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# **Standing Committee on Justice and Human Rights**

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**EVIDENCE**

**Monday, July 7, 2014**

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**Chair**

**Mr. Mike Wallace**



## Standing Committee on Justice and Human Rights

Monday, July 7, 2014

• (0935)

[English]

**The Chair (Mr. Mike Wallace (Burlington, CPC)):** I call to order this meeting of the Standing Committee on Justice and Human Rights.

Our friends from the media with the cameras have to leave now. This is a televised event and we don't need the extra cameras.

This is meeting 32 on Monday, July 7. The orders of the day are pursuant to the order of reference of Monday, June 16, 2014, 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.

Our first witness today is the Honourable Peter Gordon MacKay, the Minister of Justice and Attorney General of Canada. He is here with us for an hour, and then we have the officials afterwards.

Perhaps you'd like to introduce your colleagues with you today, Minister, and then the floor is yours for 10 minutes.

**Hon. Peter MacKay (Minister of Justice and Attorney General of Canada):** Thank you very much, Chair.

Colleagues, I am joined today by Donald Piragoff, senior assistant deputy minister at the Department of Justice, as well as Nathalie Levman, whom I would describe as an expert in this legislation. She has had a great deal of input into both the drafting and the preparation of the legislation that you see before you, Bill C-36.

I want to begin by thanking you, Chair, and all members of this committee for your decision to undertake this important work during the summer months. I think it reflects very well on Parliament and this committee to demonstrate the commitment to bringing forward important legislation, particularly the work that will be done over the coming days.

[Translation]

I very much appreciate the committee's decision to sit—exceptionally—in July to study this bill. Bill C-36 is the government's legislative proposal in response to the Supreme Court of Canada's Bedford decision, which found three Criminal Code prostitution offences unconstitutional. As you know, the court gave Parliament the opportunity to respond within one year.

[English]

Mr. Chair, colleagues, the government has made excellent use of the year to date. We are at, I note, the six-month mark since the handing down of the Bedford decision. We have undertaken and

completed an initiation of a public online consultation, a process that garnered more than 31,000 responses. There have also been in-person round table meetings with a full spectrum of input from those who advocate for legalization to those who advocate for full criminalization, and participants in prostitution.

We then set about a drafting process, a legislative response, informed by those stakeholders but also by federal, provincial, and territorial and other stakeholder consultations, and the Bedford decision itself, as well as available research.

Time is of the essence, Mr. Chair. We are proceeding through a legislative process now, as you're aware and participating in, and we're anxious to hear the views of those who will appear before this committee. Importantly, if we do not respond legislatively within the year, most adult prostitution-related activities will be decriminalized.

For our government, to do nothing was never an option. The government does not accept the proposition that prostitution is inevitable and therefore that we must decriminalize and regulate it. This is not the position. On the contrary, the government maintains that prostitution's inherent harms and dangers would only grow and be exacerbated in a regime that perpetrates and condones the exploitation of vulnerable individuals through legalized prostitution.

Accordingly, Bill C-36 does not seek to allow or facilitate the practice of prostitution. To the contrary, its goal is 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.

Mr. Chair, similar approaches have been adopted, as you may know, or are under active consideration in several other countries, including France, Norway, Sweden, Denmark, and the United Kingdom. We also know that very often there are related issues that influence and affect those vulnerable persons. They include such things as violence, drug and alcohol addiction, and exploitation. And of course the subject of human trafficking is very often associated with prostitution.

So let me be clear at the outset that Bill C-36 reflects a fundamental shift towards the treatment of prostitution as a form of sexual exploitation that disproportionately and negatively impacts marginalized groups and individuals. Bill C-36 recognizes that victims of prostitution are many, and in most cases they are vulnerable people, without doubt. Persons who sell their own sexual services are prostitution's primary victims. But prostitution also victimizes the communities in which it takes place, including children who may be exposed to it, and indeed society itself, by normalizing the gender inequalities inherent in prostitution and the objectification and commodification of individuals.

● (0940)

[*Translation*]

The cornerstone of Bill C-36's new approach is to reduce demand for prostitution by criminalizing the purchase of sexual services. The new purchasing offence is based on the existing offence that prohibits obtaining "sexual services for consideration" from persons under the age of 18 years.

[*English*]

Accordingly, case law interpreting that offence assists in defining the scope of the new purchasing offence, as does case law that interprets the meaning of prostitution, which is defined as the exchange of sexual services for payment. The court will consider whether sexual services in nature and whether the purpose of providing these services is to sexually gratify the person who receives them.

Here, Mr. Chair, case law is clear. However, this does not include acts related to the production of pornography or exotic dancing; ultimately, whether a particular act constitutes a sexual service for consideration is a factual determination to be made by the court. In other words, it will be up to the courts to interpret on a case-by-case basis.

To complement the purchasing offence, Bill C-36 also proposes to criminalize advertising—that is, the sale of sexual services—and authorize the seizure or removal of advertisements for sexual services. Prostitution, the sale of sexual services, is fuelled by demand, and advertising contributes to that demand. This is, I note, a departure from some of the other models that puts it in the category of a Canadian model.

Bill C-36 also seeks to continue to denounce and prohibit the exploitation of prostitutes by others, by third parties, commonly known as pimping. This includes the institutionalization of prostitution through commercial enterprise, such as strip clubs, massage parlours, and escort agencies in which prostitution often takes place. All of these capitalize on the demand created by purchasers.

[*Translation*]

Bill C-36 would achieve these goals through offences that would prohibit materially benefiting from the prostitution of others and procuring others to provide sexual services.

The material benefit offence would criminalize receiving a financial or material benefit obtained by or derived from the commission of the purchasing offence. It would replace the "living

on the avails of prostitution" offence that was found unconstitutional in Bedford.

[*English*]

Bill C-36 would enable those who sell their own sexual services to interact with others on the same basis as anyone else. This goes to the specific dangers that are inherent in prostitution. It would do so through legalized exceptions to the material benefit offence that would apply to non-exploitative relationships. This is the operative phrase: "non-exploitative relationships".

For example, the material benefit offence would not apply to children, spouses, or roommates of those who sell their own sexual services; those who take part in legitimate businesses, such as accountants, landlords, taxi drivers, pharmacists, or individuals who work for security companies; or those who offer goods or services informally, such as someone who offers babysitting services. So what we're talking about here are services that would be readily available to all Canadians.

This approach, Chair, recognizes that the objective of deterring and ultimately abolishing prostitution will take some time to realize and that some may continue to engage in it. Accordingly, Bill C-36 would allow those who continue to engage in prostitution to implement certain safety measures. But Bill C-36 also recognizes the inherent risks in allowing the development, or in not prohibiting the development, of economic interest in the prostitution of others, which so often leads to exploitative conduct to maximize profits.

I should pause here to say that if the non-exploitative relationship at some point changes—that is, if an individual who is assisting a prostitute without any material benefit, who is taking part in some of those examples I gave, suddenly then invokes violence and begins to exploit the prostitute—then the criminal immunity would disappear. So it is very much informed by the relationship with the prostitute.

Mr. Chair, this approach in Bill C-36 recognizes the risks inherent, as I mentioned. If a person who fits within one of the legislative exceptions becomes exploitative—for example, using violence, abusing a position of trust—that person would lose the protection of the exceptions and would be subject to charge under the material benefit offence. The proposed procuring offence would require active involvement in the prostitution of others, such as causing, inciting, or pressuring in any way others to engage in prostitution. This is consistent with the existing Criminal Code approach, I note.

Much has been said about the asymmetrical nature of these new offences—namely, that Bill C-36 proposes to criminalize the purchase but not the sale of sexual services. This is not because Bill C-36 in any way condones the sale of sexual services. It does not. Rather, it is because Bill C-36 treats those subjected to prostitution as victims, victims who require support and assistance rather than blame or punishment. This is a clear departure, again, from approaches we have seen previously in Canada.

Accordingly, Bill C-36 would expressly immunize from prosecution individuals who sell their own sexual services for any part they play in purchasing, material benefit, procuring, or advertising offences, or what you would call the “transactional” portion of prostitution.

• (0945)

[*Translation*]

We believe that the best way to address the harms that prostitution causes those subjected to it is to help them leave it. In that regard, the government has also announced that it will provide assistance through complementary funding of \$20 million over 5 years.

[*English*]

These funds—\$20 million—will be mainly directed to groups that will deliver front-line services to assist prostitutes to exit this activity. We have already begun the important task of identifying which groups to partner with, Mr. Chair.

In addition to criminalizing communicating in any place for the purpose of purchasing sexual services, Bill C-36 would also criminalize communicating for the purposes of selling sexual services, but only in public places where children can reasonably be expected to be present. Mr. Chair, this is an approach we have borrowed from other sections of the Criminal Code, mainly those that protect children. There is a legal definition or interpretation already in place in the Criminal Code that deals with places where children can reasonably be expected to be present. This approach accounts for the various interests at play, which include not only those of prostitution's primary victims—the prostitutes—but also those of children who may be exposed to prostitution and thereby placed at risk of being drawn into a life of exploitation, recognizing the vulnerability and the lack of maturity of children, Mr. Chair.

Bill C-36 would also clarify that the definition of weapon includes weapons of restraint, for the purpose of the offences prohibiting assault with a weapon, so current section 267; sexual assault with a weapon, section 272; and the possession of a weapon with the intent to commit an offence, section 88. This approach provides an extra measure of protection for those at risk of being subject to this type of violence, including those who sell their own sexual services.

It's fair to say, Mr. Chair, colleagues, that the country was very much riveted by the tragic events that occurred in British Columbia and the mass murder that occurred in that province. The use of weapons, restraint—zip cords, duct tape, etc.—were very much instruments of foul play, so we've attempted in this legislation to recognize that and create this new offence.

