Tripping Point
Brief to the Standing Committee on Justice and Human Rights on *The Protection of Communities and Exploited Persons Act*.

John Lowman, PhD, School of Criminology, Simon Fraser University

Since 1977, I have conducted numerous studies of sex work, and prostitution law and its enforcement in Canada. Between 1984 and 2002, the Department of Justice Canada contracted me to conduct eight studies of prostitution and prostitution law enforcement in Vancouver, and one on gaps in the prostitution research literature. In 1989, the Standing Committee on Justice and Legal Affairs invited me to make a submission on the 1985 communicating law. In 2005, the Subcommittee on Solicitation Laws invited me to make two submissions on prostitution law. I was an expert witness for the applicants in *Bedford v. Canada,* and a witness in the *Missing Women Commission of Inquiry*, called by the Commissioner to provide independent expert opinion on prostitution in Vancouver, and the Vancouver Police Department's investigation of missing women between 1997 and 2002. I am currently writing a book on prostitution and the law in Canada, which includes commentary on *Bedford v Canada* and ensuing law reform.

My submission focusses on six aspects of the debate about prostitution law reform and the proposed *Protection of Communities and Exploited Persons Act*:

a) Choice, consent, and the underlying logic of asymmetrical criminalization;
   i) Infantilizing sex sellers
   ii) Sexual slavery, wage slavery, and choice
b) Was the previous legislative regime restricted to nuisance control?
c) Generalizing the experience of violence from a single sample;
d) Does asymmetrical criminalization violate Charter s. 15 (equality)?
e) Other Charter violations
f) Claims about the effects of legislation in other countries.

A core theme of the ensuing commentary is that supporters of demand-side prohibition,[1] including MP Joy Smith's document *Tipping Point*, have systematically distorted information about prostitution. Research is their tripping point.

a) Choice, consent, and the underlying logic of asymmetrical criminalization

The dozens of studies of sex workers conducted in Canada since 1980 suggest that we can distinguish three broad categories of sex work, the latter two of which represent a continuum from very little to a relatively great deal of choice:[2]

[1] I do not use the term "Nordic model" to describe asymmetrical prohibition. Historically, "Nordic model" refers to the economic and social policies of the Nordic countries, which combine a market economy, expansive welfare state, free education, universal healthcare, high rates of trade union membership, and gender equality policies. While Sweden was the first country to adopt demand-side prohibition of prostitution, adopting the "Nordic model" in Canada would involve much more than law reform and twenty million dollars of funding.

a) Sexual slavery involves one (or more) person(s) forcing another to prostitute;
b) Survival sex involves a person engaging in prostitution because he or she has few or no other options; and
c) Opportunistic prostitution involves a person making an rational decision to engage in sex work rather than some other kind of labour because of the greater financial reward it brings.

Prohibitionist rhetoric would appear to hold that the third category does not exist or is so insignificant that it is irrelevant to the analysis of prostitution. The logic of asymmetrical prohibition rests on two main arguments. The first involves infantilizing sex sellers. Because the "average" prostitute began selling sex when she was a child, she never really consents to acts of prostitution. The second is that, because colonialism and patriarchal social relations force females to sell sex, the state should not hold them responsible for what they do. Because sex buyers exploit women in these positions, we should criminalize the buyers, but not the sellers, because the sellers are the buyer's victims.[3]

i) Infantilizing Sex Sellers

A core demand-side prohibitionist argument is that the "average" female sex seller begins prostituting when she is twelve to fourteen years old. Because it is a core argument, it is worth examining in some detail.

Examples of the claim abound. For example, from 2006 to 2010, *Vancouver Sun* columnist Daphne Bramham repeatedly asserted this "fact" as a cornerstone of her argument that Canada should adopt demand-side prohibition.[4] In 2008 Professor Richard Poulin, one of the Crown's expert witnesses[5] in *Bedford v. Canada*, submitted an affidavit which claimed that that "the average age of recruitment … in Canada is 14 years old" (Joint Application Record Vol. 40, Tab 102, paragraphs 24, 28). In 2012, Conservative MP Joy Smith, the leading parliamentary advocate of demand-side prohibition, held that "The average age of entry into prostitution in Canada is between twelve and fourteen years of age."[6] On CBC radio on 5th June 2014, a day after the tabling of Bill C36, MP Smith repeated this claim. It enables demand-side prohibitionists to treat adult sex sellers as if they are children. Prohibitionist icon Melissa Farley,

