

September 11, 2017

Chair and Members
Community and Protective Services Committee

Re: Licensing of Adult Live Entertainment Parlours and Adult Entertainment Body-Rub Parlours

The London Abused Women's Centre (LAWC) offers abused and exploited women and children over the age of 12 with hope and help. This includes women and girls exploited in prostitution/sex trafficking, abused by their partners and/or exposed to sexual harassment. Women and girls are provided with woman-centred, trauma-informed counselling, advocacy and support in a safe, non-crisis, non-residential setting.

The agency's Choices Program, delivered in partnership with the Salvation Army Correctional and Justice Services, provides counselling and outreach specifically to prostituted, trafficked and exploited women and girls. To date a total of 1,054 individuals have been served by the Choices Program.

The London Abused Women's Centre submits that the City of London is proposing to license illegal activity as defined by federal legislation on prostitution (Protection of Communities and Exploited Persons Act). We believe the licensing of adult entertainment parlours may be unconstitutional given it encroaches into federal powers. As such, we submit the following recommendation.

Recommendation:

The civic administration review its proposed licensing of adult live/body-rub entertainment parlours to ensure compliance with federal legislation

Rationale:

In establishing its recommendations for licensing of adult live entertainment parlours and adult entertainment body-rub parlours, the civic administration is relying on its authority under section 23 of the Municipal Act 2001 (Ontario) which gives municipalities powers to pass by-laws with respect to business licensing, and in particular to have control over adult entertainment establishments. The licensing powers of the civic administration; however, cannot conflict with federal legislation.

The proposed licensing of the adult live entertainment parlours and adult entertainment body-rub parlours is inconsistent with federal legislation (The Protection of Communities and Exploited Persons Act) which received Royal Assent on November 6, 2014.

The following provisions in the licensing proposal are contrary to federal legislation and therefore illegal:

1. The city states in its background paper that services provided at adult live and body-rub parlour establishments are "designed to appeal to erotic or sexual appetites or inclinations including services in respect of which any one or more of the words nude, naked, topless,

bottomless, sexy, table dancing, lap dancing or any other word or any picture, symbol or representation having like meaning or implication is used in any advertisement.” Some of these activities constitute a sexual service or act of prostitution in the legislation and are illegal.

2. The city has confirmed in its background paper from adult entertainment representatives that “lap dancing is a service offered in many live entertainment parlours.” Lap dancing constitutes a sexual service or act of prostitution in the legislation and is illegal.
3. The licensing provision proposed by civic administration to permit the promotion of prostitution through advertisements is illegal with a maximum penalty of five years imprisonment imposed where prosecuted by indictment and 18 months where prosecuted by summary conviction.
4. Permitting body-rub attendants to knead, manipulate, rub, massage and/or touch by any means a person’s body or part thereof include some activities that have been found to constitute a sexual service or act of prostitution in the legislation and are illegal.
5. The adult live and body-rub parlour by-law proposes to license businesses that derive a material benefit from the prostitution of others for material gain. This is illegal.

The Protection of Communities and Exploited Persons Act (PCEPA) recognizes the inherent harm to prostituted, trafficked and exploited women and girls and addresses that harm by bringing an end to its practice through a number of criminal code amendments including criminalizing purchasers/third parties, and creating advertising and material benefit offences.

Act of Prostitution Outlined

The PCEPA outlines the following activities that, if provided in return for some form of consideration, have been found to constitute a sexual service or an act of prostitution:

Lap-dancing, which involves sitting in the client’s lap and simulating sexual intercourse; masturbation of a client in the context of a massage parlour, whether or not the client climaxes; and, sado-masochistic activities, provided that the acts can be considered to be sexually stimulating/gratifying. However, jurisprudence is clear that neither acts related to the production of pornography, nor stripping meet the test. In most cases, physical contact, or sexual interaction, between the person providing the service and the person receiving it is required; however, acts for which consideration is provided that take place in a private room in a club and that are sexual in nature, but do not involve physical contact between the “client” and “performer”, such as self-masturbation, have been found to constitute prostitution. (Canada. Department of Justice. (2017) *Technical Paper: Bill C-36, Protection of Communities and Exploited Persons Act*. Retrieved from <http://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p1.html>. (See attached document.)

Criminalizing Purchasers and Third Parties

The PCEPA criminalizes the purchase of sexual services making prostitution (as outlined above) an illegal practice regardless of venue. The legislation prohibits obtaining sexual services as well as communicating in any place for that purpose.

Specifically, the legislation states:

To determine whether a particular act constitutes a “sexual service for consideration” or “prostitution”, the court will consider whether the service is sexual in nature and whether the purpose of providing the service is to sexually gratify the person who receives it. Specifically, a

contract or agreement, whether express or implied, for a specific sexual service in return for some form of consideration is required. In particular, the consideration must be contingent on the provision of a particular sexual service and the contract or agreement must be entered into before the sexual service is provided. Sexual activity involving no expectation of getting paid for the services provided does not meet the test. Sexual activity in the context of ongoing relationships also fails to meet the test, unless the evidence shows that the alleged consideration was contingent on the provision of a particular sexual service. In one case, gifts given to the complainant were not viewed as consideration for sexual favours rendered, but rather as gifts given “dans le cadre plus large de la relation affective entre l’accusé et le plaignant”. Another case held that the phrase “sexual services for consideration” is not intended to apply to consensual actions between those having an affinity towards one another.

Advertising Offence

The legislation criminalizes advertising the sale of sexual services. It is illegal to promote prostitution through advertising sexual services. Persons placing advertisements, along with publishers and website administrators, can be held criminally liable if they know the advertisements exist and are intended to promote the sale of sexual services.

Material Benefit Offence

The PCEPA “criminalizes receiving a material benefit from the prostitution of others in exploitative circumstances, including from participation in business activities involving prostitution from which third parties profit.” It would appear that the businesses the city proposes to license are third parties who may receive a material benefit from prostitution activities.

Conclusion

The Civic Administration and the Corporation of the City of London has a responsibility comply with federal legislation. It appears that the proposed by-law is inconsistent with The Protection of Communities and Exploited Person Act. By-laws promoted by the City of London that fail to comply with federal legislation may result in a constitutional challenge for encroaching into federal power.



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Executive Director

Technical Paper: Bill C-36, *Protection of Communities and Exploited Persons Act*

This paper provides an overview of the Supreme Court of Canada's findings in its December 20, 2013 *Bedford* decision and explains the basis for the Government's legislative response: Bill C-36, the *Protection of Communities and Exploited Persons Act*, which received Royal Assent on November 6, 2014 (S.C. 2014, c.25).

I: *Bedford v. Attorney General of Canada*^{Footnote1}

In *Bedford*, the Supreme Court of Canada declared unconstitutional three *Criminal Code* offences addressing prostitution-related conduct on the basis that they violated section 7 of the *Canadian Charter of Rights and Freedoms* (the "Charter"). Section 7 protects the rights to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. The offences at issue were:

- prohibition on keeping or being in a "bawdy house" for purposes of prostitution (section 210);
- prohibition on living on the avails of prostitution (paragraph 212(1)(j)); and,
- prohibition on communicating in public for purposes of prostitution (paragraph 213(1)(c)).

