in opposition to this position is that criminalizing the purchase of sex is unconstitutional because it pushes prostitution underground. I think there is something ironic about the argument that men must be allowed as a constitutional right unrestricted opportunity to buy women to keep women safe from those very same men.

To attack that argument a little more directly, I want to say to you that most fundamentally prostitution is at its most underground when it is completely decriminalized. As for the New Zealand approach we keep hearing being touted, so long as the brothel has fewer than five women it doesn't need a certificate, and it operates entirely invisibly, outside the reach of law and other interventions. It's entirely under the radar.

The second thing is that visible prostitution is not necessarily safe, healthy, or equality promoting, and the prison camp bunny ranches of Nevada, or the megabrothels of Germany are two good examples of that.

But third and most importantly I would say this argument at its heart is really disingenuous. It's the same old claim about choice that completely ignores inequality but is now masquerading as an argument about safety. I realize that's a pretty harsh-sounding statement to make, but to explain why I say that let me just speak for a moment about youth prostitution and the criminal offence of communicating for the purposes of obtaining sexual services from a person under the age of 18. That's section 212.4 in the current Criminal Code. It wasn't challenged in Bedford. It will reappear under the new bill renumbered as proposed subsection 286.1(2), I think.

It's a crime to buy a young person for sex, including through communicating for that purpose.

•(1335)

No one seems to be disputing the continued existence of that provision or questioning its constitutionality. It criminalizes exactly the same conduct as in proposed section 286.1, in very much the same language, and I'm confident that no one is going to come before this committee and ask you to repeal that section because it makes kids unsafe by pushing youth prostitution underground. They will not say we should acknowledge that youth prostitution is inevitable, and that we should decriminalize the guys who buy kids because it will make the young people safer. They'll be visible. They can communicate. We can reach out to them.

They will not argue that section 7 of the charter requires that men be allowed to buy kids for sex, and there is a lot more to it than just saying adults aren't children. It's because we believe that young people lack the capacity to consent because of an inequality based on age, but the reality is that for young people in prostitution there are many other inequalities at work, some combination usually of gender, the effects of colonialism, poverty, and addiction.

When that inequality of age is no longer present, some people refuse to see any of the other inequalities that are so prevalent in prostitution, even when the prostitute, who is now an adult, started as a child. The fact that women in prostitution are overwhelmingly poor, that so many of them are racialized, trafficked to meet male demand, struggle with addictions, with intellectual disabilities and the after-effects of being placed in state care, these inequalities count for zero so long as the woman is 18 or older and is willing to take the money.

Yet the Supreme Court of Canada did make clear in its decision in Bedford that many of those in prostitution cannot be said to be there by any real definition of choice, and that our law and policy responses ought to be focused on those women.

We don't say that the criminal law that prohibits purchasing young people for sex hasn't eliminated youth prostitution so it's useless and should be repealed, because we understand, just like the laws on sexual assault, just like the laws on wife battering, that the criminal law is there to serve a very particular, denunciatory purpose. It has a very real and important goal, but that it's not the only piece of what we're trying to do in addressing a complex social problem. You will never address that problem if you decriminalize prostitution and normalize it, and that's true in any country that has experimented with exactly that route.

The final thing I'll say about the analysis we have heard today is, yes, we do have to think about section 7 of the charter, but we also have to think about section 15, the equality rights provision, which was studiously kept out of the analysis in the Bedford case. Now we have a bill that makes clear right in its stated objectives that equality and equality for women and girls is an important consideration when thinking about prostitution. That, in my view, means that equality in section 15 can no longer be ignored in the constitutional analysis.

I'll just conclude by saying something very briefly about the provision under proposed subsection 213(1.1), the sale of sexual services where young people are expected to be present. I think this provision is misguided. I do not think that the law should be making a distinction based on location if we understand the act of the purchasing of women to be an act of exploitation. It just punishes women for being exploited in the wrong location. It returns us to an approach rooted in nuisance. It's not really about protecting children because it doesn't criminalize women who are prostituted in front of children in a private place, only in a public place.

I understand the concern about the prostitute being there on a residential street and what can we do if we don't have this kind of provision to move her along, but of course the police can do something because they now have the provision that criminalizes purchase. Use that provision to target the johns. That's how you deal with prostitution on the street. That's how we should have dealt with Pickton, a known john whom the police simply refused to arrest

wherever he picked up women: on the streets, in the drop-in centres, in the bars of the Downtown Eastside. The issue is not just displacing women to other locations. It's the refusal to interfere with the purchase of sex by johns.

That provision really needs to be rethought, and ultimately, if it is removed from the bill, it will strengthen the constitutionality of this proposed legislation.

• (1340)

I'll stop there.

The Chair: Thank you very much, Professor. That was right on 10 minutes.

Our final presenter for this panel, by video conference, from Burnaby, British Columbia, is Professor Lowman, from the school of criminology at Simon Fraser University.

Can you hear me, sir?

Professor John Lowman (Professor, School of Criminology, Simon Fraser University, As an Individual): Yes, I can. Can you hear me?

The Chair: We can.

The floor is yours.

Prof. John Lowman: Thank you very much.

In addition to speaking today, I've submitted a written brief that is much more detailed. I'll review some of the material in that written brief and make some extra points.

To introduce myself, I've worked on various research projects on prostitution since 1977, mostly in British Columbia. I've done nine different studies for the Department of Justice Canada, and I was on the board of a service organization for sex workers on the Downtown Eastside, called PACE.

My main interest in speaking to Canadians about prostitution, and particularly legislators, is the hope that policy and legislation are based on reliable and accurate information. I'm hearing all sorts of claims made about research today, none of which would actually stand scrutiny.

Of course, research can't answer all of the problems that we're talking about, so I should also say what my own political value judgment is with regard to prostitution. I believe that the state should not prohibit consenting adult sexual activity, especially in situations where it endangers sex workers. I therefore disagree with those who say that 90% of prostitution doesn't involve choice, although much of it involves highly constrained choice. Some prostitution is entirely opportunistic. Some is sexual slavery, and the law should criminalize sexual slavery in every circumstance that it should occur.

However, like most service and manual workers, sex workers make the choice to prostitute in situations that they do not choose, i. e., the capitalist political economy, colonialism, gender power structures, racism, and so on. The vast majority of the population make those choices in situations that they do not choose, but we don't see criminal law as the solution to those inequalities.

Let me start by saying a few things about evidence claims on which the prohibitionist position is based. I've heard it said again here today that the average age of entering into prostitution is 14. In my written brief I've reviewed the literature, and I've also gone over the review of the literature that was conducted in *Bedford v. Canada*. That is a preposterous claim. There is only one piece of research that supports it. It is a study of juveniles; it excluded adults. If you look at the research, which includes both adults and juveniles, the average age is generally 18 or well above that.

You also see examples of prohibitionist discourse using certain kinds of research and then generalizing it as if it represents prostitution more generally. You'll often hear Melissa Farley's research quoted, as indeed is Joy Smith's "The Tipping Point". She talks about 100 Canadian sex workers and what their profiles look like.

The women on the Downtown Eastside do not represent prostitution more generally. The research literature says that most women are not trafficked. Obviously there are many different experiences, and some of them are truly awful. However, if we want to talk about the nature of prostitution across the whole of it, we need to understand that there are many different kinds of prostitution.

I would also note that Farley's work, which is often quoted by prohibitionists, was also entered into *Bedford v. Canada*. Justice Himel concluded that Farley's advocacy contaminated her research. I think that bears repeating.

