

Legalization and Decriminalization vs. Bill C-36

The following quote is an excerpt from a seven part series published in July 2014 in the medical journal Lancet which was presented at the annual HIV/AIDS conference in Melbourne, Australia in 2014:

“The reality most people wish to ignore is that much of our challenge in addressing sex work and sex workers is the need to understand human sexual desires and needs, including our own. We might prefer to think that sex and money were unrelated, that sex was somehow immune from the transactions so common elsewhere in our lives. But why should this exception be so? And why should we condemn and criminalize the exchange of money for sex, especially if the severely adverse conditions we create for such exchange hurt women and men and often fatally so? The persistence and ubiquity of sex work suggests only that sex, and the human desire for sex, is a normal part of human societies. Sex work is part of the human story. Accepting and embracing sex work – supporting those engaged in sex work to protect their health and bodily integrity and autonomy – should be our humane, as well as our pragmatic approach to the reality of our human lives.”¹

While acknowledging the inherent opportunities for violence and criminal activity within the sex industry, it is important to objectively examine the fallacy that has made the two synonymous. There are many forms of employment in which people are exposed to a high level of risk yet are not subject to government or law enforcement oversight and control. In every other case the choice to make an informed decision is a fundamental right to any and all citizens provided that all requirements, legal and otherwise, are met. It is the failure to recognize and afford that same respect to this industry that make any attempt at legislation futile and unconstitutional.

Though there are those who disapprove of and dislike individuals who work in the sex industry, it is not necessary to condone, endorse, like or understand an individual's choice to do so in order to allow the profession to exist. Many of the social harms cited as being attributed to this industry are, in fact, caused by people's inability or unwillingness to set aside moral judgement in favor of respecting individual rights. The societal belief which dictates that sexuality and sex “reduce” women whereas men are merely on the receiving end or that sex is something a woman does for a man that requires losing something of herself by doing so has led us down many dangerous paths. The harm comes from the refusal to accept that sex is a personal commodity that is the sole right of the owner to exchange for money. It is time that we understand the valuable and valid contribution to society as a whole that this industry provides and view those who purchase and sell the services from a different perspective.

¹ Global Epidemiology of HIV among female sex workers: Influence of structural determinants: Introduction and Series of 7 papers about HIV and sex workers Authors: Dr. Kate Shannon and GHSI in co-authorship with 11 researchers and sex workers from the global south and north Published online in The Lancet (one of the world's leading medical journals) on July 22, 2014

In 2014, in a democratic society, women should not still be fighting for the right to equality and freedom of choice. This nation purports to recognize, respect the right of women to equality and to defend, protect and promote the rights of women around the world. It is submitted that this must include the right of adult women (and men) to choose to work or not work in the sex trade. While laws are needed to ensure it is a free and fair choice and to ensure that children and vulnerable persons are protected, those laws must not take away the right for freely consenting adults to make that choice themselves.

The purpose of this paper is to demonstrate that the premises of Bill C-36 are flawed and to show that:

- legislation needs to effectively fight the criminal activity associated with the sex industry and offer more aid and resources to those who want to exit as well as to victims
- legislation should afford those who enter the profession by choice the same protections, business rights and services offered to all other professions, industries and businesses
- The Justice Minister's statement that "the vast majority of those who sell sexual services do not do so by choice and the vast majority of those involved in selling sexual services are victims" is blatantly false and a very dangerous, unsubstantiated assumption/misrepresentation of the sex industry and how this view has led to the criminalization of activity that should not be deemed illegal, ineffective legislation that infringes on human rights, fewer resources for victims and endangered lives (as was determined by the Supreme Court of Canada in the **Bedford** Case, December, 2013)
- The Justice Minister's statement regarding Bill C-36 "going after the perpetrators, the pervers, those who are consumers of this degrading practice" will lead to prosecution of citizens for acting on a normal human desire. It fails to recognize that for some people intimate human relationships may be difficult or impossible to maintain. This may be for a variety of physical, mental or social reasons. For such people, the natural desire for sex and intimate human contact cannot be satisfied in the context of a relationship. Commercial sex may be the only outlet for consensual sex. Bill C-36 essentially deprives such people of a legal means of satisfying that natural instinct and desire.
- There are more effective models than the one provided by Bill C-36 in effect in other countries that have provided positive results in terms of minimizing social harm and protecting public health and protecting the health and safety of sex workers.