The Court suspended the declaration of invalidity for 12 months "considering all the interests at stake" and recognizing that "how prostitution is regulated is a matter of great public concern, and few countries leave it entirely unregulated."^{Footnote2} The declaration of invalidity would have taken effect on December 20, 2014, if Parliament had not enacted Bill C-36.

Application of section 7 analysis to the offences at issue in Bedford

The Court found that the three offences sufficiently contributed to increasing the risks of harm experienced by prostitutes such that the offences infringed their right to security of the person. The Court affirmed the application judge's holding that the evidence showed that the offences prevented people "engaged in a risky — but legal — activity from taking steps to protect themselves from the risks".^{Footnote3}

The Court went on to find that the legislative objectives of the bawdy house and communicating offences, which were primarily aimed at addressing public nuisance and community harms associated with prostitution, were far outweighed by the negative

impacts of these offences on prostitutes' safety and security. The Court also concluded that the living on the avails offence went further than it needed to in order to address its legislative objective of preventing the exploitation of prostitutes and was, therefore, overbroad. The offences were therefore contrary to the principles of fundamental justice. More specifically, the Court found:

- The bawdy house offence (section 210) was **grossly disproportionate** in its serious impact on prostitutes' safety, since it prohibited "moving indoors" as a basic safety precaution. The heightened risks for prostitutes were not outweighed by the provision's objective, which the Court characterized as nuisance-related, namely "to combat neighborhood disruption or disorder and to safeguard public health and safety".^{Footnote4}
- The living on the avails offence (paragraph 212(1)(j)) was **overbroad** in scope relative to its objective, which is to "target pimps and the parasitic, exploitative conduct in which they engage", because it punished everyone who "lives on the avails" of prostitution without distinguishing between those who exploit prostitutes and those who could increase their safety and security (e.g., bodyguards, managers, or drivers) or provide other legitimate business services to prostitutes (e.g., accountants and receptionists).^{Footnote5}
- The communicating offence (paragraph 213(1)(c)) was **grossly disproportionate** in its impact on prostitutes' safety relative to its objective, which the Supreme Court said was to "take prostitution off the streets and out of public view" in order to prevent the nuisance that street prostitution can cause. The provision's negative impact on the lives and safety of street prostitutes (e.g., by depriving them of an ability to screen customers before getting into their car) was a grossly disproportionate response to the nuisances caused by street prostitution.^{Footnote6}

Throughout its analysis, the Court emphasized that the offences were directed at addressing the public nuisances and community health and safety issues caused by street prostitution and brothels, as well as the "parasitic exploitation" of prostitutes by pimps. The Court specifically found that the prohibitions were not directed at deterring prostitution more generally.^{Footnote7}

Finally, the Court said that the Government had not presented evidence to justify the section 7 violations as reasonable limits demonstrably justified in a free and democratic society under section 1 of the Charter. In particular, the Court found that there was no evidence to show that the provisions were minimally impairing of the section 7-protected rights at stake, or that the positive impacts of the criminal prohibitions on broader societal interests outweighed their serious negative impacts on prostitutes' safety.

Other key points

The Court addressed only the challenged provisions, noting that the case was "not about whether prostitution should be legal or not. [It was] about whether the laws Parliament has enacted on how prostitution may be carried out pass constitutional

muster.”^{Footnote8} The Court also indicated that Parliament is not “precluded from imposing limits on where and how prostitution may be conducted” and recognized that “the regulation of prostitution is a complex and delicate matter.”^{Footnote9} The Court held that it did not need to decide the section 2(b) (freedom of expression) challenge to section 213 of the *Criminal Code*, previously upheld as constitutional by the Supreme Court of Canada in the 1990 *Prostitution Reference*,^{Footnote10} given the findings in respect of section 7.

II: Response to *Bedford*: Bill C-36

The Supreme Court of Canada gave Parliament one year to respond to its findings in *Bedford*. Failing to respond legislatively would have resulted in decriminalization of most adult prostitution-related activities. Bill C-36 was introduced on June 4, 2014 in response to the *Bedford* decision. It received Royal Assent on November 6, 2014 and will come into force on December 6, 2014. Its overall objective is to reduce the demand for prostitution with a view to discouraging entry into it, deterring participation in it and ultimately abolishing it to the greatest extent possible.

Bill C-36 was informed by the evidence before the courts in *Bedford*, as well as the decision itself, the public consultations conducted by the Government in February and March of 2014, jurisprudence interpreting existing prostitution-related *Criminal Code* offences, the available research on prostitution in Canada, including relevant Canadian Parliamentary reports, as well as available international research on prostitution, including relevant government reports from other jurisdictions. A bibliography of the research that informed the development of Bill C-36 is attached at [Annex A](#).

a) Objectives of the Legislation

Bill C-36 reflects a significant paradigm shift away from the treatment of prostitution as “nuisance”, as found by the Supreme Court of Canada in *Bedford*, toward treatment of prostitution as a form of sexual exploitation that disproportionately and negatively impacts on women and girls. Bill C-36 signals this transformational shift both through its statement of purpose, as reflected in its preamble, and its placement of most prostitution offences in Part VIII of the *Criminal Code*, Offences Against the Person.^{Footnote11}

Bill C-36’s objectives are based on the following conclusions drawn from the research that informed its development:

- The majority of those who sell their own sexual services are women and girls.^{Footnote12} Marginalized groups, such as Aboriginal women and girls, are disproportionately represented.^{Footnote13}

- Entry into prostitution and remaining in it are both influenced by a variety of socio-economic factors, such as poverty, youth, lack of education, child sexual abuse and other forms of child abuse, and drug addiction.^{Footnote14}
- Prostitution is an extremely dangerous activity that poses a risk of violence and psychological harm to those subjected to it,^{Footnote15} regardless of the venue or legal framework in which it takes place,^{Footnote16} both from purchasers of sexual services and from third parties.^{Footnote17}
- Prostitution reinforces gender inequalities in society at large by normalizing the treatment of primarily women's bodies as commodities to be bought and sold. In this regard, prostitution harms everyone in society by sending the message that sexual acts can be bought by those with money and power. Prostitution allows men, who are primarily the purchasers of sexual services, paid access to female bodies, thereby demeaning and degrading the human dignity of all women and girls by entrenching a clearly gendered practice in Canadian society.^{Footnote18}
- Prostitution also negatively impacts the communities in which it takes place through a number of factors, including: related criminality, such as human trafficking and drug-related crime; exposure of children to the sale of sex as a commodity and the risk of being drawn into a life of exploitation; harassment of residents; noise; impeding traffic; unsanitary acts, including leaving behind dangerous refuse such as used condoms or drug paraphernalia; and, unwelcome solicitation of children by purchasers.^{Footnote19}
- The purchase of sexual services creates the demand for prostitution, which maintains and furthers pre-existing power imbalances, and ensures that vulnerable persons remain subjected to it.^{Footnote20}
- Third parties promote and capitalize on this demand by facilitating the prostitution of others for their own gain. Such persons may initially pose as benevolent helpers, providers of assistance and protection to those who "work" for them.^{Footnote21} But the development of economic interests in the prostitution of others creates an incentive for exploitative conduct in order to maximize profits. Commercial enterprises in which prostitution takes place also raise these concerns and create opportunities for human trafficking for sexual exploitation to flourish.^{Footnote22}

Consequently, Bill C-36 recognizes that prostitution's victims are manifold; individuals who sell their own sexual services are prostitution's primary victims, but communities, in particular children who are exposed to prostitution, are also victims, as well as society itself. Bill C-36 also recognizes that those who create the demand for prostitution, i.e., purchasers of sexual services, and those who capitalize on that demand, i.e., third parties who economically benefit from the sale of those services, both cause and perpetuate prostitution's harms.