---

[2] The Subcommittee on Solicitation Laws reported that these distinctions "were corroborated by many of the former and current prostitutes who testified before our Subcommittee." See *The Challenge of Change: A Study of Canada's Criminal Prostitution Laws.* Report of the Standing Committee on Justice and Human Rights, 2006, Chapter 2.
[3] Prohibitionists build these denials of sex seller agency and culpability on a series of broader claims: prostitution is inherently harmful not just to sex sellers but to women in general; prostitution is inherently dangerous; prostitution is male violence against women; women cannot gain equality with men as long as prostitution exists.
[4] See e.g. Bramham "Prostitution is a crime – against prostitutes" *Vancouver Sun*, December 16th 2006; Bramham "Prostitution is a dangerous, soul-destroying job any way you cut it" *Vancouver Sun*, October 6, 2010.
[5] For further commentary on the Crown's expert witness testimony, see Lowman, J. (2013) "Crown Expert-Witness Testimony in *Bedford v. Canada:* Evidence-based Argument or Victim-Paradigm Hyperbole?" pp. 230-250 in E. van der Meulen, E. Durisin and V. Love (eds) *Selling Sex: Canadian Academics, Advocates, and Sex Workers in Dialogue.* Vancouver: UBC Press.
[6] Joy Smith "Sex traders keep your hands off our children" *The Province*, July 29, 2012.

another Crown expert witness in *Bedford v Canada* (and a central source for Joy Smith's *Tipping Point*[7]), explained the logic this way:

> "The 14-year-old in prostitution eventually turns 18 but she has not suddenly made a new 'vocational choice'…. Women who began prostituting as adolescents may have parts of themselves that are dissociatively compartmentalized into a much younger child's time and place" (Farley et al. 2003, 36).

For Farley and her colleagues, the "average" adult female sex worker effectively *is* a child. Prohibitionists write off anything positive she might say about sex work – including the notion that it is work – as a technique to neutralize the "horror" of her experience. Until she embraces victimhood, prohibitionists treat the adult sex worker as being the equivalent of a deluded child.

At first blush, this rhetoric is compelling: who does not want to protect children from sexual exploitation? But what if the claim about average age of entry is inaccurate? When pressed to substantiate it, how did these various commentators fare? Let us begin with Professor Richard Poulin, the authority whose word the 2007 Standing Committee on the Status of Women – the only federal inquiry to recommend that Canada adopt demand-side prohibition[8] – took as unquestioned fact. Poulin's affidavit for *Bedford v. Canada* alleged that several sources substantiated his claim about the average age of entry. However, under cross-examination, Poulin's argument fell apart. Only one of his sources – McIntyre's (1999[9]) study of sexually exploited youth – gave fourteen as the average age of entry into prostitution. That is hardly surprising given that her study focussed on youth. Because it excluded persons who began selling sex when they were adults, McIntyre's sample tells us nothing about the average age of entry into prostitution in Canada. Other studies entered into the *Bedford v. Canada* evidentiary record tell a different tale: in Benoit and Millar's (2001[see FN 20]) sample, the average age of entry was 19; in O'Doherty's (2011[see FN 20]) sample, it was 22, and in Farley et al.'s (2005[10]) sample, it was eighteen.

Poulin's errors did not deter journalist Daphne Bramham and MP Joy Smith from continuing to state that the average age of entry in Canada is fourteen, as if it is an established fact. However, because Ms. Bramham is a journalist, she is subject to the *BC Press Council's Code of Practice* admonition that "journalists shall strive to avoid expressing comment and conjecture as fact."

---

[7] Farley's study is one of a handful Canadian sources that prohibitionists ever cite, even though her work is highly controversial, and the subject of widespread international criticism. In *Bedford v Canada*, Justice Himel's evaluation of Farley's work stands in stark contrast to the credibility that Joy Smith gives it. Justice Himel concluded, "I found the evidence of Dr. Farley to be problematic. Although Dr. Farley has conducted a great deal of research on prostitution, her advocacy appears to have permeated her opinions. For example, [her] unqualified assertion … that prostitution is inherently violent appears to contradict her own findings that prostitutes who work from indoor locations generally experience less violence." Consequently, for these and various other reasons, Justice Himel assigned "less weight" to Farley's evidence (Bedford v. Canada, 2010 ONSC 4264, paras 353-356).