1. Clarifying the issues

It is essential to accept and acknowledge the sex profession and separate it from the crimes that involve sex in order to create effective legislation. The criminal activity that occurs is not a result of the existence of the industry and will not be reduced or eradicated in the absence of the profession.

Three recent research papers support the assertion that legalizing or decriminalizing the sex profession can, in fact, reduce criminal activity:

- British Medical Journal – between January and November 2013, researchers from the Gender and Sexual Health Initiative of the BC Centre for Excellence in HIV/AIDS and the University of British Columbia conducted in-depth interviews with 31 street-based sex workers in Vancouver to examine their experiences and negotiation of safety and health following implementation of the Vancouver Police Department’s enforcement guidelines introduced in January 2013. The policy focuses enforcement on clients and third parties, often referred to as the “Nordic” model. The result was that sex work-related arrests increased from 47 in 2012 to 71 in 2013. The research also suggests that there was no decrease in rates of work-related physical or sexual violence with 24% of 275 workers in 2012 experiencing violence compared to 25% of 236 women in 2013. Senior author, Dr. Kate Shannon, stated: “The findings clearly show that criminalization of clients in Canada risks recreating the same devastating harms to the health, safety and human rights of sex workers as the last two decades of missing and murdered women. Sex workers in the research were very clear: where clients continue to be targets of police, sex workers’ ability to protect themselves from violence and abuse or access police protection is severely limited.”²
- A second report and legal analysis of the research was done by The Pivot Legal Society, Sex Workers United Against Violence and GSHI entitled, “Criminalization of Clients: Reproducing Vulnerabilities for Violence and Poor Health among Street-Based Sex Workers in Canada” regarding the impacts of criminalization of clients on sex workers safety. Katrina Pacey, litigation director at Pivot Legal Society stated, “This important new research concludes that using the criminal law to target clients perpetuates the life-threatening conditions that sex workers faced under the laws that were struck down in the Bedford case. If this approach were to become the law in Canada, it would create the same unconstitutional harms the Supreme Court found are a violation of sex workers’ right to security of the person.”³

² . Criminalization of Clients: reproducing vulnerabilities for violence and poor health among street-based sex workers in Canada: a qualitative study, Authors: A Krusi, K Pacey, L Bird, C Taylor, S Allen, J Chettlar, D Bennett, J S Montaner, T Kerr, K Shannon , Published in British Medical Journal Open on June 2, 2014

³ . My work should not cost me my life: The Case against Criminalizing the Purchase of Sex in Canada, Authors: Pivot Legal Society, Sex Workers United Against Violence (SWUAV), Gender and Sexual Health Initiatives of the BC Centre for Excellence in HIV/AIDS (GHSI), Published in British Medical Journal on June 3, 2014

- A court case in Rhode Island in 2003 brought to light that an amendment in state law in 1980 actually decriminalized indoor prostitution. It took until 2009 to close the loophole which provided economists Scott Cunningham and Manisha Shah an opportunity to conduct a “natural experiment”. Their report showed that rape offenses fell by 31% (824 fewer reported rapes) and incidences of gonorrhea by 39%. No other crimes such as robbery, murder, assault, burglary or car theft saw a decline which suggests that the results were not due to an increase in or more effective policing. Their conclusion: “Despite the industry being huge and persistent, almost everything we know about decriminalizing prostitution is rooted in speculation rather than good data. Prior research has been plagued by problems like relying on small sample sizes that aren’t necessarily representative of the industry. Sex work is a predictably fraught policy issue because it gets entangled in matters of morality. But this study adds to a body of research that suggests criminalizing prostitution causes higher rates of victimization and unsafe practices.”⁴

There are laws in our current criminal code to address human trafficking, forced labor, making and distribution of child pornography, exploitation, sexual assault, coercion, physical assault, pedophilia, and kidnapping....crimes that are not synonymous with the sex profession and occur in many industries.

Legalization also has a direct impact on the reporting and prosecution of crimes within the industry. In March of 2014, an unnamed sex worker in Wellington, N.Z. was awarded about \$25,000 in damages after a tribunal ruled that her brothel manager had violated the country’s Human Rights Act and caused her “humiliation, loss of dignity and injury to feelings.”⁵ They honoured the “worker” part of “sex worker” and treated her as they would any person in another industry. This type of case would never make it to court if any part of the sex industry was criminalized. It is an example of how the sex industry can be regulated and laws enforced if treated as nothing more than work.

