

# United by the Problem, Divided by the Solution: How the Issue of Indigenous Women in Prostitution Was Represented at the Deliberations on Canada's Bill C-36

Zoë Goodall

*En 2014, le gouvernement canadien a tenu des audiences parlementaires au cours desquelles des témoins se sont prononcés sur la question de savoir si le projet de loi C-36, une loi sur la prostitution, devrait être adopté. Des universitaires ont exprimé leur avis sur ce projet de loi et les travaux parlementaires qui ont mené à son adoption, mais aucune analyse n'a porté sur la manière dont le sujet des femmes autochtones travailleuses du sexe a été abordé durant les débats parlementaires. Dans la présente recherche, une analyse qualitative du contenu des transcriptions des audiences a révélé que trente-six des quatre-vingt-dix-sept témoins ont mentionné la question des femmes autochtones travailleuses du sexe dans leur témoignage, exprimant un grand nombre d'idées en faveur du projet de loi et contre celui-ci. Cependant, la façon dont les témoins ont utilisé les mêmes idées pour défendre des objectifs politiques opposés suggère que la situation spécifique des femmes autochtones peut être invoquée pour plaider pour ou contre l'abolition de la prostitution.*

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*In 2014, the Canadian government held parliamentary hearings where witnesses spoke on whether Bill C-36, a proposed prostitution law, should be enacted. While scholarly comment has been made on this bill and its parliamentary deliberations, there has not been an analysis of how Indigenous women in prostitution arose as a topic at the Bill C-36 deliberations. In this research, a qualitative content analysis of the hearings transcripts found thirty-six out of ninety-seven witnesses mentioned the issue of Indigenous women in prostitution in their testimony. Furthermore, there was a significant number of ideas about Indigenous women in prostitution that were shared by witnesses in favour of the bill and witnesses against it. However, the way that witnesses from each side used the same ideas to argue for different policy outcomes suggests that the issue can be mobilized to argue for or against abolition.*

## Introduction

Prostitution<sup>1</sup> laws in Canada underwent a significant change in 2013 when a conclusion was reached in the Supreme Court of Canada case *Canada (Attorney General) v Bedford*.<sup>2</sup> Initiated in 2007 by then current sex workers Terri-Jean Bedford and Amy Lebovitch and former sex worker Valerie Scott, the case concluded with the unanimous ruling that several provisions relating to prostitution in the *Criminal Code*<sup>3</sup> “negatively impact security of the person rights of prostitutes.”<sup>4</sup> These *Criminal Code* provisions were section 210 (making it an offence to keep or be in a bawdy house), section 212(1)(j) (prohibiting living on the avails of prostitution), and section 213(1)(c) (prohibiting communicating in public for the purposes of prostitution).<sup>5</sup> The Canadian government was given one year to modify its legislation, and, after years of defending its prostitution policy in the courts, the government was required to overhaul it. One option, which was popular with sex workers’ rights organizations,<sup>6</sup> was decriminalization, a policy approach that regulates prostitution under existing employment laws.<sup>7</sup> The buying and selling of sexual services are viewed no differently from other businesses, unlike with legalization, where there are specific laws concerning prostitution.<sup>8</sup>

However, the Canadian government devised a policy alternative to decriminalization by introducing Bill C-36, which proposed to amend the *Criminal Code* and eventually came into law as the *Protection of Communities and Exploited Persons Act* on 6 December 2014.<sup>9</sup> According to then Minister of Justice and Attorney General Peter MacKay, Bill C-36 “borrows heavily” from the “Nordic Model,” a framework of

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1. I acknowledge the debates over using the term “prostitution” versus using “sex work.” Since I am discussing laws and policies that refer to the act of selling sex as “prostitution,” I believe it is clearer to use this term—saying “prostitution policy” is accurate when the legal materials concern “prostitution.” However, when referring to individuals, I use the term that they identify with, whether that is “sex worker,” “former sex worker,” or “prostitution survivor.”
  2. 2013 SCC 72 [*Bedford*].
  3. RSC 1985, c C-46.
  4. *Bedford*, *supra* note 2 at 1105.
  5. *Ibid* at 1103.
  6. Pivot Legal Society, “Decriminalizing Sex Work” (2016) <[http://www.pivotlegal.org/decriminalizing\\_sex\\_work](http://www.pivotlegal.org/decriminalizing_sex_work)>.
  7. Alexandra Lutnick & Deborah Cohen, “Criminalization, Legalization or Decriminalization of Sex Work: What Female Sex Workers Say in San Francisco, USA” (2009) 17:34 *Reproductive Health Matters* 38 at 39.
  8. *Ibid*.
  9. 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*, 2nd Sess, 41st Parl, 2013–14 (assented to 6 November 2014), SC 2014, c 25 [Bill C-36].

prostitution law first implemented in Sweden in 1999.<sup>10</sup> Like the Nordic Model, Bill C-36 aimed to eventually abolish prostitution by decriminalizing people selling sex and simultaneously criminalizing the purchasing and third-party profiting of sex.<sup>11</sup> Prior to Bill C-36 being enacted, parliamentary hearings were held that gave organizations and individuals the opportunity to voice their agreements, disagreements, or suggestions about the bill to federal Standing Committees. These hearings ran from July to October 2014, taking place in both the House of Commons and the Senate. Ninety-seven witnesses delivered testimony.

The academic literature that mentions or concerns Bill C-36 makes relatively little mention of these deliberations. The majority of this literature discusses Bill C-36 in order to criticize it; it argues that the decision to enact the bill was wrong or harmful<sup>12</sup> and that this decision ignored the voices of sex workers who were opposed to it.<sup>13</sup> This article takes into account the emphases and omissions of this existing Bill C-36 literature and focuses on an unexplored aspect. It seeks to answer the question: “how was the issue of Indigenous women in prostitution represented in the deliberations over Bill C-36?”

How the issue of Indigenous women in prostitution was represented at these deliberations was important, given the group’s overrepresentation in prostitution in Canada.<sup>14</sup> This overrepresentation is viewed by many scholars as a result of centuries

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10. Senate of Canada, Standing Senate Committee on Legal and Constitutional Affairs (LCJC), *Proceedings*, 41-2, No 15 (9, 10, and 11 September 2014) at 24 (Peter MacKay) [LCJC, *Proceedings*, 41-2, No 15].
  11. Bill C-36, *supra* note 9 at cls 286.1–286.2, 286.5.
  12. Jacqueline M Davies, “The Criminalization of Sexual Commerce in Canada: Context and Concepts for Critical Analysis” (2015) 24:2 *Canadian Journal of Human Sexuality* 78; Angela Campbell, “Sex Work’s Governance: Stuff and Nuisance” (2015) 23:1 *Feminist Legal Studies* 27; Amy Prangnell et al. “Workplace Violence among Female Sex Workers Who Use Drugs in Vancouver, Canada: Does Client-Targeted Policing Increase Safety?” (2018) 39:1 *Journal of Public Health Policy* 86; ME Socías et al, “Social and Structural Factors Shaping High Rates of Incarceration among Sex Workers in a Canadian Setting” (2015) 92:5 *Journal of Urban Health: Bulletin of the New York Academy of Medicine* 966.
  13. Phoebe J Galbally, “Playing the Victim: A Critical Analysis of Canada’s Bill C-36 from an International Human Rights Perspective” (2016) 17:1 *Melbourne Journal of International Law* 135; Chris Bruckert, “*Protection of Communities and Exploited Persons Act*: Misogynistic Law Making in Action” (2015) 30:1 *Canadian Journal of Law and Society* 1; Brenda Belak & Darcie Bennett, “Evaluating Canada’s Sex Work Laws: The Case for Repeal” (2016), *Pivot Legal Society* <[http://www.pivotlegal.org/evaluating\\_canada\\_s\\_sex\\_work\\_laws\\_the\\_case\\_for\\_repeal](http://www.pivotlegal.org/evaluating_canada_s_sex_work_laws_the_case_for_repeal)>.
  14. Native Women’s Association of Canada (NWAC), *Sexual Exploitation and Trafficking of Aboriginal Women and Girls: Literature Review and Key Informant Interviews*, final report (Ottawa: NWAC, October 2014) at 8 <[https://www.nwac.ca/wp-content/uploads/2015/05/2014\\_NWAC\\_Human\\_Trafficking\\_and\\_Sexual\\_Exploitation\\_Report.pdf](https://www.nwac.ca/wp-content/uploads/2015/05/2014_NWAC_Human_Trafficking_and_Sexual_Exploitation_Report.pdf)> [NWAC, *Sexual Exploitation and Trafficking*].

of colonialism and structural oppression.<sup>15</sup> Unsurprisingly, then, Indigenous women, including some with lived experience of prostitution, spoke at the parliamentary hearings on Bill C-36. Furthermore, numerous non-Indigenous witnesses referenced the issue of Indigenous women in prostitution in their testimony. It was clear that Indigenous women in prostitution was an important issue to consider when discussing new legislation on prostitution; for some witnesses, it was the most important issue.

Despite this, existing literature on Bill C-36 offers only minimal discussion of the bill in relation to Indigenous women. In the existing literature, Lauren Sampson, Jacqueline M Davies, and Menaka Raguparan mention Indigenous women in relation to the bill briefly in order to discuss anticipated negative effects of the laws.<sup>16</sup> Teresa Edwards writes about Bill C-36 as an Indigenous woman who spoke at the hearings but focuses on arguing that a pure Nordic Model is the best approach to protect Indigenous women.<sup>17</sup> Consequently, there has not yet been an examination of how the issue of Indigenous women in prostitution was discussed by Indigenous and non-Indigenous witnesses at the bill's deliberations. Indeed, in their research on respectful questioning at the same Bill C-36 deliberations, Genevieve Fuji Johnson, Mary Burns, and Kerry Porth state that no other content analyses exist on "parliamentary hearings involving policy issues that are polarized and involve marginalized populations, and their representatives and allies."<sup>18</sup> The Bill C-36 literature's relative lack of discussion on the parliamentary hearings is a notable omission, but more significant is the lack of discussion on Indigenous women, considering this subject's prevalence at the deliberations on this very bill.