Let me say something about the logic of demand-side prohibition. Demand causes prostitution, it is argued, so therefore if you get rid of demand, ultimately you will get rid of supply. It ignores economics 101. Supply and demand interact. We live in a culture that commodifies female and male sexuality at every turn. Explicit sexual imagery is only a few key strokes away, and our culture produces the demand for sex. It similarly produces sexual capital on which supply rests. Race, class, and gender structures mean that sexual capital is the only capital available for some people.

Let's take economics 101 and look at what it would do for the made-in-Canada approach to prostitution prohibition. In one of the first studies of prostitution conducted in Canada, when clients were asked what prompted them to purchase sex, 41% of respondents said it was the availability and/or visibility of sex workers.

• (1345)

Although the protection of communities and exploited persons act prohibits third-party profit from prostitution, its section prohibiting advertising exempts a person advertising sexual services on their own behalf. Demand-side prohibition holds that the state should not hold sex sellers criminally responsible because they are victims of men. However, as much as prohibitionists deny that sex workers ever exercise choice, many and I would suspect most sex workers don't agree that they are one-sided and only victims, even if some of them are victimized. They see themselves as agents acting on their own behalf, taking advantage of their sexual capital. They do not want to exit prostitution unless they do so on their own terms. Consequently, they will continue to advertise and sell sexual services, and legally so under the new regime. However, anyone who takes the bait will have the force of criminal law brought to bear

against them, in which case they say the made-in-Canada prohibition amounts to state-sponsored entrapment of men.

Asymmetrical prohibition will be subject to a section 15 challenge because it criminalizes mostly male sex purchases but not sex sellers, the large majority of whom are female. A section 15 challenge was coming down the pipe in the Pivot charter challenge, by the way. That issue was going to be argued if that challenge had proceeded.

What about supply? Demand is a necessary but not sufficient condition of prostitution. Focusing on demand means that the state will not have to address the factors that produce supply, we just blame the men. So colonialism, poverty, substance addiction, unemployment, gender employment structures, economic opportunity structures, and a culture that produces sexual capital will be left as they are.

For the people who rely on their sexual capital to subsist, demand-side prohibition will only exacerbate their problems, not least because patterns of law enforcement will not change. Since 1985, when the communicating law was enacted until the law struck it down, 93% of all prostitution charges were a street prostitution offence. Two main factors produced this enforcement pattern.

First, it reflects patterns of complaints police receive about prostitution. Nearly all of them are about the street trade. Indeed, in every public opinion survey ever conducted, one area of clear consensus—and of course Canadians are deeply divided over the legal status of prostitution—is that prostitutes shouldn't be on the street. Of those polled in the June Angus Reid survey, which also shows that the majority of Canadians do not support Bill C-36 by the way, 89% of Canadians in that poll said that prostitution should not be on the street.

The second main factor explaining that law enforcement profile is the difficulty of "procuring bawdy house/living on the avails" charges. They are time-wasting. It's difficult to get evidence. Convictions were difficult, not least because sex workers have no interest in testifying against the people with whom they work. Police also knew that charges against off-street locations would reproduce exactly the same problems that put prostitution on the street in Toronto and Vancouver in the 1970s, when police closed down off-street prostitution.

How much would that pattern of enforcement change under the new law? It wouldn't change very much. That is because, if we look at Sweden, most of enforcement, especially during the first years, was against people on the street. What are the police going to do in Canada to enforce this law against off-street clients? Are they going to set up bogus escort services? Massage parlours? Are they going to entrap people?

We come to a legislative Gordian knot. I too am opposed to the legislation, which talks about criminalizing a sex worker “in a public place, or in any place open to public view...where persons under the age of 18 can reasonably be expected to be present”. We heard the way to deal with the problem of street prostitution was to prosecute the clients, and we heard Mr. Pickton's name mentioned.

● (1350)

As it happens, in the 1990s, the police in Vancouver deliberately set up a red light district in an industrial area. They deliberately had a policy. There was a news release, and I can send you a copy if you'd like. Their entire objective was not to lay charges against the women but to focus entirely on the men who buy sex. That particular area, the red light district—that industrial zone—which is where this particular provision of the legislation would try to force prostitution, became the killing field of Vancouver. That's where Mr. Pickton picked up most of his victims. That's how successful this kind of legislative regime was when it was tried in Vancouver, as it was in the 1990s.

The Chair: Professor, you have less than a minute.

Prof. John Lowman: I have two recommendations.

First, we've had the government arguing that this legislation would pass constitutional muster. It's the same government that argued that the laws that were impugned in Bedford passed constitutional muster. The government was completely wrong on that score. It is important that the government send this legislation to the Supreme Court for an opinion about its constitutional integrity.

Second, if you want to control things like street prostitution—and one of the catch-22s that the government faces is the high public support for controlling street prostitution—if you have a system of bylaws, zoning laws, you don't need the criminal law.

One of the things you'd understand if you had studied prostitution law enforcement in Vancouver over the last 30 years is that police can move it at will to wherever they like, with one condition. It's not that they tell people where they cannot work, but where they can work. When they tell them where they can work, they can move them overnight.

Thanks very much for your attention. Decriminalization is the way to proceed.

The Chair: Thank you, Professor, for that.

Now we will move to the rounds of questions. I do ask committee members to indicate who your question is for so that the witnesses can be ready to answer.

Our first questioner, from the New Democratic Party, is Madam Boivin.

Ms. Françoise Boivin (Gatineau, NDP): There's so little time and so many questions. It is incredible.

I talk fast, but I can't talk as fast as Émilie Laliberté. That is the ultimate fast.

● (1355)

[*Translation*]

Émilie, I'll start with you since we haven't heard much from sex workers themselves ever since this whole debate began. I want to give you an opportunity to speak to certain things you probably didn't have a chance to address. You can have two minutes to answer.

How will this bill make it more dangerous for you to conduct your business? I'd like you to explain that to the committee and to respond to some of the comments the professor from the University of British Columbia made. Forgive me, but I can't remember her name.

Ms. Émilie Laliberté: Ms. Benedet.

Ms. Françoise Boivin: She said that you were all exposed to violence and that you weren't treated equally, contrary to section 15 of the charter.

Ms. Émilie Laliberté: First of all, Ms. Benedet did not distinguish between victims of trafficking and consenting adults in the sex industry. As my colleague Naomi Sayers made abundantly clear, those who are forced to provide sexual services against their will are victims of exploitation. That isn't sex work. The Criminal Code contains a host of provisions to deal with that reality: offences related to organized crime, human trafficking, illicit trafficking, domestic violence and extortion. In short, the Criminal Code contains enough provisions to address violence in those situations, which are appalling. As I see it, this bill does exactly the same thing as the previous provisions that were deemed unconstitutional, and even goes further.

Thank you, by the way, for giving me a chance to respond to Ms. Benedet's comment. She said police would now be able to go after clients on the street.

I am the spokesperson for the Canadian Alliance for Sex Work Law Reform and I have also been a liaison officer, so I've provided outreach support to street workers. I am a sex worker. I've worked with thousands of people in the sex industry in Montreal. What I saw after the police carried out mass arrests in the Hochelaga-Maisonneuve area was an increase in violence towards sex workers on the street.