It is a futile exercise to attempt to rescue people who do not want or need to be saved and are not victims of crime but rather victims of moral judgement. By removing the stigma attached to the profession more victims will come forward to report criminal activity providing valuable information for law enforcement and making it more difficult to commit the crimes within the profession. Tom Flanagan (a distinguished fellow in school of Public Policy at the University of Calgary) said in a recent article (Globe & Mail – June 20, 2014) that “the prostitution bill is a bizarre work of moral panic...eradication is for moral crusades and millenarian transformers of the human condition.”⁶ Let’s not start criminalizing people who seek voluntary transactions based on a fundamental human desire.

⁴ Decriminalizing Indoor Prostitution: Implications for Sexual Violence and Public Health, Authors: Scott Cunningham, Manisha Shah, Published by the National Bureau of Economic Research: NBER working paper No.20281, July 2014

⁵ Prostitution is nothing more than work. Treat it that way, Author: Elizabeth Renzetti, Globe and Mail (Toronto), March 10, 2014

⁶ The Prostitution Bill is a bizarre work of moral panic, Author: Tom Flanagan, Globe and Mail (Toronto), June 20, 2014

How is it possible to legalize and license the sex profession yet outlaw the purchase of the service? It defies logic and is, at best, hypocritical. It makes no more sense than legalizing and licensing the sale of guns then outlawing the purchase of them. The question then becomes, what would be the purpose of this action?

2. Education

The sex industry provides an important, valuable and necessary service and deserves the same consideration, benefits, and recognition as any other profession or business. The majority of research done on prostitution in the last 15-20 years around the world has challenged and refuted much of the common beliefs about the sex industry and the claims of rampant underage involvement, assault, forced labor and coercion that have been made are often exaggerated.

The most dangerous and inaccurate assumption/view about the sex industry is the belief that everyone involved is a victim. A critical fact, which is often dismissed as not possible, is that people DO make the adult, informed, conscious and free choice to enter the sex industry. With no disregard to victims within the sex industry, it is important to clarify the unrealistic and vague picture that has been presented to the general public by the media. The transient, shadowy nature of the industry and the stigma of association to it makes it difficult to obtain accurate facts and numbers which has led to a distorted or exaggerated perception and difficulty in creating effective legislation.

Although some women entering this industry are driven into it due to poverty, addiction or coercion, there is a large number who choose this as they would any other form of employment. The women I have met and spoken to have stated that they have been treated with more respect and faced less harassment and abuse in this profession than in previous employment (which included almost every type of industry, profession and business). These women believe in the value of the service they provide, feel treated with respect, and are learning valuable life and business skills which provide them with choices that are not available with other career options.

There have been many studies published by world renowned medical professionals and institutions that prove unequivocally that having an active, healthy sex life is directly linked to healthier, happier and more productive people. Not one has suggested that it is only beneficial within the context of an intimate, emotional relationship or marriage. There are some who would find it acceptable to engage in healthy sex when it occurs within certain parameters such as a date yet criminal when negotiated by consenting adults with no other contact. It is to society's benefit that there are individuals who recognize the value of the services provided and are willing to offer them.

The sex industry encompasses all forms of prostitution which are operated in several different ways, each attracting different workers and customers:

Street prostitution – these women are often portrayed as the face of the industry and are the workers that many people are familiar with. They are the most vulnerable and face the highest level of danger. Due to the fact that they are transient, often work alone and are out for long periods of time through the night, they become more exposed to predators such as Robert Pickton. This group of women benefitted greatly from the decision by the Supreme

Court to abolish the communication law surrounding prostitution by providing them with the time to assess a situation and negotiate terms prior to being isolated from the possibility of aid. The streets are often where you will find the victims of coercion, trafficking, exploitation and the women who are impoverished or addicted and feel they have few other options. This is not universally true as many women also choose the “stroll” or street work for the absolute control over their business, the freedom to choose working hours and anonymity.

Out call business – the women who choose this way to operate do so through advertising on the internet, in newspapers and phone books. They arrange to meet a client at a hotel or home and often require a name, phone number and credit card number to aid in establishing credibility which can reduce their risk to potential danger. Some women employ the services of a driver and/or bodyguard or work in pairs to further increase safety. These workers usually enjoy the benefits of choosing hours of availability, an opportunity to build a steady client base and control over negotiation for services. Women who travel from city to city are most often in this category and can have a regular client base across several cities. While less dangerous than street work, these women face other situations that may put them at risk which can be reduced by allowing them to hire personnel.