The importance of this particular topic, and the aforementioned gaps in the literature, have shaped this article's approach to understanding how the issue of Indigenous women in prostitution was represented at the deliberations over Bill C-36. In order to discuss Bill C-36, it is first necessary to discuss the Nordic Model framework upon

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15. Melissa Farley, Jacqueline Lynne & Ann J Cotton, "Prostitution in Vancouver: Violence and the Colonization of First Nations Women" (2005) 42:2 *Transcultural Psychiatry* 242 at 245; Cherry Smiley, "A Long Road behind Us, a Long Road ahead: Towards an Indigenous Feminist National Inquiry" (2016) 28:2 *Canadian Journal of Women and the Law* 308 at 311; Belak & Bennett, *supra* note 13 at 72–73.
  16. Lauren Sampson, "'The Obscenities of This Country': *Canada v Bedford* and the Reform of Canadian Prostitution Laws" (2014) 22:1 *Duke Journal of Gender Law and Policy* 137; Davies, *supra* note 12; Menaka Raguparan, "'If I'm Gonna Hack Capitalism': Racialized and Indigenous Canadian Sex Workers' Experiences within the Neo-Liberal Market Economy" (2017) 60:1 *Women's Studies International Forum* 69.
  17. Teresa Edwards, "For the Sake of Equality: Moving towards the Nordic Model of Prostitution Law in Canada" in Miranda Kiraly & Meagan Tyler, eds, *Freedom Fallacy: The Limits of Liberal Feminism* (Ballarat, Australia: Connor Court Publishing, 2015) 175.
  18. Genevieve Fuji Johnson, Mary Burns & Kerry Porth, "A Question of Respect: A Qualitative Text Analysis of the Canadian Parliamentary Committee Hearings on *The Protection of Communities and Exploited Persons Act*" (2017) 50:4 *Canadian Journal of Political Science* 921 at 928.

which the bill is based and to explore previous literature on Indigenous Canadian women in prostitution.

### *The Nordic Model*

The Nordic Model is the name given to a prostitution legal framework that criminalizes the buyer and third-party beneficiary of sexual services, while decriminalizing the seller. Unlike the decriminalization approach, the Nordic Model aims to eradicate prostitution to the fullest extent possible, making it an abolitionist approach.<sup>19</sup> The first instance of such a law was the *Law That Prohibits the Purchase of Sexual Services*,<sup>20</sup> which came into effect on 1 January 1999 in Sweden. Sweden's law is based on the idea that "without men's demand . . . the global prostitution industry would not be able [to] flourish and expand."<sup>21</sup> Campaigners for the law argued that any society in favour of gender equality "must reject the idea that women and children, mostly girls, are commodities."<sup>22</sup> Women and girls in prostitution are viewed as victims of male violence who should not be punished but, instead, helped to leave the industry.<sup>23</sup> Importantly, the law was implemented in conjunction with other measures focused on gender equality, including increased funding for women's shelters, a broadened definition of rape, and better social welfare provisions for women experiencing violence.<sup>24</sup> Norway and Iceland adopted similar frameworks for governing prostitution over the next ten years, leading to the framework becoming known as the "Nordic Model."<sup>25</sup>

### *Canadian Indigenous Women in Prostitution*

The literature reaches consensus that Indigenous women are markedly overrepresented in prostitution in Canada compared to women of other ethnic identities, although this is complicated by different sources linking or separating prostitution

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19. Coalition against Trafficking in Women Australia (CATWA), *Demand Change: Understanding the Nordic Approach to Prostitution* (Victoria, Austl: CATWA, 2017) at 8 <<https://www.catwa.org.au/wp-content/uploads/2017/03/NORDIC-MODEL-2017-booklet-FINAL-single-page.pdf>>.

20. *Kvinnofrid*, Sweden 1997/98:55.

21. Gunilla Ekberg, "The Swedish Law That Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings" (2004) 10:10 *Violence against Women* 1187 at 1189.

22. *Ibid* at 1188.

23. *Ibid* at 1191.

24. CATWA, *supra* note 19 at 11.

25. *Ibid* at 17.

and trafficking in their statistics. The Native Women's Association of Canada (NWAC) reports that Indigenous women and girls are severely overrepresented in both prostitution and human trafficking compared to the general Canadian population.<sup>26</sup> While the 2006 Census shows that Indigenous people constitute only 3.8 percent of the total population, various studies have recorded Indigenous women and children's representation in prostitution and trafficking as being above 30 percent.<sup>27</sup> Although there is disagreement over whether Indigenous women are the majority of trafficking victims in Canada, it is agreed that the trafficking in Indigenous women is a major issue.<sup>28</sup> Another report by the NWAC states that Indigenous women are also overrepresented amongst the numbers of women murdered while in prostitution.<sup>29</sup>

### Factors Leading to Indigenous Overrepresentation in Prostitution

Literature on the topic of Canadian Indigenous women in prostitution suggests that there are particular factors that cause their severe overrepresentation. The NWAC's literature review lists root causes of Indigenous entry into prostitution as poverty, family violence, childhood abuse, discrimination, substance addiction, homelessness, and lack of education.<sup>30</sup> They further state that Indigenous women and girls are also overrepresented in statistics of poverty and lack of education compared to the general Canadian population.<sup>31</sup>

### The Role of Colonialism

In addition to these factors, colonialism is often cited as a defining factor behind the overrepresentation of Canadian Indigenous women in prostitution. Indeed, the NWAC lists the "impact of colonialism" as a root cause of this overrepresentation,<sup>32</sup>

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26. NWAC, *Sexual Exploitation and Trafficking*, *supra* note 14 at 8.

27. *Ibid.*

28. Edwards, *supra* note 17 at 183, states that Indigenous women are the majority of domestic trafficking victims, while Sarah Hunt disagrees and argues for a "more nuanced exploration." Sarah Hunt, "Colonial Roots, Contemporary Risk Factors: A Cautionary Exploration of the Domestic Trafficking of Aboriginal Women and Girls in British Columbia, Canada" (2010) 1:33 Alliance News (Global Alliance against Traffic in Women) 27 at 27.

29. NWAC, *Understanding NWAC's Position on Prostitution* (Ottawa: NWAC, November 2012) at 1 <[https://nwac.ca/wp-content/uploads/2015/05/2012\\_NWACs\\_Position\\_on\\_Prostitution.pdf](https://nwac.ca/wp-content/uploads/2015/05/2012_NWACs_Position_on_Prostitution.pdf)> [NWAC, *Understanding NWAC's Position*].

30. NWAC, *Sexual Exploitation and Trafficking*, *supra* note 14 at 11.

31. *Ibid* at 19.

32. *Ibid* at 11.

while Cherry Smiley argues that the sex industry is “a form of ongoing colonial violence” against Canadian Indigenous women and girls.<sup>33</sup> Jacqueline Lynne argues that “earlier colonial relations,” such as Indigenous women being bought by European men in exchange for alcohol and other goods, has influenced the high number of Indigenous women engaged specifically in street prostitution in modern Canada.<sup>34</sup> Melissa Farley and Lynne also discuss the phenomenon of “country brides” as an early example of colonial male entitlement to Indigenous women; they describe British military officers marrying Indigenous women to obtain exclusive sexual access to them.<sup>35</sup> These complex relationships have been subject to much historical analysis, and there is insufficient space here to discuss them.<sup>36</sup> The NWAC argues that historical views of Indigenous women as “sexually available” and “criminals” still persist, and they suggest this normalizes the idea of Indigenous women in prostitution.<sup>37</sup> Similarly, Shawna Ferris discusses the overrepresentation of Indigenous women in Canada’s “street-involved and survival sex trade” in the context of the colonial “squaw” stereotype.<sup>38</sup>

### Disadvantages Compared to Non-Indigenous Women in Prostitution

Colonialism can also be evidenced in the ways in which Indigenous women in prostitution are more disadvantaged than non-Indigenous women in prostitution in Canada. The NWAC argues that Indigenous women are most likely to be found in street prostitution because “racism and poverty selects them for the most exploitative forms of prostitution.”<sup>39</sup> With regard to experiencing prostitution differently

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33. Smiley, *supra* note 15 at 311.

34. Jacqueline Lynne, “Colonialism and the Sexual Exploitation of Canada’s First Nations Women” (Paper presented at the American Psychological Association 106th Annual Convention, San Francisco, 17 August 1998) at 1 <<http://prostitutionresearch.com/colonialism-and-the-sexual-exploitation-of-canadas-first-nations-women/>>.

35. Melissa Farley & Jacqueline Lynne, “Prostitution in Vancouver: Pimping Women and the Colonization of First Nations” in Rebecca Whisnant & Christine Stark, eds, *Not for Sale: Feminists Resisting Prostitution and Pornography* (North Melbourne, Austl: Spinifex Press, 2004) 106 at 111.

36. For further discussion, see e.g. Sylvia Van Kirk, “From ‘Marrying-In’ to ‘Marrying-Out’: Changing Patterns of Aboriginal/Non-Aboriginal Marriage in Colonial Canada” (2002) 23:3 *Frontiers: A Journal of Women Studies* 1. See also Alanna Cameron Beason, *Claiming the Best of Both Worlds: Mixed Heritage Children of the Pacific Northwest Fur Trade and the Formation of Identity* (PhD dissertation, Utah State University, 2015) [unpublished].