Bill C-36 would also amend the human trafficking offences—a nod to my colleague from Kildonan—St. Paul for her good work—and attempts to ensure consistency with the proposed prostitution

offences. It takes existing code sections and marries some of the intent there. Human trafficking and prostitution are often intricately linked criminal behaviours. Accordingly, criminal law responses to both activities require harmonization.

In conclusion, Chair, the government recognizes that Bill C-36's vision of a society free from prostitution's harms will take time to realize, and that some will remain subjected to prostitution while this transformation is under way. Therefore, Bill C-36 does not prevent implementation of certain safety measures emphasized by the Supreme Court of Canada in the Bedford decision, such as selling sexual services, including from fixed indoor locations; providing protective services to those who sell sexual services, as long as no exploitative relationship or circumstances exist; and negotiating safer conditions for the sale of sexual services in public places, other than where children could reasonably be expected to be present. We're balancing public interest and protection, and the moral obligation to protect children.

I stress, Mr. Chair, that this approach is not intended to facilitate or in any way condone the sale of sexual services. Rather, this bill addresses this complex societal policy issue by taking into account all of the safety concerns posed by it. These involve not just the concerns outlined in the Bedford decision, but also the broader safety and societal concerns posed by prostitution more generally, which include the need to protect those subjected to prostitution from violence and exploitation; the need to protect communities from prostitution's harmful affects, including exposure of children; and the need to protect society from the normalization of a gendered and inherently exploitative practice. It infringes on values of human dignity and equality.

The government also recognizes that achieving this transformation will require sustained, cooperative efforts in a wide cross-section of society. That is why the government is committing resources to support front-line organizations to assist those engaged in prostitution to exit. We look forward to working with provinces, territories, law enforcement—many organizations—and social workers who have been on the front lines of this effort for years, and this committee, of course.

Mr. Chair, faced with the Bedford decision and the one-year timeline, the government had a choice: condone the exploitation of vulnerable persons and harms to Canadian communities, or protect them. Informed by the Supreme Court's judgment in Bedford, available research, and the government's public consultations and obligations, we naturally chose the latter. We believe that this is a sound sensible law and entirely defensible.

I thank you for the invitation. I thank you again for your work, and I look forward to your questions. Merci beaucoup.

• (0950)

**The Chair:** Thank you, Minister.

For those in the audience who aren't familiar with the process, we now proceed to a round of questions.

Our first questioner, from the New Democratic Party, is Madame Boivin.

[*Translation*]

**Ms. Françoise Boivin (Gatineau, NDP):** Thank you, Mr. Chair.

Good morning everyone.

Minister, thank you for being here. I hope your summer is going well. We are fortunate enough to regularly read comments you have made on other subjects, which we will no doubt come back to another day.

Since our time is limited, I will get right to the point.

I know you want us to study this bill—

[*English*]

**The Chair:** Madame Boivin, hold on. We're having trouble with the translation.

**Ms. Françoise Boivin:** You know what? I'll do it in English so that my seven minutes will not be cut.

**The Chair:** You're on hold, so you don't have to—

**Ms. Françoise Boivin:** I know I'm on hold. I'm used to it.

It's all right now? Excellent.

Minister, I know you claim that time is of the essence. I understand the deadline of December 2014 from the Supreme Court of Canada. Is it my understanding that what you wish is for this bill to be back to the House by mid-September, when we come back to the House, so that we can debate it at report stage? That is the deadline at this point in time for this committee. Is that right?

[*Translation*]

**Hon. Peter MacKay:** Thank you for the question, Ms. Boivin.

The decision to refer Bill C-36 to the House is up to the committee.

• (0955)

[*English*]

**Ms. Françoise Boivin:** I'm asking you, what would you like? What you would like and then what we'll do are two things, I understand—

**Hon. Peter MacKay:** That's correct.

**Ms. Françoise Boivin:** —but what you would wish for is the decision or recommendation by this committee to be back for debate by a mid-September deadline.

**Hon. Peter MacKay:** Well, Madame Boivin, my wishes and this committee, you're right, are two separate issues, but certainly we have a December 19 deadline. In order to meet that deadline, my

wish is that we have the legislation back before the House in the fall —

**Ms. Françoise Boivin:** When we come back.

**Hon. Peter MacKay:** —so that we're able to proceed.

But the timeline of this committee is—

**Ms. Françoise Boivin:** Okay: but you're not expecting necessarily that all the work will be done by Thursday, and back—

**Hon. Peter MacKay:** No, not at all. That, again, is up to your committee.

**Ms. Françoise Boivin:** Okay. Excellent.

Do you believe, Minister, that—

[*Translation*]

**Hon. Peter MacKay:** You can speak French, Ms. Boivin. That works fine for me.

**Ms. Françoise Boivin:** Do you expect Bill C-36 to be challenged and referred back to the Supreme Court, regardless of what the committee does? Whether the challenge comes from those who are in favour of decriminalization or those who support the Nordic model, do you expect the legislation to be challenged? Do you expect it to be sent back to the Supreme Court whatever we do?

**Hon. Peter MacKay:** It's possible. Every new bill runs the risk of being referred to the Supreme Court. Whenever our government introduces a bill in Parliament, experts at the Department of Justice review it carefully to ensure it's charter compliant.

[*English*]

I should mention, Madame Boivin, that in addition to testimony that will be heard by this committee, it's the intention of the government to present as well a technical bill, which has helped to inform this legislation. It's also explaining some of the research that informed Bill C-36. Of course we also have—

**Ms. Françoise Boivin:** And you don't think it would be profitable for this committee to have this before we—

**Hon. Peter MacKay:** Yes. That's my intention, to table that.

**Ms. Françoise Boivin:** So before the end of the week?

**Hon. Peter MacKay:** I could table it as soon as today—

**Ms. Françoise Boivin:** That would be very appreciated.

**Hon. Peter MacKay:** —but we want to make sure it's translated.

As you would know, by the end of July we also intend to table some of the polling information we obtained. We're following—

**Ms. Françoise Boivin:** Can you do it faster than the end of July, since you've had it since February? We heard some rumours, and I hate to work at justice on rumours.

**Hon. Peter MacKay:** Me too.

**Ms. Françoise Boivin:** It would be very practical for this committee, before we do anything, to see exactly what your scientific survey was saying.

**Hon. Peter MacKay:** Absolutely.

**Ms. Françoise Boivin:** That being said, because you do foresee... I mean, we would be pretty stupid not to think that one way or the other it's going back to the Supreme Court. Have you had time to reflect on the fact that maybe it would be better, at the end of the day, after all of the process, to send it to the court right now, which is within the power of the government to do, to make sure that we don't miss the point and have to redo it all over again? You know, life is short, and I hate to waste my time.

**Hon. Peter MacKay:** Yes: I agree we shouldn't waste our time, which is why we've taken the time to look very carefully at the issue. We have the view of the Supreme Court of Canada in Bedford, so they have very much issued what I would view as an instructive view in striking down three of the Criminal Code sections.

**Ms. Françoise Boivin:** But, you see, we're two lawyers, and obviously we're not necessarily seeing or reading the decision the same way. So that might be problematic. Instead of having us two lawyers discuss amongst ourselves and other lawyers, maybe it would be interesting to have the view of the court on the thing.

But you're talking about studies. What's wrong with you guys that you cannot send to this committee the studies on charter compliance that you had done? I know you're going to tell me that they're a matter of client privilege and so on, but I think these would help the committee see that the department did its job and did do the overview. I'd be interested in knowing what exactly was studied and how they analyzed the decision from the court, and did so in parallel with the actual Bill C-36.

**Hon. Peter MacKay:** Firstly, we're not going to send it back to the Supreme Court. That's not going to happen. We need to have an evidentiary examination of the legislation. That will happen. As sure as night follows day, there will be challenges when new bills are presented. We believe the likelihood that it will be challenged is very real, as you've said. You'll have an opportunity, a very real opportunity, to hear from experts directly from the Department of Justice, who can speak to the issue of charter compliance.

On the subject of releasing polling data, there is a normal routine six-month period that passes, and that will occur at the end of July. So the data will be released.

• (1000)

**Ms. Françoise Boivin:** Yes, but that's the ultimate deadline. Anyway, time is short—

**Hon. Peter MacKay:** Yes, that's right, and that's the way it's normally handled. In fact, you're right about—

**Ms. Françoise Boivin:** In transparency matters it could be done faster. But anyway I'll go to my—

**Hon. Peter MacKay:** But it will be released, that's the main point.

**Ms. Françoise Boivin:** And that's what, in a sense, is sad about this: we will be rushed by time on something that is so important to so many people on different things.

**Hon. Peter MacKay:** We're rushed by the Supreme Court's deadline.

**Ms. Françoise Boivin:** Would it not have been simpler to declare prostitution illegal? That's what I smell and I feel from you, from what you're saying, by declaring people perverts and so on. You don't like prostitution, which is okay by me. There's no problem with

that. But wouldn't it be clearer just to say, you know what, in Canada prostitution is illegal. You're permitting people to sell something that nobody can buy. I don't know, but in my head it makes no sense.

**Hon. Peter MacKay:** Certain elements of prostitution will be illegal by virtue of this bill's passing into law. Certainly we recognize the vulnerability of individuals, particularly women and children, to being exploited. If we were not to react—

**Ms. Françoise Boivin:** So at no time can it be consensual, in your view?

**Hon. Peter MacKay:** —we believe that the exploitation would in fact become worse. We've taken the time not only to examine the Supreme Court's decision, but also to look at other models internationally as to how we could respond to what we think is a very exploitative practice in Canada. No one raises their children to be prostitutes. That's not something that people aspire to. We want to help individuals exit prostitution and, in fact, on the preventative side, give them different career options and choices. We believe this effort and time and resources will be well spent, and I think you would agree with that, Madam Boivin.