[8] For a review of the recommendations of the various inquiries, see Lowman, J. (2011) "Deadly Inertia: A History of Constitutional Challenges to Canada's Criminal Code Sections on Prostitution." *Beijing Law Review*, 2:33-54. (http://www.scirp.org/journal/blr/).

[9] McIntyre, S. 1999. The Youngest Profession, the Oldest Oppression: A Study of Sex Work. In *Child Sexual Abuse and Adult Offenders: New Theory and Research*. Ed. Bagley, C. and Mallick, K. 159-192. London: Ashgate

[10] Farley, Melissa et al. *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder* (2003) Journal of Trauma Practice Volume: 2 Issue:3/4, p. 35.

Consequently, I wrote to Ms. Bramham asking her to substantiate her claim, pointing out that Justice Himel concluded that "Dr. Poulin's citations for his claim that the average age of recruitment into prostitution is 14 years old were misleading or incorrect" (para. 357). I asked Ms. Bramham what evidence she had that Justice Himel did not.

In response, Ms. Bramham offered two U.S. sources, and one Canadian study, a sample of Prince George sex workers. However, to the extent that it was possible calculate an average from the age categories reported in the Prince George study, it was eighteen, not fourteen. As to Bramham's two U.S. sources, they really were only one. The first source – a U.S. Department of Justice web site – did not report primary data, but relied almost entirely on Bramham's second source, Estes and Weiner's *Commercial Sexual Exploitation of Children in the U.S., Canada, and Mexico*. Given that Estes and Weiner's was the *only* research that Joy Smith cited when I requested that she substantiate her claim about the average age of entry, let us turn to MP Smith's August 2012 response to me, which was as follows:

> Thank you for taking the time to inquire about the sources I use when I quote the statistic that the average age of entry into prostitution for females in North America is 12 – 14 years old. This is based both on academic research and my own experience working with victims. Although there is solid academic research behind my statistics, I mostly speak from personal experience by working with victims of human trafficking. Many times when I meet with survivors and they share their story with me, all too often, many of them tell me they were trafficked at this age. Working with these young girls and hearing their horrific experiences motivates me to do the work that I do.
>
> This statistic is also used by many advocates and government departments. It is corroborated in an extensive study conducted by Professor of Social Work Richard J. Estes and Senior Research Investigator Neil Alan Weiner at the University of Pennsylvania, titled "The Commercial Sexual Exploitation of Children in the U.S., Canada and Mexico." This specific statistic is found on page 92. You can read this study here: http://www.sp2.upenn.edu/restes/CSEC_Files/Complete_CSEC_020220.pdf.

MP Smith's July 2012 newspaper article referred to Canada. However, when called upon to substantiate it, she referred to research in "North America." This geographical slippage opened the door to introducing Estes and Weiner's study of the commercial exploitation of children. But does this study substantiate MP Smith's claim? No, it does not.

Estes and Weiner's research suffers from the same limitation that characterized McIntyre's study: it deliberately excluded adults (p. 27). Because theirs was a purposive sample of children, it cannot substantiate claims about the average age of entrance, because it excludes anyone who entered prostitution as an adult. Further, while "Canada" appears in their title, Estes and Weiner did not conduct any research in Canada. Their findings (pp. 38-158) were restricted to the United States.[11] Why did MP Smith not cite *any* Canadian studies? While they are all non-probabilistic samples, one could at least calculate the average age of entry across these studies, which include thousands of research participants. It turns out that MP Smith's evidence is entirely anecdotal. I do not doubt her description of the victims of human trafficking she has encountered. During my research, I met women like them. But I also met women who are not like them. Personal

[11] Their decision to include "Canada" in the title thus remains a mystery.

experience aside, Canadian research does not support MP Smith's anecdotal evidence. It suggests that most sex workers are not trafficking victims.