37. NWAC, *Sexual Exploitation and Trafficking*, *supra* note 14 at 40.

38. Shawna Ferris, *Dangerous Order: Globalization, Canadian Cities, and Street-Involved Sex Work* (PhD dissertation, McMaster University, 2007) at 166–69 [unpublished].

39. NWAC, *Understanding NWAC’s Position*, *supra* note 29 at 2.

from women of other ethnic identities, Menaka Raguparan's survey of Canadian women in prostitution demonstrates that all three Indigenous participants marketed themselves as white or Mediterranean.<sup>40</sup> Their reasons for "invisibiliz[ing] themselves as Indigenous" were that they could attract richer clients and charge equal rates to white women.<sup>41</sup> This implies that Indigenous women in prostitution are viewed by clients as being less valuable than white women, which contributes to their overrepresentation in the lowest-paying sector—street prostitution.

Other disadvantages are evident in the differences between the rates of abuse experienced by Indigenous and non-Indigenous women prior to them entering prostitution. In a study in Vancouver by Farley, Lynne, and Cotton, they found that 96 percent of the Indigenous women in prostitution whom they spoke to had experienced childhood sexual abuse, compared to 82 percent of the non-Indigenous women in prostitution to whom they spoke.<sup>42</sup> In addition, 81 percent of the Indigenous women to whom they spoke had experienced childhood physical abuse, compared to 58 percent of the non-Indigenous women.<sup>43</sup> Although these factors may affect women's entry into prostitution, these results also demonstrate that overrepresentation in prostitution is part of a larger picture of oppression faced by Canadian Indigenous women as a whole.

## *Methodology*

### *Sampling Frame*

My sampling frame included transcripts of all Standing Committee meetings in the House of Commons and the Senate on Bill C-36 where witnesses testified. These meetings included:

- Standing Committee on Justice and Human Rights, meetings 33–43 (7, 8, 9, and 10 July 2014) and
- Standing Senate Committee on Legal and Constitutional Affairs, issues 15, 16, and 19 (9, 10, 11, and 17 September, 29 and 30 October 2014).

The volume of data from these transcripts equalled approximately 680 pages. I used the transcripts of meetings supplied on the Parliament of Canada and Senate of Canada official websites, which are freely available to all Internet users. From the 680 pages, data were only collected on witnesses from outside Parliament who spoke as individuals or from organizations. This meant that I did not examine the words of the ministers and senators who were members of the Standing Committees.

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40. Raguparan, *supra* note 16 at 74.

41. *Ibid.*

42. Farley, Lynne & Cotton, *supra* note 15 at 253.

43. *Ibid.*



Minister Peter MacKay's (Minister of Justice and Attorney General of Canada) evidence was excluded, as he was the author of the bill and appeared before the committees separately. Data were also not collected on witnesses from the Department of Justice Canada who helped create the bill and appeared in order to answer questions from the committee members.

Although each organization submitted a written statement to the Standing Committees, I excluded these from my data collection due to the high probability of overlap with material covered in the spoken testimony. This overlap was indicated by many witnesses saying "we discussed this in our written submission" or similar. However, I acknowledge that this exclusion is a limitation, as I may have omitted further comment concerning Indigenous women in prostitution. Ultimately, my sampling frame was chosen because the parliamentary hearings at the Standing Committees were deliberations large in scope and publicly available. The testimony of ninety-seven different witnesses provided an extensive dataset for determining how the issue of Indigenous women in prostitution was represented in relation to the bill. Focusing on the words of the public, instead of the policy-makers, meant I could analyze not only a range of beliefs relating to Indigenous women in prostitution but also a range of motivations for arguing for or against Bill C-36.

## *Procedure*

### Data Collection A

For my first round of data collection, the following information about each witness was recorded from the transcripts of the previously defined Standing Committee hearings:

- name;
- the organization they represented or whether they were an individual;
- whether they had lived experience of prostitution;
- their ethnic identity;
- whether they were in favour of Bill C-36, against it, or in favour of it but thought it needed improvement; and
- whether they mentioned Indigenous women in prostitution as part of their testimony.

If a witness appeared before both the Standing Committee on Justice and Human Rights and the Standing Senate Committee, I noted this on their existing data entry. If they mentioned Indigenous women in prostitution in their Senate appearance but not in the House of Commons, I added the mention to their existing data entry. When collecting data on witnesses who mentioned Indigenous women in prostitution, I included any reference made in either the witness's testimony or during their question-and-answer period with the committee. As well as clear terms of reference such as "Indigenous,"

“Aboriginal,” “First Nations,” or “Native,” I also included references to colonialism and residential schools, which are concepts synonymous with these terms.

If a witness did not explicitly mention their ethnic identity in the transcript, this was determined from watching the footage of their testimony on ParlVu or SenVu, the official online video services where Canadian parliamentary footage can be freely watched. If their ethnic identity was still indeterminable, effort was taken to research the individual on the Internet until a conclusion was reached. This was required for about 10 percent of the witnesses but was conclusive.

From this process, I generated a spreadsheet of raw data. I then selected the data of most relevance to my research aims and generated descriptive statistics. I chose descriptive statistics as it is a method most suitable for dealing with a large number of cases and gaining an overall picture of the data.<sup>44</sup> By using this method, I was able to assess how many Indigenous women were witnesses and how many of them had lived experience of prostitution. I was also able to find out how many witnesses (Indigenous and non-Indigenous) mentioned the issue of Indigenous women in prostitution. This identification of witness demographics was an important first step. Indigenous and/or women with lived experience of prostitution are likely to argue from a more personally invested standpoint when discussing Indigenous women in prostitution and legislation affecting them. Given the topic of discussion and its political importance, I believed it was important for each person’s words to be considered in light of their own position. Knowing the witness demographics prior to the qualitative content analysis (see below) allowed for a more in-depth understanding of what witnesses were arguing.

## Data Collection B

My second round of data collection was a qualitative content analysis of the mentions of Indigenous women in prostitution. My coding process for this qualitative content analysis began with searching through my dataset to find all mentions of Indigenous women in prostitution. Once these mentions were collated, I first analyzed them for recurring themes and ideas. Because my research aimed to find out how the issue of Indigenous women was represented at the Bill C-36 deliberations, I searched for codes that indicated speakers’ perceptions about Indigenous women in prostitution in Canada and how speakers saw Bill C-36 as affecting Indigenous women. Themes and ideas that appeared more than once were highlighted. While sometimes “ideas” were conveyed by the witness stating a fact, sometimes “ideas” were conveyed more by implication. For example, Chanelle Gallant stated that she would be reading testimony of the absent witness Monica Forrester because Forrester had to help an

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44. James B Schreiber, “Descriptive Statistics” in Lisa M Given, ed, *The Sage Encyclopedia of Qualitative Research Methods* (Thousand Oaks, CA: Sage Publications, 2008) 210 at 210.

Indigenous sex worker friend who had been arrested.<sup>45</sup> While not stating outright that Indigenous women in prostitution are disproportionately criminalized, as other witnesses did, Gallant's statement was clearly designed to convey this idea. I also noted whether each mention formed part of an argument for or against Bill C-36. Through this process, I discovered that there was not always a clear demarcation between the two sides with regard to the themes and ideas they put forth. Thus, I then divided the themes/ideas into two groups: (1) presented by witnesses from only one side of the debate or (2) presented by witnesses from both sides of the debate. Dividing the codes this way led to an analysis of the similarities and differences in claims between the two sides.

## *Description of Data*

### *Description of Data Collection A*

#### Overall Numbers

There were ninety-seven witnesses who participated in the Standing Committee hearings for Bill C-36. Seventy-seven witnesses appeared before the Standing Committee on Justice and Human Rights, and fifty-four witnesses appeared before the Standing Senate Committee on Legal and Constitutional Affairs. Of the fifty-four witnesses who appeared before the Senate, thirty-four had previously appeared before the Committee at the House of Commons. Of the total ninety-seven, fifty-six witnesses were in favour of Bill C-36. Ten were in favour of the bill passing as it was, while forty-six were in favour of the bill in principle but argued that certain parts needed altering. Forty-one witnesses were against the bill entirely (see [Figure 1](#)).

There were three witnesses (Monica Forrester, Angel Wolfe, and Beatrice Wallace Littlechief) who did not appear in person but had their words read out on their behalf. I still counted them as witnesses and counted the person reading their words as a separate witness when they made further testimony of their own or answered questions.

#### People with Lived Experience of Prostitution

I defined people with lived experience of prostitution as witnesses who stated or implied that they were currently selling or had formerly sold sexual services. Witnesses usually stated this fact about themselves at the beginning of their testimony or referred to people in the sex industry as "we" and "us." I did not include witnesses such as Tim Lambrinos

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45. House of Commons, Standing Committee on Justice and Human Rights (JUST), *Evidence*, 41-2, No 34 (7 July 2014) at 9 (Chanelle Gallant) [JUST, *Evidence*, 41-2, No 34].

