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# **Standing Committee on Justice and Human Rights**

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**EVIDENCE**

**Thursday, July 10, 2014**

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**Chair**

**Mr. Mike Wallace**



## Standing Committee on Justice and Human Rights

Thursday, July 10, 2014

• (1530)

[English]

**The Chair (Mr. Mike Wallace (Burlington, CPC)):** Ladies and gentlemen, we're calling this meeting to order.

This is the Standing Committee on Justice and Human Rights, meeting 43, as of the order of reference on Monday, June 16, 2014, Bill C-36, an act to amend the Criminal Code in response to the Supreme Court of Canada decision in Attorney General of Canada v. Bedford and to make consequential amendments to other acts. As per the orders of the day, we are being televised.

This is our last meeting as a committee on this matter before we go to the clause-by-clause meetings next week.

For witnesses dealing with this issue, we have two individuals here with us: Ms. Allison from Foy Allison Law Group; and Mr. Kirkup, from the faculty of law at the University of Toronto, and I can say a Trudeau Scholar. I can say the actual word. I can say that, yes.

From video conference from Toronto, we have with us from the Canadian HIV/AIDS Legal Network, Ms. Chu. Via video conference from Burnaby, British Columbia, from Ratanak International, we have Mr. McConaghy, and from video conference from Vancouver, British Columbia, we have the Canadian Police Association, Mr. Tom Stamatakis.

Those are our witnesses. As you know and you may have seen, the witnesses or their organization each have 10 minutes to present, and then we have a question-and-answer round.

We will go as the witnesses were introduced.

Ms. Allison, the floor is yours.

**Ms. Gwendoline Allison (Foy Allison Law Group, As an Individual):** Thank you very much for the opportunity to appear before you today.

I'm a lawyer and a partner with the Foy Allison Law Group in West Vancouver, B.C. I have 19 years of experience in the field of employment law and human rights law. I have advised a number of women's groups since the outset of my career, and their allies and callers. Two of my clients have spoken here today. I've also acted for both employees and employers, both in the provincial setting and in the federal setting, so with federal undertakings. My most recent work has centred on the implications for employment-related laws should Parliament decide to decriminalize the purchase of and profiteering from sex, or should Parliament decide to do nothing. So hopefully my presentation today will be a bit of the answer of what

will happen, or what could happen, should Parliament decide to do nothing.

My particular focus is a consideration of those laws in relation to the Supreme Court of Canada's concerns for the safety and security of those engaged in prostitution, and the recognition that the primary source of the danger to those in prostitution are those who buy the sex and those who profit from the sale of sex. I recognize that employment-related laws are mainly within the provincial sphere of regulation, and out of the control of Parliament. You can't do anything about that, for the most part, but you need to know what it will look like if you decide to do nothing.

In my presentation today I will recognize the gendered nature of prostitution, in that it is mainly women who engage in prostitution and mainly men who buy sex. The Supreme Court also recognized that gendered nature by using the pronoun "she" when writing about prostitution. I will also say at the outset that I reject the contention that prostitution is work, but do intend to focus on that in my presentation today. I agree with my clients that prostitution is a form of violence and the practice of sex inequality and subordination.

In the Bedford case I was co-counsel to the Asian Women Coalition Ending Prostitution and I appeared on their behalf in court. One of the challenges we had in constructing a submission—because we gained intervener status at the Supreme Court level—was that the court should pay attention to how racialized women, and particularly Asian women, are affected by prostitution. Our biggest challenge was the fact that among the many volumes of evidence that was before the court, there was a sum total of one line regarding Asian women in prostitution, and that one line was contained in the affidavit of a police officer, not an Asian woman but a police officer, who deposed that women in bawdy houses were often illegal immigrants and residential brothels contained mainly Asian women.

I know some of you here are lawyers, so imagine how difficult it is to construct a legal argument on a charter foundation when you have no evidence, and that was our challenge before the court.

In the case, Asian Women's position was that the impugned laws were unconstitutional as they apply to those in prostitution, but were constitutional as they applied to those who buy sex and who profit from prostitution, those men who are the primary source of danger to women in prostitution and whose rights of safety and security were not engaged and not an issue in the case.

Now I have three points to make that arise from Bill C-36, two of which I think have been dealt with already, so I would hope to only mention them in passing, and then I'll focus on my main point.

Overall, I agree that Bill C-36 has many positive aspects, and I agree with those groups and individuals who have given their qualified support to it. I applaud in particular the commitment that I heard Minister MacKay make, when he introduced the bill, to a long-term discussion with provincial, local, and aboriginal governments. This will need a multi-level government approach to address the human rights devastation caused by prostitution.

My first point adds my voice to the opinion that the continued criminalization of women in prostitution, as set out in proposed subsections 213(1) and (1.1), is, in my opinion, inconsistent with the stated purposes of Bill C-36, and in particular the purposes of encouraging those in prostitution to report incidents of violence and to leave prostitution.

As an employment lawyer, my consideration is a practical one. Continued criminalization is counterproductive to successful exiting and a long career in other work. Those exiting prostitution already face barriers to entering the workforce, not least of which would be explaining how they have earned income during their years in prostitution. A criminal record is a further and in some cases an absolutely prohibitive barrier to achieving employment.

• (1535)

Those who exit prostitution have many great insights that would make them valuable employees, particularly in social services and in other forms of public service, and in many positions criminal records checks are required. As a B.C. lawyer, I don't have experience and I'm not qualified to opine on matters outside that area, but I do say, by way of example, that in B.C. we have the Criminal Records Review Act, which requires criminal records checks for anyone who works with children or who has unsupervised access to children or vulnerable adults.

Likewise, volunteering is a very valuable and successful method of gaining skills to enter the workforce, which often, again, requires a criminal records check. I've had many visits to my local police station for my volunteering activities. I know they come up quite frequently.

Continued criminalization of those engaged in prostitution will punish them for the inequalities they've suffered, which led them into prostitution in the first place, and keep them there by impeding the chance of a successful exit.

My second point is to support the provisions as they relate to advertising. Given the time involved and given what I want to say about the employment laws, I will rely on what my client, Asian Women, said this morning about advertising and say no more on that front.

My third point relates to the effectiveness of provincial employment-related laws. You've heard from witnesses that Parliament should decriminalize the buyers and profiteers and protect women through labour and employment laws, and human rights laws. In that regard, those provincial laws would be tasked with protecting those in prostitution from the catastrophic harms that they suffer, primarily at the hands of the men who buy them and who profit from them. The ultimate question you have to ask yourself is: are these laws as they are—because you can't change them—up to the task? Can they do so? Can they protect these women? In my opinion they're not up to the task, particularly when you review the laws in comparison with the horrific nature of the violence that you've heard about over the past couple of days, the women you heard yesterday and today and the violence they've suffered.

There are three legal regimes I want to touch on. First is the common law, then human rights legislation, and then the occupational health and safety rules.

First, I say the employment laws are inadequate. They're primarily engaged with compensating people for harms done to them, such as the failure to give reasonable notice of the termination of employment. Second, employment-related laws are focused on the protection of employees, and that is a status that is not obviously conferred on those in prostitution. In the case of those who work on the street and those who work alone from their homes as independent operators, there's no employer. The underlying protections of employment law would not be available to such girls, youth, and women. There is no one against whom to seek protection.

The reality is that most women who work indoors in a decriminalized or legal environment are treated as independent contractors, self-employed businesswomen. That is the case in the bunny ranches of Nevada, the mega brothels of Germany, and the red light districts of the Netherlands where the women rent their rooms from brothel owners. At the Pascha in Cologne, the women rent the rooms for 175 euros for 24 hours. The services are then negotiated directly between the women and the buyers and the going rate is around 50 euros per half hour.

In the interests of time I won't go into what you've heard about the New Zealand model. In my work, which includes writing papers and presenting to the employment law conference of the Continuing Legal Education Society of B.C. on this bill, I did conduct a review of the New Zealand prostitution laws and their effectiveness. In doing so, I communicated with some academics in New Zealand to get a better understanding of how the laws operate there. I'm not going to go into them in my presentation, but I'd be happy to answer any questions with respect to how the employment laws are regulated in that country.

I will say one thing, though. It appears that obviously the Parliament in New Zealand has a broader range of scope of what they can do than Parliament here, because they've obviously considered health and safety, education, and occupational health and safety, and also some local government licensing, which is also outside your jurisdiction.

There's a second element to employment law and that's the corresponding duties between an employer and an employee. An employer has an obligation to provide a safe working environment and not to force an employee to carry out unlawful acts. Employees gain the benefit of protections under employment insurance and on occasion medical benefits and pensions. However, employees also owe duties to employers and I am engaged by employers to enforce these duties: to be loyal and faithful; to act in good faith and not to the detriment of the employer; to obey the reasonable and lawful directions of the employer; to act with all due skill, care, and competence; and not to neglect their duties. Some of those duties do not translate well into the realm of prostitution where the primary obligation of the employee in this consideration would be to provide sex to a third party directed by the employer.

● (1540)

There's an apparent conflict there between an employee's duties to her employer and the provisions in the Criminal Code regarding consent to sexual activity, and in particular the idea that consent cannot be given by a third party.

The Criminal Code provisions raise a question regarding the legality of employment contracts with a fundamental and core duty of the employees to provide sex to the employer's clients. When the question was asked about what a bad day would look like in.... My worst job was in a photo processing plant, which meant spending the afternoon in a dark room with a whole bunch of paper. A bad day for a woman in a brothel would be providing sex to a man who doesn't care, and that she doesn't want to have sex with. I think that's a fundamentally different analysis when you're looking at it as an employment contract.

**The Chair:** You're about a minute over your time, so if you could try to summarize, that would be great.

**Ms. Gwendoline Allison:** I will. I'm sorry.

I would say that the current schemes, and in particular the occupational health and safety schemes, are not adequate, and human rights laws are not adequate to protect women in prostitution.

I would be happy to answer questions about those, too.

Thank you.

**The Chair:** Thank you very much.

Mr. Kirkup, the time is yours.

**Mr. Kyle Kirkup (Trudeau Scholar, Faculty of Law, University of Toronto, As an Individual):** Good afternoon. My name is Kyle Kirkup. I am a lawyer and a Trudeau Foundation scholar at the University of Toronto faculty of law. My research examines the role that Canadian criminal law has played, and continues to play, in regulating gender and sexuality. As part of the research, I have conducted qualitative interviews with sex workers and sex work community organizations in Canada.

I want to make three related points about Bill C-36.

First, I want to underscore the considerable harms that will be created by its sweeping list of provisions that directly or indirectly criminalize adult sex work.