Accordingly, Bill C-36 seeks to denounce and prohibit the demand for prostitution and to continue to denounce and prohibit the exploitation of the prostitution of others by third parties, the development of economic interests in the exploitation of the prostitution of others and the institutionalization of prostitution through commercial enterprises, such as strip clubs, massage parlours and escort agencies in which prostitution takes place.

It also seeks to encourage those who sell their own sexual services to report incidents of violence and leave prostitution.

Bill C-36 maintains that the best way to avoid prostitution's harms is to bring an end to its practice.

b) Offences: Purchasers and Third Parties

Purchasing Offence

Bill C-36 criminalizes, for the first time in Canadian criminal law, the purchase of sexual services. This new offence makes prostitution itself an illegal practice; every time prostitution takes place, regardless of venue, an offence is committed. In criminalizing those who create the demand for prostitution, Bill C-36 furthers its overall objective to reduce that demand, with a view to ultimately abolishing prostitution to the greatest extent possible.

Bill C-36's new purchasing offence prohibits obtaining sexual services for consideration, or communicating in any place for that purpose (section 286.1). This offence imposes maximum penalties of 5 years imprisonment where prosecuted by indictment and 18 months where prosecuted by summary conviction and escalating mandatory minimum fines. Purchasing sexual services from a person under the age of 18 is an even more serious offence. Although already prohibited in existing criminal law,^{Footnote23} Bill C-36 moves this offence to Part VIII of the *Criminal Code*, along with most other prostitution offences, and increases the maximum penalty from 5 to 10 years imprisonment and the applicable mandatory minimum penalty for a subsequent offence from 6 months to one year.

The purchasing offence is carefully tailored to its objective of reducing the demand for sexual services. It is based on the existing offence that prohibits obtaining sexual services for consideration from persons under the age of 18 years and, accordingly, jurisprudence interpreting that offence assists in defining the scope of the new offence. Jurisprudence that interprets the meaning of "prostitution" is also instructive, given that "prostitution" is defined as the exchange of sexual services for payment.^{Footnote24}

To determine whether a particular act constitutes a "sexual service for consideration" or "prostitution", the court will consider whether the service is sexual in nature and whether the purpose of providing the service is to sexually gratify the person who receives it. Specifically, a contract or agreement, whether express or implied, for a specific sexual service in return for some form of consideration is required.^{Footnote25} In particular, the consideration must be contingent on the provision of a particular sexual service and the contract or agreement must be entered into before the sexual service is provided.^{Footnote26} Sexual activity involving no expectation of getting paid for the services provided does not meet the test.^{Footnote27} Sexual activity in the context of ongoing relationships also fails to meet the test, unless the evidence shows that the alleged consideration was contingent on the provision of a particular sexual service.^{Footnote28} In one case, gifts given to the complainant were not viewed as consideration for sexual

favours rendered, but rather as gifts given “dans le cadre plus large de la relation affective entre l'accusé et le plaignant”.^{Footnote29} Another case held that the phrase “sexual services for consideration” is not intended to apply to consensual actions between those having an affinity towards one another.^{Footnote30}

The following activities have been found to constitute a sexual service or an act of prostitution, if provided in return for some form of consideration: lap-dancing, which involves sitting in the client's lap and simulating sexual intercourse;^{Footnote31} masturbation of a client in the context of a massage parlour, whether or not the client climaxes;^{Footnote32} and, sado-masochistic activities, provided that the acts can be considered to be sexually stimulating/gratifying.^{Footnote33} However, jurisprudence is clear that neither acts related to the production of pornography,^{Footnote34} nor stripping^{Footnote35} meet the test. In most cases, physical contact, or sexual interaction, between the person providing the service and the person receiving it is required; however, acts for which consideration is provided that take place in a private room in a club and that are sexual in nature, but do not involve physical contact between the “client” and “performer”, such as self-masturbation, have been found to constitute prostitution.^{Footnote36}

In short, whether a particular service meets the test outlined above is a factual determination to be made by a court. Applicable jurisprudence provides flexibility in addressing new ways of effecting prostitution, while also limiting the scope of such offences to acts related to prostitution, consistent with its objective of reducing demand for sexual services.

Advertising Offence

To complement the purchasing offence, Bill C-36 criminalizes, also for the first time in Canadian criminal law, advertising the sale of sexual services. This new offence targets the promotion of prostitution through advertisements, which contributes to the demand for prostitution. This approach is consistent with the legislation's overall objective of reducing the demand for prostitution with a view to discouraging entry into it, deterring participation in it and ultimately abolishing it to the greatest extent possible.

Bill C-36's new advertising offence criminalizes knowingly advertising an offer to provide sexual services for consideration (section 286.4). This offence imposes maximum penalties of 5 years imprisonment where prosecuted by indictment and 18 months where prosecuted by summary conviction.

The advertising offence targets persons who place advertisements in print media or post advertisements on websites. Publishers or website administrators could be held criminally liable as parties if they know of the existence of the advertisement and that the advertisement is in fact for the sale of sexual services. Bill C-36 also allows the court to order the seizure of materials containing advertisements for the sale of sexual services, as well as their removal from the Internet, regardless of who posted them, which is also consistent with Bill C-36's objective of reducing demand for prostitution.

Material Benefit Offence

Bill C-36 creates a new material benefit offence that modernizes the living on the avails of prostitution offence, which was found unconstitutional in *Bedford*. Consistent with Bill C-36's objective of continuing to denounce and prohibit the development of economic interests in the exploitation of the prostitution of others, as well as the institutionalization and commercialization of prostitution, Bill C-36 criminalizes receiving a material benefit from the prostitution of others in exploitative circumstances, including from participation in business activities involving prostitution from which third parties profit.

Specifically, the new material benefit offence criminalizes receiving a financial or other material benefit obtained by or derived from the commission of the purchasing offence (section 286.2). Where the victim is an adult, the maximum penalty is 10 years imprisonment; where the victim is a child, the maximum penalty is 14 years imprisonment and the mandatory minimum penalty is 2 years.

Bill C-36 does not prevent those who sell their own sexual services from entering into legitimate family and business relationships on the same basis as anyone else. In this regard, Bill C-36 narrows the scope of the material benefit offence through legislated exceptions, which clarify that the offence does not apply if the benefit is received:

- in the context of a legitimate living arrangement, for example by a spouse, child or roommate of the person who provides the benefit;
- as a result of a legal or moral obligation, for example by a dependent parent of the person who provides the benefit or where a gift is purchased with the earnings of prostitution;
- in consideration for goods or services offered on the same terms and conditions to the general public, such as by an accountant, landlord, pharmacist or security company; and,
- in consideration for a good or service that is offered informally, for example by a person who provides protective or administrative services, provided that the benefit received is proportionate to the value of the good or service provided and the person who provided the service did not encourage, counsel or incite the provision of sexual services.