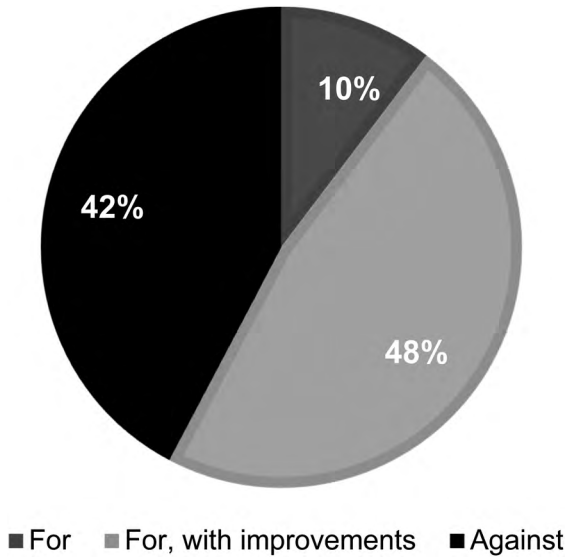


Figure 1: Witnesses' opinions on Bill C-36.

and Rudi Czekalla, who are from the Adult Entertainment Association of Canada but do not sell sexual services themselves. Twenty-eight witnesses had lived experience of prostitution, as defined above. Eleven of these witnesses were in favour of Bill C-36, and seventeen were against it. Twenty-one of the witnesses with lived experience were white, five were Indigenous, and two were Black (see Figures 2 and 3).

### Indigenous Representation

Of the ninety-seven witnesses, seventy-nine were white, four were Asian, and three were Black. Ten were Indigenous (identifying as Indigenous, Aboriginal, First Nations, Native, or Métis). All Indigenous witnesses were women. Thirty-six witnesses mentioned Indigenous women in prostitution as part of their argument. Seven of these witnesses were Indigenous, and twenty-nine were non-Indigenous. Twenty-three witnesses who mentioned Indigenous women in prostitution argued in favour of Bill C-36; the other thirteen were against it (see Figures 4 and 5).

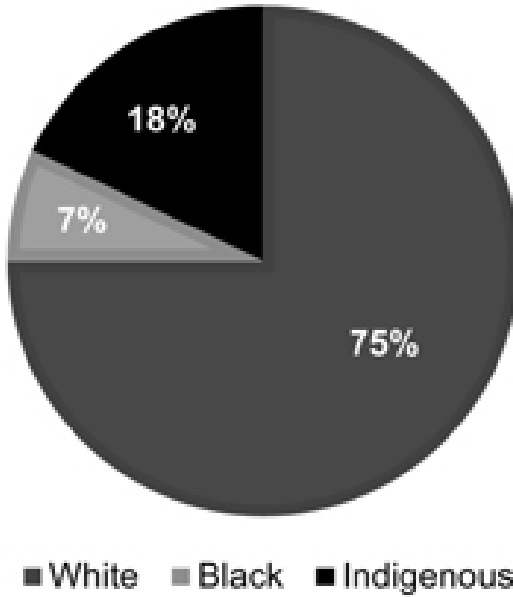


Figure 2: Witnesses with lived experience of prostitution categorized by race.

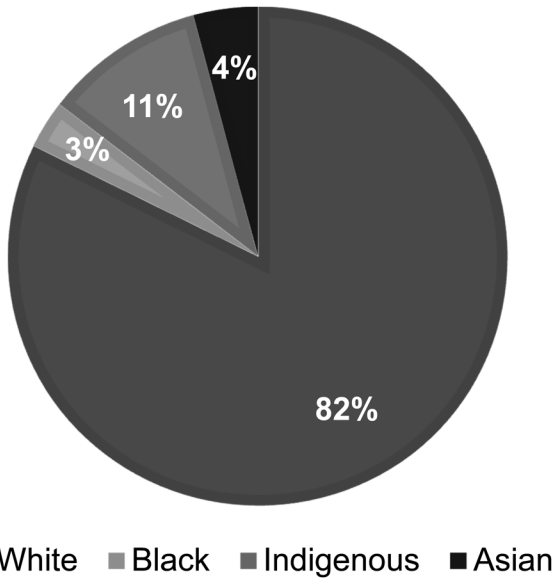


Figure 3: Witnesses categorized by race.

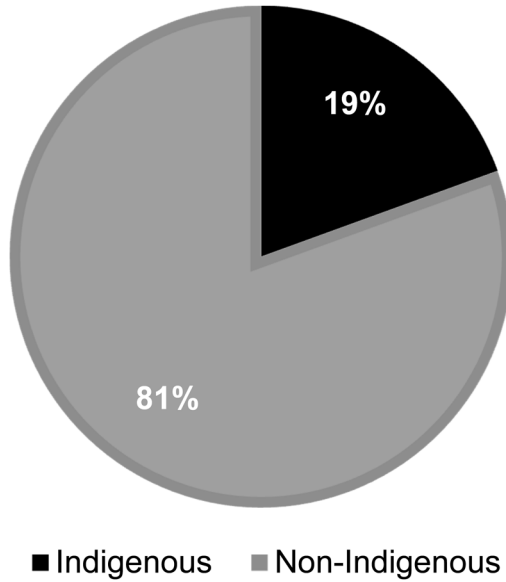


Figure 4: Proportion of witnesses who mentioned Indigenous women in prostitution who were Indigenous.

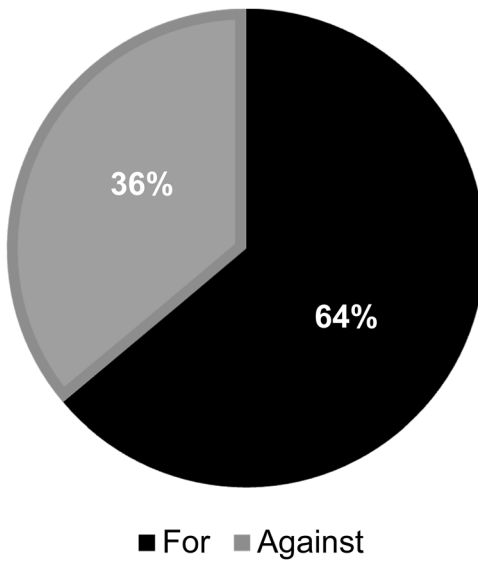


Figure 5: Witnesses who mentioned Indigenous women in prostitution categorized by their opinion of Bill C-36.

### Description of Data Collection B

This section describes the findings of my qualitative content analysis. As per the coding process outlined previously, I examined the similarities and differences in claims that concerned Indigenous women in prostitution. Examining similarities and differences in claims between the two sides uncovers how the issue of Indigenous women in prostitution was represented, by separating the commonly accepted and undisputed ideas about the issue from the ideas that hinge on having a certain stance on prostitution. I could then draw conclusions not only about how the issue of Indigenous women in prostitution was represented differently by witnesses in favour of Bill C-36 and witnesses against Bill C-36 but also about how the issue was represented by witnesses overall. Quotes from the transcripts retain original capitalizations and punctuation.

#### Description of Key Similarities in Witnesses' Arguments

##### Indigenous women are overrepresented in prostitution in Canada

The overrepresentation of Indigenous women in general prostitution was mentioned sixteen times during the hearings. Eleven witnesses in favour of the bill mentioned it, and two witnesses who were against the bill mentioned it. Primarily, witnesses in favour of the bill who mentioned this did so to emphasize that they viewed prostitution as entirely damaging and exploitative (see Figure 6). The overrepresentation of

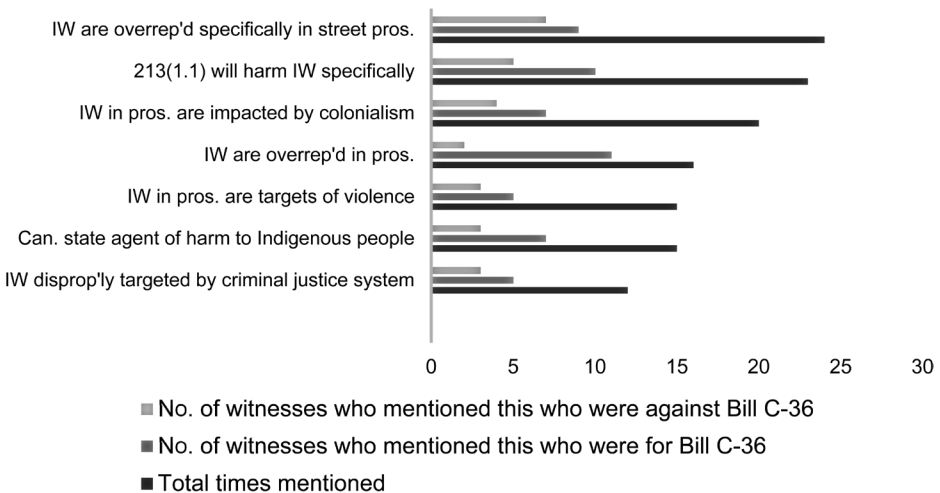


Figure 6: From most mentions to least mentions, a summary of the number of times each idea about Indigenous women was mentioned in total, and how many witnesses from each side mentioned it.

Indigenous women and girls in prostitution was given as one reason why prostitution should be abolished through Bill C-36:

Prostitution is not a victimless crime. ... We recognize that women, especially first nations women and youth, are overrepresented in prostitution.

— Deborah Pond, u-r home, white.<sup>46</sup>

Witnesses against Bill C-36 who mentioned Indigenous women's overrepresentation in general prostitution did so to argue that the bill would not benefit this group. Nicole Matte drew similarities between Indigenous women's overrepresentation in prostitution with their overrepresentation in other kinds of labour:

[I]ndigenous women, racialized women and trans-identified folks are overrepresented in sex work, but . . . these marginalized groups are overrepresented in underpaid, marginalized labour across the country in all sectors.

— Nicole Matte, Maggie's: The Toronto Sex Workers Action Project, white, sex worker.<sup>47</sup>

### Indigenous women are specifically overrepresented in street prostitution in Canada

The overrepresentation of Indigenous women in street prostitution specifically was mentioned twenty-four times in total. Nine witnesses in favour of the bill mentioned it, and seven witnesses who were against the bill mentioned it. Most often, overrepresentation in street prostitution was mentioned in conjunction with arguing that Indigenous women in particular would be harmed by the communication provision of the bill, which criminalizes both parties involved in street prostitution in certain locations.<sup>48</sup> For example, Monica Forrester mentioned this as a reason she was against the bill and also suggested there was a hierarchy wherein the most marginalized were relegated to street prostitution:

Marginalized groups, like people of colour, trans women, aboriginal women, and two-spirit women are more likely to be street-based, and they will face extreme criminalization under this bill.