It's false to call that approach a new tool. Provisions already existed under section 213. Clients were arrested on the street for soliciting someone for the purchase of sexual services. Male, female and transgendered sex workers on the street were forced to hang out on dark corners for longer periods without being able to communicate with potential clients to establish an agreement. Sex workers had to get in clients' cars as quickly as possible because clients were worried about getting caught by police, not to mention the risks and violence the workers were exposed to as a result. The Montreal-based organization Stella documented that phenomenon through its list of bad johns. Power, an organization that works with sex workers in Ottawa and Gatineau, also documented the same phenomenon. The same thing was observed in Vancouver, as outlined in two recently released reports discussing the change in tactic police there adopted in 2013 to target clients. The resulting reality for sex workers between 2013 and 2014 has been documented and it exposes them to more violence.

Ms. Françoise Boivin: The parliamentary secretary often says to us and various witnesses and groups that nothing prevents sex workers from safely conducting their activities at home. What do you say to that?

Ms. Émilie Laliberté: If children live next door, will I be able to see my clients at home, when a child could go out on their balcony, for instance? Forgive me, but that's ridiculous. It makes no sense. A person under the age of 18 could be present anywhere. Mr. MacKay confirmed that this morning when he said that children could even come out of hotels. It's another way to criminalize anyone in a bawdy house and anyone working indoors as well as those working on the street.

Ms. Françoise Boivin: When you're sitting there at home legally advertising your services—and we don't know exactly what that means, but the courts will tell us, as the minister mentioned this morning—where is the client? The bill doesn't set out any exceptions when it comes to the purchasing of sexual services. Mightn't a client who responds to your ad and purchases your services be exposed to entrapment, as Professor Lowman pointed out in his brief? What do you think? The bill may simply be a sweeping attempt at entrapment as far as committing an offence goes; the client could answer a legal ad, go to your home, where waiting police would pick him up for committing a crime.

Isn't there some form of—

• (1400)

Ms. Émilie Laliberté: Police solicitation?

Ms. Françoise Boivin: Yes, basically.

Ms. Émilie Laliberté: In fact, it makes me wonder about the message the government wants to send Canadians. Is its priority to spend its entire morality budget, the entire policing budget, the entire public safety budget on putting undercover officers in hotel rooms to arrest clients? Or is its priority to tackle violent offences and enforce existing Criminal Code provisions to stop exploitation?

Ms. Françoise Boivin: Thank you.

I still have one last question, and it's for Mr. Russomanno.

[English]

Sorry if I made a mistake on your name.

I think you asked a question, and I'm going to send the question back hoping for an answer. How do you define sexual services in this Bill C-36? Is it clear to your mind, because as a lawyer I'm not sure I'm clear on the definition? There's no real definition. Could it cover, I don't know, lap dancing? What are we treating exactly with Bill C-36? Is it clear, and if it's not, isn't it a danger to bring that to the courts and will it be a good defence at some point in time?

Mr. Leonardo S. Russomanno: The short answer is that I think it would obviously include lap dancing. That sounds like a sexual service to me. Just a preamble here, when we talk about leaving things to the court to interpret, there's a cost associated with that when we arrest people and then we let the courts figure it out. That's just a preliminary thing.

With respect to sexual services, the one reference point I have is with respect to our law on the offence of sexual assault, that the

sexual nature of the touching, for example, is subjective in the mind of the victim. So that's one potential reference point. Will it be the person who is providing the sexual service who decides whether it's of a sexual nature or not? I'm not sure. It seems vague to me, and it perhaps would even go further than lap dancing. I'm not sure. For example, if an underwear model has her picture taken, is that a sexual service? It seems to me that she's being provided consideration, and whether or not that's a sexual service is going to be left to the courts again. But there's definitely a cost associated with that.

The Chair: Thank you for those questions and answers.

Our next questioner is Mr. Dechert from the Conservative Party.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Thank you, Mr. Chair, and thanks to each of our witnesses for being here. I think you brought some really important information to the committee, especially those of you who have been involved in this trade in the past.

A lot has been said about the age at which women and men and others who get involved in prostitution typically get into the business. Ms. Nagy, I think in your opening comments you said that you know that many do between the ages of 12 and 17. Ms. Benedet, you mentioned quite a few join the profession under the age of 18. Some such as Professor Lowman disagree with that.

Ms. Sayers, when did you first get involved in the sex trade? What age were you?

Ms. Naomi Sayers: I was 18, and I was still in high school.

Mr. Bob Dechert: You were still in high school.

Ms. Laliberté?

Ms. Émilie Laliberté: I was 19.

Mr. Bob Dechert: You were 19.

Ms. Nagy?

Ms. Timea E. Nagy: I was trafficked under the age of 20, but the majority of the victims we are working with now are 16, and I'm not making that up.

Mr. Bob Dechert: Okay.

Ms. Sayers, you work with indigenous women in this business. Do you know of any under the age of 18?

Ms. Naomi Sayers: I speak from experience. In London, southwestern Ontario, sex workers—and we work with Safe Space, an organization in London, Ontario, that works directly with outdoor sex workers. They literally offer a safe space for them to come. In London, the trade isn't predominantly indigenous, but that doesn't mean they're not there. So speaking from experience.... This is really hard for me to answer.

• (1405)

Mr. Bob Dechert: Have you ever met a sex worker under the age of 18?

Ms. Naomi Sayers: A sex worker can advertise however they want.

Mr. Bob Dechert: But have you ever met a person under the age of 18 who's in the business?

Ms. Naomi Sayers: I don't really ask...

Mr. Bob Dechert: Okay. You don't know, but it's possible?

Ms. Naomi Sayers: Most people I've met have been 18.

Mr. Bob Dechert: Okay.

Ms. Benedet made an argument that I thought was interesting. Ms. Sayers, since you work with people in this industry, do you agree with the Criminal Code provisions that make the sale of sexual services under the age of 18 criminal?

There are provisions in the Criminal Code, which were not struck down by the Supreme Court in the Bedford decision, that say that anyone who's under the age of 18 providing sexual services, communicating for the purposes of selling sexual services, that's still a criminal offence in Canada. Anyone procuring or encouraging or employing someone under the age of 18, that's also criminal. Do you agree with those provisions?

Ms. Naomi Sayers: I like to quote Justice Himel's decision where she stated that although those are important issues, child prostitution and human trafficking are not essential to analyze the charter challenge with the women who filed the charter challenge.

Mr. Bob Dechert: Okay, so you're not saying either way whether you agree or disagree with—

Ms. Naomi Sayers: I am saying that I agree with Justice Himel's analysis that those are two separate issues.

Mr. Bob Dechert: Okay.

Ms. Nagy, what do you think? Do you agree that the—

[Translation]

Ms. Émilie Laliberté: How does your question relate to Bill C-36?

[English]

Mr. Bob Dechert: Yes. Well, I'm asking what.... My question....

Ms. Émilie Laliberté: I'm just asking you a question.

Mr. Bob Dechert: Do you agree with the current provisions of the Criminal Code that criminalize some aspects of underage prostitution?

[Translation]

Ms. Émilie Laliberté: I agree with what Ms. Sayers said.

The prostitution reforms and the Bedford ruling have nothing to do with underage prostitution. You're trying to steer the debate away from the real issues and the content of Bill C-36.

[English]

Mr. Bob Dechert: Fair enough. I'll accept that as a non answer.

Ms. Nagy, do you have a point of view on that?

Ms. Timea E. Nagy: We agree with that, but we would go further and say that instead of criminalizing we would like to apprehend the child under the age of 18 in need of protection.

Mr. Bob Dechert: Right.