Escort agencies - these businesses run with any number of professionals working under the same company and operate like the out call service. The agencies rely on advertising for business and work to establish a regular client base. They can offer a customer choices based on type of service requested or personal preferences. Each agency establishes their own policies, procedures, fee structure, contracts, and services as is the case with any individual business. This method of operation offers increased safety if the company tracks the appointments, builds a regular base of clientele and is able to employ drivers or bodyguards.

Studios and brothels – this is one of the safest ways to operate in this profession. The majority would operate much like a salon or barbershop where each professional is an independent contractor working within one business. This method of work offers the least exposure to danger as there is likely several people in the building and often a security system. There are usually set hours of operation and shifts would be arranged between the studio and professionals to operate within those hours. As with the agencies, each brothel will be run according to the business practices of the owners/operators. There is also the added benefit of walk in business, similar to the retail environment, where a percentage of the customer base walk in without appointment and may become clients of the studio rather than a specific worker. A receptionist is typically on site to handle the day to day running of the business. If the location is discreet and the studio provides a safe and clean environment for the service, then this becomes one of the best options for operating this profession in safety and out of the public eye.

It is also important to examine and give voice to the purchasers of the services provided by the professional sex industry. Once again we are presented with a distorted and unrealistic picture created by the media that may have some believing that the customers are perverts or perpetrators of crime. As pointed out previously, sex is a natural human desire and so is the need for human contact. Any ban on the purchase of sex will not eradicate this instinct nor is it humane to make criminals out of adults seeking to fulfill this need with another adult. To condemn all people to an emotional or intimate relationship or marriage in order to satisfy this

essential part of human nature is ludicrous and an infringement on the basic human right of freedom of choice. There has been no evidence to indicate that outlawing the purchase of sex will create more marriages, impact extra marital activity or reduce criminal behavior.

Any assumption that the exchange of sex or companionship for money is intrinsically tied to violent, exploitative or harmful intentions is absolutely not based on fact and creates an illusion of criminals on the hunt rather than the reality of customers seeking sexual gratification. Where is the benefit to society in the arrest of a 60 year old widowed rancher who is not interested in another relationship and pays for the company of a 40 year old woman, whether or not any acts of sex occur? How do we justify criminalizing a professional workaholic with no time to invest in a personal relationship for seeking to satisfy a basic human need? What is the harm to society when two adults, in private, negotiate terms for being together? Outlawing sex will not reduce the demand because it is driven by a basic, natural human instinct. It is also not a criminal act between two consenting adults so government, society and law enforcement should not make it so.

3. **Bill C-36 and Potential Effects**

On Friday, December 20, 2013, the Supreme Court of Canada struck down Canada's remaining prostitution laws, finding that the laws created severe dangers for vulnerable women. The three laws were:

*CCs. 210: Bawdy-House Laws which made it illegal for a sex worker, client or third party to operate or be found in a place that is used for prostitution

*CCs. 212(1)(j): Living on the Avails which is often referred to as the "pimping law" that criminalized third parties in prostitution such as those running an agency, booking clients (tracking the calls) or offering protection (driver/bodyguard)

*CCs. 213(1)(c): The Communicating Law which made it illegal for sex workers, clients and third parties to communicate about the exchange of sex for money in a public place, including a private vehicle, and includes negotiations about services, prices, conditions, practices, or limits and boundaries.⁷

Chief Justice McLachlin provided a clear rationale for striking down the law, firmly grounded in safety principles saying "The prohibitions at issue do not merely impose conditions on how prostitutes operate. They go a critical step further, by imposing dangerous conditions on prostitution: they prevent people engaged in a risky – but legal – activity from taking steps to protect themselves from the risks".

With regards to the bawdy-house law, the Court said, "Parliament has the power to regulate against nuisances but not at the cost of the health, safety and lives of prostitutes. A law that prevents street prostitutes from resorting to a safe haven such as Grandma's House while a suspected serial killer prowls the streets is a law that has lost sight of its purpose...if screening

⁷ R. v. Bedford, [2013] 3. S.C.R. 1101; released December 20, 2013 Docket: 34788

could have prevented one woman from jumping into Robert Pickton's car, the severity of the harmful effects is established".

Bill C-36 proposes legislation which is very similar to, if not just a clever rewording, of the laws which were struck down. These laws will not create safer working conditions for those involved in the sex industry or reduce demand for the services thereby eradicating the profession. Research has shown that the potential effects of the current bill include but are not limited to the following:

* To outlaw advertising for professional services violates the Charter right to freedom of expression and advertising should fall under regulations such as those set out by the Canadian Code of Advertising and Marketing Standards, the Canadian Competition Bureau and Advertising Standards Canada and not mandated by our federal government or included in the criminal code.