— Monica Forrester, Maggie's: The Toronto Sex Workers Action Project, Indigenous, sex worker.<sup>49</sup>

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46. House of Commons, JUST, *Evidence*, 41-2, No 41 (10 July 2014) at 9 (Deborah Pond) [JUST, *Evidence*, 41-2, No 41].

47. LCJC, *Proceedings*, 41-2, No 15, *supra* note 10 at 258 (Nicole Matte).

48. Bill C-36, *supra* note 9 at s 213(1.1).

49. JUST, *Evidence*, 41-2, No 34, *supra* note 45 at 10 (Monica Forrester).



While they also used this idea to criticize section 213(1.1), witnesses in favour of Bill C-36 often mentioned Indigenous women's overrepresentation in street prostitution to argue that the damaging nature of prostitution is evident in the racial inequality it perpetuates. Janine Benedet, for example, used Indigenous overrepresentation in street prostitution to question the idea that women "choose" prostitution:

[A]ll the evidence we have suggests that Aboriginal women and girls are grossly overrepresented in street prostitution, and that . . . Asian women are grossly overrepresented in indoor prostitution. . . . I don't think we should assume that Aboriginal women choose it more than other women or that Asian women choose it more.

— Janine Benedet, individual (professor at the University of British Columbia), white.<sup>50</sup>

Thus, the agreed-upon facts of Indigenous women's overrepresentation in general, and in street prostitution, were used in witnesses' arguments in different ways. Witnesses in favour of Bill C-36 spoke of this overrepresentation as a problem that was symptomatic of the damaging nature of prostitution. With the exception of the communication provision, Bill C-36 was positioned as something that could alleviate this problem. In contrast, witnesses against the bill presented the overrepresentation of Indigenous women as a problem that Bill C-36 was incapable of solving.

### Indigenous women in prostitution are impacted by colonialism

The impact of colonialism on Indigenous women in prostitution was mentioned twenty times. Seven witnesses who mentioned it were in favour of Bill C-36, and four witnesses who mentioned it were against Bill C-36. Witnesses in favour of the bill who mentioned it argued that Indigenous women in prostitution has its origins in racist oppression and, therefore, that prostitution remains objectionable today. The argument was made by these witnesses that prostitution's existence, for Indigenous women, was inextricable from colonialism:

As you know, prostitution is a product of a colonial system.

— Michèle Audette, Native Women's Association of Canada, Indigenous.<sup>51</sup>

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50. LCJC, *Proceedings*, 41-2, No 15, *supra* note 10 at 188 (Janine Benedet).

51. House of Commons, JUST, *Evidence*, 41-2, No 36 (8 July 2014) at 12 (Michèle Audette) [JUST, *Evidence*, 41-2, No 36].

[A]s I got older the effects of colonialism, intergenerational trauma, and child sexual abuse made me a perfect candidate for prostitution.

— Bridget Perrier, Sextrade 101, Indigenous, prostitution survivor.<sup>52</sup>

Residential schools, the last of which closed only as recently as 1996,<sup>53</sup> were mentioned in particular. Because the discussion of residential schools is inextricable from the discussion of colonialism in Canada, mentions of residential schools were coded as mentions of colonialism. The implication was made that the intergenerational trauma caused by the schools is a factor in Indigenous women entering prostitution:

Canada must also deal with the factors that contribute to women becoming involved in prostitution, including poverty, racism, the effects of residential schools.

— Mélanie Sarroino, Canadian Association of Sexual Assault Centres, white.<sup>54</sup>

Witnesses against the bill also mentioned colonialism as an entry factor into prostitution. Additionally, Monica Forrester argued that colonialism contributes to the further stigmatization of Indigenous women in prostitution, which would be compounded if the bill was enacted:

They face added stigma within their communities because of ongoing colonization. Colonialism already silenced them about sex, and sex work adds another layer of stigma and more isolation from their community.

— Monica Forrester.<sup>55</sup>

Both sides agreed that past and present impacts of colonialism were factors in Indigenous women entering prostitution and a cause of their overrepresentation. Indigenous women with lived experience of prostitution, such as Bridget Perrier and Monica Forrester, spoke of their personal experiences of being impacted by colonialism. However, they disagreed on whether Bill C-36 would ultimately help or endanger Indigenous women oppressed by colonialism.

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52. House of Commons, JUST, *Evidence*, 41-2, No 39 (9 July 2014) at 1 (Bridget Perrier) [JUST, *Evidence*, 41-2, No 39].

53. Pauline Regan, *Unsettling the Settler within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada* (Vancouver: UBC Press, 2010) at 4.

54. House of Commons Canada, JUST, *Evidence*, 41-2, No 42 (10 July 2014) at 3 (Mélanie Sarroino).

55. JUST, *Evidence*, 41-2, No 34, *supra* note 45 at 9 (Monica Forrester).

## The state of Canada is an agent of harm towards Indigenous people

The historic and current harm done to Indigenous people by the state of Canada, in the context of discussing Bill C-36, was mentioned a total of fifteen times. Seven witnesses in favour of the bill mentioned it, and three witnesses who were against the bill mentioned it. Mentions of residential schools were also included in this category, and so there is an overlap in coded data with the preceding coding item. Witnesses who were against Bill C-36 positioned the bill as a continuation of the state harming Indigenous women through its prostitution laws:

Resorting to criminal law to address prostitution—and particularly to save us—reinforces the legacies of colonialism and places aboriginal sex workers in even more precarious working conditions.

— Anna-Aude Caouette, Stella, L'Amie de Maimie, white, sex worker.<sup>56</sup>

Witnesses in favour of the bill who mentioned this idea remained highly critical of the state. However, they positioned Bill C-36 as having the potential to atone for the state's historic mistreatment and as comprising a step towards reducing the harm the state had caused:

[Y]ou have the legislative power to protect Aboriginal women, the power to choose . . . zero tolerance for the sexual exploitation of young Aboriginal girls and women, and to not criminalize them for that.

— Michèle Audette.<sup>57</sup>

While both sides were in agreement that the state of Canada had harmed Indigenous people, and continued to harm them, opinions differed on how Bill C-36 played into this harm. Witnesses in favour of the bill were optimistic that it could rectify the state's previous harm, while witnesses against the bill viewed it as a further tool of the state's oppression of Indigenous people.

## Indigenous women are disproportionately targeted by the criminal justice system in Canada compared to non-Indigenous women

The disproportionate targeting of Indigenous women by Canada's criminal justice system was mentioned twelve times. Three witnesses against the bill and five in

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56. LCJC, *Proceedings*, 41-2, No 15, *supra* note 10 at 262 (Anna-Aude Caouette).

57. *Ibid* at 44 (Michèle Audette).

favour of it mentioned this. Mostly, this concept was linked to a criticism of the communication provision of the bill. Teresa Edwards was in favour of Bill C-36 but mentioned this idea to convey that she wanted the communication provision removed:

We have enough aboriginal women who are being criminalized. Every day the numbers are increasing.

— Teresa Edwards, Native Women’s Association of Canada,  
Indigenous.<sup>58</sup>

Witnesses who were against the bill invoked the disproportionate targeting of Indigenous women by the criminal justice system as a reason they could not support the bill:

Aboriginal Legal Services objects to the passing of this bill because of the acute aboriginal overrepresentation in the criminal justice and penal systems ... [T]hree out of five federally sentenced women are aboriginal women.

— Christa Big Canoe, Aboriginal Legal Services of Toronto,  
Indigenous.<sup>59</sup>

### Section 213(1.1) of Bill C-36 will harm Indigenous women specifically

Closely related to the argument that Indigenous women are disproportionately targeted by the criminal justice system was the argument that the communication provision of Bill C-36 would harm Indigenous women in particular. In the version of the bill that was deliberated upon at the House of Commons Standing Committee, the bill proposed punishing both parties who communicate “for the purposes of offering or providing sexual services for consideration” in a place that is or is next to somewhere people under eighteen can “reasonably be expected to be present.”<sup>60</sup> It was amended by that committee, but witnesses maintained dissatisfaction with the provision even after it was changed. The provision did not change again before being enacted, and the final law thus reads:

Section 213 of the Act is amended by adding the following after subsection (1):

(1.1) Everyone is guilty of an offence punishable on summary conviction who communicates with any person — for the purpose of offering or

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58. JUST, *Evidence*, 41-2, No 36, *supra* note 51 at 13 (Teresa Edwards).

59. JUST, *Evidence*, 41-2, No 41, *supra* note 46 at 7 (Christa Big Canoe).

60. Bill C-36, *supra* note 9 at s 213(1.1).

providing sexual services for consideration—in a public place, or in any place open to public view, that is or is next to a school ground, playground or daycare centre.<sup>61</sup>

The argument that this aspect of the law would harm Indigenous women, in particular, was mentioned twenty-three times. Ten witnesses in favour of the bill made this argument, and five witnesses who were against the bill made this argument. While criticism of this provision was strong from both sides, witnesses in favour of Bill C-36 believed the bill should be passed, provided the communication provision was removed. For the witnesses against the bill who mentioned this in their argument, section 213(1.1) was one reason not to support the bill:

If sex workers are incarcerated as a result of this bill, which could realistically occur, this could disrupt their access to medical treatment . . . This would have a particularly severe impact on sex workers who are indigenous.