Ms. Benedet's argument was that no one is saying the provisions of the Criminal Code that continue to exist that criminalize some aspects of underage prostitution make it more dangerous for those

prostitutes under the age of 18 and therefore should also be struck down.

Am I getting that correct?

Prof. Janine Benedet: Not quite, and that's why, if I may, I just want to clarify.

I'm focusing on subsection 212(4) that makes it an offence to buy someone who is under the age of 18. I'm saying that no one is making the argument that somehow we'd better repeal that provision because it pushes child prostitution underground.

Mr. Bob Dechert: Okay, fair enough.

Prof. Janine Benedet: So I'm focusing here not on the child who is selling herself, who is clearly not a criminal in any sense, but the person who is buying that underage prostitute.

Mr. Bob Dechert: Mr. Russomanno, do you agree with Professor Benedet on her argument about the purchase of the sexual services of someone under the age of 18?

Ms. Anne London-Weinstein: I'd like to address that question if I may, on behalf of the Criminal Lawyers' Association.

If I understand Professor Benedet's view, I think it's that a person who is engaged as a sex worker is essentially always operating from a position of inequality. I understand the argument but I'm not sure that's a presumption that we can safely rely on in every circumstance when we're dealing with adult females.

Of course when you take the corruption of children in sexual acts and sexual prostitution, that's not going to be something that any Canadian in a free and democratic society, upholding the values that we do, is going to endorse. But the issue is really, when we're trying to deal with inequality in relation to children or we're trying to remedy some of the social ills that we're dealing with here, is the criminal law the best and most effective and precise tool that we can use? My submission would be that it is a very rough tool to either remedy inequality, or to deal with the issue of child prostitution.

● (1410)

Mr. Bob Dechert: You mentioned choice, so I'd like to ask some of our panellists about choice.

Ms. Nagy, is it your view that the majority of women in this industry freely choose to be in this industry?

Ms. Timea E. Nagy: The correct way for me to answer that is that the majority of the women that we have seen—which is about 300 in the last four years—were forced into prostitution.

We do not deny the fact that there are women in this industry who entered into this industry of their own will, just as I did when I needed money for food and when I almost became homeless.

Mr. Bob Dechert: If you need money for food, or if you need money because you need a place to live, is that a free choice?

Ms. Timea E. Nagy: It's absolutely not.

Mr. Bob Dechert: Ms. Sayers, you mentioned that a lot of indigenous women rely on the sex industry to get the money they need to survive. Is that a free choice? Do they freely choose to do this, or if they had a free choice to do something else, would they do something else?

Ms. Naomi Sayers: Would you do your work without being paid?

Mr. Bob Dechert: No, of course not—

Ms. Naomi Sayers: You have your answer.

Mr. Bob Dechert: —but I have chosen from a number of things available to earn a living.

If this is the only way for them to survive, is it really a free choice? That's my question.

Ms. Naomi Sayers: “Choice” and “free” are such value-laden terms. To say that somebody has a choice is speaking from a privileged position. We don't question other workers whether they freely choose their job and we shouldn't be questioning sex workers whether they freely choose their job.

The Chair: The next questioner from the Liberal Party is Mr. Casey.

Mr. Sean Casey (Charlottetown, Lib.): Thank you, Mr. Chair.

Professor Lowman, first of all thank you for your spirited defence of evidence-based decision-making and your critique of the Farley research.

I was interested in your comment with respect to the legal challenge from Pivot on the basis of section 15 of the charter. I am aware that this challenge is effectively stalled or parked, and I would think there's a real question as to whether it's going to go forward given these most recent developments.

Can you explain for the benefit of the committee that challenge and your view of a future challenge on the basis of section 15?

Prof. John Lowman: I have two different points. The Pivot challenge when it came to section 15 was talking about the way the protective service potential of the police is not extended to women in sex work so they do not get equal treatment under the charter.

I think a different kind of section 15 argument is likely to arise in the proposed legislation because you have a situation where you're basically saying one party in a transaction, which in a legal sense is a consenting transaction, has no responsibility for it, and the other party is given full responsibility for it.

So as far as I can see, given that many women involved in prostitution do not agree with the prohibitionists' analysis of choice—yes, choice is constrained, but that's true for most manual and service workers, agricultural workers, seasonal workers, and on and on—what you're going to see is the argument that if the police set up bogus escort services in order to get buyers to contact them and make an offer to purchase a service, remembering that the advertising of that service if it's a person doing it for themselves will be exempt from the law prohibiting advertising, you essentially have a form of entrapment because you potentially have a person who has never bought sexual services before.

As I say, supply and demand interact. When we study clients and ask them reasons for purchasing sex, 41% talked about the visibility

and availability. If you have an institutionalized system that does nothing about availability, it seems to me you have institutionalized entrapment.

• (1415)

Mr. Sean Casey: Professor Benedet, we heard Professor Lowman talk about the advisability of a reference to the Supreme Court of Canada with respect to the constitutionality of this legislation. We heard from the minister in very clear terms this morning that is not going to happen. I don't know if you were here for his testimony.

Do you have a view on that?

Prof. Janine Benedet: It depends on how you understand the evidentiary record for such a case. He'll say, “Well, let's just refer this to the Supreme Court of Canada and they can tell us whether it's constitutional or not.” The evidentiary record that was amassed for the prior challenge had a lot to do with patterns of enforcement and implementation over a very long period of time. The idea that we can simply just take all that evidence and reuse it under a new bill seems odd to me in a challenge that seems to be so deeply rooted in the way that the legislation is enforced and what its effects are. I would have assumed that there would need to be a fairly significant period of time in order for that evidence to be amassed, and not simply relying on the police saying, “Well, we're doing that anyway, so here are the effects of that or not.”

I can see the argument that we've just had a constitutional ruling, in a sense, on this legislation, so here's the new bill; why don't we skip the stage of going through all the levels of court and refer it right to the Supreme Court of Canada? But I do question then what the evidentiary record is going to be, which is based on the actual enforcement and implementation of this bill.

I don't know if it's all right for me just to say a word about this argument about entrapment. I've read the case law on entrapment. I teach criminal law, and I can tell you that the rules about entrapment are nowhere near as broad as Professor Lowman seems to be suggesting they are. The police can't just go out and set up sting operations, whether for drugs or prostitution. Right now they're doing exactly the kind of thing we're describing for underage prostitution and there are clear rules about when the police can set up a kind of bogus sting operation and when that crosses the line into entrapment. It's not like this is a new concept or that there isn't already an established body of jurisprudence.

The same thing is true for sexual services. It's there in the legislation dealing with underage prostitution. There's a body of jurisprudence that has interpreted that term where there is some kind of doubt.

I find it very odd to say that because most of the buyers, really all of the buyers, are men and most of those in prostitution are women, it is sex discrimination to prosecute the buyers. We don't do that for sexual assault where over 90% of those charged are male.

The gendered nature of the industry is what makes it so discriminatory against women. I find it very strange and not consistent with substantive equality principles at all to turn that on its head and say that by targeting men for their acts of sex discrimination, we're discriminating against them in some form of reverse discrimination. That's not a version of section 15 of the charter that I recognize as it's been applied to sexual harassment in the workplace, sexual assault, and a whole other number of gendered acts of sex discrimination.

Mr. Sean Casey: Thank you.

Mr. Russomanno, I have just a practical question. If a reference to the Supreme Court, as suggested by Professor Lowman isn't on—and it's pretty clear from the minister that it's not on and we hear from Professor Benedet that there may well be other good reasons that is not on—what can we expect in the medium term? I'm going to ask you to assume a couple of things. I'm going to ask you to assume that when the minister says he's open to amendments, he isn't, and that this bill is going to pass as it currently is. I expect at the next stage there will be a challenge. Take us through what happens from there.