Second, I want to situate this legislation in its larger context. The underlying logic behind Bill C-36 is not new. Canada, like so many countries around the world, has a long and misguided history of criminalizing sexual activities on the basis of morality.

Third, I want to explain why we should resist the claim that creating more criminal offences, more sentences, and putting more people in prisons will ever be an effective way to respond to the complex substantive equality issues that are raised by adult sex work. Instead, I want to encourage the government to listen carefully to what current sex workers—women, men, and transgender people—are actually saying about what they need to work safely and with dignity. It is not another ill-conceived criminal law.

Let me start by briefly talking about the considerable harms that will flow from Bill C-36. The legislation draws heavily upon the so-called Nordic model of criminalizing the clients of sexual services, but it goes much further, particularly with its advertising and communication provisions. We might call this made-in-Canada approach the Nordic model's bigger, deadlier cousin.

Fifteen years after passing the act, Sweden is nowhere near ending the demand for sex work. Claims that we have heard this week suggesting that the Swedish model has been some sort of a panacea are simply not supported by sound, methodologically rigorous evidence. With Bill C-36 we now see Canada going down a similar, albeit even more misguided path than Sweden. The legislation may have a new title, a new preamble, and a new goal of targeting the purchasers and not the sellers of sexual services, but make no mistake about it, Canada's new legislation will replicate the same harms that led the Supreme Court of Canada to strike down the former laws in Bedford.

As Chief Justice McLachlin noted in the unanimous opinion:

The question under s. 7 is whether anyone's life, liberty or security of the person has been denied by a law that is inherently bad; a grossly disproportionate, overbroad, or arbitrary effect on one person is sufficient to establish a breach of s. 7.

With clients anxiously trying to avoid police detection, street-based sex workers will continue to have little time to take precautionary measures such as writing down a licence plate number before moving to risky, more isolated locations. Unable to communicate in locations where persons under 18 can reasonably be expected to be present—virtually everywhere in my respectful submission—sex workers will face the constant risk of arrest by the police. With significant limitations placed on third-party advertising, sex workers will find it difficult to work in safer indoor locations.

In light of the legislation's disproportionate impact on vulnerable members of Canadian society, its potential arbitrariness, its overbreadth, its gross disproportionality, and its curtailment of freedom of expression, there are serious questions about whether this bill will withstand the inevitable constitutional challenge. While we wait for Bill C-36 to be struck down in whole or in part, we leave current sex workers in deeply precarious conditions. How long do we have to wait for them to tell us what they already know; that the criminal laws aren't going to make them safer?

Instead of again going down the path of creating constitutionally suspect criminal laws, I urge the government to consider regulatory models such as those developed in New Zealand. Since 2003, New Zealand has set up a system that prioritizes human rights and labour protections while also giving municipalities, and working with municipalities to create, health and safety and zoning regulations. If Parliament is serious about providing sex workers with meaningful options, including exiting the sex industry, the New Zealand model is much more effective in connecting them with service providers.

• (1545)

Second, I want to situate Bill C-36 in Canada's long history of using the criminal law to regulate morality. I want to do so by drawing some parallels between the shared struggles of gay, lesbian, bisexual, and transgender communities and sex workers. Like the over 80 countries around the world that continue to criminalize LGBT lives, Canada has a long history of using the criminal law to regulate sexual practices that take place between consenting adults.

In recent Canadian jurisprudence, however, we are now seeing courts moving away from using the expressive power of the criminal law to condemn these practices. Perhaps most notably, in its 2005 decision in *Labaye*, the Supreme Court of Canada held that consensual sex between adults in a swingers' club did not constitute criminal indecency within the meaning of subsection 210(1) of the Criminal Code. As Chief Justice McLachlin remarked in that decision:

But over time, courts increasingly came to recognize that morals and taste were subjective, arbitrary and unworkable in the criminal context, and that a diverse society could function only with a generous measure of tolerance for minority mores and practices.

In *From Disgust to Humanity: Sexual Orientation and Constitutional Law*, University of Chicago law professor Martha Nussbaum makes a similar claim. Writing about the regulation of gays and lesbians in the United States, Nussbaum argues that the politics of disgust has been and remains at the root of opposition to the recognition of civil rights. In the place of disgust, Nussbaum calls for us to recognize the humanity in all members of society, including those who engage in non-normative sexual practices. Our histories are qualitatively different, of course, but there are shared struggles with the disgust that has too often been directed at LGBT people and sex workers.

The Canadian government's attempt until 1969 to use the criminal law to abolish homosexuality, and its attempt today to abolish adult sex work, is rooted in a similar, underlying logic. If we threaten people with enough criminal punishment, the argument goes, we'll eventually get them to just say no, whether it be to gay sex or to adult sex work.

When we hear the Minister of Justice make reference to “the perpetrators, the perverts, [and] the pimps”, he is indeed proposing criminal laws that rely upon disgust instead of sound, evidence-based public policy. Rather than focusing our attention on flawed approaches that prioritize criminalization, we should be reframing the discussion to one about human rights, to labour protections, and to safety.

As many people in this room can attest, Canadians are deeply skilled at regulation. Indeed, we regulate everything.

Third, let me end with a few words about the danger of attempting to use the blunt force of the criminal law as a public policy tool. As I observed in an editorial on June 4 in *The Globe and Mail*, when it comes to criminal justice policy perhaps the government's slogan should be “Got a complex social issue? There's a prison for that.” With Bill C-36, Canada is set to continue down the harmful, ineffective, and constitutionally suspect path of pursuing “tough on crime” legislation, all the while purporting to secure substantive equality for women.

As we have this important public policy conversation we must not lose sight of the many criminal provisions that we have on the books to respond to the important concerns about exploitation and violence that we've heard this week. These offences include human trafficking, kidnapping, forcible confinement, uttering threats, extortion, assault, sexual assault, aggravated assault, aggravated sexual assault, and a series of gang-related offences.

In the face of these wide-ranging, existing criminal laws, it seems misguided in the extreme to attempt to protect vulnerable members of Canadian society by enacting legislation that makes adult sex work more dangerous. As a society, we should be concerned about any labour practices, and there are many of them where people are not afforded basic human rights and have not been able to make meaningful choices about the work that they do because of gender, because of race, because of disability, because of sexual orientation, because of socio-economic status. But the sound, evidence-based public policy response is not to rush to create new offences to respond to the deep complexities of adult sex work.

Rather, let me urge the government to listen carefully to what current sex workers are actually saying about what they need to work safely and with dignity. It is not another ill-conceived criminal law, and it is not Bill C-36.

*Merci beaucoup.*

• (1550)

**The Chair:** Thank you, Mr. Kirkup, for your presentation.

Now we will go to the video conference from Toronto, with the Canadian HIV/AIDS Legal Network. Ms. Ka Hon Chu, the floor is yours.

**Ms. Sandra Ka Hon Chu (Co-Director, Research and Advocacy, Canadian HIV/AIDS Legal Network):** Thank you.

My name is Sandra Ka Hon Chu, and I'm the co-director of research and advocacy at the Canadian HIV/AIDS Legal Network.

We're a human rights organization that works to promote the rights of people living with and affected by HIV and AIDS in Canada and internationally. The legal network intervened before the Ontario Court of Appeal and the Supreme Court of Canada, in Bedford, and has studied and worked on issues concerning sex work and human rights for over a decade.

I'd like to thank the justice committee for providing my organization with this opportunity to make a submission, which will focus on the impact of criminal law on sex workers' health and human rights, and draw the committee's attention to the growing global consensus that criminalizing sex work, including the purchase of sex, is poor public health practice, as well as a great violation of sex workers' human rights.

In the legal network's written submission, I described in greater detail the health impacts of specific provisions of Bill C-36, which I won't go into now. We also produced a legal brief on Bill C-36, called "Reckless Endangerment", which was circulated to all members of Parliament, outlining how the law could be applied to sex workers and others. In particular, our analysis of the bill suggests that sex workers would be captured by the criminal law even if the prohibition on communicating is removed.

Based on research in Sweden, Norway, and municipalities in Canada, which already operate on a policy of pursuing clients rather than sex workers, it can be expected that the various provisions of Bill C-36 would do the following. It would undermine a sex worker's ability to screen and identify clients and negotiate the terms of a transaction, including with respect to safer sex; displace sex workers to isolated spaces to avoid police detection where they have little ability to insist on condom use; and displace sex workers from health and social services, particularly in cases of court or police-imposed red zone orders. These often prevent sex workers from certain neighbourhoods where many crucial health and social services exist like food banks, shelters, and health clinics.

It would also erode sex workers' bargaining power, and place pressure on them to see more clients and to provide their services without being able to demand safer sex; prevent venue managers and others from promoting sexual health because condoms may continue to be seized as evidence of illegal activity; and impede sex workers' ability to work indoors and with others, which significantly enhances their ability to control their working conditions, including the ability to negotiate safer sex.

If sex workers are incarcerated as a result of this bill, which could realistically occur, this could disrupt their access to medical treatment and place them at greater risk of contracting HIV and other infections. This would have a particularly severe impact on sex workers who are indigenous and racialized and who already comprise a disproportionate number of people in the prison population in Canada.

Conversely, research conducted internationally has demonstrated that the decriminalization of sex work supports safer working

conditions and enhances sex workers' health and safety. I'd like to draw your attention to just a few of the many studies that exist on this issue.

A UN global review of research on sex workers and their clients found that laws that directly or indirectly criminalize sex workers, their clients, and third parties can undermine the effectiveness of HIV and sexual health programs, and limit the ability of sex workers and their clients to seek and benefit from these programs.

A 2010 analysis of data from 21 Asian countries revealed that—

• (1555)

**The Chair:** Ms. Chu, could you slow down a bit so we can do a better job of translating?

**Ms. Sandra Ka Hon Chu:** Sure.

**The Chair:** I'll make sure you have your time.

**Ms. Sandra Ka Hon Chu:** Okay, thanks.

A 2010 analysis of data from 21 Asian countries revealed that in places where laws exist to prevent discrimination against sex workers, sex workers have greater knowledge and use of HIV-related services and lower rates of HIV. Researchers concluded that not only do legally punitive working environments threaten the rights and health of sex workers, but may further exacerbate HIV epidemics.

A UN review of sex work in New Zealand and the Australian state of New South Wales concluded that decriminalizing sex work has empowered sex workers to demand safer sex and to refuse particular clients and practices, increase their access to HIV services and sexual health services, and is associated with very high condom use rates and very low rates of sexually transmitted infections. HIV transmission within the context of sex work is understood to be extremely low or non-existent. Prior to decriminalization, sex workers were less willing to disclose their work to health care providers or to carry condoms for fear of it being used as evidence for conviction.