**Ms. Françoise Boivin:** I wish I had the time to ask you to define “sexual services”—

**The Chair:** Thank you. No, no—

**Ms. Françoise Boivin:** —for me. I'd love to have that on the record, if you—

**Hon. Peter MacKay:** We'll have an opportunity to do so.

**The Chair:** That is an extra question you don't have time for, so there you go.

**Ms. Françoise Boivin:** Okay.

**The Chair:** From the Conservative side, Mr. Dechert.

**Mr. Bob Dechert (Mississauga—Erindale, CPC):** Thank you, Mr. Chair.

Minister, thank you to you and your officials for being here this morning.

I'd just like to respond to my friend, Madam Boivin.

We're all lawyers. There are many lawyers here. There are many lawyers who have reviewed this legislation and the Bedford decision. I certainly have. I spoke about it in the House of Commons. I think that Bill C-36 very clearly responds to the Bedford decision and is supportable.

In terms of the decision, it seems to me that the NDP don't want to take a position. They want to throw it back to the Supreme Court and hide behind that. They seem to want allow the Supreme Court to take the jurisdiction of Parliament. We had a decision; it's pretty clear. From any group of lawyers that you will ask an opinion of you'll get slightly different variations, but this seems to fit directly with the Bedford decision. I find it curious that my friends in the opposition are afraid to take a stand on how they think prostitution should be dealt within Canada and want to throw it back to the Supreme Court to hear what the Supreme Court has to say about it.

**Hon. Peter MacKay:** I do agree that all of us in Parliament—particularly this committee, and my department as well—have an important role in responding to the Bedford decision, which has created a void in the law that creates, in my estimation, further vulnerability. Constructive positioning and taking a stance I think is important. That's what we are expected to do by our constituents, and certainly as a government. The Bedford decision has laid bare some of the important questions that we believe are answered in this legislation, but we went further. We consulted 31,000 individuals and groups through the online consultation. We heard directly from a full spectrum of advocates and stakeholders. I believe this legislation, as I said, is constitutionally sound. It is good law and good public policy that will help protect vulnerable individuals. If I didn't believe so, I wouldn't be sitting here before with a bill that I think is going to further protect people in Canada.

**Mr. Bob Dechert:** Minister, can I ask you about that? You mentioned the consultation. You had over 31,000 responses. I know that you personally met with former and current sex workers.

What did they tell you that caused you to believe that there are victims, how does Bill C-36 respond to them as victims, and how does it fit in with the overall government strategy towards rebalancing our justice legislation to properly address the needs of victims? You brought in the Victims Bill of Rights. That's a general theme that this government has followed for many years. Can you tell us about why you think prostitutes are often victims, and how you think this bill will assist them?

• (1005)

**Hon. Peter MacKay:** One only needs to listen to the personal stories and history of many individuals who find themselves in prostitution to understand the exploitative nature, the vulnerability, the violence, addiction, and a complex array of other social problems and ills that affect those who are in prostitution, to understand that this is a very serious issue that we have to respond to. I have already mentioned the fact that it is tied in to other offensive practices of human trafficking, of child exploitation.

We have taken what I've been calling a uniquely Canadian approach. It's a bill that specifically targets the demand for sex, so going after those who exploit. They do include johns, pimps, and individuals who carry out the most horrific practice of violating vulnerable children, in many cases. The area of these prostitution offences, when we're talking about those who are purchasing sexual services, is an area that the government feels it has to legislate in.

We've gone further, though. We've looked at how we specifically respond to the Supreme Court's decision in Bedford on the issue of receiving a financial or material benefit, and we've put exceptions in place that deal with the very real subject of how prostitutes are able to protect themselves. Without condoning the practice, we recognize the realities of the fact that some, for an array of reasons, find themselves in these situations. We recognize that and acknowledge legitimate steps taken to protect themselves.

In the area of advertising, child prostitution offences, communicating for the purposes of selling sexual services, we have introduced an amendment, or I should say a response, that protects the public more broadly, that protects the fact that in schoolyards, in shopping malls, in playgrounds, in places where children can

reasonably be expected to be present...there is again, I suggest, an obligation on the government to protect vulnerable individuals in addition to the vulnerable prostitutes.

So that is the balance we have struck. We have also taken steps that recognize the new reality of advertising as also an enabling part of prostitution. We will hold those who are advertising, not the prostitute themselves but those who are advertising these services either through papers or online, also to criminal account.

**Mr. Bob Dechert:** Minister, you mentioned that the phrase where persons under the age of 18 may "reasonably be expected to be present" has been used elsewhere in the Criminal Code. Is that, in your view, a well-understood phrase? Do you have any concerns about how the police would interpret that or how crown prosecutors would interpret that?

**Hon. Peter MacKay:** I mentioned that it is in effect now in the Criminal Code, with 810 applications, as well as offences that deal with children. So there has been some judicial interpretation already. I wouldn't go so far as to call it judicial notice, but because it is found currently in the Criminal Code, there is a broad understanding of the definition. And it's a reasonable test; it has to do with not only the environment itself but also the time in addition to the place.

That, like many sections, coming back to Madame Boivin's question, will be subject to interpretation by the courts, but I'm confident that this definition is well understood and is there with a reasonable interpretation as to what the public would expect.

**Mr. Bob Dechert:** Some critics say that this could mean anywhere, anytime. Is that your understanding, or do you think it's narrower than that?

**Hon. Peter MacKay:** Not at all: it doesn't mean anywhere, anytime; it means very specifically places where children could reasonably be expected to be present.

I think that it's not an overly technical legal term. I think we can all envision examples of where children could reasonably be expected to be present. It wouldn't be in an after-hours bar at 3 a. m., but it would be in a schoolyard. It would be leaving church, or a shopping mall, or a ball field, or a rink. It could be leaving a hotel at certain times of the day.

So it is a common-sense, practical application of a definition that we think the courts will uphold.

**Mr. Bob Dechert:** Thank you.

• (1010)

**The Chair:** Thanks for those questions and answers.

Our next questioner, from the Liberal Party, is Mr. Casey.

**Mr. Sean Casey (Charlottetown, Lib.):** Thank you, Mr. Chair.



Mr. Minister, 15 years ago the Supreme Court of Canada handed down its decision in Gladue, which, you would agree, is the seminal decision with respect to aboriginal sentencing.

What measures have been taken to ensure that Bill C-36 is consistent with the Gladue principles?

**Hon. Peter MacKay:** All legislation has to be consistent.

**Mr. Sean Casey:** So there are no particular measures you can point to that ensure compliance with what the Supreme Court of Canada had to say in Gladue?

**Hon. Peter MacKay:** This bill, we believe, is charter-compliant and consistent with precedent.

**Mr. Sean Casey:** You would agree that first nations are uniquely vulnerable when we're talking about prostitution and exploitation.

**Hon. Peter MacKay:** I would agree with that statement.

**Mr. Sean Casey:** Are there any specific measures taken in the legislation to account for that unique vulnerability?

**Hon. Peter MacKay:** All of these sections are intended to protect all vulnerable individuals.

**Mr. Sean Casey:** So there are no specific provisions you can point to that uniquely address this vulnerability.

**Hon. Peter MacKay:** In terms of the programs we've put forward or that will be funded, and that are not specifically present in the legislation, we believe, through partnerships with the provinces and territories, those programs will help assist all groups that are vulnerable. Certainly first nation women and children, I would say, are definitely covered by that, and there are unique circumstances.

I agree with you, Mr. Casey. So if you will, the unique response will be found in programs to be funded by this government.

**Mr. Sean Casey:** Thank you.

I want to come back to the line of questioning by—

**Hon. Peter MacKay:** I'm sorry, but I should also add that in addition to the legislative and the monetary response, there are other programs like the aboriginal justice programs and programs found in the public safety department, in the health department, and in Status of Women Canada that are also uniquely designed to respond to the particular vulnerability found in first nations.

I'm sorry. I just wanted to add that.

**Mr. Sean Casey:** I want to come back to Madam Boivin's question with respect to the \$175,000 survey or poll that was done by Ipsos Reid. You have indicated that we're going to be able to see it once these hearings are over.

Mr. Minister, you have the power to allow us to see that sooner, do you not?

**Hon. Peter MacKay:** The survey itself was not particular to this question of prostitution only, and so there is a normal six-month time period that is invoked for when that polling information will be released.

I should note for the record, Mr. Casey, that you're aware there have been other surveys done and other polling information available that has been released or is in the public domain.

I also want to provide a correction. I said there will be a technical bill presented to the committee. There will be a technical paper that was produced by the department, and that technical paper is available in French and English. I'm informed that it will be tabled with this committee by leave, and it will be provided to you so that you will have it for your deliberations this week.

**Mr. Sean Casey:** Mr. Minister, do you have the power to abridge the time in which we see this \$175,000 Ipsos Reid survey? Do you have the power to give that to us before we examine all these witnesses?

**Hon. Peter MacKay:** There is a six-month timeframe that we will respect.

**Mr. Sean Casey:** So you have the power, but you're deciding not to exercise it?

**Hon. Peter MacKay:** I didn't say that. I said we'll respect the six-month timeframe.

**Mr. Sean Casey:** Do you have the power to abridge it?

**Hon. Peter MacKay:** We'll release it when the six-month timeframe is up.

**Mr. Sean Casey:** Is that a yes or a no?

**Hon. Peter MacKay:** We'll release it when the six-month timeframe is up, Mr. Casey.

**Mr. Sean Casey:** You won't tell me whether or not you have the power to abridge it, but if you do, you're not going to exercise it.

**Hon. Peter MacKay:** What I'm telling you is that you'll have the information when the six-month period is up.

**Mr. Sean Casey:** Mr. Minister, I requested that Ipsos Reid appear as a witness before this committee, but they're not on the witness list. Did your office have anything to do with that?

**Hon. Peter MacKay:** Absolutely not. We don't control the witness list. That's entirely within the purview of the committee.

**Mr. Sean Casey:** When you had an issue before you that was destined to be challenged before the courts—you'll remember a case by the name of Nadon—you took the eminently sensible approach of getting outside opinions.