*To criminalize purchasers of a legal, professional service does not uphold the right to freedom of choice. There has been no evidence brought forth to support the assertion that this will lead to decreasing crime. It will only label normal human instinct and behaviour as criminal. Furthermore, by reducing the customer base of the professional industry an environment of intense competition may be fostered which can ultimately lead to more criminal activity and greater danger for those involved.

*By criminalizing the hiring of personnel to increase safety and making it illegal to operate safe businesses such as brothels and studios the potential for more victims is increased. If brothels and studios are shut down, a small percentage of workers may leave the industry and find other means of employment, some will be forced to lean on social assistance and other forms of government programs to survive, and some may be forced into unsafe living conditions, which this industry provided them with the means to avoid. The vast majority will join the street workers creating an even larger number of women in unsafe conditions.

*By limiting the circumstances surrounding where communication can occur, workers are once again subject to dangerous conditions such as the inability to properly screen potential clients and isolation from assistance if it is needed.

Justice Minister MacKay said, "Let us be clear about Bill C-36's ultimate objective: that is to reduce the demand for prostitution with a view towards discouraging entry into it, deterring participation in it and, ultimately, abolishing it to the greatest extent possible". (CBC News – September 9, 2014). He went on to say that the bill gives sex workers the ability to create better working conditions. In an environment of trying to force the industry into extinction, how would it be possible to create and maintain better working conditions? The two objectives create a conflict that would make it nearly impossible to achieve both. He has referred to this bill as a "Made in Canada" law which emulates the 'Nordic' model used in Sweden.

Prostitution has already been accepted by law in Canada and Bill C-36 will be in direct conflict with the purpose behind the Supreme Court's decision to strike down the previous laws. The 16 year experiment in Sweden has failed to accomplish the intended purpose of ending prostitution....how many years and victims will Canada sacrifice in its attempt to gain a different result using the same methods?

Professor Jane Scoular, from the University of Strathclyde in Glasgow, published an article “Criminalising ‘Punters’: evaluating the Swedish position on prostitution” in 2004 in which she critically examines the Swedish position on prostitution with the aim of providing a theoretically informed context for comparative assessments. Her research gives us a better understanding of the culture and political environment in which this model was created. The article provided the following information:

* In their final evaluation in 2001, the authors of the study done by The National Police Board in Sweden noted that the law’s negative impact on the most socially marginalised individuals working outdoors was described as more stressful and difficult. All evaluations have clearly pointed to an increase in hidden prostitution where little is known about conditions and the law’s negative impact on those still involved in street prostitution. The government response to this has been to say that the law is not about improving conditions but is about ending prostitution and that ‘any negative impact’ on sex workers is outweighed by ‘the message’ conveyed by the law.

* In his book, *Language and Sexuality*, Don Kulick asserts that the central aim of the Swedish law is an attempt to change attitudes to prostitution calling it “a culmination of nearly a decade of work by feminist groups and centre/left politicians to convince lawmakers that they should ‘send a message’ that ‘society’ does not accept prostitution.”

* In her book, *Prostitution: An International Handbook on Trends, Problems and Policies*, Nanette Davis stated, in part, that “the more attention given to prostitution as a ‘significant’ and ‘special’ problem requiring extraordinary measures, the less we see the ordinariness of prostitution as a normal response to gender distinctions and market and political inequalities”.

In her conclusion, Professor Scoular indicates that the model in Sweden is designed to support the nation’s cultural identity of uniformity and a moral code as set out by the government. While it may work in other countries that seek the same objective, this model supports an approach that is “ultimately weak in terms of dealing with the complexities and contradictions inherent in analysing the selling of sex across space and time, without regard for the structuring roles of culture, class and race.”⁸

4. **Examining Our Options**

There have been attempts all over the world to legislate prostitution, some seeking to control the criminal activity surrounding the sex industry and some to outlaw the profession because they view women as victims regardless of whether or not they are. While no one model has proven to be 100% effective, some have shown promise in the areas of reducing criminal activity while not making criminals out of adults who choose to work in or be a consumer of the industry. To date, the most thorough and extensive research and review has been conducted in New Zealand where they have implemented and tracked decriminalization with regulation. Sweden has implemented the Nordic model which targets the consumers of the industry and the Netherlands have made the industry legal in the Red Light District. The reviews done by the

⁸ Criminalizing ‘Punters’: evaluating the Swedish position on prostitution. Author: Jane Scoular, Published in the *Journal of Social Welfare and Family Law* 26(2) 2004: 195-210

latter two, while not as thoroughly documented, have yielded some very interesting information and still have much to consider for any model.