In decriminalized environments, the sex industry can be subject to the same general laws regarding workplace health and safety and anti-discrimination protections as other industries. As borne out by the evidence, decriminalizing sex work is necessary to ensure that sex workers can work free from health and safety risks and is critical to advancing public health objectives.

Reinforcing the imperative to decriminalize sex work is the fact that sex workers are entitled to protection under all recognized human rights standards. As a number of human rights bodies have affirmed, the criminalization of voluntary, consensual sexual relations among adults is incompatible with the respect for human rights, which Canada has a legal obligation to uphold, and which must guide the interpretation analysis of the charter.

Among these rights are the rights to work and enjoy safe and healthy working conditions to the highest attainable standard of physical and mental health; the right to liberty, life, and security of the person; the right to freedom of expression; and the right to equal protection of the law, without any discrimination.

In line with international human rights law, global health and human rights bodies have increasingly called for the decriminalization of sex work. These preeminent bodies include UNAIDS and the United Nations High Commissioner on Human Rights, the World Health Organization, the special rapporteur on the right to health, and the Global Commission on HIV and the Law, which after a massive systemic study concluded that since its enactment, the Swedish law criminalizing the purchase of sex has worsened rather than improved the lives of sex workers.

The UNAIDS advisory group on sex work noted that there is no evidence that “end demand” initiatives reduce sex work, improve the quality of life of sex workers, or tackle gender inequalities.

Whatever one's position on the morality or desirability of sex work, there seems to be a consensus among the witnesses that there is a pressing need to protect sex workers' health and safety. However, a concern for the health and welfare of sex workers is profoundly inconsistent with the criminalization of sex work. Laws must be grounded in evidence and human rights. The overwhelming evidence concerning sex work demonstrates that the criminalization of sex work—both directly through prohibitions on the purchase of sex and communicating, and indirectly through prohibitions on advertising sexual services, receipt of financial and material benefits from sex work, and procuring—exposes sex workers to stigma, discrimination, and criminalization.

It diminishes the control sex workers have over their working conditions, including their negotiating power to insist on condom use. It threatens their health and safety; limits their access to essential HIV, sexual health, and harm reduction services; and leaves them without the protective benefit of labour or health standards.

These are harms that the Supreme Court of Canada found to be unconstitutional in *Canada v. Bedford*, and these harms also constitute a violation of sex workers' human rights.

As a number of witnesses have already contended, Bill C-36 merely cloaks the provisions that were invalidated in *Bedford* in a different language, with no meaningful provisions to deal with the diverse needs of sex workers, many of whom have no desire to exit the industry.

Human rights law dictates that governments must protect the rights of all sex workers, not just those who are victimized or those who choose to exit. Human rights principles also require policy-makers to value the voices of those who are directly affected by Bill C-36 and not criminalize the context in which they live and work.

Because Bill C-36 will significantly increase the risk of harm that many sex workers would face, we adopt the submissions of other witnesses who have argued that Bill C-36 would violate sex workers' constitutional rights—violations that cannot be safe under section 1 of the charter, irrespective of the broader objectives of the law.

• (1600)

Decriminalizing sex work is the only proven route to protecting sex workers' labour and human rights, and Parliament has a responsibility to ensure that one set of unconstitutional laws is not replaced with another.

There is no legal obligation on the government to create new criminal laws. As the Supreme Court of Canada noted in *Bedford*, “It will be for Parliament, should it choose to do so, to devise a new approach”. Sex work continues to be regulated under parts of sections 212 and 213 of the Criminal Code. As numerous other witnesses have explained, various other provisions of the Criminal Code can be deployed to protect sex workers from exploitation and other forms of abuse.

For all these reasons, we urge this committee to reject Bill C-36 in its entirety and to meaningfully consult with current sex workers to develop a legal framework that protects, respects, and fulfills their human and constitutional rights.

Thank you.

**The Chair:** Thank you very much for that presentation on behalf of the Canadian HIV/AIDS Legal Network.

Now, via video conference, we're off to Burnaby, British Columbia, to Ratanak International for 10 minutes.

The floor is yours.

**Mr. Brian McConaghy (Founding Director, Ratanak International):** Thank you.

Mr. Chair, ladies and gentlemen, thank you for the opportunity to speak to Bill C-36.

My name is Brian McConaghy, and I come to the issue of prostitution with 22 years of experience in the RCMP and 24 years of directing Ratanak International, a charity that assists Cambodian youth to recover from the abuses of the sex trade.

While in the RCMP, I was assigned files that involved both domestic and international prostitution. So grave were the abuses visited upon both women and children in these files that I was compelled to leave the RCMP in order to serve such victims full time. It is now my challenge and my privilege to do so. I continue to assist Canadian law enforcement in international investigations associated with prostituted children and youth.

Bill C-36 seeks to address some very complex issues, and I would like to commend the government for its efforts to identify those prostituted as victims rather than criminals. I would also support criminalizing those who purchase and benefit from the sale of Canadian women.

I need to begin by stating that I judge human trafficking and prostitution as inseparable and simply different elements of the same criminal activity, which exploits vulnerable women and youth. The separation of these elements I view to be largely academic.

I should also indicate that while there are clear distinctions in law regarding the treatment of minors and adults in prostitution, I view this as a seamless continuum of abuse that runs from the prostituted child, who by virtue of age is deemed incompetent to consent, and progresses into the abused adult, who by virtue of conditioning, addiction, and trauma is frequently rendered equally incapable of informed and considered consent. Thus the issues of minors, while not directly associated with the Bedford ruling, are clearly material to these deliberations.

I would like to address several contextual issues to which Bill C-36 applies.

First is harm reduction and legalization. Those “harm reduction” principles frequently verbalized by those seeking to legalize the prostitution industry are, I believe, misguided. I have not seen any convincing evidence to indicate that women in prostitution will be safer if regulated. If anything, legalizing the sex trade will, if we consider Germany and the Netherlands, increase the size and scope of the trade, leading to more human trafficking, more involvement of organized crime, more prostitution, and de facto more violence.

It is in my opinion foolish to presume that the introduction of regulations to an industry such as prostitution will lead to compliance and cooperation. This is particularly true given the number of minors manipulated into the trade and the number of women struggling with addiction, mental illness, and financial vulnerabilities who are not necessarily in control of their own lives. If prostitution is legalized, I would anticipate that many of these women will fall through the regulatory cracks.

I do not believe that legalization and regulation would have protected the women Willie Pickton picked up who ended up dismembered in my RCMP freezers for forensic analysis. What we learn from the Pickton file and the analysis of their body parts indicates that Pickton was only the last in a long line of predators who had over the years subjected these women to traumatic abuse and injury.

Let us be under no illusion as to the brutality of this industry. Defenceless Canadian citizens are being routinely subjected to great harm in prostitution, and their vulnerabilities are being exploited to the full. I have watched too many evidence videos involving

profound violence, degradation, and abuse. I have listened to women and children as they have pleaded for the torture—I use the term advisedly—to stop. I would not wish such videos on any of you.

In this context, the issue of consent looms large. Tragically, some of the victims consent to such bodily harm and physical injury at the hands of johns simply because they are so desperate for their next drug fix. Let us not presume that what passes as consent is actually full, informed consent free of duress.

It is this peripheral violence that the practices of harm reduction would seek to address. However, harm reduction in the context of legalized prostitution would do nothing to address the violence inherent in the central sexual activity of prostitution. It is my belief that such central activity, which is the career of prostitution, does in fact represent violence against women. Harm reduction practices will not protect women from violence if the job, itself, represents violence.

● (1605)

The purchasing of women's consent by males and subjecting them to thousands of paid rapes does violence to their bodies and is profoundly destructive to the psyche. Young women exiting out of enforced prostitution frequently feel suicidal, and they do attempt suicide.

It is interesting to me that I have never encountered a young woman in a transitional program who has attempted suicide because of her memories of beatings, being held at gunpoint, or being stabbed. Invariably, the source of their distress is a profound sense of worthlessness resulting from the repeated sexual assaults that are central to the job, along with constant dehumanizing verbal abuse that undermines their self-esteem and shakes their identity to the core—this is the central violence of prostitution.

If, then, violence is central to the life of prostitution, the only clear way to reduce violence is to reduce the size of the trade. Experimentation in other nations teaches us that legalization will not reduce the harm but rather, by growing the trade, will increase it. In addition, I believe we are naive if we assume the creation of a legalized Canadian industry of sex abuse would go unnoticed by the very large source of demand south of the border. Simple economics will dictate that the demand will be filled with increasingly vulnerable “product”, which will be found within Canadian society. Providing such a market is potentially catastrophic.

On the issue of choice, it is my belief that the law needs to target those who clearly have choice in regard to such harm. Those vulnerable women, both minors and adults, the majority of whom have experienced abuse as children, who are frequently drug-addicted, manipulated, and extremely vulnerable, do not have that choice. However, those with money, careers, and a reputation to maintain; those who kiss their kids goodnight, say goodbye to their wives, get in the car, drive downtown, and choose to abuse a vulnerable woman or girl—these are the ones our laws clearly need to be directed towards. Bill C-36 does this, for the first time, targeting johns and those who would pimp. This represents a major step forward.

As one who has spent far too much time picking through the dismembered body parts of prostituted women, analyzing the nature and circumstances of their brutal deaths; as one who knows first-hand how many years it takes to rehabilitate systematically abused youth; and as one who has devoted his life to the recovery of such victims, allow me to assure you this is not an industry of choice for the vast majority of those prostituted. It is neither lucrative nor empowering for them. It is fundamentally coercive and manipulative. It is abusive, violent, and destructive on every level, and it is deadly. Prostitution and its end game of psychological damage, physical injury, and even death should never be celebrated or legalized, only condemned.

One of the key indicators of a mature democracy is its ability to look past the superficial and move to create legislation that protects the most vulnerable and abused, irrespective of their circumstances or standing in society. In creating this legislation, Canada has moved to protect victimized women, who are frequently not recognized as victims by virtue of their circumstance and appearance. This, in conjunction with a concerted effort to prosecute those who would victimize them and capitalize on their misfortunes, is both honourable and appropriate.

I have two recommendations.

First, I am supportive of Bill C-36, but I'm cautious about provisions outlined in section 213 regarding communication. While I understand the principle of seeking to protect minors in locations where they are apt to be found, I am concerned that under this provision those who are clearly identified as victims elsewhere in the legislation become criminalized for activity over which they may not have control. This provision appears at variance with the rest of the bill and needs careful scrutiny.