The Bedford litigation started in 2007 and was finally struck down in 2014. What are we looking at in Canada in terms of legal challenges and the likely timeline, given those premises?

Mr. Leonardo S. Russomanno: In Bedford, as we know, there was just a massive evidentiary record that was amassed by Professor Alan Young and others. Presumably this would be challenged very soon after the legislation came into force. One of the first charges laid, I'm assuming, would lead to that challenge, and it's on that evidentiary record that the challenge would proceed. I know that, based on Bedford, based on just the sheer size of the evidentiary record itself, I don't think we could approximate the same sample size, if I could put it that way, of evidence as we did in that case, and that undoubtedly there would have to be reference to other jurisdictions that employ models that are similar to the one that's being proposed here. I don't think there is anything that is exactly the same. I supposed you can call this uniquely Canadian.

The asymmetric criminal model, as we know, has been employed in Sweden and other jurisdictions. Presumably there would be evidence coming out of those jurisdictions as well and an argument as to how you could transfer the interpretations of the evidence in those jurisdictions to our uniquely Canadian approach.

● (1420)

The Chair: Okay, thank you.

Thank you, Mr. Casey. Thank you for those questions.

Thank you, panellists, for those answers.

Our next questioner is from the Conservative Party, Ms. Smith.

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

I'd like to ask two questions, one to Professor Benedet and one to Timea Nagy.

Professor Benedet, can you make further comment about the constitutionality of the asymmetrical offence in Bill C-36, the

purchase of sex, as opposed to the decriminalizing of the victim for the most part. Can you comment about the constitutionality of that and compare it to some of these others that are in the Criminal Code right now?

Prof. Janine Benedet: If I understand the question correctly, you have to recall that most of the provisions that were challenged in Bedford, leaving the pimping provision aside, which I think has a slightly different analysis to it, applied to both buyers and sellers, if I can put it that way. One of the arguments that I made to the court was that we ought to look at those actors separately in looking at the effects of this provision. The court chose not to do that. Of course, the challenge was brought by three women who either were in prostitution or formerly in prostitution and now wanted to operate prostitution businesses and profit from the prostitution of others. The focus was very much on liberty and security of the person with respect to those women.

If we change the analysis and say that we now have a distinct offence here that criminalizes the purchaser—someone is charged under that offence—it's going to be that buyer whose constitutional rights are at issue. We may have a situation in which women come forward and say, “Well, we want to bring some kind of a challenge that the criminalization of him violates our rights”. It's certainly a step removed from the way that the challenge was constructed in Bedford. There's no “security of the person” interest for the buyer. His security is not at issue. His liberty is at issue, in the sense that he's being criminalized—that's true of all criminal legislation—but that's a far weaker interest than a “security of the person” interest. You're balancing that against much clearer and better objectives.

One of the things that the Supreme Court rejected was an argument by the crown, particularly the Ontario crown, that we ought to kind of infuse concerns of dignity and equality into the objectives of the old laws. The court said, “No, that's shifting the purpose; we're not going to do that. If those objectives had been there, that's a different kind of analysis.” That was certainly quite influential, and I think very present, in the Ontario Court of Appeal's decision as well.

Those are the kinds of factors that I think do change the analysis. My concern is that if we retain the provision that criminalizes women on the street when they're in places where young people are likely to be present, it undermines the argument you're going to make about the buyers, that we consider this to be exploitation, to be discrimination. We're focusing on the actor who's responsible for that discrimination and exploitation.

I don't think that requires proving that 100% of women in prostitution are beset with every possible inequality we can imagine and that they started as young people. Really, it's an impossible task. It's ultimately fruitless. The question is what the legislation is doing for those who make up that supply, and why is that supply drawn so disproportionately from racialized women, aboriginal women, women with histories of state care and sexual abuse? It doesn't have to be exclusively...in order for that argument to be an important one in the constitutional analysis.

Mrs. Joy Smith: Ms. Nagy, we've heard a lot about how everything needs to be decriminalized to make things good for the women so that they're safer.

I'd like you to comment on that, and also what happened in New Zealand when it was legalized. We have a pattern there, don't we? Can you make comment on that?

• (1425)

Ms. Timea E. Nagy: I want to start by saying that as I sit here listening, I zone out. I'm leaving my body and listening to the argument they are making. I believe this isn't really a debate about our next legislation. This is a debate about where Canada as a society will go next. This is a debate about whether you, if you're a mother, are okay with your daughter coming to you tomorrow and saying she thinks she would like to be a prostitute when she grows up.

I'm having a really hard time listening to the debate using words like "sex work". This is not work. When I go to work and I get punched in the face, held down, and a gun is held against my head to the point that I have to go the bathroom and lock myself in, hoping that someone will save me, or get beaten—there are women whose jaws have been dislocated—I don't like to call that work. What I do today I call work. I think what you do, that's work. But when you go to work and every day there's a chance of your being exploited, beaten, and taken advantage of, I don't think we should call that work. For our next debate maybe we should change our language, because this is very offensive.

To go back to your question, Mrs. Smith, decriminalizing, this is how I would like to answer that question. Overall I think, because of where I'm coming from, and because of the front-line work that I... I work with the police on a daily basis. We see the victims of human trafficking, and yes, of course, we see the women who are there of their own will, but they are well over 20 or 25. They have already accepted that this is the choice they have made, but those choices led from some very poor circumstances. They had been victimized before.

I think overall we need to make a stand as a society on where we're going next and what we would like our next generation to accept, where we would like our next generation to go, and what they think would be right for them to do, selling their body or going to university and college.

Mrs. Joy Smith: Also we've heard a debate about... As Ms. Sayers says, she's never met anyone under 18. Yet we find that from the John Howard Society study on prostitution, 14 to 16 is the average age of entry, as you said, Ms. Nagy, about the young people you've worked with. From the childhood victimization journal, the *Journal of Interpersonal Violence*, 89% enter into prostitution before the age of 16. They're 13 to 19 years old on entry in Canada, An International Handbook on Trends, Problems, and Policies.

I know that Professor Lowman or others have stated different comments, but 52% entered before the age of 16. This is from a study to stop violence, Canadian research on violence against women. The studies go on and on, validating what you've said, is what I'm saying.

That being said, we talk about this turning point. I think you were very eloquent when you were talking—

The Chair: Mrs. Smith, if you have a question you need answered, ask it right now or else your time is up.

Mrs. Joy Smith: Ms. Benedet, do you have any research on this? You've done a lot of studies on the age of entry into prostitution.

Prof. Janine Benedet: To give you an example, about 24 women testified in the Bedford case, called by both sides, the government and the applicants. They had the choice of whom they could get to testify, who wanted to come forward and be heard. That was a really interesting cross-section of the women in prostitution.

Among that group of 24, there were numerous women who started in prostitution at the age of 18 or younger, including the three applicants themselves in the case, who started at 15, 16, and 18. Those were the women they chose to bring forward to bring this case.

There were other women. I think the oldest among that group of 24 was 27. She had four children whom she had lost to child protective services when a boyfriend got her hooked on drugs and then pimped her out.

So it was a range of ages, there's no question. But there were significant numbers of women who had started as teenagers with very limited prospects, often fleeing either abusive situations in the home or state care that itself had become abusive.