The published review of the complete legalization of prostitution in the Netherlands determined that by having no controls in effect, there was too much opportunity for illegal operations to exist and even thrive. The doors were open for organized crime to set up shop and bring about even more illegal activity. Yet even after these findings, the Netherlands are not planning to outlaw prostitution, but rather to put some controls in place to regulate the industry and minimize the opportunities for organized crime to be involved. The current plan is to reduce the size of the red-light district, not to close it down, as well as mandate workers in the sex trade to register and customers to verify the registration. In addition, all businesses such as brothels and adult movie theaters will be required to obtain a license and license numbers will need to be included in any and all advertising for both companies and individuals. It has been suggested that there will be another review to determine if this has the desired effect of allowing the industry to continue while reducing the rampant influx of organized crime and the associated activity, although no specific time frame was given for when that would occur.⁹

The published review of the Nordic model used in Sweden among other countries, has highlighted some interesting results. Monitoring and evaluation of the model was first delegated to the National Board of Health and Welfare of Sweden, which produced 3 reports (2000, 2004, 2007). These reports acknowledged the difficulties of evaluation and provided no hard evidence that the law had in any way achieved its objectives. The report from 2010 included an interesting observation stating,

"prostitution and human trafficking for sexual purposes are complex, multifaceted social phenomena that take place to some degree behind closed doors. Factors such as increased internationalization and a growing number of people advertising on the internet make it difficult for the police and social services to fully grasp the extent of these activities. The knowledge we have about prostitution and sex trafficking can rarely be described with precise figures....we realized that it would not be possible in the framework of this inquiry to produce the precise knowledge about prostitution that politicians and debaters request, but which no authorities or researchers have been able to generate in the nearly eleven years that the ban against the purchase of sexual services has been in place."¹⁰

It is notable that at that time judges and senior police officials had been caught purchasing sex and shortly thereafter the Minister of Labor was caught in the same situation. The report went on to state that their objective of reducing street prostitution and human trafficking had been achieved. Sweden now reports that street prostitution has been reduced by 50% but that

⁹ Prostitution in Amsterdam, Amsterdam Info website put up by Amsterdam Tourism, Updated: 03/11/2014

¹⁰ English Translation of Selected Extracts of the Swedish Government report SOU 2010:49 – The Ban Against the Purchase of Sexual Services. An Evaluation 1999 – 2008 Author: Original report authored by Committee of Inquiry to Evaluate the Ban against the Purchase of Sexual Services headed by Chancellor of Justice, Anna Skarhed -July 2, 2010

there has been an increase in indoor prostitution, which is harder to track and made note of the increase of street prostitution in surrounding countries.¹¹

In July of 2014, lawyer Gunilla Ekberg, one of the architects of Sweden's anti-prostitution strategy (Nordic model), presented testimony during a three day round of hearings in Canada's House of Commons summer session regarding the Justice Ministry's proposed new laws surrounding prostitution in Canada. She said, in part, "Not only are they discriminatory but they are contrary to the human rights obligations that Canada has signed on to." She went on to say that "In the 16 years that we have been doing this (in Sweden), we will not be able to eliminate prostitution and trafficking completely."¹²

New Zealand established and enacted the Prostitution Reform Act (PRA) in 2003 which created a new legal environment.¹³ The PRA "decriminalized prostitution whilst not endorsing or morally sanctioning prostitution or its use". The laws and controls used to regulate other business have been applied to the profession of prostitution. The purpose of the PRA was to:

- *safeguard human rights of sex workers and protect them from exploitation
- *promote the welfare, occupational health and safety of sex workers
- *be conducive to public health and
- *prohibit the use of persons under 18 in prostitution

A committee consisting of eleven members appointed by the Minister of Justice, were commissioned to research and document the effects of the PRA and delivered their final report in 2007.¹⁴ It stated in part "that the research undertaken challenges, and in some cases refutes, commonly held perceptions about the sex industry and those who work in it". They also consider that the media and public perception have exaggerated the number of sex workers and underage involvement in prostitution.