It seems to me, Minister, that you are in the exact same situation now with this bill. Have you sought outside opinions with respect to the constitutionality or an eventual challenge of this legislation?

•(1015)

**Hon. Peter MacKay:** Well, I think you would have to acknowledge that there was a bit of a difference there, Mr. Casey. We already have a decision from the Supreme Court of Canada, in Bedford. That was certainly not the case with the Nadon appointment. There was very much an open question on the subject of eligibility, so much so that we had Federal Court judges applying, and so much so that a justice committee itself recommended names of those who were deemed eligible. In addition, we had the Supreme Court precedent of judges who had been appointed from the Federal Court, albeit from other provinces.

I would describe it as a distinguishable difference between what we have before us now, with a bill that has been drafted in direct response to a Supreme Court decision....

**Mr. Sean Casey:** So have you or have you not sought outside expert opinions with respect to the constitutionality of this legislation?

**Hon. Peter MacKay:** We have very expert opinions within the Department of Justice that we feel adequately respond to the Supreme Court decision. We relied on those as well as the consultation that took place, as well as previous precedent from Parliament and previous case law. As a result, I think we've produced what I view is a very sound, sensible, practical response to Bedford.

**Mr. Sean Casey:** If I understand your answer, you haven't sought outside opinions because you're comfortable with the opinions you've received from Department of Justice officials.

Will we see them?

**Hon. Peter MacKay:** I'm very confident that you will have adequate opportunity to question Justice officials who are here with us now, and who have provided the backing, the underpinnings, for this legislation. And yes, I am confident in our bill.

**Mr. Sean Casey:** One of the provisions in the bill talks about places where children reasonably would be present.

My question to you, Minister, is whether this always criminalizes someone who is under the age of 18 because that person would always be somewhere where someone under 18 would reasonably be. I realize that's a convoluted way of asking it, but my question is this. Do you not agree that those under 18 are in need of protection and that criminalizing them isn't the best way to protect them?

**Hon. Peter MacKay:** To answer your previous hypothesis—and I'm loath to be drawn into these hypotheses because there will be judicial interpretation, without a doubt—do persons under the age of 18 deserve, and should the public expect, special protection? Yes. That's why we have specific sections of the Criminal Code that were not affected by the Bedford decision that are designed to protect particularly vulnerable persons under the age 18.

I don't agree with your scenario that anybody under the age of 18 engaging in prostitution will always be subject to criminal charges. I don't think that's correct. But it's reasonable to expect that a person under the age of 18 could be present in certain factual scenarios in certain locations, yes.

**Mr. Sean Casey:** Thank you.

**The Chair:** Our next questioner, from the Conservative Party, is Mr. Wilks.

**Mr. David Wilks (Kootenay—Columbia, CPC):** Thank you, Chair.

Thank you, Minister, for being here today.

With regard to the new sections being brought forth under Bill C-36 in relation to police officers—because that's where my domain is—what does this do with regard to police officers enforcing and/or assisting them in this area of their work?

**Hon. Peter MacKay:** Mr. Wilks, first let me acknowledge your long service as a police officer. I think you would agree that in settings where prostitution is prevalent, most police have attempted for years to assist prostitutes in a way that avoids their criminalization or further exploitation by making them aware of programs that would assist them to exit prostitution. This in essence creates, I

would suggest, a greater and more visible framework around those efforts to help prostitutes exit. It also puts in place a clearer delineation between those who are selling sexual services and those who are purchasing them. So the predatory, exploitative nature, in my view, is on full display in this bill. It provides police and the public and the courts with clarity from Parliament's perspective. From this democratic, elected institution of Parliament, we believe it was incumbent upon us to respond to what would clearly be a very confusing and dangerous situation had we not responded to the Bedford case.

I think this legislation will give police greater tools, greater ability, to enforce the law in a way that puts the emphasis on the predators, on the pimps and the johns, on those who exploit vulnerable people, on those purchasers wherever that transaction takes place. The police will then, of course—and you're much more familiar with this than most—exercise their discretion and use their investigative techniques. At the same time we hope, in relatively short order, that we will be able to have these programs up and running and available to help off-ramp those who are involved in prostitution to educational programs, to treatment facilities if there are addiction problems, to help with rehabilitation, to help individuals leave what we think is an inherently dangerous situation.

• (1020)

**Mr. David Wilks:** Thank you.

Prior to coming here today, one of the things I've heard is that from the perspective of the prostitutes who are going to be working the streets, the police will be able to detain them, will be able to assist them in getting off the street if need be. I do note that under proposed subsection 213(1) in the new bill, everyone is guilty of an offence punishable on summary conviction. I think that's probably something that I would like to touch on because summary conviction is much different from a dual-procedure offence and an indictable offence, in that summary conviction does not hold a criminal record, and it allows the police to do a minor investigation, but also gives them some leeway on how they can work.

I wonder if you could just speak to that a bit, Minister, with regard to the summary conviction side of it.

**Hon. Peter MacKay:** Sure. You're absolutely right, Mr. Wilks, that it has a much lower threshold of criminal consequence. There is the ability, obviously, to make the original investigation and make an arrest if the circumstances warrant. Then, through the process of diversion, through the process of the programming available by virtue of your jurisdiction wherever you may be, there is the much preferred option of treatment, of complying with a court order, which could in many circumstances not result in a criminal record.

We think this is a preferred option. There are, I have to acknowledge, a variety of opinions on this, even within the policing community. But the vast majority of police I've spoken to have been dealing with prostitution offences act very much out of a sense of compassion and a desire to help individuals leave prostitution. We think this facilitates that in a very practical way, and gives police that initial discretion at the front end to encourage prostitutes...and through the decision on whether to lay a charge or not. Of course, much of that can be discussed and then, of course, a crown prosecutor is involved in a plea bargain potentially.

**Mr. David Wilks:** I want to carry on with that, if I could, Minister.

Having been involved in the Pickton case, and having done one of the next-of-kin notifications for that, it was very challenging for the police. You never want to have to go to a home and tell a parent that their child has passed away.

Having said that, I recognize that this legislation gives police the opportunity to bring someone in from the street who is potentially in harm's way and to offer them services through the funding you are going to provide.

I wonder if you could speak to that a bit, with regard to what type of services may be provided and how we can direct people to that.

• (1025)

**Hon. Peter MacKay:** The programming itself will obviously be informed in many cases by the community, by groups that are currently doing very good work in this area. There can be community, provincial, territorial discretion as to the needs. Many of them I've already touched on. There are very often addiction issues, certainly violence, and the stress and trauma associated with that violence and upbringing. Ms. Smith can speak to this in a much more informed way, but many prostitutes enter prostitution at a very early age. Many are new Canadians. Sadly and tragically, many, as Mr. Casey referred to, come from the aboriginal community. Programs that are specific to those particular and individual conditions will be provided and will be crafted over time.

However, I want to refer back to the preamble. I think you will find in that preamble many of these stated and very specific objectives of the bill. It talks about exploitation, and this is inherent in prostitution. I think there is a focus in this bill on the risks of violence posed by engaging in prostitution. This holistic approach of legislation plus programming is aimed, as you've suggested, at going to the very source, by criminalizing those who are exploiting prostitutes, not punishing or revictimizing individuals who have been drawn in to it—in many cases through no fault of their own—and assisting with either prevention or an exit from prostitution, in a way that goes well beyond anything we can do in the criminal law.

The objectives are very clear. It's a very important preamble to understand. I would suggest there's a paradigm shift in the way we will treat exploited persons under this bill versus those who are ultimately responsible, the perpetrators, those who are purchasing and exploiting women.

**The Chair:** Thank you, Minister.

Thank you for those questions.

Our next questioner, from the NDP, is Mr. Scott.

**Mr. Craig Scott (Toronto—Danforth, NDP):** Thank you, Chair.

Thank you, Minister, for being here.

Minister, I'd like to open by indicating that summary conviction does indeed lead to a criminal record. It's only if there's unconditional discharge that it doesn't.

Correct?

**Hon. Peter MacKay:** It can. You're right.

**Mr. Craig Scott:** That was not the impression you left.

I want to make sure that the government is fully on side with the Bedford decision. In Bedford your government argued, as can be seen at paragraph 80 of the Bedford judgment, that “it is their choice”—that is, prostitutes' choice or sex workers' choice—“to engage in the activity, not the law, that is the cause” of the risks they face, or any violence or insecurity or health consequences. The Supreme Court roundly rejected that line of argument by your government.

I want to confirm for everybody here that you accept that the line of argument was erroneous.

**Hon. Peter MacKay:** Well, Chair, what the Supreme Court ultimately spoke about was the overbreadth and gross disproportionality of the law. Let's not forget that the case did previously go through trial division and appeal court division, where it was overturned, and then the Supreme Court came back with its decision.

But the objective here is to denounce and deter prostitution as a practice. We are informed by the Bedford decision from the Supreme Court, but other sources as well. We see it as a practice that commodifies, degrades, and dehumanizes, and it exploits people who are involved in prostitution. As a result, we've responded with a bill that we think asserts that prostitutes are victims of an inherently dangerous and exploitative practice.

**Mr. Craig Scott:** I'll just note for the record that it wasn't a precise answer to my question, but thank you.

Minister, does it matter that some sex workers, or prostitutes, see what they do as legitimate? They will express what they do as an exercise of choice. I'm not saying it's anywhere near all; let's just say some. I'm wondering what that makes them in your eyes, in the eyes of this law.

You used very strong language at one point about clients being predators or perverts. So does it make women—just leave it at women for the moment—who think in those terms also perverts as a result?

• (1030)

**Hon. Peter MacKay:** I think anyone who preys on children in particular, whether they're male or female—

**Mr. Craig Scott:** That wasn't the question. You know that wasn't the question.

If women believe that the work they're doing is legitimate, what does that make them in the eyes of this law?

**Hon. Peter MacKay:** We believe that prostitution is inherently dangerous and exploitative, and that ultimate definition, when it comes to the courts, will be for the courts to determine.

