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History

At the end of the 19th century, European settlers came to Canada and began to exploit Aboriginal people whom they considered to be “savages”.

Aboriginal children were forced to attend residential schools with the purpose of assimilation.

Studies have shown residential school survivors have higher rates of depression, which can extend to subsequent generations.

Consequently colonization has left Aboriginal people more oppressed in today’s society.

Aboriginal people are more likely to face socio-economic difficulties, than non-Aboriginal people, making them more prone to engage in sex work.

R. v. Bedford

Prostitution is not illegal, however prior to 2014 the many activities surrounding it were.

In *R. v. Bedford*, Terri Bedford, Amy Lebovitch and Valerie Scott applied to the Court to have s.210(1), s.212(1)(j) and s.213(1)(c) of the *Criminal Code* found unconstitutional for infringing upon s.7 of the *Charter*.

The Court considered each section:

s.210(1) To keep a bawdy house: The Court held the provision was grossly disproportionate because its effect pushed the sex-workers onto the street where they are more likely to become victims of crime.

s.212(1)(j) Living on the avails of prostitution: The Court held this provision to be overbroad. The provision criminalized anyone who could supply a service, meaning a sex-worker could not hire a bodyguard to enhance their safety.

s.213(1)(c) Communication for the purpose of obtaining sexual services: This provision was found to be grossly disproportionate. McLachlin CJC stated: “if screening could have prevented one woman from jumping into Robert Pickton’s car, the severity of the harmful effects is established”

As a result, the Court struck down “prostitution” from the definition of “common bawdy-house” and repealed s.212 and s.213(1)(c)

The Court gave Parliament one year to devise new legislation to address the unconstitutional provisions.

Bill C-36

Bill C-36 was Parliament’s response to *R. v. Bedford*. The Bill seeks to address the problems with prostitution, which Parliament identified as being, but not limited to: exploitation and risk of violence, the social harms created by objectifying women and the commodification of sexual activity.

Parliament made four amendments to the *Canadian Criminal Code*:

1. s.286.1 Everyone who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person is guilty of an indictable offence. By criminalizing the buyer, Parliament expects to reduce the demand for prostitution by heightening the risk of punishment and therefore deterring people from wanting to participate in purchasing sex.

1. s.286.2 Everyone who receives a financial or other material benefit, knowingly that it is obtained directly by or derived directly or indirectly from the commissions of an offense under subsection 286.1(1), is guilty of an indictable offense and liable to imprisonment for a term of not more than 10 years. Further, s.286.2(4) narrows the definition by introducing exceptions, such as: “in the context of a legitimate living arrangement” or “as a result of a legal or moral obligation”. By refining the definition, Parliament is still able to criminalize those who are receiving a material benefit from prostitution while remedying the issue the provision being overbroad.

1. s.286.3 Everyone who procures a person to offer or provide sexual services for consideration is liable for imprisonment for a term not more than 14 years. Although similar to s.286.2, this provision requires a higher degree of involvement and will impose a higher criminal sanction.

2. s.286.4 Everyone who knowingly advertises an offer to provide sexual services for consideration is guilty. The objective of this provision is to reduce the demand for prostitution by criminalizing persons who promote it.

Effects of Bill C-36 on Aboriginal Sex Workers in Saskatchewan

Bill C-36 seems to have addressed the issues which arose in *R v. Bedford*, however, Aboriginal sex-workers are still exposed to the same safety concerns, and arguably at a greater rate.

Hirsch Greenberg, a professor at University of Regina’s department of justice attests that as a result of Bill C-36, the sex-work industry has just been pushed underground. By criminalizing the buyers, the selling of sexual services will have to take place in more isolated areas to avoid detection, leaving little to no time to screen the client for any potential harms.

Sue Meikle, the program coordinator of the outreach and child services at EGADz Saskatoon, agrees. In an interview, she indicated that there have been less youth who are visibly working the streets because they have started setting up in various hotels around the city. Meikle indicates that the safety concerns of having girls work out of hotels is being less visible, having little access to police and the practical issue of still not being able to locate the pimps.

Michele Kinzel, a constable who has worked in the VICE unit in Saskatoon for the past 4 years was also able to comment about the shift in the forms of prostitution her team has seen. Kinzel noted Bill C-36 has not deterred women from entering into the sex-work industry but has only made connecting with Johns easier and more dangerous. Sex-workers were easily prepared to adopt a more “outcall based” system believing it would be safer, without realizing that by moving into hotels or unregulated establishments it has only become increasingly difficult to find where they are and who they are with.

Kinzel also commented that the police view sex-workers as victims, however their team has not made any changes to how they handle prostitution related matters since the implementation of Bill C-36. Amongst the Aboriginal community, there is a general mistrust towards the police and that many sex-workers do not go to the police because the Johns typically get away without being charged or convicted.

Proposed Amendments

Aboriginal people are more likely to enter into sex-work because of their socio-economic disadvantages due to a colonial past. In order make a difference in these marginalized communities, a three-step approach is proposed:

1. Education: Sex-workers need to be humanized and have their voices heard by society and begin having the basic needs of education, employment and homelessness met. In order to do this, society needs to be educated about colonialism and the realities of sex-work. Further, by educating sex-workers, or those at risk of entering the sex-work industry, it reduces the risk of entering into the industry or empowers them to become agents of their own change
2. Prevention: In response increasing incidents of prostitution and the negative feedback towards Bill C-36, it has become increasingly crucial for prevention programs. Suggested programs would include interval housing, community living alternatives and 24-hour daycare centres.
3. Intervention: As important as it is to have programs in place for those at risk to sexual exploitation, it is important to have intervention programs. EGADz has created the outreach program “I am Not 4 Sale” which provides access to immediate 24 hour resources with confidential support and a safe and positive solution to enable a healthy lifestyle change.

References

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