Since being challenged to substantiate her claim that fourteen is the average age of entry into prostitution in Canada, journalist Daphne Bramham has not repeated it. However, despite having produced no reliable evidence, MP Smith continues to repeat it as if it is established fact. None of this is to argue that children should be involved in prostitution – or that they should consume alcohol, drive cars, or marry. However, MP Smith generalizing her particular experience of "the victims of human trafficking" to prostitution as a whole is akin to attending a series of Alcoholics Anonymous meetings and then arguing that the misery recounted at them is the experience of everyone who consumes alcohol. Prohibiting the purchase of sex from a consenting adult in order to stop children and youth from prostituting is like arguing that we should criminalize adult alcohol consumption to prevent children from drinking alcohol.

ii) Sexual slavery, wage slavery, and choice

The abolitionist analysis of prostitution – all prostitution – as "sexual slavery" is similar to 19th Century analyses of wage labour as "wage slavery," except that it substitutes patriarchal social relations for class relations. The abolitionist discourse on prostitution also borrows some of its rhetoric from 19th Century critiques of capitalism that viewed working for wages as little different from chattel slavery. The wage labourer makes what appears to be a voluntary contract. In a legal sense, like the sex worker, the wage labourer is "free" to sell labour. However, wage labourers do not make that choice under self-selected circumstances. They make it in the context of capitalist socio-economic relationships. In 21st Century capitalism, the working poor remain compelled to work for a wage to survive. As long as there is structural unemployment, some workers have no choice but to sell their labour for subsistence wages. Just as there are "survival sex workers," there are "survival wage labourers" too. Their social and economic circumstances force both to sell their labour. Trafficking of domestic and agricultural workers occurs too. Does this mean we should prohibit the purchase of survival wage labour?

Like many wage labourers, many women who sell sex do not do so out of desperation. Studies such as Benoit and Millar's *Dispelling Myths and Understanding Realities* (2001)[12] and Jeffrey and McDonald's *Sex Workers in the Maritimes Talk Back*[13] (2006) suggest that, for many sex workers, the decision to prostitute is a rational economic choice, albeit one that is shaped by race, class and gender. Many choose sex work over minimum wage service sector jobs, and reject the victim status that prohibitionists impose on them. Those who work independently often see themselves not as victims, but as entrepreneurs taking advantage of their sexual capital.

b) Was the previous legislative regime restricted to nuisance control?

MP Smith's *Tipping Point* argues that the courts will have to evaluate the constitutional integrity of the proposed legislation in a new light, because it has a different set of objectives than the

[12] http://www.peers.bc.ca/images/DispMythsshort.pdf
[13] Vancouver, BC: University of British Columbia Press.

previous legislation. Regarding the old regime she says, "The historical approach to prostitution in Canada never carried the goal of eliminating prostitution but rather only to hide it from public view." Her description is misleading. It ignores the procuring offences,[14] and it portrays the other laws as being exclusively about nuisance.

In *Bedford v Canada*, Justice Himel concluded that the bawdy-house laws' purpose was "combatting neighbourhood disruption or disorder and *safeguarding public health and safety*" (para. 243, emphasis added). While she concluded that the communicating law "is aimed at taking … prostitution off the streets and out of public view," it also targeted "*social* nuisance" (para. 274, emphasis in original). Social nuisance included protection of children – i.e. the same goal as s.213 (1.1) of the proposed legislation. Given that the sale of sex would still be legal under the proposed legislation, courts are likely to view s.213 (1.1) as suffering the same constitutional inadequacy as the communicating law, which the Supreme Court of Canada struck down. Zoning bylaws would be more effective for controlling nuisance, and would be more likely to pass constitutional muster.

As further evidence of the alleged purpose of the former prostitution laws, *Tipping Point* argues:

> s. 213 is, by far, the most commonly used law out of all the offences involving prostitution. For example, in 1995 … 92% of all prostitution offences reported by police were for the communication offence, followed by procuring (5%) and bawdy house (3%).[15] Certainly, if Parliament's goal had always been to eliminate prostitution or strongly suppress prostitution due to the harm it causes, there would not be such disparity between the communication offence and the other offences that better address the exploitive nature of prostitution.

The disparity in these charge rates is not a reflection of parliament's intention, but the outcome of police discretion. One measure of parliament's intention was the classification of the various prostitution offences. The nuisance laws were summary offences, whereas the procuring sections are all indictable offences, as was the offence of "keeping a common bawdy house." True, under the old regime, prostitution technically was legal, but it was virtually impossible to prostitute without breaking the law; it was prohibition in all but name. However, because its overall goal was not clear, in practice it became contradictory and sometimes self-defeating. For example, in Vancouver and Toronto in the 1970s, police enforcement of laws against off-street prostitution forced it onto the street and into residential areas.[16] VPD designed subsequent law enforcement to contain street prostitution in several industrial and commercial districts. Police found the procuring laws difficult to enforce, requiring intensive and costly investigations because evidence was hard to obtain. The system resulted in a two-tier prostitution trade; the off-street trade operated with relative impunity while police enforced the communicating law extensively. Would asymmetrical prohibition result in different enforcement patterns? Probably not.