What I believe is that we shouldn't normalize it, and that we shouldn't condone it or support it. We should work to help people exit prostitution. I believe we need to minimize, to the greatest extent possible, the inherent dangers of prostitution.

That's what we're attempting to do with this bill. We're not attempting to facilitate, to enable. We're attempting to reduce.

**Mr. Craig Scott:** Thank you, Minister.

Minister, just a quick answer: was the insertion of protection of health considered for the preamble, and if so, why was it not included amongst the objectives of the bill?

The only reference is to preventing violence and exploitation, but health concerns don't appear at all, and they do appear in the Supreme Court judgment.

**Hon. Peter MacKay:** Yes, I think health concerns are very much a legitimate concern, there's no question. If the committee in its wisdom has recommendations in that regard, it's a very legitimate question.

**Mr. Craig Scott:** Great.

In the opinions that you've received, the work done by your officials that—

**Hon. Peter MacKay:** And that could go, by the way, to the programming aspect, to come back to Mr. Wilks' question about how we help individuals who may be suffering from addiction issues or other issues.

**Mr. Craig Scott:** It makes sense. Thank you.

In the opinions that you've received, and that you're not going to show us, I understand, did you receive advice that any charter right—section 2, section 7, even section 15—was actually infringed?

**Hon. Peter MacKay:** No. There are always criteria—

**Mr. Craig Scott:** You did not, even with regard to section 1?

**Hon. Peter MacKay:** If I could finish, there are always criteria, as you know, as to the scale of risk involved. When it comes back to section 1, that is very much ultimately the determining factor—whether it can be justified in a free and democratic society, whether the Oakes test is met. That goes into the criteria of whether it passes constitutional muster or charter compliance.

**Mr. Craig Scott:** Which leads me to conclude—

**Hon. Peter MacKay:** The department would very much have gone through that in each section of this bill.

**Mr. Craig Scott:** Right. I have just a comment; I know I don't have much time. In the way you've answered that, Minister, in order for the crucial question to be section 1, your officials would indeed have to have advised you that at least one charter right was infringed. I just want to make that clear.

**Hon. Peter MacKay:** That there would be risk. That's the way it's determined, Mr. Scott.

**Mr. Craig Scott:** No, infringed.

**Hon. Peter MacKay:** Well, that's your word.

**Mr. Craig Scott:** That's the way the charter works.

**The Chair:** Thank you very much.

Our final questioner for the minister is Ms. Ambler, who is joining the committee.

Thank you for coming. The time is yours.

**Mrs. Stella Ambler (Mississauga South, CPC):** Thank you, Mr. Chair.

Thank you, Minister and officials, for joining us today. We appreciate your time.

My question, Minister, is about human trafficking. We all know that it's horrible. In fact, in the region I represent, it's a huge problem, because it's in the vicinity of the airport. This is something that most Canadians don't know much about and don't hear much about. I know this bill attempts to address it and to link the issues of prostitution and human trafficking.

Could you tell us more about the human trafficking component of the bill and how it will work?

**Hon. Peter MacKay:** Sure. Thank you very much, Ms. Ambler.

The amendments contained in Bill C-36, as I said my opening remarks, are meant to marry new sections of the Criminal Code with existing sections that deal with human trafficking. But you're absolutely right: there are many overlaps, if you will, particularly for vulnerable individuals and exploitative persons.

What we've attempted to do is ensure consistency with the human trafficking offences, which is very much related criminal conduct. Specifically, to answer your question, it would increase maximum penalties and impose mandatory minimum penalties for receiving a material benefit from human trafficking. Many of those who are trafficked are underage so there are already sections that apply, but regarding, for example, the withholding of documents for the purpose of committing child trafficking and the receipt of a material benefit from child trafficking, all of these types, shall we say, of collateral activities that need to be deterred will see increased maximum penalties under the bill.

What we're attempting to do here throughout this bill is to ensure greater protection for vulnerable Canadians. This is inherent in the bill. We have examined other jurisdictions that have decriminalized or legalized prostitution and found that higher rates of human trafficking and sexual exploitation have been the end result, and legalizing and regulating prostitution would create an increase in demand for those who provide sexual services.

That runs completely contrary to our intent to end the violence and exploitation that we think is inherent to prostitution, as I've said. It recognizes the societal harm that is caused by the commodification of sexual services. That is very much what we're attempting to do, to take these new sections and ensure they are consistent with the current provisions of the code.

• (1035)

**Mrs. Stella Ambler:** Thank you.

We'll be hearing from a number of witnesses, I think, who can speak to this issue and support what you said as well.

You mentioned other jurisdictions that are criminalizing the purchase but not the sale of sex. They follow an approach used in Sweden. I'm wondering if you can tell us if we know anything about the Swedish approach, and what the results have been of their legislative changes that were made in 1999.

**Hon. Peter MacKay:** The 1999 decision in Sweden that started a bit of a trend in this direction of decriminalizing the sale but criminalizing the purchase of sexual services was coupled in Sweden with the programming approach, the dual tracks of putting the emphasis on the perpetrators, on johns and pimps, and assisting vulnerable persons to exit the field of prostitution. I think—and I stand to be corrected—it was the first country to move, I don't want to say radically but, dramatically in that direction.

A report that was compiled in 2010, just a relatively short time later, found that implementation had been successful in reducing street prostitution as well as the rate of human trafficking. So there is a tried and true example, if you will, that is encouraging. The model also found it had a deterrent effect. By focusing resources, including police resources, on the perpetrators, on the purchasers, this is having an effect, anecdotally speaking. We may not have the empirical data we would hope to have in an ideal world.

Prostitution, as you know, is an underground activity. It's very difficult in many cases to get the type of specific statistics we need, but given its nature, the prevalence of other criminal elements—and we haven't really talked about that, the organized crime element that is very often associated with human trafficking—this has had a positive effect in Sweden. Recent research indicates that legalization or decriminalization of prostitution has the inverse effect, that going to either end of that spectrum in fact increases human trafficking in addition to prostitution.

**The Chair:** Thank you, Minister—

**Hon. Peter MacKay:** Based on that data, this is, again, supportive of the bill.

**The Chair:** Thank you, Minister, for joining us on our first panel, introducing Bill C-36 to us, and starting off the conversation that we'll be having all week. We appreciate your time.

I know that your officials are staying, but you are free to go.

**Hon. Peter MacKay:** Mr. Chair, I thank you again for your deliberations.

As well, I do have that technical paper available to this committee, should the committee wish to receive it.

**The Chair:** I'm assuming the committee would like to receive the technical paper? Yes?

**Some hon. members:** Yes.

**Hon. Peter MacKay:** Okay.

**The Chair:** Please pass it out. The clerk will take it. Thank you very much.

We'll suspend for about three or four minutes until we change panels.

• (1040) \_\_\_\_\_ (Pause) \_\_\_\_\_

• (1040)

**The Chair:** I'll call this meeting back to order.

In our second panel, we have the officials from the Department of Justice. Mr. Piragoff was already introduced, as was Madam Levman. We are also joined by Ms. Morency, who is from the criminal law policy section.

Do you have an opening statement, or do you want to just go to questions?

Questions: there you go.

Members, we are here until 11:30. Just so you know, I do have to bring up an issue about the budget for the review of this legislation. I will save five minutes at the end today.

Our first questioner, from the NDP, is Madame Boivin.

[*Translation*]

**Ms. Françoise Boivin:** Thank you to all the witnesses for being here today.

Now I have some legal questions for you. I hope you're ready.

I want to discuss the Bedford decision. If I've understood correctly, the decision affects sections 197(1) and 210, as well as paragraphs 212(1)(j) and 213(1)(c). That means that the whole matter of human trafficking under sections 279 to 286 of the Criminal Code weren't mentioned in the Bedford decision at all. Is that correct?

[*English*]

**Mr. Donald Piragoff (Senior Assistant Deputy Minister, Policy Sector, Department of Justice):** That's correct. The Bedford ruling only looked at three offences.

**Ms. Françoise Boivin:** Okay. So we're not talking of human trafficking here. We're talking solely of prostitution and what surrounds it.

**Mr. Donald Piragoff:** The Bedford decision, yes, that's what it looked at.

[*Translation*]

**Ms. Françoise Boivin:** Bill C-36 is supposed to respond to the Bedford ruling; hence the sense of urgency on the minister's part. Is that correct? I am just trying to put things into context to make sure we are all on the same page.

In Bedford, the Supreme Court ruled that the provisions I just mentioned jeopardize the health and safety of sex workers because they criminalize what those workers do and create a sense of insecurity and danger since they must carry out their activities in places that are out of sight.

That said, the minister is bound to respond to the Bedford ruling. What process did the department follow in ensuring that response? Did you examine different models, or rather, did you consider only one when you were drafting Bill C-36? Did you consider decriminalizing or legalizing these activities? Did you analyze the Nordic model? How exactly did you arrive at Bill C-36?

• (1045)

[English]

**Mr. Donald Piragoff:** We looked at a number of different models. The consultation paper, which was distributed in March, actually referred to three different approaches. They were general, but there were a lot of variations between them. Those three approaches were considered. Everything was looked at—from total abolition to total criminalization, as in some American states, to the Nordic model, to decriminalization models.

**Ms. Françoise Boivin:** Did you have legal advice for each type of model, based on the Bedford decision? Did you have, for instance...?

I don't know, but when I was more practising law on a day-to-day basis and a client would come to me and say, "Review the three models and advice to us", I would review them and give suggestions.

Did that process happen, or...?

**Mr. Donald Piragoff:** When we provide options, we provide pros and cons of each option in terms of benefits and disadvantages. Policy decisions are made on the basis of the analysis.

**Ms. Françoise Boivin:** And it's the political branch that takes that part. So is it my understanding that you did give pros and cons, even for what we have here?