Second, the success of the Nordic model appears to be contingent upon the clear commitment to appropriate exit strategies and an equal commitment to their associated budgets. I urge the government to remain focused on this vital element.

To finish, I wish to reiterate my support for the bill and offer my thanks to Minister MacKay and member of Parliament Joy Smith, who have worked so hard to bring justice and dignity to those who need it most.

Thank you, Mr. Chair.

• (1610)

**The Chair:** Thank you for that presentation from Ratanak International.

Our final witness for today is from the Canadian Police Association.

Sir, the floor is yours for 10 minutes.

**Mr. Tom Stamatakis (President, Canadian Police Association):** Thank you.

Good afternoon, honourable members. I appreciate having the opportunity to appear before your committee today on behalf of the Canadian Police Association as part of your study of Bill C-36.

For those of you who may not be familiar with our organization, the CPA represents more than 54,000 front-line civilian and sworn law enforcement personnel serving across Canada in more than 160 police services.

I'd like to begin my brief opening remarks by saying that the Canadian Police Association is supportive of Bill C-36, though we certainly understand that this legislation, like prostitution in general, is a controversial topic. Our association appreciates that Minister MacKay and Minister Blaney, as well as the Departments of Justice and Public Safety Canada, actively consulted with front-line law enforcement during the drafting process for the legislation.

As I mentioned, while we appreciate and understand that the issue before you here is a complex and controversial one, I believe there are some areas in which all sides can come to an understanding, particularly with the need for us to focus on protecting the most vulnerable and exploited members of our communities. It is here that we believe Bill C-36 takes some very positive steps.

Provisions within this proposed legislation, which clarify the definition of a weapon within the Criminal Code to include restraints, including handcuffs or rope used in the commission of certain offences, will certainly help to provide additional and necessary tools to our officers. Further, the increased penalties attached to child prostitution, child trafficking, and related offences will hopefully send a very clear signal that there will be absolutely zero tolerance given to anyone who preys on or exploits those who are most in need of our protection.

When discussing the issue of prostitution, the fundamental point I'd like to stress is the absolute need for both law enforcement and sex trade practitioners to end the adversarial nature of any interactions between their two groups. There is some misconception that, pre-Bedford, law enforcement made it a priority to harass and arrest sex trade workers on a regular basis as part of a targeted attack on what many might call the world's oldest profession. I can say, both from my experience with my home police service—the Vancouver Police Department—and from my conversations with officers involved in these investigations across Canada that this is just not the case. When sweeps are conducted to target street prostitution, the instigation is usually complaints from the surrounding community that need to be responded to by our police services.

Officers involved in prostitution task forces receive specific training and have access to community support programs to help sex trade workers who might themselves be the victims of exploitive relationships or suffer from some form of drug dependency. Further, police services across the country have initiated john school programs to help divert those who are purchasing sex and to increase their awareness of the victims who may be created by their actions.

Regardless of whether Bill C-36 is passed, I would suggest that we need to continue to monitor and enhance these programs wherever possible to ensure that education is a key component for both the buyers and sellers of sex, and that resources will need to be committed to further these efforts.

When it comes to prostitution, as with many other offences, Canadian police personnel exercise a tremendous amount of discretion in the pursuit of their duties. This will continue even if Bill C-36 becomes law. Many of those involved in the sex trade come from among the most vulnerable and marginalized members of our society, where violence and addiction are the common themes that law enforcement encounters. Any legislated response to prostitution in this country needs to take those factors into account, as the harm that is caused not only impacts the buyers and sellers of sexual services but also the surrounding communities.

To conclude, I want to reiterate that the Canadian Police Association endorses the approach taken with Bill C-36. This legislation will provide front-line law enforcement personnel the additional tools they need to help target the predators who seek to take advantage of the vulnerable. Our members appreciate the enhanced penalties for offenders who target children and those who try to draw minors into this industry through child trafficking.

The recent Bedford decision has had a significant impact on policing in this country because of the uncertainty that has followed it regarding the constitutionality of Canada's laws surrounding prostitution. We appreciate that this government has taken steps to address that uncertainty and that law enforcement took part in the consultations that took place to draft the legislation that you are considering today.

I wanted to keep my opening remarks brief to allow as much time as possible for questions and I look forward to participating in the continued discussion here this afternoon.

Thank you again very much for inviting our association to participate.

• (1615)

**The Chair:** Thank you for that presentation from the Canadian Police Association.

We are moving to the rounds of questions and answers. Our first questioner, from the New Democratic Party, Madame Boivin.

[*Translation*]

**Ms. Françoise Boivin (Gatineau, NDP):** Thank you, Mr. Chair.

I want to thank our last group of witnesses for joining us today.

[*English*]

Bear with me, please, because I have a couple of lawyers, and next Tuesday we're going to start the clause-by-clause.

We are dealing with a piece of legislation, so we have to address Bill C-36 section by section. There will be votes on each and every one of those clauses, so we need to be sure—in my case, anyway, that's how I do my job and I'm sure all my colleagues are the same—that the clauses we vote on are sound, do what they're supposed to do, and are constitutional and charter compliant. So you can see the challenge we have.

So having the benefit of two lawyers.... After four days of testimony and hearing lots of stories that are heartbreaking, when I go back to the legislation I will do a job for the next five minutes that might be very boring on TV, but for me, very important.

To this day I'm still wondering about a couple of things. We heard that the preamble is important. As a lawyer, I know a preamble can give a bit of

• (1620)

[*Translation*]

the purpose of a bill, and provide certain explanations for the courts that will have to deal with interpretation issues. Titles and sections must also be considered, and especially the Criminal Code.

I am very familiar with the way criminal lawyers work, and I know that any argument that can be debated will be tested before the court. This much is known. Even the minister is aware that his bill will be tested.

So here is my question about that. I am looking at the new section 213, in response to the Bedford case. That provision is still where it was before, more specifically in the part on disorderly houses, gaming and betting. Unless I am mistaken, it is still in part VII, under section 213. The heading was changed, and clause 14 states the following:

offences in relation to offering, providing or obtaining sexual services for consideration

This is the most problematic provision. We have almost unanimously been told that we should decriminalize prostitutes' activities' because they are victims and they cannot be both victims and criminals simultaneously.

Section 213 also states the following:

Everyone is guilty of an offence [...] for the purpose of offering, providing or obtaining sexual services for consideration.

Further on, the new section 286 follows the provision on offences against individuals and reputations. This provision covers kidnapping, human trafficking, hostage taking and abduction. This is the meatiest part on criminal offences relating to the purchase of sexual services, while section 213 already covers the issue, as I mentioned, but in a more summary fashion.

On the one hand, why was this offence in section 213 maintained? How do you interpret this? Is that provision in conflict with section 286? On the other hand, should the new part introduced by the minister, which contains section 286, be interpreted so as to limit the notion of buying in a context of abductions or human trafficking given the heading of the section it is under?

I am wondering if this is clear for you, as it is not clear for me. There is room for debate, and someone could say that they do not interpret the legislation as we do, and that they feel that no offence is involved in purchasing a sexual service when there is consent.

[English]

That's one of my big dilemmas right now on how to interpret the bill.

So to start, I'm addressing it to Mr. Kirkup.

**Mr. Kyle Kirkup:** Great.

The first thing I would say is that the reason the preamble has been coming up so much in the discussions is because the government knows that the section 7 analysis is very much about proportionality. So what we're supposed to be doing is looking at the purpose of the legislation and then weighing it against what the legislation is going to do when it goes out into the world.

In Bedford, one of the problems identified by the court was that you had this purpose that was kind of weak, a public nuisance purpose, going up against very real harm and death to sex workers. I would argue that the constitutional problem we now see is that even though there's a stronger preamble in place, we're now into the terrain of what section 7 calls arbitrariness. The purpose of the legislation is to protect vulnerable members of Canadian society, but when you think about what Bill C-36 will do when it goes out into the world as legislation, it will actually be counterintuitive to its stated goal of protecting vulnerable women from exploitation.

To answer the first question about why the preamble keeps coming up—and while Minister Peter MacKay has not released the legal opinion, I would encourage him to do so; I think that would be an important contribution to this debate—it's because for section 7 in particular, when you're weighing that purpose against the effect, it's a really important provision. I take your point, and the point that you've made throughout the week, that the legislation ultimately won't hold the preamble. I think that's also why you're seeing the new legislation shifting old provisions into offences against the person. It's again part of this story of trying to recast this legislation as something new, something new for the first time.

In my respectful submission, I would say that it largely feels like window dressing. You move different provisions to different sections of the Criminal Code. You amp up the preamble—

• (1625)

**Ms. Françoise Boivin:** But could it be argued that new section 286.1 would be seen as only regarding trafficking?

It would be buying sexual services in the context of human trafficking, rape, kidnapping, and so on, since it is exactly at the end of the actual section 286, and not necessarily in the same type of aspect as section 213, which seems like a lesser charge because it's a summary conviction.

Or is it like we heard from Conservatives that as soon as Bill C-36 is adopted, there's no buying? Even though we permit people to sell, there's no buying. I find it hard to see the logic in it.

Mr. Kirkup.

**Mr. Kyle Kirkup:** I would echo your point. I think when you do the line-by-line reading, that's a really important question that continues to need to be raised. I don't have a clear yes or no answer on that. But I think the general push, as we've seen with this legislation, is to try to move those offences, and by doing so, to change the constitutional section 7 analysis.

**The Chair:** You have one more minute. You have to ask a question and have an answer within that.

**Ms. Françoise Boivin:** Okay, I will try.

My question is for the president of the association of policemen in Canada.

I understand, since Bedford, that there's kind of a grey area now. Why is it that you can't do your job in human trafficking and for women who are in really serious situations? I'm pretty sure that can still go on.

**Mr. Tom Stamatakis:** I think it can still go on.

But to put it into context, one of the problems is that police agencies across the country don't spend that much time dealing with issues related to prostitution. I think the issue, from a policing perspective, is that when you believe that someone's engaged in human trafficking, or where vulnerable women are being exploited, you have to build the case before a judge to get the authorizations to do a number of things in order to build a brief to present to the crown and pursue a criminal charge.

When there's confusion around the law, people are very reluctant to make a decision to go out on a limb. From a policing perspective, I think that's the frustration. We would just like some very clear direction around what the expectations are, so that when we are investigating and trying to protect vulnerable people, we know how to do it and we can get the results. From my perspective as a front-line police officer, that's the concern. It's confusing. You have so many people on different sides of the debate, and we seem to get caught in the middle of it.