None of these exceptions is applicable, however, if the person who received the material benefit from the prostitution of others:

- used or threatened to use violence, intimidation or coercion toward the person who provided the benefit;
- abused a position of trust, power or authority toward the person who provided the benefit;
- provided intoxicating substances to the person who provided the benefit to aid or abet that person's prostitution;
- engaged in conduct that would constitute procuring under the new procuring offence; or,
- received the benefit in the context of a commercial enterprise that offers sexual services for sale, such as a strip club, massage parlour or escort agency in which prostitution takes place.

These exceptions reflect jurisprudence that carves out exceptions to the living on the avails of prostitution offence. The “legitimate living arrangement” and “legal and moral obligation” exceptions find their origin in the Ontario Court of Appeal’s 1991 *Grilo* decision,^{Footnote37} which was cited as an authority on these issues by the Supreme Court of Canada in *Bedford*. The exception related to goods and services offered to the general public originates in a line of cases starting with the 1962 House of Lords decision in *Shaw*.^{Footnote38} The fourth exception for services or goods provided for proportionate value responds to the Supreme Court of Canada’s *Bedford* decision by exempting non-exploitative relationships.^{Footnote39} Also, Bill C-36 provides an extra layer of protection in cases involving persons who initially pose as a benevolent helper and thereby appear to be entitled to one of the exceptions; it removes the availability of any of the exceptions if any exploitative circumstances materialize.

Although “commercial enterprise” is not defined, the phrase has been interpreted in sentencing cases under the *Controlled Drugs and Substances Act*.^{Footnote40} Courts apply a contextual analysis to determine whether a particular enterprise is commercial in nature^{Footnote41} which provides flexibility to the courts to find different types of enterprises, including informal ones, to be “commercial”. In the context of Bill C-36, a “commercial enterprise” necessarily involves third party profiteering. Courts would likely take into account considerations such as the number of persons involved, the duration of the activities and the level of organization surrounding the activities. The only type of enterprise that this phrase cannot capture is one involving individuals who sell their own sexual services, whether independently or cooperatively, from a particular location or from different locations. Bill C-36 does not allow for prosecution in these circumstances for reasons outlined in the section below. Otherwise, Bill C-36 provides flexibility to the courts to find different types of enterprises, including informal ones, to be “commercial” in nature.

Bill C-36 also reformulates the presumption that applied to the living on the avails offence (subsection 212(3)), which allowed a prosecutor to prove an element of the offence by introducing evidence that the accused lived with or was habitually in the company of a prostitute. Similarly, Bill C-36’s proposed subsection 286.2(3) allows a prosecutor to prove that an accused received a financial or material benefit from the sexual services of another by introducing evidence that the accused lived with or was habitually in the company of a person who offers or provides sexual services for consideration. The application of this presumption takes into account the scope of the material benefit offence as narrowed by the exceptions

In its 1992 *Downey* decision, the Supreme Court of Canada found that the subsection 212(3) presumption infringed the presumption of innocence as protected by section 11(d) of the *Charter*, but was justified as a reasonable limit under section 1. Specifically, the Court found that those who sell their own sexual services are often reluctant to testify against their “pimps”, who “maintain control by the emotional dependence of prostitutes upon them or by physical violence” and that this problem is not unique to Canada, thereby justifying the enactment of a rebuttable evidentiary presumption.^{Footnote42}

Procuring Offence

Bill C-36 modernizes the procuring offences in subsection 212(1), which used antiquated language and created significant overlap between offences by criminalizing similar conduct effected in different ways. Consistent with Bill C-36's objective of continuing to denounce and prohibit the procurement of persons for the purpose of prostitution, Bill C-36 prohibits comprehensively all conduct related to procuring others for the purpose of prostitution.

Specifically, the procuring offence criminalizes procuring a person to offer or provide sexual services for consideration or recruiting, holding, concealing or harbouring a person who offers or provides sexual services for consideration, or exercising control, direction or influence over the movements of that person, for the purpose of facilitating the purchasing offence (section 286.3). Where the victim is an adult, the maximum penalty is 14 years imprisonment; where the victim is a child, the maximum penalty is 14 years imprisonment and the mandatory minimum penalty is 5 years.

Bill C-36's procuring offence can be proven in one of two ways. First, the offence can be proven if the accused "procured" another person for the purposes of prostitution. The term "procure" has been interpreted by the Supreme Court of Canada as meaning "to cause, induce or have persuasive effect,"^{Footnote43} which necessarily entails active involvement in the prostitution of another on the part of the accused. Second, the offence can be proven if the accused recruited, held, concealed or harboured a person for the purposes of prostitution or exercised control, direction or influence over the movements of a person for that purpose. This approach builds on existing jurisprudence interpreting one of the existing procuring offences^{Footnote44} and the human trafficking offence,^{Footnote45} both of which use some of the same language as found in new section 286.3.

The difference between the material benefit and the procuring offences hinges on the level of involvement in the prostitution of other persons. As with the procuring offences replaced by Bill C-36, the new procuring offence requires active involvement in the provision of another person's sexual services; whereas, passive involvement is sufficient to make out the material benefit offence. For example, a "classic pimp" is likely to be caught by both the procuring offence and the material benefit offence, because pimps generally induce or cause others to offer or provide their sexual services and they economically benefit from that activity. In contrast, a person who derives a benefit from the prostitution of others, without actively inciting the provision of sexual services, such as a "bouncer," who works at a strip club and knows that prostitution takes place there, is only caught by the material benefit offence.^{Footnote46} This difference justifies the imposition of higher penalties for procuring.

c) Immunities: Sellers

Bill C-36 criminalizes the purchase but not the sale of sexual services. However, Bill C-36 in no way condones the sale of sexual services; rather, it treats those who sell their own sexual services as victims who need support and assistance, rather than blame and punishment. Research shows that individuals frequently engage in prostitution as a result of seriously constrained choices and/or because they have been coerced by unscrupulous individuals to do so.^{Footnote47} This asymmetrical approach is also intended to

encourage those who sell their own sexual services to report incidents of violence and exploitation committed against them, rather than seeking to avoid detection by law enforcement.

Accordingly, Bill C-36 expressly immunizes from prosecution individuals who receive a material benefit from their own sexual services or who advertise those services. It also immunizes those who sell their own sexual services for any part they may play in the purchasing, material benefit, procuring or advertising offences in relation to the sale of their own sexual services. Such prosecutions would otherwise normally be available by operation of general provisions of the criminal law that impose criminal liability on persons for various forms of participation in offences committed by other persons (i.e., liability for aiding, abetting or counseling another to commit an offence, conspiring with another person to commit an offence or being an accessory after the fact to an offence). These immunities mean that individuals cannot be prosecuted for selling their own sexual services, whether independently or cooperatively, from fixed indoor or other locations, as long as the only benefit received is derived from the sale of their own sexual services.

d) Offences: Community Harms

Bill C-36 protects communities, and especially children, from prostitution's harms by imposing higher mandatory minimum fines on those who purchase sexual services or communicate for that purpose in specified locations, i.e., parks, schools, religious institutions and places where children could reasonably be expected to be present. In this way, Bill C-36 is intended to send a particularly strong message to purchasers about the harms their conduct causes to vulnerable communities in its effort to reduce the demand for prostitution.

