



Protection of Communities and Exploited Persons Act: Misogynistic Law Making in Action

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On December 20, 2013 the Supreme Court of Canada overturned three of Canada's prostitution laws in *Bedford*,¹ ruling that they infringed on sex workers' security of the person rights guaranteed under the *Canadian Charter of Rights and Freedoms*. Valerie Scott, one of the plaintiffs, joyfully thanked the Court for declaring sex workers persons.² This *could* have been the moment when Canadian lawmakers listened to sex workers, attended to evidence, and introduced laws that respect the human and labour rights of all citizens, including those in the sex industry. Instead, in a perverse irony, the *Protection of Communities and Exploited Persons Act* came into effect on December 6, 2014—a law of questionable constitutionality³ that almost certainly increases sex workers' vulnerability to violence.⁴

The assertion that sex work is *inherently* violent and exploitative is a foundational assumption of the new legal framework⁵—remove this assumption and we are left with little more than legal moralism. This forces the question: Is sex work inherently—that is, intrinsically, inevitably, and unchangeably—violent? And, if not, what are the implications of this rhetorical framing?

The justices of the Supreme Court of Canada asserted that “the violence of a john does not diminish the role of the state in making a prostitute more vulnerable to that violence.”⁶ Indeed, when we compare the rates of violence, including fatal violence, of the street level, which accounts for 5–20 percent of the sex industry, and indoor sex work, where most commercial sex occurs, we appreciate that legal, labour and social context matters⁷. Replace prostitution with any other

¹ *Canada (Attorney General) v Bedford* SCC 72

² “Top Court Strikes Down Canada's ‘Overly Broad’ Anti-Prostitution Laws,” CTV News, December 20, 2013, <http://www.ctvnews.ca/canada/top-court-strikes-down-canada-s-overly-broad-anti-prostitution-laws-1.1601790#ixzz3LnYvgNM7>.

³ See for example the open letter signed by over 200 Canadian lawyers stating that “Bill C-36 is likely to offend the *Charter*.” Available at <http://bccla.org/wp-content/uploads/2014/07/LetterC36.pdf>.

⁴ See an open letter signed by over 300 researchers sent to the government: “Evidence-Based Call for Decriminalization of Sex Work in Canada and Opposition to Criminalizing the Purchasing of Sex,” March 27, 2014, http://www.gshi.cfenet.ubc.ca/openletter#.VIX6_s0kNRc.

⁵ Justice Minister MacKay repeatedly asserted that sex work is “inherently violent.” Moreover, the preamble to Bill C-36 states: “Whereas the Parliament of Canada has grave concerns about the exploitation that is inherent in prostitution and the risks of violence posed to those who engage in it”

⁶ *Canada (Attorney General) v Bedford* SCC 72 at preamble.

⁷ John Lowman, “Tipping Point, Brief to the Standing Committee on Justice and Human Rights on *The Protection of Communities and Exploited Persons Act*,” 2014.

occupation—construction, policing, taxi driving—and the statement that nothing can be done to reduce workplace risks becomes unthinkable. The response to danger at work should be, and usually is, to implement safety and security mechanisms. This is the approach New Zealand took in 2003, and sex workers report better working conditions, enhanced security, access to occupational health and safety protections, and improved relations with police.⁸ The gendered workplace violence experienced by sex workers or, for that matter, women workers in the service and health sectors, is a serious issue that needs to be addressed.⁹ To assert that sex work is *inherently* violent erases the need to do so. At the same time, it normalizes violence against women—if sex work is naturally violent then men must be naturally aggressive—the same (biologically grounded) logic that underpins the rape myth that “women should avoid dressing sexy in order not to be victimized.”

While the inherently violent claim does not stand up to empirical scrutiny, it does converge neatly with the ascribed “victims of sexual exploitation” master status that draws on deeply entrenched and discrediting stigmatic assumptions about sex workers; specifically, that sex workers *must be* under the control of a pimp, drug addicted, mentally ill, psychologically damaged, deluded (suffering from false consciousness) or, at the very least, so disadvantaged that they are incapable of conceptualizing options—otherwise, why would they continue this demeaning, destructive, and of course, inherently violent activity? Questions of consent and agency are rendered irrelevant, and we are left with incompetent subjects in need of rescue rather than rights. This framing provides a socially valorized (if disempowered) identity for those who self-define as victims at the same time as it reifies heteronormative regulatory binaries. The policing of appropriate gender scripts played out dramatically at the Standing Committee on Justice and Human Rights hearings, where those who identified as victims (good girls) were (fittingly) praised and literally applauded for their tenacity and bravery, while sex workers (unrepentant whores—the archetypical bad girls) who spoke passionately about the harms of the laws were ignored, ridiculed, and dismissed.¹⁰ Nothing new here, whose stigma has long been used to discredit and silence women.

Sadly, a legal regime that defines sex workers as victims does not even attempt to address the deep-seated inequalities of gender, race, and class that constrain women’s personal and professional choices—constraints that are certainly implicated in individual women’s decisions vis-à-vis sex work. Instead, the government pledged 20 million dollars to the issue, allocating just under half to *law enforcement*, with the remainder going to agencies providing services to “those who want to leave this dangerous and harmful activity.”¹¹ In short, even minimal support

⁸ Paul Fitzharris and Aline Taylor, “Brothel Operators’ and Support Agencies’ Experiences of Decriminalisation,” in *Taking the Crime Out of Sex Work*, eds. Gillian Abel et al. (Bristol, UK: Policy Press, 2010), 119–40.

⁹ In this paper, I am engaging in feminist analysis that focuses on women in the sex industry, mindful that such an approach risks reproducing the tendency to dismiss male sex workers (who are estimated to comprise 20–25% of the industry) as “too few to count.”

¹⁰ See Kerry Porth, “Justice Committee on Bill C-36 Ignored Sex Workers,” *The Pivot Blog*, July 14, 2014, http://www.pivotlegal.org/justice_committee_ignored_sex_workers.

¹¹ Government of Canada, “Background: Protection of Communities and Exploited Persons Act,” 2014, <http://news.gc.ca/web/article-en.do?nid=853729>.

(that does not address fundamental income needs) is contingent on sex workers recognizing their need for “rehabilitation.”

Conservative Senator Donald Plett made the position of the government clear: “[O]f course we don’t want to make life safe for prostitutes we want to do away with prostitution. That is the intent of the bill.”¹² So there we have it—mind-boggling paternalism that endeavours to protect sex workers by increasing their challenges (and, empirical evidence indicates, their risks) in an effort to compel them to make what others deem to be the *right* decision. Since the 1960s, we have rallied for women’s right to choose what they do with their bodies—think abortion—even if their choices would differ from our own. Knowing that the free choosing, neo-liberal subject is elusive, and that women’s choices are very often made in less than ideal circumstances, we defend and respect a woman’s *ability to make decisions for herself*. That is why we have also fought long and hard against paternalistic regimes that endeavour to “protect” women by limiting their freedoms. Tragically, in 2014, Canada went in the opposite direction, mobilizing carceral feminist¹³ rhetoric to justify a law that is shockingly misogynistic. Sex workers, especially the most marginalized and vulnerable among them, will pay the heaviest price.

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¹² Senate Committee on Legal and Constitutional Affairs, September 9, 2014.

¹³ Elizabeth Bernstein, “Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Anti-Trafficking Campaigns,” *Signs: Journal of Women in Culture and Society* 36, no. 1 (2010): 45–71.