---

[14] Justice Himel concluded that, "The legislative aim of the living on the avails of prostitution provision is to prevent the exploitation of prostitutes and profiting from prostitution by pimps." (para. 272) The same is true of the remaining sections of the procuring law that were not subject to in *Bedford v. Canada.*

[15] http://publications.gc.ca/Collection-R/Statcan/85-002-XIE/0029785-002-XIE.pdf

[16] See Brock, D.R. (1998). *Making work, making trouble: The social regulation of sexual labour*. Toronto, ON: University of Toronto Press; and Lowman, J. (1986). Street prostitution in Vancouver: Notes on the genesis of a social problem. *Canadian Journal of Criminology*, *28*(1), 1-16.

One of the initial experiences of asymmetrical prohibition in Sweden was that most of the enforcement of the law prohibiting purchase of sex targeted the street trade.[17] How would police in Canada prosecute off-street clients? Set up bogus sex worker advertisements in order to entrap clients. Or would the enforcement look like it did in Vancouver in the mid-1990s, when VPD had a policy of enforcing the communicating law against clients, but not against sex workers in the Downtown Eastside as long as they restricted their activity to an industrial area and did not work near schools or in residential areas. Willie Pickton picked up most of his victims in this industrial area, which brings us to *Tipping Point's* claims about violence in the sex trade.

c) Generalizing the experience of violence from a single sample

In a section on the harms of prostitution, MP Smith presents data on exploitation and violence in the sex trade. However, like most prohibitionists, she selects data on the most marginalized sex workers to illustrate the harms of prostitution, and implies that they exemplify levels of violence across the sex trade. While MP Smith acknowledged that Farley et al. (2005) drew their sample from Vancouver's Downtown Eastside (DTES) the table in *Tipping Point* has the heading, "Out of 100 Canadian women in prostitution." Statistically speaking, such generalization is cavalier.

Bedford v. Canada established that levels of violence vary according to "location or venue of work and individual working conditions" (Justice Himel, para. 300). The following description of the DTES, the most poverty-stricken urban postal code in Canada, is from my submission to the Missing Women Commission of Inquiry:

> The City of Vancouver notes that, "As a traditionally low-income neighbourhood, the Downtown Eastside has experienced an influx of problems such as drug addiction and dealing, HIV infection, prostitution, crime, lack of adequate housing, high unemployment, and the loss of many legitimate businesses."[18] The unemployment rate is 22%, as compared to 8% in the city as a whole (City of Vancouver 2006, p. 12). Many DTES residents live in poverty, are homeless, and drug and/or alcohol addicted.
>
> … the DTES was [reputed to be] "the largest and most heavily concentrated open illicit drug use scene in North America" (Shannon et al. 2008; Strathdee et al. 1997, Wood et al. 2002). In 1997, the drug and HIV epidemics were so severe that health policy makers declared them to be a public health emergency (Pivot 2004, p. 4). VPD reported that, in 1992, the DTES population included over 500 mentally ill persons, 480 sex workers, over 350 Latino refugees, and many alcoholic and dysfunctional residents living in poverty. The large majority of street level sex workers in the community were young female Aboriginals.[19]

---

[17] See the Norwegian review of the Swedish law at http://odin.dep.no/jd/english/012101-990578/dok-bn.html

[18] http://vancouver.ca/commsvcs/planning/dtes/

[19] Shannon, K., Kerr, T., Allinott, S., Chettiar, J., Shovellor, J. and Tyndall, M. "Social and Structural Violence and Power relations in Mitigating HIV risk of Drug-Using Women in Survival Sex Work." *Social Science and Medicine*, 66:911-923, 2008. Strathdee, S.A., Patrick, D.M. and Currie, S.L. (1997) "Needle Exchange is Not Enough: Lessons from the Vancouver Injecting Drug Use Study." *AIDS* 11:8:F59-F65. Wood, E., Kerr, M.W., Spittal, P.M. (2002) "Factors Associated with Persistent High-risk Syringe Sharing in the presence of an Established Needle Exchange Programme. *AIDS* 16:1:401-436. Pivot Legal Society (2004) *Voices for Dignity* http://www.pivotlegal.org/pivot-points/publications/voices-for-dignity