— Sandra Ka Hon Chu, Canadian HIV/AIDS Legal Network,  
Asian<sup>62</sup>

While criticism of section 213(1.1) was no less severe from those in favour of the bill, many positioned it as being inconsistent with the bill's intent, something that could be altered in order to create a uniformly beneficial law:

I do think that Aboriginal women in Vancouver on the streets of the Downtown Eastside would be much more likely to be charged. Acknowledging the inequality inherent to prostitution and then providing one provision that lets you criminalize women who are the most unequal of all unequal women is a mistake.

— Lisa Steacy, Canadian Association of Sexual Assault  
Centres, white<sup>63</sup>

While many witnesses in favour of Bill C-36 argued that the provision was dangerous and discriminatory towards Indigenous women, some stated that they would still support the bill if the communication provision was left in because they felt a flawed bill would be preferable to no bill.<sup>64</sup> Others said they could not support the bill unless it was

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61. *Ibid.*

62. House of Commons, JUST, *Evidence*, 41-2, No 43 (10 July 2014) at 5 (Sandra Ka Hon Chu).

63. LCJC, *Proceedings*, 41-2, No 15, *supra* note 10 at 243 (Lisa Steacy).

64. See e.g. JUST, *Evidence*, 41-2, No 36, *supra* note 51 at 10 (Michèle Audette): “Had this question been put to me when I was 28 years old, I would have flat out refused. Now that I am 42, I know how things work within government. We sometimes have to swallow certain things unwillingly.”

amended.<sup>65</sup> Witnesses against the bill believed the potential damage of the communication provision was overwhelming and also disagreed with other aspects of the bill.

### Indigenous women in prostitution are targets of violence

The idea that Indigenous women in prostitution are targeted for violence more than women of other ethnic identities in prostitution in Canada was mentioned fifteen times. Five witnesses in favour of the bill and three against it mentioned this point. Both sides agreed that Indigenous women in prostitution are targeted for violence more by clients and others in the sex industry, but disagreement arose over how Bill C-36 would affect this factor. Witnesses against the bill argued that it would increase rates of violence against Indigenous women. Christa Big Canoe criticized the communication provision for targeting Indigenous women who already face violence:

The disproportionate numbers of street-based sex workers, including those engaging in survival sex, are aboriginal and will be affected if criminal charges occur ... [A]boriginal survival sex workers experience higher levels of violence both in terms of incidence and severity.

— Christa Big Canoe<sup>66</sup>

Naomi Sayers argued that the criminalization of clients enacted through Bill C-36 would increase the levels of violence:

The criminalization of clients ... has devastating impacts for indigenous women ... The isolation and inability to screen clients for safety contributes to the rising violence against sex workers. Indigenous women are already targeted by aggressors.

— Naomi Sayers, Canadian Alliance for Sex Work Law Reform, Indigenous, former sex worker<sup>67</sup>

By contrast, witnesses in favour of the bill positioned Bill C-36 as a law that would reduce the violence against Indigenous women in prostitution. Bridget Perrier and Beatrice Wallace Littlechief spoke of the violence they experienced in prostitution and argued that Bill C-36 would create positive change:

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65. See e.g. House of Commons, Standing Committee on Justice and Human Rights (JUST), *Evidence*, 41-2, No 38, (9 July 2014) at 18 (Gunilla Ekberg) [JUST, *Evidence*, 41-2, No 38]: “I don’t support the bill in its entirety because I disapprove deeply of the criminalization of those who are victims in prostitution. I think that is unconstitutional and contrary to any gender equality or human rights measures. I do, however, support an amended bill.”

66. JUST, *Evidence*, 41-2, No 41, *supra* note 46 at 8 (Christa Big Canoe).

67. House of Commons, JUST, *Evidence*, 41-2, No 33 (7 July 2014) at 4 (Naomi Sayers) [JUST, *Evidence*, 41-2, No 33].

I never, ever said I was an Aboriginal woman because I saw what the industry did to Aboriginal women . . . I think [Bill C-36] will make it easier for [Indigenous women] to report their abuse.

— Bridget Perrier<sup>68</sup>

[W]ith Bill C-36 coming to reality . . . I am filled with joy and hope that this is going to save so many girls, especially First Nation girls like myself . . . We are vulnerable and left to fend for ourselves.

— Beatrice Wallace Littlechief, individual, Indigenous, prostitution survivor<sup>69</sup>

There was uniform agreement between the sides that Indigenous women were targeted for violence more than women of other ethnic identities in prostitution. As with the idea that the state of Canada harms Indigenous people, the disagreement hinged on whether Bill C-36 would create further harm and replicate the same oppressions. Witnesses against the bill argued that it would, while witnesses in favour of the bill believed it would reduce the existing levels of violence for Indigenous women in prostitution.

## Description of Key Differences in Witnesses' Arguments

### Links between prostitution and trafficking in Indigenous women

Only witnesses who were in favour of Bill C-36 mentioned trafficking in Indigenous women in their testimony. Michèle Audette spoke at length about the numbers of Indigenous women she encountered who had been trafficked, and her belief that the passing of the bill would lead to the abolition of sex trafficking:

It is aboriginal girls and women who are specifically targeted in this country to be trafficked, in such huge numbers that it does not compare with other populations.

— Michèle Audette<sup>70</sup>

If we decriminalize the prostitution industry, we will ensure that aboriginal women and girls are even more vulnerable to prostitution and trafficking.

— Deborah Kilroy, *Sisters Inside*, white<sup>71</sup>

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68. LCJC, *Proceedings*, 41-2, No 15, *supra* note 10 at 165, 177 (Bridget Perrier).

69. JUST, *Evidence*, 41-2, No 41, *supra* note 46 at 10 (Beatrice Wallace Littlechief).

70. JUST, *Evidence*, 41-2, No 36, *supra* note 51 at 4 (Michèle Audette).

71. *Ibid* at 9 (Deborah Kilroy).

Throughout the deliberations on Bill C-36, no witnesses denied the existence of trafficking, but some witnesses against the bill disagreed that trafficking should be linked with prostitution:

While exploitation happens in the context of trafficking, Bill C-36 does not distinguish between exploitation and prostitution. It assumes that prostitution is exploitation.

— Naomi Sayers<sup>72</sup>

The views of witnesses who linked the existence of prostitution with the trafficking in Indigenous women are in line with prostitution abolitionist researchers such as Melissa Farley. For example, Farley discusses the modern-day trafficking of Native American women and defines trafficking as “any form of prostitution controlled by a third party such as people commonly defined as pimps.”<sup>73</sup> This definition is at odds with the viewpoint of witnesses against the bill, who clearly separated trafficking from prostitution.

### Integrating Indigenous women specifically into the language of the bill

Witnesses who were completely against the bill did not seek to adapt the bill in any way since they wished for completely different legislation. However, several witnesses in favour of the bill spoke of strengthening it by integrating specific mention of Indigenous women. Audette and Edwards were particularly adamant that the oppression of Indigenous women be recognized in the language of the bill:

[T]he bill does not specifically refer to aboriginals. You and your colleagues from the Conservative government still have the power to make sure it does.

— Michèle Audette<sup>74</sup>

If you search the act, you’re not even seeing the word “aboriginal.” So yes, that is obviously a concern for us.

— Teresa Edwards<sup>75</sup>

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72. JUST, *Evidence*, 41-2, No 33, *supra* note 67 at 4 (Naomi Sayers).

73. Melissa Farley, “Slavery and Prostitution: A Twenty-First-Century Abolitionist Perspective” in Bonnie Martin & James F Brooks, eds, *Linking the Histories of Slavery: North America and Its Borderlands* (Santa Fe, CA: School for Advanced Research Press, 2015) 283 at 299.

74. JUST, *Evidence*, 41-2, No 36, *supra* note 51 at 12 (Michèle Audette).

75. *Ibid* at 12 (Teresa Edwards).



Audette and Edwards also referenced the *United Nations Declaration on the Rights of Indigenous Peoples*.<sup>76</sup> Other non-Indigenous witnesses also approached this idea from a human rights angle:

What is lacking is a general reference to international human rights and obligations under that, which include looking specifically at the discrimination of aboriginal peoples in Canada.

— Gunilla Ekberg, individual (University of Glasgow School of Law), white<sup>77</sup>

The frequent references to the oppression of Indigenous women in prostitution throughout the deliberations emphasized the importance of the issue in Canada. These witnesses argued that this importance should be reflected in the bill in order to greatly improve it.

### Abolition versus decriminalization as a solution

The most fundamental difference between witnesses in favour of the bill and witnesses against the bill related to the best solution for reducing the oppression of Indigenous women in prostitution. The two legislative solutions supported by witnesses at the deliberations were abolition and decriminalization. Many witnesses in favour of the bill certainly had strong criticisms of various aspects, but they agreed with Bill C-36's end goal of abolishing prostitution. Abolition was viewed as the optimal method for helping Indigenous women because these witnesses believed Indigenous women's circumstances would improve if there was no possibility of them being in prostitution:

We have to take a position in favour of abolishing prostitution . . . We must ensure we deliver new hope and new opportunity to our women and girls.

— Teresa Edwards<sup>78</sup>

Bill C-36 will protect my daughters and the other young girls from predator johns who have the nerve to solicit in public.

— Bridget Perrier<sup>79</sup>

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76. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, UN Doc A/RES/61/295 (2007).

