



# A Summary of the proposed legislation Bill C-36 'Protection of Communities and Exploited Persons Act'

## Law-making in Canada

First of all, *The Protection of Communities and Exploited Persons Act* (the "Act") has just been *proposed*, (called the 'First Reading') and is *not yet law in Canada*. Before the Act can become law, it must go through a 'Second Reading' where Members of Parliament ("MP's") debate the Act; the 'Committee Stage' where a committee is struck to study the Act piece by piece; the 'Report Stage' where MP's can make amendments; and the 'Third Reading' where MP's debate and vote on the Act. Then the Act goes to the Senate where a similar process is repeated all over again, before the Act receives 'Royal Assent' by being passed into law by both Parliament and the Senate. As you can imagine, this could take a while! [See more about law-making in Canada here.](#)

## Sections of the Act

The Act contains two important pieces, the 'Preamble' that describes the government's intent for creating the laws, and then the proposed changes to various legal documents, such as the Criminal Code. The preamble is important should the laws ever be challenged in court, as one of the things that judges look at is how well the laws meet their stated purpose. Many small changes need to be made to other laws relating to evidence collection, warrants, and sentencing to support the main changes, and are also included in this Act.

## The Preamble

The Preamble gives you an idea of how the government is attempting to justify the proposed changes to the law. The preamble for the Act states that the government is concerned about "exploitation that is inherent to prostitution"; that it feels "objectification of the human body and the commodification of sexual activity" cause harm; that the dignity and equality of Canadians needs to be protected by discouraging prostitution; that it is important to "denounce and prohibit the purchase of sexual services" and to denounce procurement and the development of business around prostitution; and that the government "wishes to encourage those who engage in prostitution to report incidents of violence and to leave prostitution."

## The Proposed Changes to the Criminal Code

### 1) Communicating to provide sexual services for consideration

The Act first proposes to modify the section of the Criminal Code that currently includes the communicating provision that was struck down by the Supreme Court of Canada. This section would be renamed '*Offences in Relation to Offering, Providing or Obtaining Sexual Services for Consideration*' and S. 213(1)(1.1) would make it illegal for **anyone to communicate with any other person for the purpose of offering or providing sexual services for consideration (money or other thing of value) in a public place or a place open to public view, that is or is next to a place where persons under age 18 can reasonably be expected to be present.** This offence is a 'summary offence' meaning it can lead to a maximum sentence of 6 months imprisonment, or a fine, or both.

### 2) Commodification of Sexual Activity

The Act proposes adding a new section to the Criminal Code titled '*Commodification of Sexual Activity*' which includes sections 286.1 to 286.5, and basically replaces the laws struck down by the Supreme Court including that dealing with 'procuring' (pimping), and 'living off the avails'.

### 3) Obtaining sexual services for consideration

Section 286.1(1), would make it illegal for **anyone to obtain or communicate for the purpose of obtaining the sexual services of a person, in exchange for consideration (money or other thing of value), in any place.** Basically, purchasing sexual services would be illegal.

This is an indictable or summary offence. The punishment for the indictable offence is a maximum of 5 years imprisonment and a minimum punishment of a fine: \$1000 for a first offence, \$2000 for each subsequent offence, or \$2000 for a first offence, \$4000 for each subsequent offence if it occurred in a public place, place open to public view, or next to a place where persons under age 18 can reasonably be expected to be present. The punishment for the summary offence is a maximum of 18 months imprisonment and a minimum of a \$500

fine for a first offence, \$1000 for each subsequent offence, or a \$1000 fine for a first offence, \$2000 for each subsequent offence if it occurred in a public place, place open to public view, or next to a place where persons under age 18 can reasonably be expected to be present. For the same offence involving someone under 18 the maximum is 10 years, minimum of 6 months for a first offence, one year for each subsequent offence.

#### 4) Material benefit from sexual services

S. 286.2(1) would make it illegal for **anyone to receive a financial or other material benefit, knowing it is obtained directly or indirectly from someone obtaining or communicating for the purpose of obtaining sexual services.** This offence is indictable with a maximum of 10 years imprisonment. If it involves someone under 18, the offence carries a maximum of 14 years imprisonment and minimum of 2 years.

This offence involves a 'presumption', which is a fact that is assumed to be true unless you can prove otherwise, 4 'exceptions' and 1 'immunity', which are circumstances where the law does not apply, and 5 situations where the 'exceptions' don't apply and a person can still be found guilty. The presumption is that if a person lives with or 'is habitually in the company of' a sex worker this is proof that they receive a financial or other material benefit from the services that sex workers provides, and is therefore guilty of the offence. The exceptions, however, state that it is not considered an offence to receive financial or material benefit where:

- a) There is a legitimate living arrangement;
- b) There is a legal or moral obligation between the parties;
- c) The benefit is received in exchange for a service or good just as offered to the general public (e.g. third parties such as accountants, drivers etc.), or
- d) The benefit is received in exchange for a service or good not offered to the general public, so long as they did not counsel or encourage the person to provide sexual services.

The 5 situations where these exceptions don't matter and receiving a financial and material benefit from a sex worker is still illegal are:

- a) Where threats, violence, intimidation, coercion were used;
- b) Where there was an abuse of a position of trust or authority;
- c) Where the person provided a drug, alcohol, to the sex worker for the purpose of aiding or abetting that person to offer or provide sexual services;
- d) Where conduct relates to the 'procuring' offence (described below); or
- e) Where the benefit was received in the context of a commercial enterprise (business) that offers sexual services for consideration.

The 'immunity' states that no one will be prosecuted for receiving a material benefit from sexual services if the benefit is from *their own* sexual services, meaning a sex worker can't be charged for materially benefiting from the sale of their own sexual services.

#### 5) Procuring

S. 286.3(1) would make it illegal for anyone **to procure a person to offer or provide sexual services for consideration (money or other thing of value), to hold, conceal or harbour a person who offers or provides sexual services for consideration, or to exercise control, direction or influence over the movements of a person who offers or provides sexual services for consideration.** This is an indictable offence with a maximum punishment of up to 14 years. For the same offence involving a person under age 18, the punishment is a maximum of 14 years, and a minimum of 5 years.

#### 6) Advertising Sexual Services

S. 286.4 is an entirely new offence that would make it illegal to **knowingly advertise an offer to provide sexual services for consideration.** This could be an indictable offence with a sentence of imprisonment up to 5 years, or a summary offence up to 18 months. There is an 'immunity' relating to this offence also, that states that no one will be prosecuted if they are only advertising *their own* sexual services.

If you have any questions about the '*Protection of Communities and Exploited Persons Act*', email [sallan@cfenet.ubc.ca](mailto:sallan@cfenet.ubc.ca)