

# Prairie Vice: Reflecting on Robson's Report of the Royal Commission on Charges Re Vice and of Graft Against the Police - A Winnipeg Study

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## ABSTRACT

Using the foundational tenets undergirding Commissioner Robson's Report of the Royal Commission on Charges Re Vice and of Graft Against the Police from 1911, we review the critiques from academics and activist groups in response to the Harper government-era legislation that endures to this day, espousing a new model for the criminalization of sex work. We contrast our findings with the conceptions of sex work contained in the Report using a Winnipeg-based sample. We share the results of our survey and reveal that our participants demonstrated multivalent and complex reactions to the legislative provisions of the scheme. Our findings show that participants held complex and divergent views regarding the individual provisions under the legislation and the attendant policy rationales. We also found a gendered variation in responses, with men generally being more supportive of the legalization of sex work than women. Importantly, many of the concepts and foundations that motivated Robson's findings in his Report can still be seen as threads which run through the activist communities and in the responses to our survey.

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When one first reads the *Report of the Royal Commission on Charges Re Vice and of Graft Against the Police*<sup>1</sup> written by Commissioner Robson (as he was then), one is immediately struck by the distance travelled in the regulation of and discourse pertaining to modern sex work. The Report was written in response to a story in the *Globe* and other Toronto newspapers interviewing Rev. J.G. Shearer in which he alleged that Winnipeg was in a state of the “rottenest condition of things in regard to the question of social vice,”<sup>2</sup> that a notional district of brothels had been set up as a means of displacing prostitution to a “segregated area,”<sup>3</sup> and that the police failed to enforce anti-prostitution rules and were engaging in protection for money of the sex workers in the area. Shearer was a Presbyterian moral reformer and minister, co-founding the Moral and Social Reform Council of Canada (later renamed as the Social Service Council of Canada).<sup>4</sup> Valverde and Wilson describe Shearer’s crusade as a reclamation for puritanism, noting that he stated in print in a Presbyterian paper:

Let [our] Puritanism be that of the twentieth century - wise, tolerant, gracious, and inflexible [...] let us go ahead in the present crusade unterrified by all sneering cries of ‘puritanical legislation’ raised by cavilling newspapers that would cater to an evil-minded crowd.<sup>5</sup>

Robson’s report on the allegations of vice and graft is clear. He could find no overt police corruption, though he did find that there had been “the disturbance of peace and good order in the locality, a menace to morals and a great depreciation of property of the neighbouring residents.”<sup>6</sup> Further, he found that “houses of vice” grew from 29 to 50 in the segregated area with a police policy of “toleration.”<sup>7</sup> However, Robson rejected the claims of Shearer

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<sup>1</sup> A B McKillop, “Prostitution in Winnipeg” (1979), Volume V: The Manitoba Records Society Publications at 207 [Robson Report].

<sup>2</sup> *Ibid* at 208.

<sup>3</sup> *Ibid*.

<sup>4</sup> Mariana Valverde & S Craig Wilson, “Shearer, John George” (2005), online: Dictionary of Canadian Biography <biographi.ca> [perma.cc/8SNM-2N38].

<sup>5</sup> *Ibid*.

<sup>6</sup> Robson Report, *supra* note 1 at 223.

<sup>7</sup> *Ibid* at 222.

in the newspapers,<sup>8</sup> noting in the report that “[i]t should be a useful procedure to punish defamatory publications regarding any City.”<sup>9</sup>

The report reads as an abject rejection against charges of anti-puritanism by Shearer at the time, and the report both manages to criticize municipal and police behaviour in the vice district while simultaneously deflecting Shearer’s claims. Yet the report is emblematic of its times, reflecting Robson’s Victorian views of the sex trade and its effects on the morally corruptible.

It would be easy to dismiss the Report as a relic of its times, and the viewpoint of its writer as antiquated. No question, the ways Canadians speak of the sex trade as well as its regulation have been subject to something of a revolution in the last ten years. As our work will show, in the coming pages we will demonstrate that the views contained in the Robson Report are ones that still animate the belief systems of some Manitobans, even in the current era of sex work reform.