**The Chair:** Thank you very much.

Thank you for those questions and answers.

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

**Mr. David Wilks (Kootenay—Columbia, CPC):** Thank you very much, Mr. Chair.

Thanks to the witnesses for being here.

Mr. McConaghy, some have depicted Bill C-36 as the Pickton bill. I wonder what you think about that.

**Mr. Brian McConaghy:** I think the Pickton file illustrates for Canada, in its most grotesque form, where this stuff ends up if we don't deal with it forcefully. Obviously he is on the extreme end, killing so many individuals who really had no hope once they got into his clutches. I think what is very clear from Pickton is that we have to do something. To allow a prostitution industry to grow is going to contribute to circumstances that allow more of these individuals to prey on women. The percentage of them that will lead to homicides, etc., we don't know. But this is a whole industry that exacerbates this kind of social behaviour that is really dangerous, and Pickton, while extreme, I would hold him up as an example of the kind of people we have to protect society from.

• (1630)

**Mr. David Wilks:** I guess the reason I ask you that question is that some have said that Bill C-36 will exacerbate and create the next Pickton. Can you tell me what you think about that, and also how it makes you feel as one who, obviously, worked on the Pickton file. I'm also retired from the RCMP and I'm quite familiar with that file.

**Mr. Brian McConaghy:** I don't believe that legalizing the industry would have protected the girls from Pickton in any way. I believe that the comments that have already been submitted to the committee, where we're told that the prostituted women will be nervous and have to make a decision on their john very quickly and not be given time to assess whether or not he is dangerous, I think is ludicrous, to be honest. They are not, on a street corner or wherever, going to be able to assess whether somebody is dangerous or not. That's simply not going to happen. In law enforcement we have enough trouble assessing whether or not people are dangerous with all the tools of law enforcement at our disposal, so I don't think that has any real meaning.

I think one of the points that we can speak to from a policing standpoint from the Pickton file is that there is a sense that the police in the early parts of that investigation really dropped the ball and did not adequately investigate those crimes, that the women were not considered valuable. They were considered transient; they were disposable. All kinds of accusations were made, and I think there is some truth in terms of early police opinions there.

What I can speak to very clearly is the investigation component. When we got involved in that file, those of us who were involved became very passionate about trying to defend these girls. I had their heads, their feet, their hands, their ribs, all that kind of stuff in freezers for a long while. I worked particularly with their heads, which had particular forensic significance. Under most cases, as you know, you refer to exhibit numbers. It's a very abstract process. Even in that I would refer to them as the women, I knew them by name. This was a very personal thing and a lot of people in that investigation were very passionate about trying to protect women and bringing justice to the situation.

So I think it's been a huge learning curve for police to personalize this and make it human, and if there's a silver lining to Pickton I think that's perhaps it.

**Mr. David Wilks:** Thank you.

Mr. Stamatakis, thank you for being here today. I wanted to ask you a couple of questions. You had mentioned in your remarks "discretion in the pursuit of their duties". You've also mentioned that

you represent 54,000 law enforcement officers across Canada. There are a couple of things I wanted to ask, and on one thing if you may be able to find the information for this committee and provide it, it would be great.

We heard from York Regional Police that they have not laid a charge under what was section 213 in the past five years. We heard testimony today that Victoria city police have laid few charges, if any, with regard to 213. We've heard from other units that say that section 213 as it was, was very rarely used, but it was used as a tool by police for discretionary powers. In fact, Surrey detachment has used it in the past but specifically focusing in on johns, and then diverting those people to john school through Surrey detachment.

I wonder if you could give us the experience from Vancouver city police.

**Mr. Tom Stamatakis:** Yes, what you've described is very accurate. I can tell you as I meet with my colleagues across the country, that's certainly how they describe the experience in the various jurisdictions across the country. I know in Vancouver specifically, my home service, we have a vice unit, or it's not called the vice unit anymore. We're one of the few departments across the country with a dedicated group of officers who deal with issues related to human trafficking, the sex trade.

It's been more than five years, probably closer to 10 years since we moved right away from enforcing what was then 213. So I would just echo what the testimony has been. I don't know the last time that a charge was laid under what was 213 previously.

• (1635)

**Mr. David Wilks:** If I may, I heard Mr. McConaghy say with regards to 213 that maybe we should look at that. I look at it probably from a different angle and that would be from the perspective of discretionary powers from a police officer because it's a summary conviction offence and it provides them with a tool that may or may not be able to get a person out of trouble if they were in it.

I'm just curious to hear comments from both of you on that, starting with you, Mr. McConaghy, and then Mr. Stamatakis. Then I have a quick comment if I have time for Ms. Allison.

Thank you.

Go ahead, Brian.

**Mr. Brian McConaghy:** Yes, I recognize that 213 does present a problem, and I don't have an easy answer for it because I fully recognize that the police, appropriately, want to have tools by which they can protect women who are in very vulnerable situations, to remove them from the danger, to remove them away from the context of pimps or those who might control them, to give them time to just think things through and give them options. I fully appreciate that. I'm really concerned that the use of the Criminal Code is a very blunt instrument for that. I don't necessarily have an answer for how you tackle that particular issue, so I recognize there's conflict there.

I totally understand from a policing standpoint how those tools are valuable. I just can't get past the disparity within the legislation where you have a girl who is consistently and appropriately treated as a victim and then for this particular clause, based on location, her activities are criminalized, when I believe it's clearly demonstrated that they are not necessarily in control of their activities so they don't necessarily have the *mens rea*, if I could put it this way. The action is there but the intent may not be, so I don't know how to answer that question and I think that is a problem.

**Mr. David Wilks:** Thank you.

Tom.

**Mr. Tom Stamatakis:** I agree with your earlier comments from a policing perspective, a front-line policing perspective. It is a tool. It gives us an opportunity to engage with someone who might be in a vulnerable situation, being exploited by a pimp or someone else. So I think it's a useful tool for police.

But as I said earlier, it's a complex issue and it's controversial. But from a policing perspective, it's a valuable tool.

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

Our next questioner from the Liberal Party is Mr. Casey.

**Mr. Sean Casey (Charlottetown, Lib.):** I'd like to come right back to Chief Stamatakis on your last answer, sir.

It's an appropriate tool or a necessary tool for the police to have to be able to detain under threat of conviction someone who's been victimized. Is that what we're to understand?

**Mr. Tom Stamatakis:** Well, I guess what I'm saying is that we need legislative tools or mechanisms where we can intervene, where in the typical circumstance when you're on the street dealing with a sex trade worker who's in a vulnerable situation, if we don't have some ability to give that person an excuse to talk to us, how do we find out if that person is in fact being exploited? The fact is that the practice—certainly it has been in Vancouver—is that we can have time or we can isolate that person away from the pimp or the male that's exploiting the vulnerable female. That's how we find out that the person actually needs some help and they want to get the services.

Frankly, we then take whatever steps we can to try to get them to the services that are available to get them assistance. Sometimes it's just simply a case of getting them to a place where they can have some food, maybe some shelter, or where they can get some rest.

• (1640)

**Mr. Sean Casey:** It seems a little bizarre that you have to put somebody under the cloud of a criminal conviction to be able to get them food.

However, I don't want to dwell on that. I understand your position and we've heard it from some others in the same business as you're in. So I understand your position; I just don't agree with it.

I want to thank Mr. Kirkup—

**Mr. Tom Stamatakis:** What would you propose as an alternative, I wonder? Because these are women who are being.... These are the most vulnerable women—

**The Chair:** Did you want to hear this, Mr. Casey?

**Mr. Tom Stamatakis:** —and they're usually drug-addicted, and I'm not sure how else we could ever get them to a place where we can have a discussion with them to see how they're being exploited or how they can be helped.

**The Chair:** Thank you.

**Mr. Sean Casey:** I want to thank Mr. Kirkup and Ms. Ka Hon Chu for their plea for evidence-based public policy. We'd like to see more of that around here.

In fact, give the government credit. In the course of putting together this legislation, they actually did some scientific research in the form of a poll that they paid \$175,000 for. We'd like to have that poll before we do a clause-by-clause examination, but the minister won't let us see it and the committee has voted against asking for it. I asked for the author of the poll to appear. He's not coming.

So, given your plea and your support for evidence-based public policy, given that the bureaucrats, the lawyers within the Department of Justice, said that they found this poll to be useful information in the course of putting together the legislation, I wonder, first, Mr. Kirkup, and then I'll come to you, Ms. Ka Hon Chu, what value a scientifically performed poll such as this might add for us in the course of reviewing this legislation line by line.

**Mr. Kyle Kirkup:** I'll start, I guess. I would raise a first concern with what I have called the survey monkey that we do have, which is, the government sets up an online page and asked a series of questions, and then folks on one side or the other email it around and people put in responses. I have deep concerns about using that for any kind of a sound discussion because there are so many problems: the sampling bias, the ways in which the questions were drafted, and so on and so forth. It's unworkable.

So I would also urge that it would be very useful to at least have all of the evidence in the coffer before you make decisions about such an important issue, but I would also be careful about making sure that public policy is not guided by the mores of the majoritarian concerns of Canadian society. Historically, those very same kinds of majoritarian concerns have been used to criminalize, for example, LGBT people. If you had taken a poll in 1969 about whether or not the Canadian government should decriminalize homosexuality, I think that you would probably have found the results were not terrific. So I would say the evidence should be in the coffer, but I think we should also be deeply skeptical about relying too heavily upon it.

**Mr. Sean Casey:** Thank you.

Ms. Ka Hon Chu.

**Ms. Sandra Ka Hon Chu:** Yes, I agree with Mr. Kirkup on that point. I think the government should look to the Bedford decision as their guiding principle, to human rights principles, to the charter. We talk about evidence-based public policy. There is peer-reviewed research in Canada. There was a report released in Vancouver early last month about the impact of the criminalization of the purchase of clients on sex workers and the disastrous impacts it could continue to have that would replicate all the harms that the Supreme Court of Canada found in Bedford. So I would also caution against using the outcomes of a poll to guide public policy.

We should look to the charter and to research.

**Mr. Sean Casey:** Thank you.

Mr. Kirkup, you spoke in your opening remarks with respect to the constitutionality of this legislation. Most of what you had to say focused on a section 7 analysis, as did the decision. During the week we've heard concerns about the constitutionality of this bill from the viewpoint of section 15, equality rights; section 2, freedom of expression; and paragraph 11(d), the presumption of innocence.