I think it is true. I think Professor Lowman is correct that some of the studies that show a very young age of entry are focusing on street prostitutes as a population. We really have a lot more studies in Canada in particular about street prostitution than we do about off-street prostitution and the demographics there.

• (1430)

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

Our next questioner is Madam Pécelet from the NDP.

[*Translation*]

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

I would also like to thank the witnesses for being with us today. This is a very informative discussion.

All the lawyers in the room know that legal opinions differ from one lawyer to another. It's important to point out that the purpose of the discussion isn't to figure out which lawyer is right, but to figure out what bill is best for all Canadians affected by this issue.

The Supreme Court of Canada's decision is as important as the rule of law. But we also have to take into account the health, safety and lives of all the women and men—since this isn't just a woman's issue—it affects.

I wanted to start by saying that.

[*English*]

Bear with me, please. I have a lot of questions and so little time.

My first question would be for Walk With Me Canada Victims Services. I just want to say, Ms. Nagy, I personally was very shocked by your testimony. Thank you very much for coming forward with your personal story. I don't think any woman or man should be beaten, should be sexually assaulted. I think everyone agrees here in the room that this is a particularly bad situation for the people you deal with, and it's a crime. What you described in your testimony is already criminalized by the Criminal Code in that it specifies that you cannot consent to being beaten up or being sexually assaulted. So I think this ought to be clear, that you cannot consent to this. Even if at the beginning you might have consented to the act, you cannot consent to being sexually assaulted. I think it is included in the Criminal Code, and I think it's important that this is noted.

I just want to ask you about all those women or men you deal with who are in particularly vulnerable situations. The government is proposing \$20 million for five years and that covers all of Canada, so 10 provinces and three territories. As you mentioned in your testimony, we know that there are people living in very vulnerable situations. Do you think that's enough if we're talking about equality? Don't you think that the core problem of this situation is not necessarily the work that they do, but the conditions that they live in, like poverty or history? Do you think that \$20 million from the government for five years for all of Canada is enough?

Ms. Timea E. Nagy: Thank you so much for your comments previously, and thank you very much for the great question.

I just want to comment quickly that there are already in the Criminal Code laws about sexual abuse and assault. Just because it's in the Criminal Code that doesn't stop the johns and pimps from beating up the girls, so that's just my comment on that.

About the \$20 million, I don't know if you're aware of it, but in the United States currently they documented that 300,000 young girls between the ages of 16 to 21 are being trafficked into the sex industry, which is obviously prostitution. The American government gave \$10 million to fight that. So I think when we look at our Canadian government and specifically human trafficking, 10 years ago when I was trafficked there wasn't even a law about it. Now you guys have done such an amazing job creating laws, and many laws, to protect.

Just a few years later you are announcing \$20 million and last year you announced \$25 million to fight this. So altogether in the last two years this government has already committed more money to Canada and the victims of both human trafficking and sexual exploitation than America did in the last two years.

• (1435)

Ms. Ève Pécelet: You know we're talking about trafficking and not prostitution, but it's okay.

My second question will be directed to the Criminal Lawyers' Association. It's important because I haven't had time to ask questions to the *fonctionnaire publique*. What is the definition of publicity? In the article where there's the immunity, we talk about publicity for your own services, so does it include solicitation? What is your overview of this article and the immunity? Does it apply to the article 213 where there's communication/solicitation? What's the difference between them?

Ms. Anne London-Weinstein: I'd like to try to address your question briefly. But before I do that, I was wondering if I could briefly respond to something that Professor Benedet said.

I think it's important to note, when we're looking at the purpose behind this legislation—and there are laudable aspects of it—that just because we are now criminalizing the purchaser does not eliminate the potential for criminalization of the seller. You're still going to be getting those arguments on section 7 and the liberty and security of persons. There is still a potential for challenge. They have not been eliminated, even though we are now criminalizing the purchase as opposed to the sale directly.

For example, you have workers who are working together. Both of them may be under 18. That would be an offence. We've talked about the number of young people who are involved in prostitution. We'd be criminalizing both of those young people, saddling them with a criminal record, making it much more difficult for them to safely exit once they have that stigma.

So I just want to say that we're not going to be getting rid of that section 7 argument.

In relation to publication and communication, based on some of the background reading that I've done, and this is admittedly anecdotal—just my own research—there is a concern that some of the advertisers may be targeted by the broadness of this legislation. They may be implicated by providing advertising services. As I read the legislation, I understand that you can advertise, but it's sort of in a private way. How much utility it would be to a sex worker to advertise privately, I'm not sure. It also is going to have an effect on the ability to screen, which I understand is a safety concern for workers.

The Chair: Thank you for those questions and answers.

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

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

Thank you to all the witnesses for your testimony today. There's certainly a wide swath.

I want to focus on Ms. Nagy, if I could, please.

It's interesting. At the start of your statement here you described yourself as a survivor. There's no question that you are definitely a survivor. There's an old adage that says if it doesn't kill you, it makes you stronger. Certainly you've made your organization, Walk With Me, stronger, and you're to be commended for all the work you have done with them, and will continue to do, I'm sure.

We'll talk about the \$20 million later.

Ms. Timea E. Nagy: I'll be waiting for your call.

Mr. Robert Goguen: There's been some discussion of the charter, as would be expected. Of course, one of the things that Bill C-36 focuses on is the protection of those who are subjected to prostitution, violence, and exploitation, such as yourself.

A while ago, Mr. Russomanno said that in his view Bill C-36 was in breach of subsection 2(b), freedom of expression, and section 7, life, liberty and security of the person.

You were describing a scenario where you were being raped, I believe, by three Russians. Let's suppose that the police authorities had broken in and rescued you. Would your freedom of expression have been in any way breached? You couldn't possibly have been doing it freely.

Ms. Timea E. Nagy: I don't understand the question. It's just the way you framed it. English is my second language still. Sorry.

Mr. Robert Goguen: Sure.

What I'm saying is that you weren't freely expressing yourself by being raped by three men.

Ms. Timea E. Nagy: You mean, if I would have been able to say that I was just raped?

Mr. Robert Goguen: No. If you were rescued, you wouldn't feel that your rights were violated.

You don't get it. Okay.

Ms. Timea E. Nagy: I'm sorry.

A voice: [*Inaudible—Editor*]

Ms. Timea E. Nagy: My answer is no.

Mr. Robert Goguen: That's kind of what I thought. Very good.

Okay, I'll try this one.

With this section 7, there's the life, liberty, and security of the person. When you're being coerced into doing sexual acts, you're not doing them freely. That definitely goes against your right to life, liberty, and freedom of the person.

You're not participating in this freely, right?

• (1440)

Ms. Timea E. Nagy: Absolutely not.

Mr. Robert Goguen: Now if the authorities came to you and said, "Look, Ms. Nagy, we want to help you get out of this sex trade; you're not here voluntarily", would you disagree with that kind of thing if it happened? Would you be angry at the authorities? Would you say that your right to life, liberty, and security of the person was being violated and you don't want to be rescued?

Ms. Timea E. Nagy: No, I wouldn't.

As a matter of fact, this is what we do on a daily basis with police officers. That's exactly what we do. We are not targeting. We are not raiding. There are no police raids like the opposite parties have said in the media. By the way, in the first three weeks that's all you heard in the media. The other side of the story was never heard. That's just my other comment.

But there are no police raids. When we go in the room with the police, we talk to the girls, and you better believe that in a week or two or three, when the person is indeed trafficked, they will call for help and they will ask us to take them. There are times when they beg us to get them out of the room: "I was just kidnapped. I've been forced. I can't leave my hotel room. Please take me".