Canada’s latest sex work legislation is the subject of polarized and polarizing debate after the Supreme Court struck down three unconstitutional sections of the *Criminal Code* in the case of *Canada (Attorney General) v Bedford* in 2013.<sup>10</sup> Following the Court’s suspended declaration of invalidity, the Canadian government, then led by Stephen Harper, had the option of redrafting the provisions within a year’s-time, lest they become of no force and effect. The following year, the government introduced Bill C-36, the *Protection of Communities and Exploited Persons Act*,<sup>11</sup> which officially made sex work illegal for the first time in Canadian history.

The bill was enacted in the face of criticism and opposition from the academic and activist communities and with little input from the general public. We designed a study in order to assess whether, and to what extent, our respondents’ attitudes toward the criminalization of sex work aligned with the policies undergirding the legal provisions of Bill C-36. Our results reveal not only the complexities of the socio-legal issues surrounding sex work, but also the wide variability in participants’ attitudes towards criminalization and specific aspects of the new legislation. In other words, some of the principles underlying the Robson Report still animate opinions today.

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<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid* at 210.

<sup>10</sup> *Canada (Attorney General) v Bedford*, 2013 SCC 72 [*Bedford*].

<sup>11</sup> SC 2014, c 25; see also S Mas, “Prostitution Bill Would Make it Illegal to Buy, Sell Sex in Public” (4 June 2014), online: *CBC News* <[cbc.ca/news/](http://cbc.ca/news/)> [perma.cc/TJ23-UY93].

We begin with a truncated overview of the *Bedford* decision which prompted Parliament to amend the federal prostitution legislation. We then introduce Bill C-36, contextualized within Parliament's preamble of the bill, and explain the legal changes. Then we explore the critiques from academics and activist groups in order to indicate the contested areas in the new legislation. In supporters of the legislation we see that the ghosts of the Robson Report still provide logical support for those who advocate for strict controls over the sex trade. Last, we examine whether specific policy objectives of the legislation find support by participants within a study we conducted on modern views of the sex trade; we consider whether our sample respondents still hold steadfastly to some beliefs that animated the Robson Report. We conclude our study with a discussion that situates the surprisingly complex and diverse opinions of our participants by comparing the results with the fundamental viewpoints that underpin the Robson Report.

## THE BEDFORD DECISION

The *Bedford* case began at the Ontario Superior Court in 2010, where current and former sex workers, the applicants, Terri Jean Bedford, Amy Lebovitch, and Valerie Scott, argued the unconstitutionality of three sections of the *Criminal Code*: ss 210, 212(1)(j), and 213(1)(c).<sup>12</sup>

Firstly, the applicants argued that section 210 of the *Code*, keeping a common bawdy-house as it relates to prostitution, was unconstitutional because the law contributed to the harms that sex workers experience, contrary to their s. 7 *Charter* right. That is, the law wrongfully prohibited sex workers from working in private locations, which allowed for a safer working atmosphere than those who work in public places, such as at street-level. The negative effects produced by the law, which decreased sex workers' ability to work in safe and secure conditions, outweighed the law's objective of reducing public nuisance.

Secondly, the applicants argued that section 212(1)(j), living off the avails of prostitution, was overbroad because the law criminalized too wide a net of individuals: it prohibited exploitative relationships with persons such as pimps, and also non-exploitative relationships with, for instance, drivers, managers and body guards.<sup>13</sup>

Thirdly, the respondents argued that the communication law, section 213(1)(c), was unconstitutional on the grounds that the law's negative effects

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<sup>12</sup> *Criminal Code*, RSC 1985, c C-46.