77. JUST, *Evidence*, 41-2, No 38, *supra* note 65 at 13 (Gunilla Ekberg).

78. JUST, *Evidence*, 41-2, No 36, *supra* note 51 at 5 (Teresa Edwards).

79. JUST, *Evidence*, 41-2, No 39, *supra* note 52 at 2 (Bridget Perrier).

Other witnesses argued that the best solution for protecting Indigenous women was to decriminalize prostitution, which they believed would lead to safer working conditions and less violence:

Other witnesses will argue that the criminal laws against clients and third parties will protect indigenous women from going missing and murdered. We argue the opposite . . . We recommend adopting a rights-based approach, like the New Zealand model, to protect the most vulnerable and marginalized groups in society.

— Naomi Sayers<sup>80</sup>

Witnesses in favour of the decriminalization of prostitution did not view Indigenous women working in prostitution as a wholly negative phenomenon but saw them, instead, as an area where conditions drastically needed improving through harm reduction and labour laws. Witnesses in favour of the abolition of prostitution, however, viewed the very existence of it as reinforcing the oppression of Indigenous women.

### ***Similarities in Argument between the Opposing Sides: An Examination of Recent Canadian History***

The previous section laid out the ideas that both sides mentioned and, in doing so, established that there was a significant level of uniformity of testimony given at the deliberations. The debate over whether or not to enact Bill C-36 was ultimately a debate between two beliefs: that prostitution should be abolished and that prostitution should continue to exist. Peter MacKay stated clearly in his Standing Committee appearance that the goal of Bill C-36 was to “reduce the demand for prostitution with a view to discouraging entry into it, deterring participation in it, and ultimately abolishing it to the extent possible.”<sup>81</sup> There is a monumental difference between wanting prostitution to be abolished and wanting it to continue with the laws around it amended. The level of uniformity in ideas demonstrated by the previous section is therefore surprising; it negates the preconception that two ideologically opposed sides would share no common ground. Since these agreements were focused on material things—such as criminalization, violence, and overrepresentation—it is logical to look for the source of these agreements in something tangible. Hence, I contend that past events may be responsible for the level of unanimity. Several significant events in Canada occurred before the deliberations on Bill C-36, and examining them leads to the inference that they shaped the discussions at the hearings.

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80. JUST, *Evidence*, 41-2, No 33, *supra* note 67 at 4 (Naomi Sayers).

81. House of Commons, JUST, *Evidence*, 41-2, No 32 (7 July 2014) at 1 (Peter MacKay).

### *Canada v Bedford*

The deliberations over Bill C-36 were undoubtedly influenced by the court case of *Canada v Bedford*. The trials and appeals ran for six years, and, after a verdict was reached in December 2013, there were only seven months before the first Standing Committee on Bill C-36 was held. Many members of the organizations that appeared as interveners in *Bedford* reappeared as witnesses at the Standing Committees. These organizations would have had years to sharpen their arguments and reasoning and likely brought the same rhetoric to the Standing Committees as they did to the courts. It can therefore be proposed that the level of uniformity in the debates over Bill C-36 had their basis in *Bedford*—both sides learning which arguments to cede in order to strengthen their points of view. Over six years, it is possible that both sides learned that it was effective to cede some ground and, therefore, developed many overlapping arguments. This further demonstrates that the arguments where they did differentiate are reflective of oppositional and irreconcilable beliefs.

### *Robert Pickton*

In 1998, public concern arose over the high numbers of women who had gone missing in the Downtown Eastside of Vancouver, known as the “poorest postal code” in Canada; sixty-seven women were officially recorded as missing.<sup>82</sup> Yasmin Jiwani and Mary Lynn Young note that “Aboriginality remained a persistent, though undercurrent, theme” throughout the media coverage of the cases since thirty-nine of the sixty-seven missing women were Indigenous.<sup>83</sup> In 2002, a farmer named Robert William Pickton was identified by police as responsible for murdering fifteen of these missing women, and, in 2006, he was charged with the murder of twenty-six.<sup>84</sup> Elaine Craig notes that there were “years of widespread indifference” towards the high number of Downtown Eastside women going missing before the police investigated.<sup>85</sup> Many, but not all, of the missing women were involved in prostitution, and Pickton was a “well known john.”<sup>86</sup> Despite the fact that the majority of Pickton’s victims were Indigenous, only one of the seventy-six judicial rulings from Pickton’s trial and appeals contained any mention of this fact.<sup>87</sup> Pickton was ultimately

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82. Yasmin Jiwani & Mary Lynn Young, “Missing and Murdered Women: Reproducing Marginality in News Discourse” (2006) 31:4 *Canadian Journal of Communication* 895 at 897–98.

83. *Ibid* at 898.

84. *Ibid*.

85. Elaine Craig, “Person(s) of Interest and Missing Women: Legal Abandonment in the Downtown Eastside” (2014) 60:1 *McGill Law Journal* 1 at 3.

86. *Ibid* at 8–12.

87. *Ibid* at 11–12.

convicted for six murders, and the government of British Columbia conducted a public inquiry into the failures of the police to investigate earlier, and this inquiry was titled the Missing Women Commission of Inquiry.<sup>88</sup>

Pickton's name was mentioned fifty-five times by witnesses and by committee members throughout the hearings on Bill C-36. The case is the "largest-known serial murder case in Canada,"<sup>89</sup> and, therefore, it is not surprising that it would still have such prevalence seven years after Pickton was convicted. The case can be seen as bringing the material disadvantages faced by Indigenous women in prostitution to public attention. It is impossible to know how the level of uniformity in argument would be altered if the Pickton case had not occurred; it is unclear if ideas such as colonialism's impact on prostitution or Indigenous women's overrepresentation in street prostitution were understood to the same extent by politically aware Canadians before the Pickton case. However, it is reasonable to assume that the high level of publicity surrounding the case impacted all Canadians' awareness of the oppression faced by Indigenous women and Indigenous women in prostitution, in particular. Indigenous witnesses with lived experience of prostitution would always have brought knowledge from their own experiences, but the publicity surrounding the Pickton case likely impacted the rhetoric and arguments used by non-Indigenous witnesses and witnesses without lived experience.

The phrase "missing and murdered women" was also mentioned fifteen times by witnesses and committee members throughout the hearings. The exact same phrase was always used and usually in relation to Indigenous women, indicating that the phrase has become ubiquitous in Canadian activist culture. Certain facts discussed at the deliberations, such as the overrepresentation of Indigenous women in street prostitution, that they are targets of violence, and that colonialism and state harm influence their entry into prostitution, likely became (more) undeniable and commonly accepted after this traumatic event in Canadian history.

### ***Differences in Argument between the Opposing Sides: Examination through Feminist Theoretical Frameworks***

Apart from the fundamental difference between wanting to abolish prostitution versus wanting to decriminalize it, there were other differences in the arguments relating to prostitution put forth by each side. While agreements between the two sides focused on material issues, the differences between the two sides were matters of ideology. Their disagreements stemmed from different beliefs surrounding women's choices and conditions of oppression under patriarchy, which are more abstract than the material issues upon which they agreed. Accordingly, this section examines the

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88. *Ibid* at 4.

89. Jiwani & Young, *supra* note 82 at 896.

differences in argument through feminist theoretical frameworks. Grounding the arguments this way provides an understanding of the broader themes and beliefs expressed in witnesses' testimonies, and engaging with feminist theoretical frameworks, specifically, demonstrates how each side's argument is based on beliefs that align with different feminist theories.

### *Witnesses against Bill C-36*

The witnesses who were against the passing of the bill argued for harm reduction in order to make prostitution safer. Gaining legitimacy and reducing the violence inflicted on women in prostitution, they believed, could be achieved through total decriminalization. From this perspective, prostitution is not a problem but, rather, the current conditions of it are. Furthermore, from this perspective, women in prostitution are not victims but, instead, the agents making active choices. John Lowman, for example, argued: “[M]any and I would suspect most sex workers don’t agree that they are one-sided and only victims, even if some of them are victimized. They see themselves as agents acting on their own behalf, taking advantage of their sexual capital.”<sup>90</sup>

Regarding Indigenous women in prostitution, the emphasis remains on them being agents rather than victims. This was demonstrated through the discussions of Indigenous women doing “survival sex work”; the choice of term implies that, despite the motivation being purely survival, selling sex in this context is still a form of labour in which one actively participates. As Jacqueline M. Davies noted in her discussion of the terms “sex work” and “prostitution,” “[w]orkers may be treated well or badly, but as workers they are engaged in action.”<sup>91</sup> For example, Monica Forrester stated: “Aboriginal women in remote areas are working along the highways to get from town to town. Survival sex work is necessary to feed their kids and themselves.”<sup>92</sup> This by no means glamorizes the conditions these women face, but it emphasizes that they had purposely chosen to sell sex. This focus on agency, instead of victimhood, is also held by Menaka Raguparan in her study of Indigenous and racialized sex workers, where she criticizes Bill C-36 for “[attributing] the normative version of ‘victim’ to a racialized woman,” specifically an Indigenous woman.<sup>93</sup>

In addition to this focus on agency, some witnesses against the bill argued that prostitution must continue because it needs to remain an option for Indigenous women who cannot make money in other ways. In addition to Forrester’s earlier

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90. JUST, *Evidence*, 41-2, No 33, *supra* note 67 at 8 (John Lowman).