Mr. Robert Goguen: So the great work that your organization does by getting the girls out of this scenario that they don't want to voluntarily participate in is actually empowering their life, their liberty, their freedom.

That's what you do so greatly, right?

Ms. Timea E. Nagy: That's right.

Mr. Robert Goguen: There was talk about the \$20 million from the federal government to fund organizations. I don't know exactly which organizations will be funded but I suspect they will be like yours.

Can you give us some examples of what types of programs you would put in place if you did have such funding? What would you do to help get the girls out?

Ms. Timea E. Nagy: I don't think it should just be programs like ours. I think there are programs that the opposite side is providing as well. We believe there are women who got into prostitution one way or another, and I believe they get to a place in their life when they decide they would like to leave, and it's hard to leave that industry. So I believe that money should be divided not just on our side, but on the side where they have a full understanding of what it's like to be there for 10 or 20 years. They can also assist those girls who would like to leave voluntarily one day because they have decided, not because the government tells them to.

But there are programs currently available across Canada. There are agencies, and not just Walk With Me. As I said, there are agencies on their side of the fence too that offer job counselling and therapy. There needs to be a lot of therapy once you leave this industry on your own or once you are rescued, whichever way you leave.

There are emergency safe houses where you stay for up to three days, which is one of our services. Then hopefully you go to an assessment centre. This is already being done in the United States. In the United States prostitution is illegal so when you go before a judge you get arrested, instead of going to jail you're asked to go into a treatment centre for up to three months, an assessment centre where they ask you why you originally entered this industry and how they can help you out.

The same law was just proposed. It's called a diversion program in the Los Angeles area. After a three-month assessment, a time where you literally relax, eat, sleep, and take a break from life and society, you go to a rehabilitation program for up to one year, which is no different than going to rehab for drugs or alcohol. This is an addictive lifestyle, and you need all the help you can get.

Those are the programs that can help you heal and be reintegrated as a healthy member of society so you can start paying taxes and contributing.

Mr. Robert Goguen: Thank you, sir.

The Chair: Our next questioner from the New Democratic Party is Mr. Scott.

Mr. Craig Scott (Toronto—Danforth, NDP): Thank you, Mr. Chair.

Mr. Russomanno, Professor Benedet, and Émilie or Naomi, I want to ask a few questions about advertising.

It seems fairly clearly established from both the reading and the earlier testimony that one way or the other, if anybody is going to advertise prostitution services, sex work services, they're going to have to do it somehow on their own and any third-party involvement risks criminalization or will be criminalized. I find it very hard to figure out exactly what kind of effective advertising that would be.

One of the concerns I have is that some of the advertising that allows somebody to work out of their home or work out of some kind of a fixed location—advertise that fact, screen by way of a phone call, screen visually once a person arrives, and that kind of stuff—is going to be harder because the advertising modalities, the vehicles, the third parties that help create effective advertising will be gone and therefore advertising may push itself back out to the street. I'm not sure exactly.

Mr. Russomanno, earlier you talked about protective expression and you were specifically talking about communicating for screening and how this added provision, which Professor Benedet also brought up, whereby if you're doing it anywhere where anybody under 18 can be expected to be, would get in the way of protective expression.

Do you see the advertising features of this also in light of this idea of protective expression?

Professor Benedet, do you not have any concerns about the prohibition on any kind of a third-party involvement in advertising in what it might do by way of risk factors? You did isolate the communicating in areas where those under 18 are present or expected to be present, but you didn't focus on that.

I want the members of the Canadian Alliance for Sex Work Law Reform to comment on the advertising.

• (1445)

The Chair: Okay, we'll start with Mr. Russomanno.

Mr. Leonardo S. Russomanno: I'm going to let Ms. London-Weinstein deal with that question.

Ms. Anne London-Weinstein: One of the concerns is the definition of a public place, and whether the Internet would be encompassed as a public place, as a place where youth are likely to be. It's a public domain. It's online communication. It's a wild, vast universe out there. Arguably it could be interpreted as being a place where young people are anticipated to be and therefore would be barred as a method of advertisement.

From the reading I have done, I understand there are real limitations on advertising, and the advertising under this legislation is going to be of somewhat limited utility because there are real restrictions on where the advertising can take place. In terms of screening—and I'll let the other panellists address the issue of safety—one of the concerns that arises out of the inability to advertise is the inability to screen, which is directly related to section 7 concerns in relation to security of the person.

The Chair: Okay. Professor.

Prof. Janine Benedet: I'm at a bit of a loss here to understand how advertising is really protective expression, in particular how profiting from running ads is protective expression. When I look at

the kinds of ads that run in the *Georgia Straight*, our local free paper in Vancouver, the best estimate I have is from a few years ago. Someone tried to calculate how much they made, and it was at least \$50,000 a week from that advertising.

I see advertising that is blatantly racist, and divides women by their ethnic categories and ascribes various kinds of servile categories to them based on race. I see advertising that reduces women to body parts so that they don't look like full human beings. I see a culture of advertising that, frankly, is harassing and demeaning to all Canadian women, but is enormously profitable to the organizations that carry it. I didn't expect to see this advertising provision in this bill, but it's a really important step to say that this kind of profiteering needs to stop.

Even in jurisdictions that have decriminalized prostitution, it varies, but there are often significant restrictions on advertising. We were talking about New Zealand, which doesn't permit the advertising of prostitution on television, on radio, and I don't think on billboards. It does permit it in print, and the advertising is done by the brothels, which are now offering coupons that you can clip for a discount and bring with you to the brothel. I don't see anything protective about that kind of expression, and I don't see what you can do through advertising that once that guy is with you alone in your apartment really makes any difference, whatever it is you've bargained for in advance.

I strongly support this provision and I think what's being done here is a prohibition on advertising and on the advertisers, who are profiting, with a clear exception that we're not going to criminalize prostituted women through the back door through an advertising provision, so they are exempted. I quite like the structure of this, and I think it is quite different from that communicating provision that effectively criminalizes all street prostitution taking place in residential areas and criminalizes the women for that, which I think is really a backwards move.

• (1450)

[Translation]

Ms. Émilie Laliberté: Ms. Sayers will answer first, followed by me.

[English]

Ms. Naomi Sayers: In reference to third parties in relation to advertising, sometimes sex workers advertise through online sites, and this section makes reference to specific online sites. Sometimes moderators and owners of these sites provide sex workers' only access to valuable bad date list information. Criminalizing their actions would eliminate that access area and potentially extremely valuable safety mechanisms.

[Translation]

Ms. Émilie Laliberté: In my ads, I don't objectify myself or my body. I describe my personality, and above all, I list the services I want to provide and the prices I charge for those services. I also list the services I do not wish to offer.

Simply by posting my ad, I've been able to pre-negotiate the contract for my services. If I lose the right to advertise online and network with fellow sex workers who also post ads online, I will lose the ability to do reference checks on clients and work indoors. I will have to turn to the streets to find clients. I will have to turn to trafficking rings for clients.

Thank you.

[English]

Mr. Craig Scott: That's precisely what I meant by protective. Thank you.

The Chair: Thank you for those questions and answers.

Finally, I think, we have Mr. Dechert from the Conservative Party.

Mr. Bob Dechert: Thank you, Mr. Chair.

I believe, Ms. Laliberté, what you were just describing and what you do is exactly what C-36 would allow. That's certainly my understanding.