In regards to trafficking, the report stated that "the argument that trafficking in humans and prostitution are inexorably linked is in part due to policy decisions made by the United States. Although much international dialogue surrounding both trafficking and prostitution claims prostitution and trafficking are often linked, the extent of this link is debatable. The Committee considers that in the case of New Zealand, there is no link between the sex industry and human trafficking".

New Zealand is more likely to deal with the forcible movement of persons within their country (whether for sex or other purposes) under kidnapping, slavery or other related forms of offending and has laws against use of persons under 18 years in prostitution, whether or not they have been transported internally or internationally. In addition, the PRA makes it an

¹¹ Prostitution Bill likely Unconstitutional MPs told on day 3 of Hearings, Canadian Press, CBC News on July 9, 2014, Quote from lawyer Gunilla Ekberg

¹² Loc. Cit. Fn. 9

¹³ New Zealand Prostitution Reform Act (PRA) Policy Development Effective in 2003 and published on the N.Z. Ministry of Justice website

¹⁴ Review of the New Zealand PRA, Author: Prostitution Law Review Committee based on research conducted by the Crime and Justice Research Centre, Delivered to Ministry of Justice in 2003

offense to compel any person to provide commercial sexual services or earnings directly from prostitution.

In their assessment regarding criminalizing clients their research concluded that "the evaluation of these approaches suggest little change in the overall level of prostitution services provided, with demand being either relocated elsewhere or in the transactions being negotiated in more clandestine local environments. In one study of men who buy sex (Coy et al, 2007), when asked if anything might deter them from paying for sex, few men in an East London study mentioned criminal sanctions as holding any relevance".

The conclusion of the report stated that in the five years that the PRA had been in force "the sex industry has not increased in size and many of the social evils predicted by some who opposed the decriminalization of the sex industry have not been experienced" and that "on the whole, the PRA has been effective in achieving its purpose and the Committee is confident that the vast majority of people involved in the sex industry are better off under the PRA than they were previously".

Saskatoon, SK offers an example of a model that has produced positive results. A new set of bylaws went into effect regarding Saskatoon's sex industry in January 2013.¹⁵ These bylaws require that each person, agency and worker within the industry acquire a city business license to operate. The requirements for the license include proof of Canadian citizenship, proof of age (must be 18+), a Canada wide criminal record check and a business licensing fee. After city approval, each person is then required to obtain a photo identification card from the Saskatoon Police Service's vice unit. The studios and brothels are required to operate within specific industrial or light industrial areas which are located at least several city blocks away from schools, churches and residences.

On May 1, 2014, Saskatoon Police Chief Weighill reported on a review of the bylaw to the Board of Police Commissioners stating, "It has not only opened up the doors of communication with these individuals, but has developed a good positive working relationship with most. Our main concern for the performers is that they are doing it voluntarily, that they are not being exploited and that they are of age." He reported that a 17 year old female victim was identified and "without the Adult Service Bylaw 9011 in place, police most likely would not have been able to identify the underage victim". The report also noted that "workers in the adult services industry have expressed they feel more secure coming to police with issues that arise in their industry".¹⁶

At the time of receiving the photo ID, officers are presented with an opportunity to engage directly with each person and assess whether or not there may be any force or coercion involved. For the people in the industry, it's an opportunity to engage with the police without fear. It has brought about a mutual respect and understanding creating an environment where each can work with the other to the benefit of the entire community. While it is still relatively new, it has already proven to be effective and will likely have positive long term results.

¹⁵ City of Saskatoon Bylaw No. 9011, Passed in March 2012 and effective July 1, 2012.

¹⁶ Public Agenda: Report of impact of Adult Services Licensing Bylaw – Adult Entertainment Venues, Presented by: Clive Weighill, Chief of Police, Saskatoon Police Service to Board of Police Commissioners on May 1, 2014

This is not a black and white issue; however, I believe it can be made clearer than it has been in the past. What has been demonstrated here is that if people sincerely wish to find a workable solution then it is possible. With so much at stake, it is time to start a dialogue from a position of mutual respect and to attempt to gain a greater understanding to the benefit of everyone involved in and touched by this issue, regardless of personal moral beliefs. Canada's Justice Minister said that there is a reason this has not been resolved for a long time. I say there is no reason for that not to change now.

5. **Autobiography**

My name is Trish Fisher and I am the owner/operator of The Lion's Den Adult Services Studio in Saskatoon, SK. I was born here and grew up in a middle class, Catholic home. My parents were hard working people who raised five children and were married for 29 years, until my mother passed away.

