

## **Backgrounder for Waterloo Region Crime Prevention Council (WRCPC)**

### **Position on Prostitution Law Reform, Bill C-36**

**July 11, 2014 (position adopted)**

**For Position/Resolution see Doc 1648527**

“Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”  
(Canadian Charter of Rights and Freedoms, section 7)

### **Core principles of the Waterloo Region Crime Prevention Council (WRCPC)**

The WRCPC rooted its conclusion in the following core principles:

- Do no harm.
- The right to safety is a human right.
- All laws must respect the Charter of Rights and Freedoms.
- Prevention through social and community development works.
- Addressing root causes is imperative for long-term sustainable social change.
- The inclusion of voices with lived experience always leads to the design of better solutions.
- Stigmatizing any population is harmful and ignores that all human beings have capacities that can be harnessed for individual and community well-being.
- We should strive for gender equality.
- Good policy is based in good evidence.
- There is a growing consensus that the prostitution laws of Canada have been ineffective in accomplishing what they set out to do.
- The status quo rarely gets us beyond the issues of today.

### **Analytical approach**

The working group of the WRCPC examined the research evidence regarding the impact of various legal frameworks (including in different countries) on the populations affected by prostitution; namely those selling, purchasing, and managing sexual services as well as neighbourhoods, municipalities and the general public.

Complex social problems require comprehensive and holistic solutions and each part of the solution has to be seen in the context of others.

### **Key Elements of the Analysis**

#### **1. Prostitution is legal in Canada.**

Prostitution is legal and always has been legal in Canada. However, several provisions governing activities associated with prostitution have been found to be ineffective and unconstitutional.

## **2. Prostitution is not an issue of morality.**

- Our laws are based on a shared and evolving understanding of moral and ethical concepts regarding the common good. Since prostitution itself is not against the law, moral judgements about the social acceptability of prostitution are out of place in this debate. Furthermore, a focus on moral issues detracts from the development of pragmatic solutions to serious social problems and is likely to do more harm than good.

## **3. Prevention is essential and possible.**

- Social interventions have been proven to be more effective and less expensive in the long run than enforcement. Effective prevention of exploitation and violence demands attention to root causes and these conditions cannot be changed by legislative responses only. Indeed, the law is insufficient as the only tool to deal with the complexities of communities, including the sex industry. There is a growing recognition (visible in programmes such as mental health courts) that we cannot enforce our way out of challenging social problems.
- While prostitution under the age of 18 remains illegal and is exploitation by definition, in the context of prevention, children and youth always deserve special consideration. Effective prevention requires appropriate and sustained commitment and resources beyond investments in the law and enforcement. Early childhood trauma, homelessness, persistent under-employment are just three of the root conditions that cannot reasonably be addressed through the Criminal Code.

## **4. Evidence indicates that different populations need different interventions.**

- The people who are involved in and impacted by sex work and the circumstances in which sex work takes place, represent a very diverse spectrum. Sex workers are not a homogeneous group. Evidence shows that only approximately 20% of sex work is street based which is by far the most dangerous form of prostitution. A sizeable proportion (approximately 20 %) of sex workers are transgender or male.
- A diversity of life circumstances and motivations are present among sex workers. Some engage in survival sex work where choice is constrained by serious challenges such as addictions, poverty and homelessness. Others choose sex work as an occupation. Similarly, there is much diversity among clients who

purchase sexual services. Finally, there are differential impacts on community residents and neighbourhoods.

- Oversimplified definitions of all sex workers as exploited victims, all purchasers as “perverts” and all communities as negatively affected by sex work - do not recognize the complex and diverse spectrum of prostitution. Effective interventions are grounded in an analysis that is appropriate for the complexity of the issue at hand.

#### **5. Gender inequality remains pervasive.**

- Sex workers are not only female, however it is important to acknowledge that one reason why women are overrepresented in sex work speaks to their status in society. Beyond the sex industry this includes the persistent objectification of women’s bodies, higher rates of victimization due to violence, and significant social and economic inequities.
- Gender inequality is a central issue but different policy approaches to prostitution lead to very different solutions. It is inaccurate, and viewed by some as paternalistic, to contend that all female sex workers are exploited victims and to deny that sometimes women choose sex work as an occupation. Instead, policy approaches such as decriminalization that focus on promoting human rights, harm reduction and the reduction of stigma, are the most effective to protect and promote the health and safety of all those involved in the sex industry.