Ms. Émilie Laliberté: Actually it is not, because C-36 would shut down all the websites where I can advertise.

Mr. Bob Dechert: No, not if you pay for it on commercial terms.

Ms. Émilie Laliberté: Excuse me...?

Mr. Bob Dechert: Not if you pay for it on reasonable commercial terms. In other words, if they are not exploiting you, you can do that. You can set up your own website.

Ms. Émilie Laliberté: You consider me an exploited person anyway.

Mr. Bob Dechert: No. I'm saying if you do it yourself, if you pay someone to set up your own website, describe the services you're describing, my understanding is that you will not be criminalized. That advertisement would be allowed.

Ms. Émilie Laliberté: We'll see that in action.

Mr. Bob Dechert: We will.

Let me focus on something else. A number of our witnesses have mentioned New Zealand, Mr. Chairman, and some have said they think perhaps it's the ideal model. I think the Criminal Lawyers' Association said that. I believe Professor Lowman said that. The alliance may have said something similar about it.

Ms. Benedet, you have mentioned New Zealand. I want you to tell us what the situation was before they passed their new laws and compare it to the situation now with respect to street prostitution and with respect to indigenous women. Can you tell us what you understand the experience is there?

Prof. Janine Benedet: I guess the first thing I would say about comparisons to New Zealand is that it is important to understand... I think it's useful to look at other jurisdictions, and I'm certainly someone who has asked Canada to look at the experience of Sweden, but New Zealand is a very small geographically isolated country. It's nearest neighbour, Australia, has mostly legalized prostitution. The Canadian experience with the United States right next to us is different, so whatever has happened for good or for ill you have to be a little bit careful about those kinds of analogies.

I can say, even looking at research coming out of the New Zealand government and coming out of the New Zealand Prostitutes' Collective, which is sort of the most established group supporting the New Zealand model, the general trend is that reported incidents of violence have remained the same. They are lower indoors than on the street, but they have remained the same both prior to the legislation and after. That has not changed.

The number of women on the street in street prostitution in cities like Christchurch has not changed since the legislation was passed, and it's the women on the street who are disproportionately the aboriginal women, the indigenous women.

What has changed—and again the groups supporting the legislation verify this as well—is quite a significant increase in the number of foreign women, now Chinese women, in prostitution in New Zealand. That's estimated to make up about a third of the industry as I understand it, and those women are not legally permitted to engage in prostitution because they are not citizens. The law there requires that you be a citizen in order to engage in prostitution.

• (1455)

Mr. Bob Dechert: In the Bedford decision the Supreme Court told us that street prostitution is the most dangerous form of prostitution. Would you agree with that?

Prof. Janine Benedet: I think we have to be a little bit careful about that because in fact we've had in the last few years in Vancouver several murders of women who have been prostituting either out of their homes or in trick pads that are used for that.

Mr. Bob Dechert: It's dangerous in many locations, but...

Prof. Janine Benedet: In terms of degrees of danger, the reality is that taking the very same women who were on the street and moving them indoors.... It's not the location that is dangerous; it's the men who seek out those women.

So ultimately it's the women who are at the bottom of the social hierarchy in whatever country you're in that have to endure the most brutal and degrading forms of prostitution, whether indoors or outdoors.

Mr. Bob Dechert: Can you comment on the ethnicity of the people who comprise most of the street prostitution in New Zealand? Do you have any information on that?

Prof. Janine Benedet: Yes. Many of the reports that have been done have shown in many Canadian cities that the concentration of aboriginal women in street prostitution vastly outnumbers their representation in the population. Certainly we see that in Vancouver. We see that in Winnipeg. I know Andrew Swan, the Attorney General of Manitoba, has really made a point of highlighting that as well.

I think there's no question that there's disproportionate representation of aboriginal women on the street.

Mr. Bob Dechert: Is that true in New Zealand as well?

Prof. Janine Benedet: Yes, that's true in New Zealand as well.

Mr. Bob Dechert: I'd like to go to Ms. Sayers' perspective on this.

Ms. Sayers, you work with indigenous women, you said, here in Canada. What is your understanding of the situation in New Zealand? Who are the women who are largely on the street there? Are they indigenous? Was there any reduction when they moved to this new model?

Ms. Naomi Sayers: In 2007 there was a survey done on over 700 Maori sex workers. That's the reference to their specific nation. They did say that they were no longer under the threat of violence, but they also reported that they felt safer in reporting violence not just from clients but also violence from the public. We have to remember that violence comes in many forms and not just from clients. As I stated in my presentation, it includes institutional and systemic violence.

Mr. Bob Dechert: Would you say that there are the same number of indigenous women on the streets of New Zealand today as there were before they changed their laws?

Ms. Naomi Sayers: There was no change, but that's not the—

Mr. Bob Dechert: No, I heard the rest of it, but I just wanted to clarify that point.

Ms. Naomi Sayers: Yes, but they feel more safe in reporting incidents of violence, which is the key.

Mr. Bob Dechert: I'd like to hear from Professor Lowman on this point. He mentioned that total decriminalization is the way he thinks Canada ought to go. He also mentioned zoning bylaw restrictions, and that where the city decides it's going to be in a particular place isn't necessarily a way of making it safer. I'd like to hear from him on where he thinks street prostitution would be safer. What kinds of bylaws would he be in favour of supporting or does he think would be useful in making street prostitution safer for prostitutes? Can he give us any insight into the New Zealand experience in that regard?

The Chair: Professor, you have the last word.

Prof. John Lowman: My first instinct is to say that we all seem to be expecting a silver bullet, a panacea, and there isn't one out there. This is a very complicated situation. I would like to see prostitution taken off the street, but I realize when I'm talking about women in the Downtown Eastside and we talk about them going indoors, there's no indoors for them to go to. They're homeless. Their involvement in prostitution is a reflection of many other problems.

What we've noticed over the years in Vancouver is that whenever police have simply had an initiative against prostitution in certain

residential areas, it automatically gets displaced. But the displacement is often unintentional. When you have a situation where the police say, "Okay, don't work in this area, work in this area", the women move. The reason I mention bylaws is that you could presumably set up some kind of zone where some kinds of business activities would be generically regulated, and this could apply to other kinds of prostitution locations where they would be located. The most important part of whatever kind of regulation would be introduced in that vision, the most important thing, is to involve the people who are going to be regulated, i.e., the sex workers, the people whom we never ask about what kinds of regulations would make sense to them.

That's why I don't just come out with a particular plan of action. One needs to sit down with the people who these laws would apply to, to find out what would make sense for them, because if it doesn't make sense for them it isn't going to work.

• (1500)

The Chair: Can you briefly comment on New Zealand and then we have to wrap up, Professor.

Professor, can you hear me?

Mr. Bob Dechert: What is your view of the New Zealand experience in that regard? What is the experience in New Zealand with respect to the regulation of where street prostitution is allowed to be carried out?

Prof. John Lowman: I'm not fully conversant with exactly how the legislation of street prostitution works. We know that street prostitution still exists. There has not been a silver bullet, but I think if you go through the research, there's a lot more to discuss about the New Zealand experience than we heard today.

The Chair: Okay. Thank you very much.

Thank you to all of our witnesses for coming.

We will be having committee meetings—we have another one after this—until Thursday at 5:30, and then the committee will decide what they'll do next. The meetings are all televised, so you can watch or come if you want.

Thank you very much for your testimony.

With that, we will adjourn until 3:30 p.m.

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