Bill C-36 also achieves its goal of protecting communities by criminalizing communicating for the purposes of selling sexual services in specific locations that are designed for use by children. As introduced, Bill C-36 proposed a summary offence that would have criminalized communicating for the purposes of selling sexual services in public places where children can reasonably be expected to be present. The scope of this offence was narrowed by the Standing Committee on Justice and Human Rights to prohibit communicating for the purposes of selling sexual services in public places that are or are next to school grounds, playgrounds or daycare centres (section 213(1.1), as enacted). This prohibition applies at all times and remains a summary conviction offence with a maximum penalty of 6 months imprisonment.

The main objective of the offence, as enacted, remains the same – to protect children from exposure to prostitution, which is viewed as a harm in and of itself, because such exposure risks normalizing a gendered and exploitative practice in the eyes of impressionable youth and could result in vulnerable children being drawn into a life of exploitation. The offence also protects children from additional harms associated with prostitution, including from being exposed to drug-related activities or to used condoms and dangerous paraphernalia. In not criminalizing public communications for the purposes of selling sexual services, except in these narrow circumstances, Bill C-36

recognizes the different interests at play, which include the need to protect from violence those who sell their own sexual services, as well as the need to protect vulnerable children from prostitution's harms.

Bill C-36 also retains, but modernizes, existing paragraphs 213(1)(a) and (b), which were not at issue in the *Bedford* case. These offences criminalize stopping or attempting to stop motor vehicles or impeding the free flow of pedestrian or vehicular traffic in public places or places open to public view for the purpose of either purchasing or selling sexual services. These are summary conviction offences with maximum penalties of 6 months imprisonment. Their objective is to protect residents of communities in which prostitution takes place from harassment by both those who purchase and those who sell sexual services.

e) Safety Issues

First and foremost, Bill C-36 seeks to ensure the safety of all by reducing the demand for prostitution, with a view to deterring it and ultimately abolishing it to the greatest extent possible. However, Bill C-36 recognizes that its transformational paradigm shift will take time to realize; changing social attitudes can be a long process. Bill C-36's approach, therefore, acknowledges that some will remain at risk of, or subjected to, exploitation through prostitution, while this transformation occurs.

In response to this concern, Bill C-36 focuses law enforcement attention primarily on individuals who purchase sexual services, as well as on third parties who exploit individuals that sell sexual services. In addition, Bill C-36 does not prohibit individuals from taking certain measures to protect themselves when selling their own sexual services. In *Bedford*, the Supreme Court of Canada found that the impugned *Criminal Code* prostitution-related offences prevented sellers of sexual services from taking certain safety measures when engaging in a risky, but legal activity. These protective measures are: selling sexual services from fixed indoor locations, hiring persons who may serve to enhance safety and negotiating safer conditions for the sale of sexual services in public places. Bill C-36 seeks to balance these concerns with other broader safety and societal concerns posed by prostitution more generally: the need to protect those subjected to prostitution from violence and exploitation; the need to protect communities from prostitution's harmful effects, including exposure of children; and, the need to protect society itself from the normalization of a gendered and exploitative practice. In addressing this complex interplay of issues related to safety, the Supreme Court of Canada's concluding comments in its *Bedford* decision were instructive: I have concluded that each of the challenged provisions, considered independently, suffers from constitutional infirmities that violate the *Charter*. That does not mean that Parliament is precluded from imposing limits on where and how prostitution may be conducted. Prohibitions on keeping a bawdy-house, living on the avails of prostitution and communication related to prostitution are intertwined. They impact on each other. Greater latitude in one measure — for example, permitting prostitutes to obtain the assistance of security personnel — might impact on the constitutionality of another measure — for example, forbidding the nuisances associated with keeping a bawdy-

house. The regulation of prostitution is a complex and delicate matter. It will be for Parliament, should it choose to do so, to devise a new approach, reflecting different elements of the existing regime. ^{Footnote48}

Bill C-36 addresses the Supreme Court of Canada's safety concerns in the larger context of all the harms, risks and dangers posed by prostitution in the following way:

Fixed Indoor Locations

The Supreme Court of Canada expressed concern that the existing prostitution offences prevent the selling of sexual services from fixed indoor locations, which the Court found to be a safer place to sell sex. Under Bill C-36, individuals cannot be prosecuted for selling their own sexual services, including from a fixed indoor location, whether independently or cooperatively.

Bodyguards and Drivers

The Supreme Court of Canada's second major concern was that existing offences prevent those who sell sexual services from hiring bodyguards and others who may enhance their safety. Bill C-36 carefully balances this safety concern with the need to ensure that exploitative third parties are criminalized. It achieves this goal by: criminalizing receiving a financial or other material benefit that is obtained by or derived from the purchasing offence; limiting the scope of the offence through legislated exceptions, including exceptions that apply to individuals who offer protective services; and, ensuring that none of the exceptions apply in exploitative circumstances.

Negotiating in Public Places

The Supreme Court of Canada's final concern was that individuals who sell their own sexual services should not be prevented from taking steps to negotiate safer conditions for the sale of sexual services in public places. One of the offences found unconstitutional by the Supreme Court of Canada criminalized all public communications for the purpose of either purchasing or selling sexual services. Bill C-36, on the other hand, creates, first, a new offence that criminalizes communicating *in any place* for the purpose of *purchasing* sexual services and, second, a separate offence that criminalizes communicating for the purpose of *selling* sexual services, but only *in public places that are or are next to school grounds, playgrounds or day care centres*. This approach strikes a careful balance between the interests of two vulnerable groups: those who are subjected to prostitution and children who may be exposed to it. Notably, Bill C-36 does not prohibit persons who sell their own sexual services from communicating for that purpose, other than in public places that are or are next to school grounds, playgrounds or day care centres. ^{Footnote49}

III: International Context

Canada is not alone in implementing a legislative approach to prostitution that views the practice as a form of sexual exploitation by targeting those who create the demand for it

and those who capitalize on that demand. Sweden was the first country to implement such an approach in 1999, followed by Norway and Iceland in 2009, which is why Sweden's approach is referred to as the "Nordic Model". Furthermore, the Northern Ireland Assembly passed a bill that will criminalize paying for another person's sexual services in October 2014,^{Footnote50} Ireland's Joint Committee on Justice, Defence and Equality recommended the Nordic Model in June 2013^{Footnote51} and a March 2014 United Kingdom All-Party Parliamentary Report recommended implementation of a version of that approach.^{Footnote52}

Moreover, the European Parliament endorsed the Nordic Model in February 2014^{Footnote53} and, in April 2014, the Council of Europe recommended that member and observer states, which includes Canada, consider criminalizing the purchase of sexual services, as the most effective tool for preventing and combating human trafficking, and banning advertising sexual services and pimping.^{Footnote54} The United Nations Committee on the Elimination of Discrimination against Women has also recommended or welcomed the criminalization of the purchase of sexual services and has stressed the importance of addressing the demand for prostitution.^{Footnote55} In short, this approach is receiving growing international support as a sound policy approach, supported by an expanding body of evidence.