#### **6. Public involvement and consultation are critical.**

- The WRPCPC participated in the online public consultation in March 2014. Council at that time expressed the concern that this consultation process was flawed in a number of ways including an overly simplistic and narrow framing of questions. In addition, the consultation process did not allow for appropriate and adequate input by key stakeholders such as municipalities and organizations representing sex workers. Public education and engagement is an essential step in developing and implementing practical solutions that promote the individual and community good as defined by the Charter of Rights and Freedoms. Good public input is also based in good public understanding. The issues surrounding prostitution are so complex that the time frame of the consultation did not allow for meaningful public dialogue. The text of the Council’s contribution to the federal survey appears in Appendix 1.

- Existing laws in the Criminal Code, labour laws, human rights legislation and municipal regulations are already in place to address problems that may negatively impact communities. A growing number of researchers state that where there are concerns, they can be successfully addressed through dialogue and mediation processes that involve everyone affected.

### **Response to Bill C-36: The Protection of Communities and Exploited Persons Act**

- Most elements of the WRPCPC position statement and resolution as well as the backgrounder were developed prior to the tabling of Bill C-36 in anticipation of new legislation. However, Bill C-36 did nothing to alleviate but rather exacerbated many of the original concerns. Concerns more directly brought on by the proposed legislation are noted below.
- A hasty and inadequate consultation process, (and an insufficient examination of current research evidence) by the federal government has resulted in proposed legislation that does not address nor remedy the serious problems with several provisions of the previous legislation that were struck down by the Supreme Court of Canada in the Bedford ruling. Many legal experts and scholars expect Bill C-36 will be challenged and also be ruled unconstitutional. Not improving upon the previous legislation in terms of constitutionality alone would be a waste of limited resources.
- Prostitution has always been legal in Canada. The new legislation proposes to criminalize additional aspects of prostitution including the purchase of sexual services. This punitive response is contrary to the research evidence about protecting those involved in the sex industry. There is a substantial body of national and international research evidence demonstrating that criminalizing either sellers or purchasers of sexual services has serious and harmful impacts on the safety of sex workers, particularly the most marginalized and at risk population of street-based sex workers. These harmful impacts include displacement to more isolated and dangerous areas, decreased ability to implement safety measures such as screening clients, decreased access to police protection, and increased risk of physical and sexual violence.

## Appendix 1

### The WRCPD Response to the Public Consultation on Prostitution-Related Offences in Canada

1. The Waterloo Region Crime Prevention Council (WRCPD) agrees with the Supreme Court of Canada's decision in Bedford and the principles upon which the ruling is based, including the principle of fundamental justice whereby "the state cannot deny a person's right to life, liberty or security". The WRCPD also agrees that the social, economic and community situations have significantly evolved since the criminal code offences regarding prostitution were passed and need assessment with regards to their impact in the current times.
2. Good data make for good policy. The current public consultation process is flawed. The questions are overly simple and too narrow to do justice to the complexity of the issues. The space allotted for providing a response is accordingly severely limiting. Public consultations that restrict responses mostly to yes/no answers cannot foster a balanced or knowledge based conversation.

For these reasons, the Waterloo Region Crime Prevention Council has chosen to provide its feedback to the current public consultation solely in Question # 5 as the only open ended aspect of the consultation.

3. The WRCPD believes that any legislative response to the Supreme Court of Canada ruling in Bedford should be based on the following key principles:
  - a. The law should provide the maximum protection to any vulnerable population including those in the sex trade.
  - b. The law should work in combination with provisions of viable alternatives for those wanting to leave the sex trade; and appropriate prevention activities to prevent sex trade involvement for those who do not make it a choice.
  - c. Solutions should balance individual rights with the well-being and common good of neighbourhoods and communities.

We urge the government to undertake a broader, more inclusive, and more meaningful consultation and dialogue that would effectively involve key stakeholder groups such as persons with lived experience, municipalities, community agencies and others. We also urge the government to review local and national research, international good practices and carefully consider the multiple and systemic roots of the sex trade.