Given that these are out there, and in particular, your emphasis is on the problems in section 7, what would be your view of simply referring the bill straight to the Supreme Court for an opinion?

• (1645)

**Mr. Kyle Kirkup:** I think it would be an important intervention to have at this stage. Because throughout this week we've heard so many times "Bedford said this" and "Bedford said that", I think it would be very useful to ask the Supreme Court whether or not this new legislation passes constitutional muster.

But again, one of the many problems we have with references is that they're often not based on a strong evidentiary record, are they? So there is a concern about passing this legislation and then, I suppose, waiting until the same harms that we identified in the pre-Bedford era emerge again. To me that's unconscionable.

**Mr. Sean Casey:** Ms. Allison, you were there. I realize that you've stated from the outset that your expertise is in the area of employment law, so I don't want to put you on the spot, but I'll ask you whether or not you're comfortable in passing opinion on that question, the advisability of a reference.

**Ms. Gwendoline Allison:** Thank you for your concerns about that.

I will just point out the infirmity with the Bedford case, particularly with respect to my clients, Asian women. As I said in my opening statement, there was a complete dearth of evidence as it related to Asian women and prostitution and the harm suffered by them. There was no analysis of equality law in Bedford.

So my concern about going to a constitutional reference would be with what the evidence would be or what the record of the evidence would be without it. I would say that without a proper evidentiary record that takes all of these considerations into effect, I would not be in favour of moving for a constitutional reference.

**Mr. Sean Casey:** Mr. McConaghy, you stated your concerns with respect to proposed section 213. We heard from a witness earlier today who advocated for an expunging of the criminal records of anyone who now carries a conviction under the laws that have been

determined to be unconstitutional. Given your views on section 213 and the impacts upon victims and the impact of a criminal record, what would be your view of an amnesty such as that?

**Mr. Brian McConaghy:** I would agree with it. If it's convictions for prostitution that have been traditional and historical in our country, I don't think they have particular value, given all this committee has heard this week in terms of the vulnerabilities and the difficulties that women have getting out of that trade. To add a criminal record on top of those difficulties I don't think is appropriate, and I don't think it serves the public good.

**The Chair:** Okay, thank you very much for those questions and answers.

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

**Mr. Bob Dechert (Mississauga—Erindale, CPC):** Thank you, Mr. Chair.

Thank you to each of our guests for being here today.

Ms. Allison, I want to speak to you specifically about employment law. I'm pleased that you're here because I think you're the only employment law specialist we've heard from all week, and I think that is pretty important.

We've heard from a number of people that if parliamentarians choose to do nothing; if we allow the laws that were impugned in the Bedford decision to fall away with the expiry of the suspension in December, there will be a flood or a panacea of employee benefits to sex workers across Canada. You pointed out that most employment law is in provincial jurisdiction, as I appreciate.

First of all, a number of people have told us that they have in the past worked or that they currently work for an escort agency today and have for the past number of years.

In your view, are they actually in an employer-employee relationship with the escort agency? What is the nature of the contractual relationship?

**Ms. Gwendoline Allison:** It's one of an independent contractor, to the extent that.... Well, there are two issues. With escort agencies they're the agents, so there can actually be service providers to the women who are in prostitution, because they manage it from that.

That is one of the concerns we have with decriminalization of buying: that you could have.... None of these issues has been really researched to date, and it's a novel point coming forward, but one of the concerns you might have is that these bodyguards, who sometimes are called pimps, could actually end up being employees or service providers to the women who are in prostitution.

The women in prostitution are, in almost every location that I've considered so far, independent contractors, not employees, so they're not getting EI or CPP or pension benefits. Not only that, but they're responsible for paying their taxes and are responsible for paying the contributions to any worker's compensation scheme. So their protection under occupational health and safety regulations and worker's compensation depends on their participation and their payment into that too.

When you consider that in the context of the most vulnerable employees, the ones who are on the street or those who are operating from their homes, their protection will depend on their payment in.

• (1650)

**Mr. Bob Dechert:** Right. So conversely and perversely, you're suggesting that the pimp or the bodyguard might end up as an employee of the sex worker and therefore it would be the sex worker's obligation to fulfill all of the employer's obligations as we typically understand them.

We know that employment law and employment law standards, labour standards and regulations, and occupational health and safety standards differ pretty significantly from province to province. It's not entirely consistent across Canada.

You mentioned that in Germany and in the Netherlands and perhaps in other places, most sex workers are actually independent contractors. They are not in an employee relationship with the owner of the brothel. They simply rent space in the brothel.

**Ms. Gwendoline Allison:** That's right.

**Mr. Bob Dechert:** So in those countries, in Germany and in the Netherlands—we'll take those two examples—what kinds of employee benefits do they receive?

**Ms. Gwendoline Allison:** They don't have any. They don't have minimum wage. They don't have overtime. They don't have employee sick benefits, or anything like that.

In Germany prostitution is legalized, so they do have the ability to register and become employees. But so far it's been taken up by very few women who've actually registered for those kinds of benefits.

**Mr. Bob Dechert:** So in your considered view, if we were to legalize prostitution tomorrow, what do you think would be the situation for most sex workers in Canada? Would very many of them be in an employment contractual relationship or would they be independent contractors?

**Ms. Gwendoline Allison:** They will be independent contractors.

Some who work in managed brothels—if they were to take it to court and to challenge it—will be able to convince either the employment standards branch or the court that there's so much control over the work that they've done that they are actually employees. But they would have to enforce that themselves. There would be no government body that would say that.

In fact it would be one of the few unregulated businesses in Canada. If you were to decide to do nothing or allowed to decriminalize it, it would be completely unregulated. There are no occupational health and safety provisions there.

Also in respect to human rights laws, it will have knock-on effects on all women. Because if you're telling society or telling women that it's no longer unlawful to impose a condition of employment to have sex as part of your employment—which is what it is—then that will have a knock-on effect against all women in employment when that kind of consideration becomes lawful.

**Mr. Bob Dechert:** Well that's interesting. I hadn't heard that before.

**Ms. Gwendoline Allison:** We fought for years to get away from the “coffee, tea, or me” world, and decriminalization of the buying of sex can take us back into that world.

**Mr. Bob Dechert:** Right. So in terms of occupational health and safety, I'm not an employment law specialist but it seems to me my recollection in my years of practice in Ontario is that each industry is assessed an occupational health and safety premium. Certainly in the province of Ontario, it's based on the record of safety and injury in that area.

So we know from all of the evidence we've heard all week that the sex industry is a very violent, dangerous occupation and virtually every sex worker, with the exception of very few that we've spoken to, have encountered violence and injury at some point in their career.

So if someone were then to become an employee or even an independent contractor and be required to make payments to the provincial occupational health and safety organizations, how would that be assessed and how expensive do you think it would be to properly insure somebody under occupational health and safety laws in Canada?

**Ms. Gwendoline Allison:** Well there are two aspects to that. First of all, in B.C. at least, massage parlours, steam baths, and escort agencies are already included in coverage as part of the leisure industry. Their base rate is 50 cents per \$100 in assessable payroll to a maximum wage per worker of \$77,900. I haven't conducted a wide-ranging study of how that compares, but that's a fairly high premium rate for that.

So if you were to count in all of the other forms of prostitution—and it's not just violence. There's post-traumatic stress disorder, mental disorders. There are repetitive strain type injuries. There's pregnancy. Those are all occupation-related hazards of the business. So it wouldn't just be the violence, which in itself is horrific.

So yes, the rates in my submission would go through the roof. They would be borne by these women who are independent contractors who are actually subject to a different scheme. They have to apply separately and their rates are even higher within the current system, so they would have to do that.

But compliance is a problem and it's simply that people aren't complying with the law as it is. The cost of compliance will actually be a deterrence, especially for the vulnerable women, to go ahead and try to get that protection even if they could.

• (1655)

**Mr. Bob Dechert:** I'd suspect it would be difficult to imagine the average street sex worker who may have other issues—drug and alcohol addiction, mental illness, and other issues—to then be able to comply with all this complex law, make the premium payments on time, and therefore derive the benefits.

**Ms. Gwendoline Allison:** Well, and every premium payment they make means they have to service another man to pay for those payments.

**Mr. Bob Dechert:** Good point.

Vision care, dental care, employee assistance programs, employee source deductions, employee hours and standards—it's probably not there.

Yesterday, thanks to a witness on the Liberal list, we heard from the Adult Entertainment Industry Association here in Ontario that represents strip clubs. We were introduced to the owners of two strip clubs here in the Ottawa area.

Do you know what the situation is in British Columbia on whether the performers in the exotic dance industry are typically employees or are they independent contractors as well?

**Ms. Gwendoline Allison:** They're typically independent contractors. They're the entertainers. When you look at the sorts of boards on the association, you'll see there are classifications for entertainers, classifications for employees who are bar staff, bouncers—those are staff—and then you have clients. So they're considered part of the entertainment, although I do believe that when you had the foreign worker analysis for women coming in to join these clubs that they were actually employees, because they had to be.

**Mr. Bob Dechert:** So at least they got those claims in.

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

Our next questioner from the New Democratic Party, Madam Péclet.

[*Translation*]

**Ms. Ève Péclet (La Pointe-de-l'Île, NDP):** Thank you very much, Mr. Chair.

I also want to thank all the witnesses for sharing their expertise to enlighten us.

What you are doing today and the work you do in your communities is extremely important. Thank you very much for that.

I want to begin by reassuring everyone who feels that the Conservatives are not using the charter properly. Sometimes, the charter is very important to them.

I introduced in the House of Commons a bill whose scope is international. Almost all Canadians agree that this bill is necessary, as it is likely to promote the respect of human rights. Yet the Conservatives decided to vote against that bill because they felt it was unconstitutional. Occasionally, the Conservatives love bringing up the charter to avoid certain situations.

**Ms. Françoise Boivin:** That's good publicity for your bill.

**Ms. Ève Péclet:** If my six Conservative colleagues are so concerned about human rights issues, I invite them to vote in favour of my bill. The vote will probably be held next December. Let's band together to save Bill C-583. I invite them to read that bill, which is extremely interesting. In my opinion, the bill is not unconstitutional, but we can debate that in the House of Commons.

My question is for Mr. Kirkup.

A woman testified this morning and did a very nice job. She analyzed the Bedford ruling and focused on section 121.

I do not know if this means anything to you. The Supreme Court of Canada stated the following:

● (1700)

[*English*]

Gross disproportionality under s. 7 of the Charter does not consider the beneficial effects of the law for society. It balances the negative effect on the individual against the purpose of the law, not against societal benefit that might flow from the law. As this Court said in *Malmo-Levine*...