In 2008, the Swedish government appointed the Committee of Inquiry to Evaluate the Ban against the Purchase of Sexual Services, headed by Chancellor of Justice Anna Skarhed, a former Justice of the Supreme Court, to assess the ban against the purchase of sexual services from 1999 to 2008.^{Footnote56} The Committee of Inquiry concluded that the Nordic Model was successful in deterring purchasers of sexual services, decreasing the number of prostituted persons and clients, and gaining favorable public support.^{Footnote57} These conclusions were supported by other sources as well.^{Footnote58} Furthermore, the Swedish Government has seen no concrete evidence that prostitution has merely been displaced and not reduced, e.g., moved from outdoor to other arenas, such as indoor locations, since implementation of the Nordic Model,^{Footnote59} and evidence suggests that the criminalization of the purchase of sexual services has helped to combat prostitution and human trafficking for sexual purposes.^{Footnote60}

In July 2014, the Norwegian government released a report assessing the effects of its 2009 ban on the purchase of sexual services,^{Footnote61} which came to similar conclusions as the Swedish research, including that the ban had reduced the demand for sexual services, thus contributing to an overall decrease in the extent of prostitution and human trafficking in Norway. Furthermore, the evaluation did not find any evidence of increased violence against women in street-based prostitution following the coming into force of the law. The report concluded that the criminalization of the purchase of sexual services in Norway had met its intended goals.^{Footnote62}

Since its implementation, some have raised concerns that the Nordic Model would drive prostitution underground, make human trafficking more difficult to detect and impact the safety and well-being of vulnerable women. Although some studies, mostly qualitative, have been conducted on these issues,^{Footnote63} there is no concrete empirical evidence available to support the assertion that prostitution, which is already an underground activity given its nature and the prevalence of criminal elements even in

decriminalized/legalized regimes, has been pushed further underground through the criminalization of purchasers.

On the other hand, research on the experience of countries such as Australia, Germany and the Netherlands shows that jurisdictions that have decriminalized or legalized prostitution tend to have larger sex industries than those that have not decriminalized or legalized prostitution.^{Footnote64} Jurisdictions that have decriminalized or legalized prostitution have also experienced an expansion of their overall sex industries post-legalization/decriminalization,^{Footnote65} especially outside the legal zones or regulated environments,^{Footnote66} and individuals who sell their own sexual services continue to be vulnerable to violence and exploitation at the hands of third parties. Research indicates that coerced prostitution and human trafficking have flourished in both legal and illegal sectors,^{Footnote67} and that social stigmatization of individuals who sell their own sexual services continues to prevail, while their overall “material conditions have not noticeably improved”.^{Footnote68} Finally, two recent empirical studies have shown that decriminalization and legalization are linked to higher rates of human trafficking for sexual exploitation.^{Footnote69}

Footnotes

Footnote 1

Bedford v Attorney General of Canada, [2013] SCJ No.72.

[Return to footnote1referrer](#)

Footnote 2

Ibid at paras 167-69.

[Return to footnote2referrer](#)

Footnote 3

Ibid at paras 60-92.

[Return to footnote3referrer](#)

Footnote 4

Ibid at paras 132-136.

[Return to footnote4referrer](#)

Footnote 5

Ibid at para 142.

[Return to footnote5referrer](#)

Footnote 6

Ibid at paras 158-59.

[Return to footnote6referrer](#)

Footnote 7

Ibid at paras 132-147.

[Return to footnote7referrer](#)

Footnote 8

Ibid at para 2.

[Return to footnote8referrer](#)

Footnote 9

Ibid at para 165.

[Return to footnote9referrer](#)

Footnote 10

Reference re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.), [1990] 1 SCR 1123.

[Return to footnote10referrer](#)

Footnote 11

By contrast, existing prostitution offences are all placed in Part VII, Disorderly Houses, Gaming and Betting.

[Return to footnote11referrer](#)

Footnote 12

Quebec, Conseil du Statut de la femme du Québec, La prostitution: il est temps d'agir(2012) at 28,
online: http://www.csn.qc.ca/c/document_library/get_file?uuid=9dfcb4ff-d60d-4c42-af9e-dfabadd202d5&groupId=2464358. See Canada, Subcommittee on Solicitation Laws, *The Challenge of Change: A Study of Canada's Criminal Prostitution Laws*, (Ottawa: Standing Committee on Justice and Human Rights, 2006) at 10,
online: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=2599932&Language=E&Mode=1&Parl=39&Ses=>.

[Return to footnote12referrer](#)

Footnote 13

Conseil du Statut de la femme du Québec, *supra* note 12 at 47-8. See Canada, Subcommittee on Solicitation Laws, *supra* note 12 at 12-3. See Melissa Farley et al., "Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder" (2004) 2:3-4 *Journal of Trauma Practice* 33 at 37-8,
online: <http://www.prostitutionresearch.com/pdf/Prostitutionin9Countries.pdf>

[Return to footnote13referrer](#)

Footnote 14

Canada, Subcommittee on Solicitation Laws, *supra* note 12 at 11-12. See Melissa Farley et al., *supra* note 13 at 48-9 and 65. See Conseil du Statut de la femme du Québec, *supra* note 12 at 29.

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Footnote 15

Conseil du Statut de la femme du Québec, *supra* note 12 at 52-55. See Melissa Farley et al., *supra* note 13. See Canada, Subcommittee on Solicitation Laws, *The Challenge of Change, supra* note 12 at 19-21. See Richard Poulin, "Prostitution et traite des êtres humains: controverses et enjeux" (2008) 45 *Cahiers de recherche sociologique* 135 at 4-5,
online: <http://sisyphe.org/IMG/pdf/Prost.traitesPoulin.pdf>. See Maddy Coy, *Prostitution, Harm and Gender Inequality: Theory, Research and*

Policy (Burlington, VT: Ashgate, 2012). See Maddy Coy, Josephine Wakeling & Maria Garner, "Selling sex sells: Representations of prostitution and the sex industry in sexualised popular culture as symbolic violence" (2011) 34 *Women's Studies International Forum* 441 at 443.

[Return to footnote15referrer](#)

Footnote 16

Liz Kelly, Maddy Coy & Rebecca Davenport, "Shifting Sands: A Comparison of Prostitution Regimes Across Nine Countries" (Child & Women Abuse Studies Unit, London Metropolitan University, 2009) at 40-3, online: http://www.turnofftheredlight.ie/wp-content/uploads/2011/02/Shifting_Sands_UK-HOME-Office.pdf. See Melissa Farley, "Bad for the Body, Bad for the Heart: Prostitution Harms Women Even if Legalized or Decriminalized" (2004) 10:10 *Violence Against Women* 1087, online: <http://projectrespect.org.au/system/files/Prostitution+Harms+Women.pdf>. See NZ, Prostitution Law Review Committee, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, (New Zealand: Ministry of Justice, 2008), online: <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/documents/report.pdf>. See NZ, *Prostitution Law Reform in New Zealand*, Parliamentary Library Research Paper (NZ: Parliamentary Library, 2012), online: <http://www.parliament.nz/en-nz/parl-support/research-papers/00PLSocRP12051/prostitution-law-reform-in-new-zealand>. See Melissa Farley, *Prostitution and Trafficking in Nevada: Making the Connections* (San Francisco: Prostitution Research and Education, 2007). See Jess N. Gibly, "Safe Sex for Sale: Is Legalizing Sex Work the Answer to Sex Trafficking in the Netherlands?" (2012) 4:1 *International Journal of Undergraduate Research and Creative Activities* at 1-11, online: <http://commons.pacificu.edu/cgi/viewcontent.cgi?article=1004&context=ijurca>. See Richard Poulin, "The legalization of prostitution and its impact on trafficking in women and children" (2005), online: http://sisyphe.org/article.php3?id_article=1596.