I went to public school and graduated with my grade 12 diploma. After graduating, I married and started a family. My daughter is an executive administrator in a successful business and my son is currently in England working after earning his master's degree.

In 1992 I became the Sales Manager and instructor for Dale Carnegie Training for Northern Saskatchewan. During the eight years I held this position, I was certified to instruct both the course in Human Relations and the Sales Course. I participated in and graduated from courses in Leadership Training for Managers as well as Customer Relations and Personnel Development. We also developed and delivered courses to companies such as SaskTel and Blue Cross designed to increase communication and create more productive and team oriented work environments. My business and sales experience include selling real estate for a number of years followed by a position in advertising sales with Rawlco Radio.

For six years I was an active, weekly volunteer with victim services which is affiliated with the local police service and the justice department. It was very rewarding and I was provided with excellent, ongoing training and education. In 2007, I also participated in the 12 week community police academy which was one of the most fun courses I have participated in as well as very informative about our local police force. From 2002 – 2005, I was involved in the development and facilitation of a weekly support group for women who were victims of domestic violence and abuse as well as those who were victims of childhood sexual abuse.

In 2011, my 26 year marriage ended and I chose a new path for my life. I was not emotionally broken, financially strapped, feeding an addiction or without many options for a career path. My curiosity about the industry led me to seek out some information and opportunity knocked. I did my research and found myself presented with a path to attain both professional and personal goals. I opened The Lion's Den to provide a safe, clean and supportive environment for women who choose to work in this industry and to offer a professional environment for both the workers and clientele. I have complied with all the provisions, terms and conditions of the Adult Services Bylaw including closing down for a period of five months and physically relocating the studio to a location that was approved. This business provides a valuable service to the community and it is not criminal, shady, perverted or shameful.

My personal belief that every adult deserves to make their own choices and that we should treat others in the way we would like to be treated has led me here. I have lived up to that in my personal and professional life, in private and in public. Freedom of choice is one of the reasons I have always been grateful to live in Canada and will fight to maintain that right.

6. **Conclusion**

At this juncture of history, our government is proposing to write and enact new laws surrounding prostitution after the Supreme Court of Canada deemed the previous laws were unconstitutional, ineffective and put lives in unnecessary danger. Bill C-36 appears to be a cleverly rewritten form of the laws that were struck down. Their efforts to gain support for this bill have included a public survey (which, based on format alone, was designed to limit responses and information), senate hearings that did not include enough testimony from the people who work in the industry and round table meetings with the Justice Minister to generate political support. Unfortunately, the general perceptions and lack of education regarding this industry do not provide most people with enough information from which to offer much more than a personal opinion. It would have been far more beneficial to start an open dialogue with the people most affected by any legislation that is implemented and to take advantage of all of the fact-based research that has already been done around the world to address the issues which the Supreme Court raised in their decision.

This excerpt from the previously mentioned HIV/AIDS study sums up where we need to start:

“The seventh myth is that sex work is not work. By definition, sex work requires consent. Sexual exploitation, sexual violence and human trafficking include coercion, deceit, absence of consent and loss of agency. Sex work is a contractual arrangement in which sexual services are negotiated through economic exchange. Under the International Labour Office’s new international labour standard, sex workers have the same entitlements as all other informal workers.”¹⁷

There has been enough documented research to highlight that the Nordic model is still problematic whereas legalization and decriminalization have produced positive results for workers in the industry without increasing the rate of crime. We now have evidence based in fact that we can draw upon to create a safer and healthier environment for the sex industry as a whole. One of the most important recommendations made that should be implemented is to have people from within the industry involved at the government level as well as in any regulatory body that may develop in the future. It is critical to have representation from those who have the most experience and knowledge about the issues faced and will bring information to the table essential to finding workable solutions.

We are a nation that has a deep respect for the rights and freedoms of all citizens and most of the time we demonstrate that in our laws and in our public image. In this diverse, vast country occupied by such a wide array of cultures, values, morals and views of the world, we have shown that through education, understanding and acceptance, all people can live together in peace and mutual respect for individuality. With so much at stake in this issue and the

¹⁷ Ibid, fn 1

thousands of lives that will be affected directly by this act, it is the duty and responsibility of everyone involved to take whatever time is needed and to use all the resources at our disposal to ensure that we continue to honor that timeless Canadian tradition and be a nation that leads by example.

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