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How Bill-36 Perpetuates Problems for Sex Workers in Light of *Bedford* - by K Montelban

The *Bedford* decision looked at safety issues facing sex workers due to the restrictiveness of the criminal code provisions at the time.¹ Before *Bedford*, sex workers could be convicted for selling their services out of a particular location, and they could not hire staff to make the selling of their services safer. In *Bedford*, it was ruled that these criminal code provisions infringed upon the rights of sex workers and government was given a year to change the provisions to make them compliant with the decision.

The Conservative government at the time revealed bill C-36, which was enacted to be complaint with the *Bedford* decision.² In short, although it fell within the legal requirements posed by *Bedford*, it did so by making it illegal to purchase the services of a sex worker, but not to sell them. It created exceptions in the law so that sex workers could sell their services, and hire certain staff to ensure their safety. There are three problems with Bill C-36: firstly, it frames sex work in a negative light and invalidates it; second, it poses a safety issue because purchasing their services is now illegal and so screening clients becomes difficult; and thirdly, it makes it harder for sex workers to advertise their services due to the restrictions of where they can do so.

Regarding the first problem of how sex work has been framed negatively, at first glance it might seem like the problems raised in the *Bedford* case had been solved, but the overarching issue of sex workers being seen as victims that do not have autonomy and sex work not being seen as legitimate kind of work both remained, due to how the problem was framed by the government at the time. The law was drafted to try and prevent and reduce sex work, and in infringing on the autonomy of people who actively choose to be sex workers of their own volition. Worse, in framing the issue from a negative perspective, the rest of the law follows suit, as seen with the second and third problem and how the “rights” given to sex workers are merely exceptions that have been carved out so the legislation can be *Charter* compliant.

The second problem is a practical one, but is informed by the framing issue highlighted earlier. Because the law was created with reducing and preventing sex work in mind, it made the purchasing of sex work illegal. Although selling the service was still legal, by making the purchase of it illegal it has made it difficult for sex workers to screen their prospective clients, because their clients are worried about being caught. Because of this, sex workers need to go to greater lengths to identify and discern if they are comfortable working with a client or not, and these difficulties make it more dangerous for them to engage in their work. Whether one thinks it is morally wrong to purchase sex work, or if they think that sex work is inherently harmful towards those who sell it, by making it more dangerous to screen clients, the law is perpetuating whatever potential harms exist.

¹ *Bedford v Canada*, 2010 ONSC 4264

² “Technical Paper 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” *Department of Justice Canada* (2014), online: <<https://universityofmanitoba.desire2learn.com/d2l/le/content/352820/viewContent/1751754/View>>.

Thirdly, the law prevents the advertisement of sexual services in certain areas, such as schools. Again, this stems from the perspective or framing of sex work being morally wrong and/or harmful. Platitudes regarding the immorality of sex work clash with the hardship these laws cause sex workers, because it forces them to work in secluded or barren areas, particularly if they live in a city where schools or other restricted zones are all around them. Forcing them to advertise or work farther away from where they feel comfortable and safe again shows the harms that are being caused by these laws.

If the government was concerned with issues of morality and harm, then focusing strictly on people who are forcing women into sex work should be their goal. Instead, what has happened are blanket bans with exceptions built in to be *Charter* compliant. In doing so, sex workers are still in dangerous and precarious positions, and they also have less leverage to advocate for themselves, because the government can point to bill C-36 “fulfilling” the requirements of *Bedford*, and could claim that “the job is done”. It is important to highlight the issues that continue to face sex workers after bill C-36 to ensure the government does not become complacent and to put pressure on Parliament to continue to recognize and sex workers’ rights and to protect them.

To conclude, although Bill C-36 is compliant with the *Charter*, it still perpetuates harms towards sex workers, and it frames sex work in a negative perspective, as something that should be eliminated from society, instead of a legitimate means of work that should be protected. For these reasons, Bill C-36 has failed sex workers.