[*Translation*]

The court said that

[*English*]

the balance must always go to the individuals at risk and touched directly by the legislation.

[*Translation*]

A lawyer also indicated that

[*English*]

it's constitutionally too broad based on the fact that there's no definition whatsoever of what is publicity, what is a public space, what is a commercial enterprise.

[*Translation*]

Can you comment on those two statements, which were made by witnesses who appeared before this committee?

[*English*]

**Mr. Kyle Kirkup:** Right. Thank you very much. I think it's an excellent question.

In *Bedford*, as I mentioned, one of the reasons the court was led to conclude that the former legislative scheme was unconstitutional and was grossly disproportionate was that the purpose was public nuisance when weighed against the effect. What we see with the new bill is an attempt to try to turn up the volume on the preamble, turn up the purpose, and make it more important and elevated so that the government can eventually argue that the effects are not so grossly disproportionate that they cannot be rationally supported.

So I would say there is still an argument to be made that, even though the government has changed the legislative purpose in the preamble, the same effects that led the court to strike down the old piece of legislation are very much still in play. I would argue that while the gross disproportionality analysis is now going to be a bit more challenging for those who are trying to strike down the legislation, there is also now a strong claim that can be made about arbitrariness—that when you look at the purpose and you weigh it against how the legislation will actually work in practice, it seems arbitrary.

**Ms. Ève Péclet:** My second question would be for both Mr. Stamatakis and Mr. McConaghy.

I would just like to know, because my colleague started you on the tools that you need to do your job in the field.... I was just wondering if you could talk to me about what Bill C-36 will bring for you in the field and what it would have given you, because I know Mr. McConaghy represents an organization other than the police.

What will it give you? What tool do you need to do your job that you didn't have before? If I read the Criminal Code, prostitution and trafficking and exploitation are all addressed already.

Mr. Stamatakis, and then Mr. McConaghy....

**Mr. Tom Stamatakis:** At the very basic level, from my perspective, what Bill C-36 provides to police is the ability to respond where there's a community concern, where we identify a concern in a particular part of our community that we're serving, or where we see women being exploited. It provides us with the tools to be able to intervene to find out what situation the woman might be in and whether there's anything we can do to help and whether there are services that we can refer the woman to.

**Ms. Ève Pécelet:** But you couldn't do that before?

**Mr. Tom Stamatakis:** For policing, it's really at the front line—

Sorry?

**Ms. Ève Pécelet:** You couldn't do that before with the current legislation?

**Mr. Tom Stamatakis:** I think we could have done that before. The issue, though, is that with the Bedford decision, the provisions that were most commonly relied upon by front-line police officers were struck down, so—

**Ms. Ève Pécelet:** Yes, but that was only one year ago. The exploitation and the trafficking weren't struck down, so they're still in force.

• (1705)

**Mr. Tom Stamatakis:** Right, but when we're talking about the most marginalized or vulnerable women, we were using those provisions before to intervene, to intercede, and to try to make a difference. The issue is what do we do now, since Bedford. I think that Bill C-36 provides us now with some of those tools that we can continue to employ.

**Ms. Ève Pécelet:** But what kinds of tools...? This is what I want to know.

Okay, so yes, both what kinds of tools and which clause of the bill or which definition or which...whatever?

**The Chair:** Would you like Mr. McConaghy to answer?

**Mr. Tom Stamatakis:** Well, it would be the provisions around 213 where the communication gives us an opportunity to intervene; the provisions around someone engaging in sex trade activities in front of a school, in a park, where it's causing other issues; the provisions around preventing youth from being drawn into the sex trade. Those are the kinds of tools that Bill C-36 provides that I think the police can use to protect vulnerable people in our community.

**The Chair:** I'm sorry, Mr. McConaghy, we're out of time. Maybe somebody else will answer that for you.

Thank you for that question and answer. We're next going to the Conservative party.

Mrs. Smith, the floor is yours.

**Mrs. Joy Smith (Kildonan—St. Paul, CPC):** Thank you. I want to thank all the members of this committee for coming today and all our guests today for your input.

Mr. McConaghy, it's nice to see you. You've done so much good work with Ratanak and the Willie Pickton file. It's a great honour to have you here.

When you listen today.... I have a question and I'll try to frame it. The Bedford case gave us a year to respond. We don't send it back to the Supreme Court of Canada. The Supreme Court of Canada said Parliament must come back with a decision before December 19, with a response. Bill C-36 came about and when we're asking.... We heard so many voices of survivors, so many. The survivors came in and bravely sat in these chairs and talked about what happened to them behind closed doors. They told us that Bill C-36 was very important. Why? Because the buying of sex was going to be put in place and they had something that could bring them out in the open to be able to defend themselves because now the perpetrators were targeted.

It was a compassionate bill. For the first time in Canadian history, Canada produced a compassionate bill that looked at what was happening to the victims of human trafficking and of prostitution, which are really one and the same, because often.... We heard at this committee that there are no people under 18 who are trafficked or prostituted. In fact, when we listened to the survivors, all of them started underage and things progressed.

When we look at this whole thing, there is an urgency for Canada and an urgency for all parliamentarians to understand what's going on and to get busy and do the job instead of dragging their feet and letting it fall under the bus. We've talked about this law and that law, and the other thing. Human trafficking laws and mandatory minimums came in June 2010. It is now July 2014. That's four years ago. Following that was another law on human trafficking in 2012, and there was one in 2005. So the laws on human trafficking are new. So what do we have? We have a police force that has done a remarkable job on human trafficking. If you google human trafficking, it comes up all the time. Canada, I think, has done a remarkable job at finding out what's going on. Our government has done that; found out what has gone on behind closed doors. Now the voices of the survivors are out there.

Brian, you've had a lot of experience in this. You know what you're talking about and I want to talk to you about police training. What we've heard here in the committee is that the police sometimes think the victims should be arrested and sometimes think the victims shouldn't be arrested. They're all well-meaning because they all want to take care of the victims. But I've also heard from some of the victims. Some of the victims have said, "Well, you know when they arrest me they bargain with me. Turn over the goods and then I'll get you out of harm's way." If they don't, they don't take them out of harm's way. That's the reality of what I've heard from the victims.

My son is a police officer. I love the police. I'll do anything for the police but I find that disturbing.

The other thing is that police are saying, "You know, if we don't have some laws, somewhere along the way, we have no tools." I find that disturbing.

Could you talk a little bit about police training and could you talk a little bit about the realities on the street? Because we have to get this show on the road.

•(1710)

**Mr. Brian McConaghy:** I would agree with you that Canadian law enforcement has made absolutely tremendous strides in this past decade in terms of these very complex issues, and I would say there is a cultural change under way in terms of how police officers view the prostituted. However, I don't think the application of good principles that have been spoken to in committee already by some law enforcement officials are universal in any way, shape, or form.

We are dealing with a long-standing culture where prostituted women were the criminals. It takes time for that to work through the system, where we really understand that they are victims. A 29-year-old young woman on a street corner, in my opinion, is just as much a victim as a nine-year-old, and we need to start balancing how we respond to that. I think there's been tremendous success and tremendous work done, but I would like to see, as part of the cultural change, if you will, as we move towards really accepting these women as victims, that this is really embedded in police training, so that becomes universal and national, and that the culture is changed. We've had several witnesses already speak to the cultural change they're seeing in Sweden. I would love to see the same kind of thing happening on a police level.

In terms of tools, which perhaps strays back into the question asked by Ms. Pécelet, I think it's fascinating that the biggest tool I believe police have is the intangible tool of a non-adversarial relationship. It is police officers having a measure of trust with prostituted women, where they're not seen as the enemy and they know it. This is the rub for me. While I totally understand the requirement of tools in the eyes of the police, there's a disconnect here because the biggest tool I believe police have to help prostituted women is trust and relationship. Proposed section 213 is problematic because that reintroduces the adversarial relationship, whereas the rest of this act would indicate the women are not in an adversarial relationship and they can build those trust relationships that are going to be so valuable.

So that's one of the things I would like to see basically part of the whole process of this, that relationships would be built that are fundamentally not adversarial.

**The Chair:** You have one minute left.

**Mrs. Joy Smith:** One minute left only, Brian, so I have to talk fast. Sorry about that.

We have heard over and over again that the paradigm has changed in this country, that suddenly it's from prostitution and human trafficking being the country's oldest profession to the oldest oppression, and we need to have exit strategies for victims to get out.

You've had a lot of experience with victims of human trafficking and the exit strategies that are needed. Can you talk about those a little bit?

**Mr. Brian McConaghy:** Yes.

Exit strategies are both vital and expensive. If we look at the models between Sweden and Norway, I think there's more struggle with the system in Norway because I'm told they have not applied the same degree of emphasis or budgets to exit strategies. I think it's absolutely key that if we're going to say to prostituted individuals that we want to get them out, that there are other options for their

lives that are much less violent and much more beneficial for them, we need to have the tools to help them do that. That, by definition, is going to be expensive and it's going to be long term.

With the young women we work with in Cambodia, sometimes that's a 10-year process of trying to deal with the medical issues first, then the psychological issues, then the reintegration back into society. This is something that as a nation, as a society, as a government, we have to come to terms with. This is not easy or quick.

**The Chair:** Okay, thank you very much.

Thank you for your questions and answers.

Our next questioner from the New Democratic Party is Mr. Jacob.

[*Translation*]

**Mr. Pierre Jacob (Brome—Missisquoi, NDP):** Thank you, Mr. Chair.

I want to thank all the witnesses for participating in our meeting this afternoon.

My first question is for Mr. McConaghy. He can't get a break.

You said in your opening statement that exit strategies were very important. You added at the end that adequate budgets were needed for exit strategies.

What kind of tools would we need to help vulnerable women on the ground avoid falling back into the hands of pimps? Do you think the government is serious about rooting out the causes of prostitution?

Anyone who wants to answer the question can do so after Mr. McConaghy.

•(1715)

[*English*]

**Mr. Brian McConaghy:** Yes, from a budgetary standpoint I can't give you a total for that, and I have heard evidence already of people complimenting \$20 million, particularly in comparison with the United States and their population, and saying it is very significant and will have a significant impact. I've heard others say that it's a drop in the bucket. I would say that in a weird way both are true. We don't know what the number is. Is there room for more money and greater budgets? Absolutely.

