

# Bill C-36 and You

## Saskatoon Criminal Defence Lawyers Association

### A summary of Bill C-36 changes to the Criminal Law

With the amendments to the Criminal Code of Canada made by Bill C-36 “Protection of Communities and Exploited Persons Act”:

- Service providers may lawfully continue to receive consideration (e.g. money or something of value) in exchange for their sexual services.

BUT

- It is now illegal (punishable by a minimum of conviction and \$1000 fine) for a person to obtain such services for consideration.

AND

- It is illegal for anyone to communicate in any manner, anywhere for the purpose of selling or obtaining sexual services for consideration.

EXCEPT THAT:

- A person may communicate for the purpose of selling their own sexual services provided the communication is **not public** and is not done at or next to a place where **persons under 18 may reasonably be expected to be present**.

*[Note: No one is sure what the term “sexual services” includes but it could include erotic massage, erotic dancing (eg. “Lap dancing”) and performing sexual acts for erotic photographs or videos/film.]*

### Sexual services for “consideration”

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It is not illegal to sell sexual services but it *is* illegal to *buy* them.

2

It is not illegal for a person to communicate in private (where under-age persons will not likely see it) for the purpose of selling their own services- *but it is illegal for anyone else*.

# Advertising the sale of sexual services and “living off the avails” of a person’s sale of sexual services is prohibited

## Advertising

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All advertising is illegal UNLESS it is in a non-public place where under-age persons will not likely be present AND it is for your own sexual services.

Advertising the sale of one’s own sexual services will be legal only if the advertising is not made in public and not made in any place at or near where persons under the age of 18 years may reasonably be expected to be present.

Caution: The advertising one’s own sexual services in conjunction with those of another person may be illegal.

ALL other advertising of the sale of sexual services is prohibited.

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## Receiving benefits from the sale of sexual services

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Receiving a financial benefit from the sale of the sexual services of another person is illegal. The exceptions are very narrow and difficult to determine.

Those who work as support persons in the sex industry and receive a material benefit for their work risk criminal liability. Anyone who provides goods or services “in the context of a commercial enterprise” involving the sale of sexual services, risks criminal liability. The penalty for living off the avails of an under-age person is still a minimum of two years imprisonment.

Persons who rent housing to a service provider at market rates of rent will not be breaking the law. However, persons who rent commercial space – even at market rents – may not be protected if the space is used for the sale of sexual services.

Anyone living with a person who sells their own sexual services in something other than a “legitimate living arrangement” will be deemed to be living off the avails and will be breaking the law. Courts have said that a living arrangement where there is not an equal sharing of expenses *may not qualify as legitimate.*

# Recruiting or exercising control over other providers of sexual services carries severe penalties

## Procuring or controlling other sex workers

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Procuring covers any form of recruitment and would include internet or newspaper ads inviting persons to apply for work in the sex trade.

“Procuring” is now defined as any act done for the purpose of recruiting a person to offer their sexual services for consideration, or holding concealing or harbouring a person who provides sexual services for consideration, or exercising control, direction or influence of the movements of such a person.

Posting an ad, anywhere, offering an “adult services” job may now be illegal.

A person who “harbours” a person who provides sexual services for consideration, or who exercises “influence” over

that person’s movement” may be criminally liable for “procuring”.

While procuring was an offence previously (s. 212, now repealed), the penalties have increased significantly.

The maximum sentence for procuring is increased from 10 to 14 years.

In the case of procuring an under-age person, the minimum sentence is five years imprisonment (there was no minimum penalty previously).

## Human trafficking

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Human trafficking is similar to “procuring” but has the added element of coercion through threats to a person’s safety.

If the holding, concealment, control, influence or direction is exercised through direct or indirect threats to a person’s safety, the act becomes one of **human “trafficking”**.

The **trafficking** of any person now carries a minimum penalty of four years imprisonment (s. 279.01). If the person is under-age, the minimum penalty is five years.

# The “Common Bawdy House” prohibition has been relaxed

## Common Bawdy Houses

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Acts of prostitution no longer make a place a common bawdy house. Acts of indecency are required – a much stricter test

*The Supreme Court of Canada in the **Bedford** case (R. v. Bedford, December 2013) struck down Canada’s laws prohibiting the operation of a “common bawdy house”. A “common bawdy house” was defined as a place kept for the purposes of “prostitution” or “acts of indecency”.*

The new amendment in Bill C-36 removes the word “prostitution” from the definition of “common bawdy house”. This means that the prosecution must prove that the place was kept for the purpose of carrying out “acts of indecency”.

*The Supreme Court has held (R. v. Labaye, 2005), that “acts of indecency” must be acts that meet a test that has two components: 1) the acts must undermine or threaten community values by causing an interference with personal autonomy and liberty, or by causing antisocial behaviour or physical or psychological harm; AND 2) the degree of harm must be incompatible with a properly functioning society.*

Most places where acts of prostitution are carried on will NOT be considered common bawdy houses under this test. The exception will be where it can be demonstrated that the acts meet the *Labaye* “community values” and “harm” criteria. The Supreme Court has said that acts of common sexual activity between consenting adults are not “acts of indecency”.

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