**Mr. Donald Piragoff:** Yes.

**Ms. Françoise Boivin:** What would be the cons?

**Mr. Donald Piragoff:** Well, there would be whatever the pros would be for decriminalization or full criminalization, or full decriminalization—

**Ms. Françoise Boivin:** So enlighten us.

**Mr. Donald Piragoff:** —would be a con.

**Ms. Françoise Boivin:** Specify it, because not everyone around the table and hearing this is necessarily a lawyer. Give us the gist of the pros and cons.

**Mr. Donald Piragoff:** The pros of this bill are that it responds to Bedford.

Bedford found that the existing fee provisions infringed section 7 charter rights of sex workers because it prevented them from taking measures to protect themselves while they were engaged in a risky but legal activity.

**Ms. Françoise Boivin:** So what does Bill C-36 do, and which clause answers to that?

**Mr. Donald Piragoff:** In particular, the areas that the court found to be of concern were that sex workers were not able to sell sex from fixed indoor locations. They had to keep moving around because the definition of bawdy house was such that if a place was used more than once, it became a bawdy house. Second, the offence of living on the avails of prostitution did not distinguish between exploitive conduct and non-exploitive conduct, so therefore people were not able to hire bodyguards or other people in order to protect them. Third, the breadth of the communicating offence, which was communicating in all circumstances, was prohibited, and denied them the ability to negotiate safer conditions.

[Translation]

**Ms. Françoise Boivin:** This way, the criminal activity always rests on the customer. If I've understood the bill correctly, there are no exceptions to that, even if the sex worker provides their services indoors, as you just mentioned, or engages in—

[English]

"legal advertisement", in the sense of what you are saying.

Am I correct to say that in this bill, at all times, clients will be viewed as engaging in a criminal act?

**Mr. Donald Piragoff:** The purchasers of sexual services are criminalized for offering to purchase or purchasing in any place, so location, any time—

**Ms. Françoise Boivin:** How does that make it more secure and more...?

You didn't go as far as declaring prostitution illegal in Canada. I still can't fathom the sense of it.

• (1050)

**Mr. Donald Piragoff:** May I take you back to the objectives that the minister mentioned?

Bill C-36's overall objectives are to reduce the demand—

**Ms. Françoise Boivin:** But I'm talking about Bedford, sir. I'm talking about Bedford.

**Mr. Donald Piragoff:** That's what I'm responding to.

The overall objective of Bill C-36 is to reduce prostitution, discourage entry into prostitution, and to deter participation. It also recognizes that the process of trying to deter prostitution is not an easy avenue, and that in the course of that people who engage in prostitution and selling sexual services need to be protected.

Therefore, Bill C-36 would allow—

**Ms. Françoise Boivin:** So the only protection is not to do it.

**Mr. Donald Piragoff:** Well, no. It would allow the provision of sexual services in indoor locations, either—

**Ms. Françoise Boivin:** To no client.

**Mr. Donald Piragoff:** —independently or collectively. It will permit a person to hire bodyguards.

**Ms. Françoise Boivin:** But to no clients.

**The Chair:** [Inaudible—Editor]

**Ms. Françoise Boivin:** Okay. Anyway—

**Mr. Donald Piragoff:** This is not the only place in criminal law where we have asymmetrical criminal law. We have asymmetrical criminal law in suicide. It is not an offence to commit suicide; it's an offence to aid someone. That's asymmetrical.

It is an offence to sell drugs; it is not an offence to purchase drugs. There is no offence of buying drugs. It is an offence to sell drugs. However, the buyer could of course be criminalized by aiding the seller to sell the drugs, by—

**Ms. Françoise Boivin:** Except that with prostitution it usually takes two to tango. Well, not necessarily two, but anyway—

**Mr. Donald Piragoff:** That is why the bill immunizes...and says that the seller of sex will not be prosecuted—

**Ms. Françoise Boivin:** He continues, and it makes me continue.

**The Chair:** Okay, thank you very much.

Our next questioner is Mr. Brown, from the Conservative Party.

**Mr. Patrick Brown (Barrie, CPC):** Thank you, Mr. Chair.

My first question is in regard to some groups who have argued that in prohibiting advertising of sexual services, you are not allowing prostitutes the opportunity to screen their clients.

Could you comment on that concern?

**Ms. Nathalie Levman (Counsel, Criminal Law Policy Section, Department of Justice):** The advertising offence prohibits advertising the sale of sexual services, but if you look at proposed section 286.5, it proposes an immunity for the sellers of sexual services. So to the extent that a person puts an ad up advertising their own sexual services, they are immunized from prosecution by the bill explicitly.

**Mr. Patrick Brown:** I have an additional question. There has been some confusion over what would apply in the case of those under 18, but I understand that it would be the Youth Criminal Justice Act provisions that would hold forth here. Can you comment on those under the age of 18 and if the latter would be the superceding document? Would it be the Youth Criminal Justice Act that governs any interactions that involve someone under the age of 18?

**Ms. Nathalie Levman:** Yes.

**Mr. Patrick Brown:** Additionally, going back to the advertisement of sexual services, are there any studies that would complement that view, any evidence that the Department of Justice has found, for example, to show that in jurisdictions where prostitution has been completely legalized there has been an increase in human trafficking?

**Ms. Nathalie Levman:** Yes, there is evidence that indicates that.

Sorry, what's the link to the advertising?

**Mr. Patrick Brown:** The link is that there's no model that can ever make prostitution a safe activity, but I thought it might be relevant to this committee to share some of the studies that have been done in jurisdictions where prostitution has been completely legalized.

**Ms. Nathalie Levman:** I would recommend that you all take a look at the technical paper that the minister just tabled. All of the research is referenced in that paper in the end notes, as well as in annex B, which is a bibliography. There is evidence that speaks to the experience of New Zealand, which decriminalized prostitution. I believe they put restrictions on advertising, but in a regulatory context as opposed to a criminal context.

**The Chair:** Are those studies that are mentioned in the bibliography and footnotes of the technical paper we just received available through the Internet?

•(1055)

**Ms. Nathalie Levman:** We've provided links where links were available, and full references in order for them to be found.

**The Chair:** Thank you. I inquired because a member of the committee asked me whether any studies that are mentioned could

be brought forward. But they're actually inside that technical paper, the references to them?

**Ms. Nathalie Levman:** Yes, they aren't reproduced in full, or else it would be a lot bigger. But yes, all of the references are there.

**The Chair:** Thank you.

The time is still yours, Mr. Brown.

**Mr. Patrick Brown:** Actually, that covers my two questions. Bob has a....

**The Chair:** Thank you very much.

You want to share his time?

**Mr. Bob Dechert:** To either Mr. Piragoff or Ms. Levman, on this question of advertising, a number of commentators have got it wrong. I know there are some journalists in the room today who got it wrong in their columns. They made statements like, because this bill makes it illegal to have any form of advertising, they're going to force prostitutes out into the street to advertise their services and, therefore, the bill is unconstitutional.

You pointed out 286.2(4b), which says that someone can provide their own advertising for their own services and can pay someone on commercial terms to help them with that. That clearly allows the individual to offer their own sexual services. There seems to be some concern about what the advertisement can say. For certain types of advertisements, the prosecutor can apply to the court to have those advertisements removed if they define sexual services in a certain way.

I've taken a look at some of these advertisements, and anyone who has access to the Internet can see them, and typically what they say is rather sad, rather degrading. It says sometimes the person's name, their age, their ethnicity, their hair colour, their eye colour, their bust size, their waist size, their height, and certain other physical characteristics. Then it will give an hourly rate, i.e. so much for half an hour, so much for two hours. If that ad runs, as it does today—you can find it online in many places and in many newspapers across Canada—is that something that would be caught by the provisions of Bill C-36?

**Ms. Nathalie Levman:** You're absolutely right that it's very rare to see an explicit ad.

**Mr. Bob Dechert:** That's a laundry list.

**Ms. Nathalie Levman:** I would refer you to the general principles of criminal law that require proof beyond reasonable doubt. So a crown would have to prove beyond reasonable doubt that a particular advertisement was an advertisement for the sale of sexual services.

**Mr. Bob Dechert:** Right. I think a lot of people are misunderstanding this. They're saying that this is a total ban on advertising. But as I read it, what's going on today, whereby an individual, if he or she is paying for that ad themselves, if everyone involved is only receiving a material benefit that's commensurate with the services provided on reasonable commercial terms, you can say my name is X. I'm available for a certain price per hour or hourly rate—I can say that—and that's probably not the type of thing that's going to be made illegal by Bill C-36. Would you agree with that?

**Ms. Nathalie Levman:** The person who takes out that ad, as long as it relates only to their own sexual services, is immunized from prosecution, which I would note is different from allowing prostitution. In no way does Bill C-36 attempt to allow the practice of prostitution. It merely immunizes from prosecution certain types of behaviour that are frequently engaged in by the persons who are considered to be exploited by the practice of prostitution.

**Mr. Bob Dechert:** Okay, thank you.

**The Chair:** I'm just going to put it in as a Conservative slot, if you need one.

Mr. Casey from the Liberal Party, the time is yours.

**Mr. Sean Casey:** Thank you, Mr. Chair.

To begin I'd like to stay with the issue of advertising.

Could one of you tell me whether you agree with this statement? It's from a document written by Sandra Ka Hon Chu, Jenn Clamen, Richard Elliott, Katrina Pacey, and Tara Santini, with the Canadian HIV/AIDS Legal Network, Pivot Legal Society, and Stella.

Here's the question. Tell me if this is an accurate depiction of Bill C-36:

...any party (e.g., newspaper, website, phone-service, etc.) that is a vehicle for sex workers' advertising their services is guilty of a crime. This makes it virtually impossible for a sex worker to advertise. Even maintaining one's own website leaves the Internet Service Provider (ISP) host exposed to prosecution.

Would you agree with that characterization of what's in Bill C-36?