[Return to footnote16referrer](#)

Footnote 17

Conseil du Statut de la femme du Québec, *supra* note 12 at 34-42. See Canada, Subcommittee on Solicitation Laws, *The Challenge of Change*, *supra* note 12 at 17. See M. Dank et al. "Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities" (2014) *The Urban Institute*, online: <http://www.urban.org/UploadedPDF/413047-Underground-Commercial-Sex-Economy.pdf>.

[Return to footnote17referrer](#)

Footnote 18

M. Coy, "Prostitution, Harm and Gender Inequality" *supra* note 15. See Conseil du Statut de la femme du Québec, *supra* note 12 at 31. See M. Coy et al., "Selling sex sells", *supra* note 15. See Janine Benedet, "For the Sake of

Equality: Arguments for Adapting the Nordic Model of Prostitution Law to Canada” (2014), prepared for: Women’s Coalition for the Abolition of Prostitution, online: <http://www.rapereliefshelter.bc.ca/learn/resources/sake-equality-arguments-adapting-nordic-model-prostitution-law-canada>. See Mary Sullivan & Sheila Jeffreys, “Legalising prostitution is not the answer: the example of Victoria, Australia” (Coalition Against Trafficking in Women: Australia) at 12, online: <http://www.catwinternational.org/content/images/article/95/attachment.pdf>.

[Return to footnote18referrer](#)

Footnote 19

Canada, Subcommittee on Solicitation Laws, *The Challenge of Change*, *supra* note 12 at 24-6, 31-4. See M. Coy et al., “Selling sex sells:” *supra* note 15 at 446. See M. Coy, *Prostitution, Harm and Gender*, *supra* note 15.

[Return to footnote19referrer](#)

Footnote 20

Janice G. Raymond et al., “A Comparative Study of Women Trafficked in the Migration Process: Patterns, Profiles and Health Consequences of Sexual Exploitation in Five Countries (Indonesia, the Philippines, Thailand, Venezuela, and the United States)” (N. Amherst, MA: Coalition Against Trafficking in Women, 2002), online: <http://www.oas.org/atip/Migration/Comparative%20study%20of%20women%20trafficked%20in%20migration%20process.pdf>. See Mary Honeyball, “Report on sexual exploitation and prostitution and its impact on gender equality,” Committee on Women’s Rights and Gender Equality, European Parliament, A7-0071/2014, online: <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT%26reference=A7-2014-0071%26language=EN> See UK Home Office. *Tackling the Demand for Prostitution: A Review* (United Kingdom, 2008), online: <http://www.uknswp.org/wp-content/uploads/demandResponse.pdf>. See Sigma Huda, “Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Integration of the Human Rights of Women and a Gender Perspective”, E/CN.4/2006/62, at paras 42-3, online: <http://www.refworld.org/docid/48abd53dd.html>. See Donna M. Hughes et al., “The Demand for Victims of Sex Trafficking”, (2005) Women’s Studies Program, University of Rhode Island.

[Return to footnote20referrer](#)

Footnote 21

Conseil du statut de la femme, *supra* note 12 at 34-9. See M. Dank et al., *supra* note 17 at 151. See Guylaine Paradis, Cousineau & Marie-Marthe Cousineau, “Prostitution juvénile: étude sur le profil des proxénètes et leur pratique à partir des perceptions qu’en ont des intervenantes-clés” (2005) Les Cahiers de recherches criminologiques42. See Felicia Gabriele et al., “The

incidence of human trafficking in Ontario” (2014) Alliance Against Modern Slavery,
online:http://allianceagainstmodernslavery.org/events/release_of_research_report_on_human_trafficking_in_ontario

[Return to footnote21referrer](#)

Footnote 22

Conseil du statut de la femme, *supra* note 12 at 30-1. See Mary Sullivan & Sheila Jeffreys, “Legalising prostitution is not the answer: the example of Victoria, Australia” *supra* note 18 at 11. See Melissa Farley, “Prostitution & Trafficking in Nevada: Making the Connections” *supra* note 16 at 104-8. See Erika Schulze & Sandra Isabel Novo Canto, “Sexual Exploitation and prostitution and its impact on gender equality” Policy Department of the European Parliament – Citizen’s Rights and Constitutional Affairs (2014) at 36, online: [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493040/IPOL-FEMM_ET\(2014\)493040_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493040/IPOL-FEMM_ET(2014)493040_EN.pdf) See Jess N. Gibly, “Safe Sex for Sale: Is Legalizing Sex Work the Answer to Sex Trafficking in the Netherlands?” (2012) 4:1 *International Journal of Undergraduate Research and Creative Activities* 1-11, online: <http://commons.pacificu.edu/cgi/viewcontent.cgi?article=1004&context=ijurca>.

[Return to footnote22referrer](#)

Footnote 23

See subsection 212(4) of the *Criminal Code*.

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Footnote 24

Prostitution Reference, *supra* note 10 at para 45.

[Return to footnote24referrer](#)

Footnote 25

R v Phippard, [2005] NJ No.34 (Nfld. Prov. Ct.). See *R v Lund*, [2005] 288 AR 189 (Alta. Prov. Ct.); *R v Watkins* (2004), docket number: 200403T039, unreported (Nfld. SC).

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Footnote 26

Ibid. See *R v Watkins*, *supra* note 25. See also *R v M.G.B.*, [2005] ABPC 215 (Alta. Prov. Ct.), in which the accused agreed to pay the complainant after the sexual act was completed; the court dismissed charges under subsection 212(4) without reasons, but convicted on child sexual offences.

[Return to footnote26referrer](#)

Footnote 27

R v Lee, [1998] NWTJ No.113 (NWTSC).

[Return to footnote27referrer](#)

Footnote 28

R v Phippard, *supra* note 25.

[Return to footnote28referrer](#)

Footnote 29

R v Jobin, [2007] QCCQ 1227 (CQ).

[Return to footnote29referrer](#)

Footnote 30

R v Leo, [1993] 147 AR 161 (Alta. Prov. Ct.), appeal against conviction dismissed by Alta. CA and SCC, without reasons.

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Footnote 31

R v Caringi, [2002] OJ No.2367 (Ont. C.J.), appeal dismissed [2005] OJ No.766 (Ont. CA). See *R v Akouros*, [2006] OTC 67 (Ont. SCJ).

[Return to footnote31referrer](#)

Footnote 32

R v Ni, [2002] 158 OAC 230, 53 WCB (2d) 485 (Ont. CA). See *R v Brandes*, [1997] OJ No.5443 (Ont. CJ (Prov. Div.)).

[Return to footnote32referrer](#)

Footnote 33

R v Bedford [2000] 143 CCC (3d) 311, 184 DLR (4th) 727 (Ont. CA), leave to appeal to S.C.C. refused 147 CCC (3d) vi, 193 DLR (4th) vii. See *R v Wahl*, [1999] JQ no.2540 (Cour municipale de Montreal).

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Footnote 34

R v Bauer, [1999] OJ No. 5294 (Ont. CJ). See *R v Natarajan*, [1995] 177 AR 190, 29 WCB. (2d) 379 (Alta. Prov. Ct.).

[Return to footnote34referrer](#)

Footnote 35

R v Saftu, [2002] OJ No.3046 (Ont. CJ). See *Bauer*, *supra* note 34.