91. Davies, *supra* note 12 at 79.

92. JUST, *Evidence*, 41-2, No 34, *supra* note 45 at 9 (Monica Forrester).

93. Raguparan, *supra* note 16 at 69.

quote about survival sex work being “necessary” for some women, Naomi Sayers argued that criminalizing clients would have “devastating impacts for indigenous women who rely on income generated from prostitution, particularly in the context of inadequate housing, social services, or education.”<sup>94</sup> This criticism of inadequate social services, which Forrester also mentioned,<sup>95</sup> suggests they viewed the oppression of Indigenous women as something that could not be overcome by Bill C-36, or at least believed the bill was inadequate at reducing the need for financially disadvantaged Indigenous women to work in prostitution. Davies argued similarly about Bill C-36, stating: “In a market-dominated society, denial of access to the market threatens survival.”<sup>96</sup>

The perspective of these witnesses can be understood through the framework of Deniz Kandiyoti’s “patriarchal bargain.”<sup>97</sup> She theorizes that “women strategize within a set of concrete constraints,” which shapes their “active or passive resistance in the face of their oppression.”<sup>98</sup> This theory posits that women are not always in a position where they can eliminate the patriarchal forces that constrain them; therefore, they must work within patriarchy. Kandiyoti contends that patriarchal bargains “define, limit, and inflect [women’s] market and domestic options.”<sup>99</sup> In the case of Bill C-36, witnesses against the bill viewed the market option of working in prostitution as more preferable for Indigenous women than having no source of income.

With the perspective that Indigenous women in prostitution are active agents working to survive within a limiting system, decriminalization is seen as the best option. Under decriminalization, prostitution would be regulated through labour laws rather than criminal laws, positioning it as a legitimate occupation and, therefore, positioning women in prostitution—even “survival sex work”—as workers. For the witnesses against Bill C-36 who mentioned Indigenous women, it was clear that they wanted conditions to change for this group. However, they believed the bill was unsuitable for, and incapable of, achieving this goal.

### *Witnesses in Favour of Bill C-36*

Witnesses in favour of the bill argued that prostitution should be abolished, and, for witnesses who mentioned Indigenous women in their testimony, the overall

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94. JUST, *Evidence*, 41-2, No 33, *supra* note 67 at 4 (Naomi Sayers).

95. JUST, *Evidence*, 41-2, No 34, *supra* note 45 at 9 (Monica Forrester).

96. Davies, *supra* note 12 at 87.

97. Deniz Kandiyoti, “Bargaining with Patriarchy” in Carole R McCann & Seung-Kyung Kim, eds, *Feminist Theory Reader: Local and Global Perspectives*, 3rd ed (New York: Routledge, 2013) 98 at 98.

98. *Ibid.*

99. *Ibid* at 104.

contention was that, if prostitution was abolished, conditions for Indigenous women in Canada would improve. Several of these witnesses requested that the Act put Indigenous women at its centre; as Michèle Audette asserted, “[t]oday’s topic of study must be addressed with aboriginal women in mind.”<sup>100</sup> From this perspective, helping Indigenous women to exit prostitution is one of the most important outcomes the bill should achieve.

Many witnesses in favour of the bill drew links between prostitution and trafficking, rather than seeing them as separate phenomena. They further positioned prostitution and trafficking as part of a system of patriarchal and colonial exploitation that disproportionately targets Indigenous women. The bill was viewed as being capable of abolishing both and, therefore, liberating Indigenous women from this system. These witnesses’ vision of abolition can be viewed as part of an Indigenous-centred radical feminism. Feminist theorist bell hooks defines radical feminism as a model that demands “fundamental change in the existing structure” in order to “replace the old paradigms” with ones of “mutuality and equality.”<sup>101</sup> She contrasts this with liberal, reformist feminism, which demands equal rights “within the existing class structure.”<sup>102</sup> These witnesses did not want a liberal feminist solution that sought to improve the existing structure of prostitution.

Beyond arguing that prostitution was a “product of a colonial system” that should be abolished, several Indigenous witnesses used argumentation that suggested prostitution was in fact incompatible with the ontological category of Indigenous women.<sup>103</sup> In other words, Indigenous women and prostitution should not exist in compatibility with each other. Bridget Perrier stated: “[O]ur mothers, sisters, and daughters are not born to be used and sold for men’s sexual needs. We are not commodities. Our women are sacred.”<sup>104</sup> Teresa Edwards also stated: “[W]e want more than prostitution for aboriginal women.”<sup>105</sup> This rhetoric positions prostitution as not just unacceptable for Indigenous women but also fundamentally at odds with what Indigenous women, in ontological terms, should be understood as.

Along with hooks’s definition of radical feminism, this Indigenous-centred abolitionist viewpoint can be connected to Audre Lorde’s argument on thinking radically. Her famous words, “the master’s tools will never dismantle the master’s

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100. JUST, *Evidence*, 41-2, No 36, *supra* note 51 at 18 (Michèle Audette).

101. bell hooks, *Feminism Is for Everybody: Passionate Politics* (London: Pluto Press, 2000) at 37.

102. *Ibid.*

103. JUST, *Evidence*, 41-2, No 36, *supra* note 51 at 12 (Michèle Audette).

104. JUST, *Evidence*, 41-2, No 39, *supra* note 52 at 2 (Bridget Perrier).

105. JUST, *Evidence*, 41-2, No 36, *supra* note 51 at 5 (Teresa Edwards).

house,”<sup>106</sup> about white American feminists not acknowledging “the differences between” themselves and women of colour, argue that using tools of patriarchy cannot dismantle it. Lorde further argues that using the master’s tools “may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change.”<sup>107</sup> Applying Lorde’s words to the Bill C-36 deliberations, this Indigenous-centred radical feminism can be theorized as attempting to dismantle the master’s house, which, in this case, is a system of colonialist patriarchy. The Indigenous abolitionists do not wish to win the “game” but, rather, aim to bring about “genuine change” by getting rid of the “master’s [tool]” of prostitution. The demands that Indigenous women be mentioned in the bill and their theorizing of prostitution as incompatible with Indigenous women signify a wish for radical overhaul rather than reformist harm reduction. All witnesses in favour of the bill wanted the abolition of prostitution, but for the Indigenous abolitionists and some of their allies, the best solution was to create a radical feminist bill that centred on Indigenous women and their culture.

### *Conclusion*

Contrary to expectations, there were strong similarities in the ideas about Indigenous women in prostitution put forth by both sides. Witnesses in favour of Bill C-36 and witnesses against Bill C-36 both represented the issue of Indigenous women in prostitution as an important issue—one that is shaped by oppressive structures. Furthermore, witnesses from both sides agreed that Indigenous women were overrepresented in prostitution and street prostitution specifically; that they were impacted by colonialism; that the state of Canada was an agent of harm to them; that they were disproportionately targeted by the criminal justice system; that section 213(1.1) of the bill would harm them specifically; and that they were targeted for violence.

The issue of Indigenous women in prostitution was represented differently, however, with regard to what was the best practice for solving these problems. The aforementioned ideas may have been put forth by witnesses from both sides, but they were mostly used to argue in different ways about Bill C-36’s merits. The major ideological difference between the two sides rested on how

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106. Audre Lorde, “The Master’s Tools Will Never Dismantle the Master’s House” in Cherríe Moraga & Gloria Anzaldúa, eds, *This Bridge Called My Back: Writings by Radical Women of Color*, 2nd ed (New York: Kitchen Table: Women of Color Press, 1983) 98 at 99–100.

107. *Ibid* at 99.



Indigenous women in prostitution should engage with the oppressive system that had produced these problems. Witnesses against the bill more often positioned Indigenous women in prostitution as agents making choices to engage in work, even if it was done purely for survival. Furthermore, they contended that Bill C-36's attempt to abolish prostitution could not change Canada's structural oppression of Indigenous women and, therefore, would not lead to better conditions for them. Witnesses in favour of the bill, however, viewed the participation of Indigenous women in prostitution as unacceptable. Their ultimate argument was that Indigenous women in prostitution should not work within the oppressive system but, rather, be liberated from it through the abolition of prostitution.

Another major finding was that Indigenous activists and their allies on each side argued from unified positions that can be understood through feminist theory. While many witnesses against the bill operated within a liberal feminist framework that prioritized individual economic survival, many witnesses in favour of the bill operated within a radical feminist framework that prioritized collective liberation through systemic overhaul, and both sides featured witnesses who centred Indigenous women within these arguments. Most surprising was that several Indigenous witnesses argued that prostitution was incompatible with the ontological category of Indigenous women, thereby invoking an entirely Indigenous-focused abolitionist framework. Given that very little of the Bill C-36 literature mentioned Indigenous women, this finding suggests that Indigenous-centred abolitionism has been overlooked and that it challenges the argument that abolitionist discourse ignores racialized people.<sup>108</sup>

Overall, the implications of these findings are that the issue of Indigenous women in prostitution—and the problems that they face—are so well known and undisputed in Canada that they can be agreed upon by people who hold ideologically opposed views about whether prostitution should exist. The issue of Indigenous women in prostitution is something that politically aware Canadians can unite on, regardless of their views about prostitution. However, the key differences between the two sides in relation to this topic show that the issue can also be mobilized to argue for or against abolition. Although the issue united the witnesses, the argument whether or not Indigenous women in prostitution would benefit from Bill C-36 divided them.

It must be noted that although thirty-six of the ninety-seven witnesses at the Bill C-36 hearings clearly felt that Indigenous women in prostitution was a key aspect of the discussion, the final piece of legislation completely lacks reference to this issue. While there was disagreement between the two sides as to the best solution, the specific problems faced by Indigenous women in prostitution were largely agreed upon. Perhaps then, the most surprising outcome is not that the issue caused two

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108. See e.g. Bruckert, *supra* note 13 at 2.

ideologically opposed sides to agree on a large number of ideas but, rather, that the issue of Indigenous women in prostitution, ultimately, was not deemed noteworthy in the policies of the Canadian government.

*About the Contributor / Quelques mots sur notre collaboratrice*

**Zoë Goodall** completed her Honours in Bachelor of Arts (International Studies) at RMIT University, Australia, in 2017. She has delivered presentations about her research on Bill C-36 in both Melbourne and Vancouver. Currently, she works as a research assistant, freelance editor, and film critic.