• (1100)

**Ms. Nathalie Levman:** Thank you.

Again, I would bring you back to the general principles of criminal law. Definitely one of those persons could be found a party to the advertising offence if a crown could prove knowledge of (a) the existence of the ad, and (b) the fact that the ad was in fact an ad for sexual services.

**Mr. Sean Casey:** What if the website is hosted in another country?

**Ms. Nathalie Levman:** I don't believe Canada has jurisdiction over websites that are hosted in other countries. That said, my understanding is that websites do cooperate with authorities.

**Mr. Sean Casey:** Okay.

You were here when I asked the minister about consistency between Bill C-36 and Gladue. Bill C-36 contains some mandatory minimums and increases some mandatory minimums.

Would you agree that on their face the mandatory minimums contained in Bill C-36 run afoul of the principles enunciated by the Supreme Court in Gladue?

**Mr. Donald Piragoff:** Gladue is a general sentencing principle that applies irrespective of whether there's a mandatory minimum or not. Mandatory minimums do not run afoul of Gladue. Gladue is a principle that would be applied in light of the mandatory minimum.

**Mr. Sean Casey:** Would you not agree that Gladue compels a judge to explore options other than incarceration when sentencing an aboriginal offender? When the government decides to take away all

other options, it is directly contravening what the Supreme Court of Canada said in Gladue.

**Mr. Donald Piragoff:** I would not agree with that statement.

**Mr. Sean Casey:** Do you accept that the government had a duty to consult first nations when drafting this legislation, particularly when considering the disproportionate impact that the societal problem of prostitution has on first nations communities?

**Mr. Donald Piragoff:** The government conducted a broad consultation. There were representatives from first nations communities at some of the consultations.

**Mr. Sean Casey:** So you agree that they had a duty to consult and they fulfilled it?

**Mr. Donald Piragoff:** I'm not saying whether they have a duty or not. That's a constitutional issue. I'm saying that aboriginal groups were consulted, and I believe that some of them will be testifying before the committee this week.

**Mr. Sean Casey:** What value was the \$175,000 Ipsos Reid survey to the department in preparing the bill?

**Mr. Donald Piragoff:** It was useful information, just as the consultation that the department undertook online was, as well as the in-person consultation that the minister undertook. It was all part of an accumulation of background information and views and comments with respect to a social issue in Canada.

**Mr. Sean Casey:** Mr. Piragoff, can you expand at all on the words "useful information"? Is there anything more that you can tell us in terms of the value of that Ipsos Reid survey or poll, other than that it was useful information?

**Mr. Donald Piragoff:** As the minister indicated, the poll was quite extensive. There were only a few questions dealing with prostitution, so when you talk about \$175,000—if that's what was true—there were only a couple of questions on prostitution. There were a whole bunch of questions on other topics.

I believe that's why the minister said there's a certain process for the release of the document. It was not only dealing with this topic.

**Mr. Sean Casey:** Can any of you shed any more light on the proposed \$20-million expenditure? I'm particularly interested in any specific plans for programs with respect to first nations and aboriginals.

• (1105)

**Mr. Donald Piragoff:** The details of the \$20 million have not yet been finalized. However, clearly the research does show that there are certain groups that are disproportionately affected by prostitution. That includes marginalized communities, including aboriginal communities. It would naturally make sense for program money to focus on the most vulnerable, so we will be looking at aboriginal communities, at youth, and at those most susceptible to exiting the practice of prostitution.

**Mr. Sean Casey:** Subsection 213(1) of the Criminal Code was struck down by the Supreme Court of Canada. It says:

Every person who in a public place or in any place open to public view

...(c) stops or attempts to stop any person or in any manner communicates or attempts to communicate with any person

for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute is guilty of an offence punishable on summary conviction.



That was found to be unconstitutional and it has been replaced. What strikes me is the similarity between the two. Here is what it has been replaced with. I understand it's your opinion that this will pass constitutional muster.

(1.1) Everyone is guilty of an offence punishable on summary conviction who communicates with any person for the purpose of offering or providing sexual services for consideration in a public place or in any place open to public view that is or is next to a place where persons under the age of 18 can reasonably be expected to be present.

Would you agree that there isn't a lot of difference between the wording of what was struck down by the Court and what you propose to replace it with?

**Mr. Donald Piragoff:** There's a significant amount of difference. The first difference is the purpose of the legislation. The existing section 213 was interpreted by the Supreme Court as being essentially a nuisance offence. Basically, it was to control nuisance on the street.

Bill C-36's reformulation of section 213's objective is to protect children from the harms of prostitution. It is to essentially prohibit soliciting in front of children because of the harms that may befall children, and also drawing them in.

It is not geared to controlling the nuisance on the street. It is to protect children. It's a different legislative objective, so there's a huge difference.

The other difference, of course, is that it's a lot more narrow in scope. It only applies to places—not any place—where there's a reasonable expectation that children would be present, which means that in the case of any place other than that, a person would be able to solicit legally.

**The Chair:** We'll move to Mr. Dechert from the Conservative Party.

**Mr. Bob Dechert:** Thank you, Mr. Chair.

Mr. Piragoff, the minister spoke about exploitation. We've heard lots of commentators talk about the exploitation of the prostitutes, men or women, who are in this business. Bill C-36 focuses on exploitation, on material benefit, that is exploitive in nature. I'm wondering if you can tell us a bit about why you focused on that. Do you feel that by focusing on those who exploit—in other words, a pimp who takes 75% or more of the fee that the prostitute receives as their fee, or the strip club or massage parlour owner who takes a significantly higher portion than the individual would receive from that fee, people who extort money from prostitutes in other ways—how will that in your view make the lives of prostitutes safer and assist them in exiting the business?

**Ms. Nathalie Levman:** I think you're referring to the legislative exceptions to the material benefit offence.

**Mr. Bob Dechert:** Yes.

**Ms. Nathalie Levman:** As the minister said, those exceptions ensure that people who sell their own sexual services can develop legitimate family and business relationships, just the same as you or I. It has a number of different exceptions. I think what you're referring to is the fourth exception, which allows for some informal arrangements where services or goods are not offered to the general public, but they might be offered to a particular person, for example,

a friend who is willing to provide some protective services on a weekend, let's say. This was crafted very carefully.

To access that exception, the person has to receive only what would be a fair value for the service provided, and couldn't be involved at all in the actual provision of sexual services, couldn't encourage, incite, or anything like that. So it's exactly the same as if I felt that my security was threatened, and I hired a friend. That is intended to provide an opportunity to implement certain safety measures when engaging in a very risky.... But if Bill C-36 is enacted, it would be an illegal activity.

The legislation is also very careful to recognize that when third parties develop economic interests in the prostitution of others, there's a risk that they may become unscrupulous and exploit, and that evidence is also listed in the bibliography and in the end notes to the technical paper for your reference. To address that very real concern, Bill C-36 takes away the exception if any exploitive circumstances exist. So if that person starts involving themselves in the prostitution of that other person starts inciting or encouraging or procuring using violence, and offering drugs to aid and abet, or—and this is important I think in relation to your comments—if that material benefit is received in the context of a commercial enterprise that offers sexual services for sale, that is considered to be exploitative a priori by Bill C-36. So Bill C-36 doesn't allow the commercialization or institutionalization of prostitution because it considers that to be harmful in itself. The risks, the links to human trafficking, are too high. I would make that point.

That's how the legislation carefully allows for certain measures to be undertaken, but also recognizes the inherent dangers and is careful to take away the legislated exceptions when any kind of exploitation presents itself, as the minister has outlined in his remarks.

• (1110)

**Mr. Bob Dechert:** It sounds to me that if you take the coercion and the undue profiteering of others out of the mix, it will certainly make the lives of the people who are in this business easier and perhaps give them other choices.

Mr. Piragoff, can you outline in a nutshell why you think Bill C-36 addresses the concerns of the Supreme Court in the Bedford decision with respect to the safety and security of the individuals involved in prostitution under section 7 of the charter? Can you just give us in a nutshell why you think this bill is constitutional and will withstand a charter challenge on the provisions laid out by the Supreme Court in Bedford.

**Mr. Donald Piragoff:** Bill C-36 removes the inherent limitations in the existing definition of bawdy house by deleting those limitations, and essentially would allow a sex worker, either alone or collectively with other persons, to carry out activity in a fixed indoor location, provided there is no exploitation or commercialization of any of the individuals involved.

Also, the bill, through the exemptions that Ms. Levman mentioned, would permit a person to rent a place. In Sweden, under the strict Nordic model, persons cannot rent an apartment or hotel room because of the fear that the landlord could be charged. This bill would provide that the sellers of sexual services could purchase any service that is available on the market, like any other person could. They could rent a place. They could deal with pharmacists. They could deal with doctors. They could hire protective services, just like anyone could hire a protective service that is available to the general public if they felt they needed it. The bill specifically deals with the safety deficiencies that the Supreme Court found within the existing law.

I might add that the existing law, of course, is a situation where the sale and purchase of sex is a legal activity. This is providing this protection even though the activity is an illegal activity. This bill actually goes beyond. It says that even though the activity is illegal, this is going to afford protection to sellers of sexual services. It goes beyond what was required by Bedford.

Bedford was dealing with a situation where the activity was legal, and they were asking how you can endanger people who are involved in a legal activity. Now, under Bill C-36, it will be an illegal activity, but Bill C-36 will still provide these people with protection.

• (1115)

**Mr. Bob Dechert:** I think that's an important distinction, one that our friends in the media have missed largely, and one that some of my friends in the opposition have missed.

Thank you.

**The Chair:** Thank you for those questions and answers.

Our next questioner is Mr. Scott.

**Mr. Craig Scott:** Thank you again, Mr. Chair.

Thank you to the officials for being here.

I want to clarify a few things. The first is a very simple question. In the online survey that was done, were mechanisms in place to ensure that the only people answering were from within Canada—Canadian ISPs?

**Ms. Nathalie Levman:** As I understand, we did receive some submissions from non-Canadians. Those submissions were considered but were not counted in the final count.