[Return to footnote35referrer](#)

Footnote 36

R v St-Onge, [2001] 155 CCC (3d) 517, 44 CR (5th) 395; 50 WCB (2d) 485 (QCA.). See *R v Tremblay*, [1991] 41 QAC 241, 68 CCC (3d) 439, 14 WCB (2d) 490 (QCA).

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Footnote 37

R v Grilo, [1991] 2 O.R. (3d) 514 (Ont. C. A.), cited in *Bedford*, *supra* note 1 at para 141.

[Return to footnote37referrer](#)

Footnote 38

Shaw v Director of Public Prosecutions, [1962] AC 220 (H.L.), cited in *Bedford*, *supra* note 1 at para 141.

[Return to footnote38referrer](#)

Footnote 39

Bedford, *supra* note 1 at para 142.

[Return to footnote39referrer](#)

Footnote 40

Jurisprudence shows that courts will consider drug offences committed in the context of a “commercial enterprise” as an aggravating factor for the purpose of sentencing under the *Controlled Drugs and Substances Act*.

[Return to footnote40referrer](#)

Footnote 41

R v Gobran, [2013] 308 OAC 12 (OCA).

[Return to footnote41referrer](#)

Footnote 42

R v Downey, [1992] SCJ No. 48 at para 46.

[Return to footnote42referrer](#)

Footnote 43

R v Deutsch, [1986] SCJ No. 44 at para 32.

[Return to footnote43referrer](#)

Footnote 44

See subsection 212(1)(h) of the *Criminal Code*, which prohibits, for the purposes of gain, exercising control, direction or influence over the movements of a person in such a manner as to show that he is aiding, abetting or compelling that person to engage in or carry on prostitution with any person or generally. See *R v Perrault*, [1997] RJQ 4 (QCA) interprets the meaning of “exercises control, direction or influence over the movements of...”.

[Return to footnote44referrer](#)

Footnote 45

See section 279.01 of the *Criminal Code*, which prohibits recruiting, transporting, transferring, receiving, holding, concealing or harbouring a person or exercising control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation. “Exploitation” is defined in section 279.04. These provisions were enacted in 2005. There is some jurisprudence interpreting the offence, for example: *R c Urizar*, [2013] JQ no. 132 (QCA) and *R v Beckford and Stone*, [2013] OJ No. 371 (Ont. SCJ), in which the constitutionality of section 279.011 (trafficking in children) was upheld. Section 279.011 is identical to section 279.01, with the exception that it imposes mandatory minimum penalties for trafficking children.

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Footnote 46

A person who receives a material benefit in the context of a commercial enterprise that offers sexual services for consideration would not be entitled to any of the legislated exceptions to the material benefit offence, including the exception that applies to persons who offer protective services, by virtue of paragraph 286.2(5)(e). This approach is consistent with Bill C-36’s objective of prohibiting the commercialization and institutionalization of prostitution.

[Return to footnote46referrer](#)

Footnote 47

See research referenced at notes 14, 21 and 22.

[Return to footnote47referrer](#)

Footnote 48

Bedford, supra note 1 at para 165.

[Return to footnote48referrer](#)

Footnote 49

Where such activity is found to be harmful to children but occurs in private places, such as in the child's home, other *Criminal Code* offences, such as corrupting children (section 172), may apply. Provincial/territorial child welfare legislation also allows for state intervention where a child is in need of protection.

[Return to footnote49referrer](#)

Footnote 50

NIA Bill 26/11-15, *Human Trafficking and Exploitation Bill*, 2011-2015 sess, 2013, online: <http://www.niassembly.gov.uk/Assembly-Business/Legislation/Current-Non-Executive-Bill-Proposals/Human-Trafficking-and-Exploitation-Further-Provisions-and-Support-for-Victims-Bill/> See Northern Ireland, Committee for Justice, *Report on the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill*(NIA 26/11-15), NIA 170/11-15, 10 April 2014, online: <http://archive.niassembly.gov.uk/justice/report/human-trafficking/Report-on-Human-Trafficking-Bill.pdf>

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Footnote 51

Houses of the Oireachtas, Joint Committee on Justice, Defence and Equality, *Report on hearings and submissions on the Review of Legislation on Prostitution*, June 2013, online: <http://www.oireachtas.ie/parliament/media/committees/justice/1.Part-1-final.pdf>

[Return to footnote51referrer](#)

Footnote 52

United Kingdom, *All-Party Parliamentary Group on Prostitution and the Global Sex Trade, Shifting the Burden: Inquiry to assess the operation of the current legal settlement on prostitution in England and Wales*, March 2014, online: <http://prostitutionresearch.com/2014/04/29/shifting-the-burden-inquiry-to-assess-the-operation-of-the-current-legal-settlement-on-prostitution-in-england-and-wales/>

[Return to footnote52referrer](#)

Footnote 53

European Parliament, *Resolution on sexual exploitation and prostitution and its impact on gender equality*, Adopted (26 February 2014), online: [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493040/IPOL-FEMM_ET\(2014\)493040_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493040/IPOL-FEMM_ET(2014)493040_EN.pdf). This resolution indicates that the European Parliament: endorsed the Nordic Model as one way of combating the trafficking of women and under-age females for sexual exploitation; recognized

that prostitution and forced prostitution are intrinsically linked to gender inequality and have an impact on the status of women and men in society and the perception of their mutual relations and sexuality, that prostitution forced prostitution and sexual exploitation are highly gendered issues and violations of human dignity, that prostitution can have devastating and long-lasting psychological and physical consequences for the individual involved, especially children and adolescents, while perpetuating gendered stereotypes such as the idea that women's and under-age females' bodies are for sale to satisfy male demand for sex; and, stressed that prostitution markets fuel trafficking in women and children. See Mary Honeyball, Committee on Women's Rights and Gender Equality, European Parliament, *Report on sexual exploitation and prostitution and its impact on gender equality*, *supra* note 20.

[Return to footnote53referrer](#)

Footnote 54

Council of Europe, Resolution 1983, *Prostitution, trafficking and modern slavery in Europe*, Text Adopted (2014),
online: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20716&lang=en>.

[Return to footnote54referrer](#)

Footnote 55

Committee on the Elimination of All Forms of Discrimination against women, 8 February 2014, REC C/FIN /CO/7,
online: <http://formin.finland.fi/public/download.aspx?ID=127460&GUID=%7B50D3AE8D-B478-40D7-8B71-6EE474410022%7D>. See Committee on the Elimination of All Forms of Discrimination against women, 9 March 2012, REC C/NOR/CO/8,
online: <http://www.fokuskvinner.no/PageFiles/3379/CEDAW-C-NOR-CO-8.pdf>. Committee on the Elimination of All Forms of Discrimination against women, 30 July 2010, REC C/AUS/CO/7,
online: <http://www.refworld.org/publisher,CEDAW,CONCOBSERVATIONS,AUS,52dd07654,0.html>.

[Return to footnote55referrer](#)

Footnote 56

National Public Investigations, Swedish Institute, "Prohibiting the purchase of sexual services: An evaluation 1999-2008", Report of the Commission on the evaluation of prohibiting the purchase of sexual service (SOU, 2010: 49), at 2,
online: <http://www.government.se/content/1/c6/15/14/88/0e51eb7f.pdf> [English summary].

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Footnote 57

Ibid at 7-10.

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Footnote 58

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