The characteristics and experiences of this population of street-connected women, working in an area that other street-level sex workers disparagingly refer to as "low track," ought not to be generalized to other segments of the commercial sex industry. For example, the percentage of Aboriginal women is much higher in the DTES than other Vancouver strolls, and much higher than any strolls in Montreal or Toronto. There is no doubt that the women in the DTES experience horrific levels of violence; everyone agrees that they need alternatives to prostitution to make a living. However, other sex workers do not experience the same risk.

For example, compare the rates of violence in the DTES to O'Doherty's (2011[20]) sample of 39 women working in the mid to high end of the prostitution trade. Five women in O'Doherty's sample began working on the street. If we look at the experience of the remaining 34 women, in the roughly 270 years that they had practiced prostitution in massage parlours, escort services and independently, there was one assault by a client and five incidents where clients had made threats of some kind. One study in the DTES found that 48% of respondents had been "beaten by a customer" in the six-month period prior to participating in that study.[21]

Consider the characteristics of the women in O'Doherty's sample. Only two were under 18 when they began sex working, 57% began between the ages of 19 and 24, and 17% when they were 30 or older. More than half her respondents earned at least $60,000 annually. There were no Aboriginal women in the sample. These findings suggest that the race, gender and class structure of wider society also characterizes prostitution.

Demand-side prohibitionists argue that, because there is a risk of violence no matter where prostitution occurs, we should abolish it. Imagine this argument carried over into other realms of human activity. Should we prohibit logging, fishing and mining because they are high-risk occupations, or should we try to make them safer? Because motorbike riding is far more dangerous than driving a car should we ban motor bikes, or require that riders wear crash helmets? Should we ban prostitution or design policy to ensure that women can sell sex in relative safety. The greatest irony of demand-side prohibition is that, pursuing abolition is likely to increase the risks associated with prostitution, not reduce them.

d) Does asymmetrical criminalization violate Charter s.15 (equality)?

MP Smith's *Tipping Point* implies that asymmetrical prohibition will not violate s.15 of the Charter, which guarantees equality rights. Her rationale is not convincing.

Demand-side prohibitionists argue that demand causes prostitution. Consequently, targeting (male) demand is the best strategy to end (female) prostitution. This argument ignores the way that supply and demand interact. Just as demand may increase supply, so supply may increase demand. For example, in one of the first studies of sex purchasers in Canada, when asked what initially prompted them to purchase sex, 41% of respondents said that it was the availability

[20] O'Doherty (2011) "Victimization in Off-Street Sex Industry Work," *Violence Against Women* 20:10:1-20.
[21] Currie et al. (1995) "As*sessing Violence Against Street Involved Women on the Downtown_Eastside/Strathcona Community* Ministry of Women's Equality, DEYAS and WATARI, Vancouver.

and/or visibility of sex workers.[22] Because independent sex workers will still be able to advertise their services, the proposed legislation will do little to change this dynamic. MP Smith's *Tipping Point* argues that:

> Many of the women involved in prostitution are controlled by violent pimps and traffickers. Even those who claim to be in prostitution by choice are often using prostitution as a means of survival or to maintain an addiction. Canadian legislation should not criminalize these women.

What about the women who are not trafficked or forced by poverty to sell sex: where do they figure in this analysis? Women who are not trafficked use their sexual capital to make a living; survival sex workers do the same. The women who are not trafficked appear to comprise a substantial majority of sex workers.

The proposed legislation would allow adult sex workers to advertise their own sexual services, and sell them to anyone responding to the ad. Then, police could charge the man responding to the advertisement with a criminal offence even though both he and the seller are legally consenting adults, and even if he had never previously purchased sex. One can imagine a defence lawyer calling evidence to establish that many sex workers do not see themselves as victims, are not trafficked, and choose to prostitute, in which case, demand-side prohibition constitutes institutionalized entrapment of male sex purchasers, a government made honey-trap.

e) Other Charter Violations

In addition to a section 15 challenge, one can anticipate constitutional challenges arguing that:

I. the proposed prohibition of "Material benefit from sexual services" would prevent an independent sex worker from hiring bodyguards and drivers, thereby reproducing the constitutional violation of the former living on the avails law; and
II. the criminalization of sex workers who work "in a public place, or in any place open to public view … where persons under the age of 18 can reasonably be expected to be present" would reproduce the same constitutional infringement that caused the Supreme Court of Canada to strike down the communicating law (see point b above).