**Mr. Craig Scott:** Thank you.

I want to return to the material benefit, where those who might be otherwise exempted aren't exempted if they receive the benefit in the context of a commercial enterprise that offers sexual services for consideration.

Mr. Piragoff has outlined that individual prostitutes having their own places would not be caught. But if you have any kind of a cooperative enterprise, let's say two or three women, or two or three men, working together in an arrangement that is commercial but also designed to enhance mutual surveillance, safety, etc., would that be a commercial enterprise?

**Ms. Nathalie Levman:** You're talking about working cooperatively together whereby the only benefit received results from the

sale of one's own sexual services. The answer is that Bill C-36 does not criminalize that scenario.

**Mr. Craig Scott:** Thank you.

So as long as they make sure there was no pooling of resources and sharing of income, they would be safe. Otherwise, they'd fall within a commercial enterprise.

**Ms. Nathalie Levman:** I think we have to be careful to read the bill with all of its component parts. We have a legislative exception that would apply to a person who offers, let's say, protective services. If people were working cooperatively together and they all contributed a portion towards the protective services that were provided, at a fair value, and that person wasn't at all involved in the prostitution other than acting as a body guard, Bill C-36 would not apply to that scenario.

**Mr. Craig Scott:** Otherwise, if this collective effort included any kind of on-site manager or a receptionist service, etc., that would be considered commercial.

**Ms. Nathalie Levman:** Now we're getting into factual determinations that need to be made by the court.

**Mr. Craig Scott:** This is the criminal law. We'd like to know a little more. We'd like to have a little more clarity in advance, thank you.

**Ms. Nathalie Levman:** As I said, if the third party who was present falls within a legislative exception and the people are working cooperatively together and the only benefit they are receiving from the others is the safety of proximity, Bill C-36 does not criminalize anyone in that scenario.

• (1120)

**Mr. Craig Scott:** Okay, thank you.

The minister earlier said that the ability to screen clients in public would be available, as long as you take care not to be anywhere near anybody 18 years or under. But we also know that johns, the clients, cannot engage in the purchase anywhere at all, so I'm wondering whether or not you would accept that it's still going to be a fleeting enterprise to be able to screen your clients in public, precisely because the johns are themselves criminalized for being in public with a prostitute and engaging in the transaction.

**Ms. Nathalie Levman:** You're right. The bill is clear that because one of the main objectives is to reduce prostitution, deter it, and discourage it, purchasing and communicating for that purpose is criminalized in all places, which is consistent with the objectives of the bill to reduce prostitution itself. A lot of balancing of interests is going on in Bill C-36, and it has to take into consideration many different safety issues.

**Mr. Craig Scott:** Thank you, Mr. Chair.

The minister in his June 4 press conference said something that I think he confirmed today. He said, "Some prostitutes we know are younger than 18 years of age. If they are in the presence of one another at three o'clock and are selling sexual services, they would be subject to arrest". I believe he confirmed that today, and I'm wondering if that is the case.

I understood that the Department of Justice issued some kind of correction after the press conference to say he wasn't correct. It seems as if he has reiterated that.

Could we please have a clarification about whether that is true or not?

**Ms. Nathalie Levman:** It's an objective test. Where children can reasonably be expected to be present is a qualified, objective test, and so the courts will look at a person in the position of the accused, whether or not that person would have known that children could reasonably be expected to be present.

I recall the minister making a comment in his earlier remarks that a bar, for example, would likely not meet that test. As to whether or not another scenario would meet that test, that would be up to the courts.

**The Chair:** Thank you very much.

**Mr. Donald Piragoff:** Just to clarify that, with a test it's really not material whether a person under 18 is present or not. That would be evidence, but the test is whether it is objectively a reasonable expectation that at that place, at that time, a person under 18 would be there. The fact that someone under 18 is there doesn't ipso facto satisfy—

**The Chair:** Thank you very much.

Our next questioner is Mr. Dechert.

I'm giving you a couple of minutes.

**Mr. Bob Dechert:** Thanks, Mr. Chair.

Let's just follow on this question for a moment because the opposition has put a lot of time and effort into the concern about two 16-year-old prostitutes out on the street, and each of them knows that the other one is 16. In that situation it's conceivable that the police could arrest one or both of them.

Would you agree with that?

**Mr. Donald Piragoff:** Under the existing law, two persons under the age of 18 could be arrested and charged under the Young Offenders Act. Under the new Bill C-36 whether they're together or whether they're alone, what matters is whether they are soliciting in a place where there's a reasonable expectation that children would be present. That's the test. It's not whether children are actually present or not.

**Mr. Bob Dechert:** I understand that point. It's not whether or not the two know that each other is under the age of 18, but whether or not they think it's conceivable that other children might be present, other persons under the age of 18. Is that correct?

Ms. Levman.

**Ms. Nathalie Levman:** Yes, as Mr. Piragoff has clarified, it's not about whether or not a child is actually present. To use the minister's example with regard to two teenagers in a bar, a bar is not a place where children could reasonably be expected to be present, so it's likely—

**Mr. Bob Dechert:** But if they were in front of the school or the playground, it would be.

**Ms. Nathalie Levman:** At 2 o'clock in the afternoon, it would be far more likely that a court would find that it met the test in that case.

**Mr. Bob Dechert:** The opposition seems to be concerned that if you criminalized the purchase of sex, instead of purchasing it in front of the school at 2 p.m., the customers, the johns, for lack of a better term, are going to go into the back alleys or into the industrial parks. I find it hard to believe. You don't have to answer this, because it's more of a comment than a question, but I find it hard to believe they think that customers are looking for prostitutes in front of the Rideau Centre in the middle of the afternoon or in front of a school in the middle of the afternoon, or in front of the Eaton Centre, in Toronto, in the middle of the afternoon. It seems to me that it has always taken place in the back alleys, in the shadows, if it's out on the street. Whether or not you are criminalizing the purchase isn't determinative of where the prostitute's going to go to try to find her client if she's doing it in the street. But we know that they have other options: they can go inside, to a fixed indoor location, with security. And that's all provided for under this legislation.

What is your view on where these things are likely to take place? Do you really believe there's a distinction that the safety of the prostitutes will be harmed by the provision that (a) they can't communicate for the purposes where children may be present or (b) because the purchase of the service could be criminalized?

• (1125)

**The Chair:** That's the final question.

**Ms. Nathalie Levman:** Perhaps it would be helpful to the committee to review paragraph 165 of the Supreme Court of Canada's Bedford decision, which talks about how all prostitution provisions are interrelated and intertwined. The Supreme Court is asking us not just to look at what is criminalized, but also what is not criminalized. That informs the constitutionality of each individual provision. I think that your comments are fair. We have to look at the other aspects where Bill C-36 says it doesn't prevent certain safety measures when we look at another provision that criminalizes other aspects of prostitution.

**The Chair:** Okay, thank you very much for those questions and answers.

I want to thank our officials for joining us today and I appreciate all the questions and answers that were provided.

That brings us to the end of our panels. I have one thing that I want to discuss, and then another item that I need to bring forward.

We have budgets in front of us, members of the committee. One is for \$39,000 and the other one is for \$66,050. Now that's not in addition to the \$39,000, which is an accumulative one. I need approval for both.

I'm going to put it right on the table. The way the process works is that we offer but don't require video conferencing. I've had individuals who had said that they'd like to come here. As chair, I made the decision that if they want to come and they don't want to do video conferencing, the Government of Canada should pay for them to be here because they've been asked to be witnesses. There were others who said that they would pay for their own way. I wouldn't allow that to happen; if we are paying for one, we should pay for them all.

We are allowed, as a committee, to approve the \$39,000, done by the clerk. I will have to go back to the Liaison Committee—after the fact, but I'll have to go back—and ask for some more money for this particular study during the summer time on this bill. But I do need approval for both, so would somebody move the \$39,009?

It's been moved.

All those in favour?

(Motion agreed to [See *Minutes of Proceedings*])

**The Chair:** On the \$66,000, it's just a budget, not actual spending. We will be back to you with the actual spending. On behalf of this committee, I will be going back to the Liaison Committee and saying that maybe we need to change the process and require video conferencing, such that it's not choice, that a witness is either doing video conferencing or not appearing, because we need to get some control over the costs.

Yes, Madame Boivin.

[*Translation*]

**Ms. Françoise Boivin:** Thank you, Mr. Chair.

I am inclined to share your view on that. But, from my experience, there is a tendency to forget about witnesses who appear via videoconference. It puts them at somewhat of a disadvantage. That's my only caveat. And that may be why some witnesses prefer to appear in person. It's similar to doing a radio interview: it's better to be in the studio than to phone in, as my colleague realized on Saturday. Be that as it may, if it means we can keep control, I agree.

I have a question for you. What happens if the liaison committee refuses to give you the money? Would it come out of your pocket in that case?

[*English*]

**The Chair:** Yes. And I will be doing two or three jobs to pay for that.

**Voices:** Oh, oh!

• (1130)

**Ms. Françoise Boivin:** Excellent.

**The Chair:** I don't disagree with you, Madame Boivin. I think it should be a committee decision on video conferencing—i.e., this is where we're spending, and this is what we have. It should be a committee decision.

**Ms. Françoise Boivin:** Okay.

**The Chair:** With that, will somebody approve the \$66,000, or move it for me?

Thank you very much.

(Motion agreed to [See *Minutes of Proceedings*])

**The Chair:** We don't have to do it now, but we have a notice from one of our future witnesses that I think we need to discuss in camera. I'd be happy to move in camera now. I don't think it will take more than a couple of minutes to discuss this particular witness, who has asked for a discussion in camera.

Could somebody move that we go in camera?

It's been moved. All those in favour?

(Motion agreed to)

**The Chair:** We'll suspend for a few minutes while we move in camera. It should take only a couple of minutes.

[*Proceedings continue in camera*]







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