[*Translation*]

**Mr. Pierre Jacob:** We are talking about the amount of money allocated over five years.

[*English*]

**Mr. Brian McConaghy:** I think one of the things we need to be careful of here is that we're not critical of what is a substantial start to this process. But I would hope that increased funding would come later as those programs would kick in, that the \$20 million would not be the beginning and the end of this. I think there is a need for more.

[Translation]

**Mr. Pierre Jacob:** Mr. Kirkup, do you want to answer my question?

[English]

**Mr. Kyle Kirkup:** I'd be delighted to.

When we're talking about the underlying social realities of sex work, I think that we actually have to be having a deep, broader conversation about a housing strategy, about social and economic inequality, and about changing the ways in which we create a more equitable society. I don't know that placing \$20 million in a criminal law bill is in any way really going to make any dent in that. I think we actually have to think much more broadly about social inequality.

[Translation]

**Mr. Pierre Jacob:** Thank you, Mr. Kirkup.

Would anyone else like to say anything?

Ms. Ka Hon Chu, go ahead.

[English]

**Ms. Sandra Ka Hon Chu:** I just wanted to underscore that I think it's very important that any kind of funding not be contingent on exit from the industry. As I emphasized in my submission, all sex workers are entitled to human rights, whether they identify as being victims or not. I think \$20 million is a start but to make a meaningful difference, it needs to apply to all sex workers and the number of social programs.

**The Chair:** Mr. Jacob, Ms. Allison would like to comment.

**Ms. Gwendoline Allison:** Sorry, I just have one comment.

[Translation]

**Mr. Pierre Jacob:** Okay. Go ahead.

[English]

**Ms. Gwendoline Allison:** Obviously, \$20 million is a start. I would imagine that after this bill is passed my clients will be advocating for more money to be spent, as they have done throughout. So I would expect more money to be requested and sought for the social programs, the living wages that they've asked for today.

Thank you.

[Translation]

**Mr. Pierre Jacob:** Thank you, Ms. Allison.

My second question is for you, Mr. Kirkup.

You talked about the New Zealand model, which has been more effective, and I would like you to explain why that is later. You said that this specific model prioritized human rights, safety and dignity.

I think poverty is among the main factors that lead to prostitution. The Swedish model is effective because it contains various social assistance and anti-poverty measures. However, with the Conservatives in power, such measures tend to disappear.

Do you think it would be possible to reduce prostitution while reducing the state's involvement in society?

[English]

**Mr. Kyle Kirkup:** I think what I would say, first of all, is that one thing that distinguishes sex work from so many other forms of labour is that sex workers don't have labour protections. They don't have any employment standards. They can't seek recourse if they're working in a dangerous condition, and I think that's a really important distinction between sex work and so many other forms of labour.

So what I find useful about the New Zealand model and what the empirical evidence, I think, demonstrates is that labour protections are very effective in responding to often power imbalances between purchasers and sellers of sex. I don't know that the Swedish model, which continues down the path of criminalization, is really going to be effective in terms of improving the lived realities for sex workers.

● (1720)

[Translation]

**Mr. Pierre Jacob:** Would anyone else like to answer my question?

[English]

**Ms. Gwendoline Allison:** I can answer the question with respect to the New Zealand model.

The Prostitution Law Review Committee recognized, when it reviewed the success of the plan, that exploitative working conditions were long-standing in the industry and that decriminalization made no significant difference to the working conditions for women in prostitution. Nonetheless, the committee decided not to interfere, leaving the matter to be one of negotiation between the women and the brothel itself.

The committee decided not to recommend that women in prostitution be granted employment rights. The committee recognized that most women in prostitution were independent contractors. Under their system, as I understand it—and this is something that's beyond your jurisdiction, obviously—they have an employment relations authority that is roughly equivalent to the employment standards plus an industrial tribunal. The remedies there are not available to independent contractors.

In fact, the only provision that those authorities have is that they can provide a dispute resolution. It's a voluntary process, so a woman in prostitution would have to go to the authority to say she is actually an employee and convince them that she's an employee; then she'll get benefits. Otherwise, she's an independent contractor with no rights.

**The Chair:** Ms. Ka Hon Chu, you wanted to answer this question too.

**Ms. Sandra Ka Hon Chu:** Yes.

The same prostitution review committee also found that the law decriminalizing sex work in New Zealand had a noticeable effect in safeguarding sex workers' rights. There's an explicit provision in the law that says sex workers do not have to accept any client. There is no coercion in their employment.

There was even a decision just three months ago in New Zealand in which the human rights tribunal awarded a sex worker damages for sexual harassment by a brothel owner. This would not have been possible in a criminalized environment.

So there are examples. If you listen to the New Zealand Prostitutes' Collective, which is the largest national organization representing sex workers in New Zealand, you hear that for their membership there is a palpable effect based on the Prostitution Reform Act. There is a safeguarding of their employment rights.

**The Chair:** Okay.

Thank you very much for those questions and answers.

Our last questioner for this panel and for this review of Bill C-36 is Ms. Ambler from the Conservative Party.

**Mrs. Stella Ambler (Mississauga South, CPC):** Thank you, Mr. Chair, and thank you to all of you for being here today. We appreciate your testimony.

My question is for Mr. McConaghy. We've heard a fair bit today about consent. I'm wondering, in the context of helping women who have been involved in prostitution to exit the profession, what you say to those who say that the woman—because it's mostly women—needs to be ready to exit.

If there is little choice, do you believe that they are capable of or can freely choose to leave the life? If they can, how can we help them do that? How can police, in particular, help them?

If it's okay with you, I'll just ask all the questions and then let you go at it without saying anything else.

Finally, what powers do you believe that parents of young Canadian girls who are at risk of being brought into this life of prostitution want police to have?

**Mr. Brian McConaghy:** To address the first question, basically the power and ability to choose to leave, I think, is in doubt on a lot of occasions. When women are under the control of pimps or addictions, we have seen them consent to horrendous circumstances of bodily harm. To assume that they all of a sudden have the clarity and judgment to get out under those circumstances is fairly naive.

This leads right into the problem. Forgive me if I sound somewhat schizophrenic here, but this is where the clauses within 213 provide the ability for police to remove a girl or a young woman who is abused and give her enough time to think clearly. I totally accept that and in so many ways that's necessary.

There are so many issues that fall out from using the Criminal Code to do that in terms of the victim being criminalized, but a lot of times I don't think there is much ability to consent to leave. There is not the mental preparation to be able to walk out of this.

With minors, that's easy. With minors, we can simply go in and rescue them. We've dealt with situations where minors can be removed very readily because there's the understanding that consent is not an issue. But as soon as a young woman crosses that line and becomes 18, then there's an expectation that she can make her own decisions, and it becomes very problematic because she trusts nobody and wants to participate on many occasions with no one.

So it is really problematic and I don't know how to attack that. In this whole Bill C-36 legislation, this issue is so problematic. How do we help the individuals and give them the tools to make free decisions to get out without imposing legal restrictions or criminalizing them in a way that is counter-productive. I don't have an answer for that. Perhaps that's for the committee and Parliament to hammer out, but it's very difficult.

In terms of parents and what tools parents have, I honestly don't have expertise and can't speak to that, but obviously, there needs to be much greater education. We've heard from some witnesses on committee already who have spoken—

• (1725)

**Mrs. Stella Ambler:** Sorry, my question was what tools do you think parents of young Canadian girls expect police to have, because we've heard that girls are now being recruited from shopping malls at the age of 12 and in high schools by older kids, things like that.

**Mr. Brian McConaghy:** Yes, I think parents would expect the police to be able to intervene to save their daughters from spiralling into a world that they can't get out of, and I think that's exactly what has been spoken to by police officers who are for the clauses in 213. Now where there are minors involved, it's much easier. But where they're adults, it's problematic.

From a parental standpoint, I know exactly how I'd feel. I'd want to completely give the police power to go in and extract my daughter from that kind of situation.

**Mrs. Stella Ambler:** Me too. Thank you.

Mr. Stamatakis, do you have a comment on any of those questions that I asked Mr. McConaghy?

**Mr. Tom Stamatakis:** I agree. Canadian parents expect the police—to use Mr. McConaghy's term—to rescue their children when they're being recruited, when they're being exploited by often older impressive people who want to take advantage of them. That's the expectation.

I also want to echo some of the comments around the need for more education, including for the police in terms of emphasizing the fact that sex trade workers are victims and the intervention needs to be focused on assisting as opposed to criminalizing. I think that policing has changed. Our culture has changed and we're wrapping our minds more around that, but we still.... I'm just seeing too many examples of where just having casual contact with a police officer on the street results in a sex trade worker being beaten up.

So the tools are important and I think the idea here is to prevent people from being victimized even more than they already are. As a front-line officer, I agree with Mr. McConaghy. It's just horrendous what women will consent to for very little money. It's often because they're in the throes of addiction or because they're being horrifically exploited by a pimp or by someone who purports to be a boyfriend or a husband or whatever. Somehow we have to be able to intervene in that.

**Mrs. Stella Ambler:** Thank you very much, and thank you for the work that you do and that all of you do. Thanks.

**The Chair:** Thank you, Ms. Ambler, for that.

That brings us to the end of this panel. I want to thank each of our panellists for being here today.

I want the committee to thank J-F, our clerk, for his fantastic job of putting together very good panels, which met the needs of all committee members, I think. Thank you for all the work that you did.

We will be adjourning now.

We will be reconvening on Tuesday morning, at 9:30, to begin the clause-by-clause discussion. I will remind committee members that the sooner the better for amendments, but we need them by Saturday at 5 p.m., if possible.

Mr. Dechert.

• (1730)

**Mr. Bob Dechert:** I'd like to make a motion, if I could, and I hope it would be unanimous.

I would like to sincerely thank the clerk, the analysts, and all of the staff of the committee, everybody in this room. I would also like to thank the people we don't see in this room, our interpreters, everyone who was involved in doing this very hard work, bringing

all of these people together this week in such a very professional way, and a very technically excellent way.

I want to give my heartfelt thanks to all of them, and to all of our witnesses. I hope we can have the unanimous support of all members of the committee.

**The Chair:** Do we have support for that motion?

Madame Boivin.

**Ms. Françoise Boivin:** What motion?

**The Chair:** Madame Boivin, he was thanking the chair for the great job that he did.

**Some hon. members:** Oh, oh!

**Ms. Françoise Boivin:** I thought he was asking for unanimous consent for the bill, so you know how—

**The Chair:** No, no. The motion thanks not only the clerk but the researchers and everyone else who put this together in the middle of the summer for us.

Are there any comments? All those in favour?

(Motion agreed to)

**The Chair:** Thank you very much.

The meeting is adjourned until next Tuesday.

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