If Bill C36 becomes law, numerous constitutional challenges are likely to arise, and are likely to be successful given that selling sex will still be legal. Even if the legislature were to criminalize the sale of sex, the prohibition would violate the sex worker's right to security of the person.

f) Claims about the effects of legislation in other countries

Tipping Point's various claims about the effects of prostitution regimes in other countries deserve a separate ten-page submission, suffice it to say that MP Smith ignores evidence that

[22] Lowman, J. & Atchison, C. (2006). Men who buy sex: A survey in the Greater Vancouver Regional District. In C. Benoit & F. Shaver (Eds.), Critical perspectives on sex industry work in Canada [Special issue]. *Canadian Review of Sociology and Anthropology, 43*(3), 281-296.

does not support her viewpoint. Other well-known champions of demand-side prohibition, such as UBC Law Professor Benjamin Perrin,[23]do the same. By way of example, consider *Invisible Chains: Canada's Underground World of Human Trafficking*. Not only did Mr. Perrin cherry pick his evidence about the effects of different legal regimes, but also he distorted it:

> Perrin claimed (p. 215) that a 2005 report[24] commissioned by the European Parliament "found that legalized prostitution generally results in higher levels of violence." It did nothing of the sort. Di Nicola et al use the term "abolitionist" to refer to regimes such as Poland, Spain and France where the law creates a grey zone in which prostitution is legal or semi-legal but not regulated as a form of work. They use the term "regulationist" to refer to countries like the Netherlands and Germany where the sale of sex is regulated as "work." They concluded, "if one were to express a general rule (whose confirmation should be backed by the analysis of better data than currently exists) ... it seems that the models of 'abolitionism' and 'new abolitionism' are those which can develop a slightly higher level of violence than other models."[25] In "regulationist" regimes – which most commentators refer to as "legalization" – there appears to be less violence.[26]

When promoting demand-side prohibition, Benjamin Perrin and Joy Smith cite only the champions of the Swedish legislation without noting that there has never been a truly independent and methodologically rigorous evaluation of that legislation. They never cite its critics or mention evidence suggesting that the Swedish ban on sex purchase exposes sex workers to greater harm than the legislation that preceded it.[27]

Conclusion

MP Smith asserts that, "Canada is at a tipping point" – we must try to eradicate prostitution by adopting demand-side prohibition. I suggest that prohibitionist arguments have reached a tripping point: they stumble when they reach the hurdle that research findings constitute. Prohibitionists selectively assemble evidence to suit their political agenda, ignoring anything that contradicts it. In the process, they ignore, distort or misread key evidence.

Ironically, if implemented, the proposed *Protection of Communities and Exploited Persons Act* will help to produce the very conditions its proponents allege are inherent to prostitution. Ultimately, the people who will suffer most if parliament passes Bill C36 are the ones who prohibition always victimizes: survival sex workers who cannot find an alternative way to make a living, and the sex workers who do not want to find an alternative, preferring to take advantage of their sexual capital rather than working long hours for mediocre wages. +

---

[23] In 2013, Perrin was an in-house legal counsel for Prime Minister Harper, and the "lead policy advisor on all matters related to the Department of Justice, Public Safety Canada … and Citizenship and Immigration Canada."

[24] Andrea Di Nicola, Isabella Orfano, Andrea Cauduro, Nicoletta Conci (2005) *Study on National Legislation on Prostitution and the Trafficking in Women and Children*. Brussels: European Parliament.

[25] Ibid. p. x.

[26] John Lowman review of *Invisible Chains*, posted at http://www.ccja-acjp.ca/en/cjcr400/cjcr427.html

[27] Susanne Dodillet and Petra Östergren. The Swedish Sex Purchase Act: Claimed Successes and Documented Effects. Paper presented at the International Workshop Decriminalizing Prostitution and Beyond" Practical Experiences and Challenges, The Hague, March 3-4, 2011.