<sup>13</sup> *Bedford*, *supra* note 10.

were grossly disproportionate to its objectives. By criminalizing communication between sex workers and clients, this provision restricted sex workers' ability to screen clients – an “essential tool” for sex workers' safety.<sup>14</sup>

Ruling in favour of the respondents, Justice Himel granted a stay of 30 days to allow for an appeal.<sup>15</sup> The Crown appealed the case and in 2012 the Ontario Court of Appeal found s. 210, as it related to bawdy houses, unconstitutional. Further, the Appeal Court ordered that s. 212(1)(j) be amended in order to only include exploitive relationships. However, the Appellate Court did find that the communications provision was constitutional – a finding of law that the Supreme Court of Canada would ultimately dispute and overturn.<sup>16</sup> Finally, the case was heard before the Supreme Court in 2013, on an appeal filed by the original applicants.

On December 20, 2013, in a unanimous decision by the Supreme Court of Canada in the case of *Canada (Attorney General) v Bedford*,<sup>17</sup> the Court struck down the three aforementioned provisions of the federal prostitution legislation due to their violation of the *Canadian Charter of Rights and Freedoms*. The *Bedford* decision was received by some as a success for the rights and safety of sex workers, as guaranteed under s. 7 of the *Charter*.<sup>18</sup> The Court, led by Chief Justice McLachlin, ruled in favour of the respondents, who argued that these three provisions were arbitrary, overbroad, and grossly disproportionate and consequently infringed sex workers' s. 7 *Charter* right to security of the person. Further, these provisions were found to be constitutionally untenable. In particular, the negative impact of the bawdy-house prohibition on the

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<sup>14</sup> *Ibid* at para 22.

<sup>15</sup> *Bedford v Canada*, 2010 ONSC 4264.

<sup>16</sup> *Canada (Attorney General) v Bedford*, 2012 ONCA 186; *Bedford*, *supra* note 10 where the majority writes at para 159: In sum, the Court of Appeal wrongly attributed errors in reasoning to the application judge and made a number of errors in considering gross disproportionality. I would restore the application judge's conclusion that s. 213(1)(c) is grossly disproportionate. The provision's negative impact on the safety and lives of street prostitutes is a grossly disproportionate response to the possibility of nuisance caused by street prostitution.

<sup>17</sup> *Bedford*, *supra* note 10.

<sup>18</sup> S Fine, “The Victor: Terri-Jean Bedford Spent 20 Years Fighting Prostitution Laws” (20 Dec 2013), online: *The Globe and Mail* <theglobeandmail.com> [perma.cc/RM9Q-YNV9]; A Janus, “New Prostitution Laws Should Consider ‘Consenting Adults’: Terri-Jean Bedford” (22 Dec 2013), online: *CTV News* <ctvnews.ca> [perma.cc/2UWS-W9Y4]; J Arthur, “A Bittersweet Victory for Sex Workers” (23 Dec 2013), online: *Rabble* <rabble.ca> [perma.cc/779Q-W7CF].

applicants' security of the person was grossly disproportionate to its objective of preventing public nuisance; the living on the avails provision was consequently overbroad: though its purpose was to target pimps and their exploitative conduct, the law punished all who lived on the avails of prostitution without distinction, even those who could increase security for sex workers (for example, drivers); last, the purpose of the communicating prohibition was to remove prostitution from the streets to limit nuisances but the provision's effect on the safety of street-based sex workers and their ability to screen bad clients, for example, was a grossly disproportionate response to the mere possibility of nuisance.<sup>19</sup>

The Supreme Court decided that these laws were not saved under section 1 of the *Charter*, and as a result they were struck down, largely because the Appellant Attorneys General did not raise substantial arguments at the justification phase of the argument. The Court clearly stated that its decision did not pertain to whether or not sex work should be legal; rather it was based upon the constitutionality of Parliament's current legislation.<sup>20</sup> Following its decision, the Court granted the Parliament of Canada one year to respond to a suspended declaration of invalidity.

## BILL C-36

On June 4, 2014, Parliament introduced Bill C-36, the *Protection of Communities and Exploited Persons Act* – its response to the unconstitutional laws struck down in *Bedford*. The bill both amended the existing legislation and incorporated entirely new provisions.<sup>21</sup>

As a response to the criticisms of the Supreme Court in *Bedford*, the Harper government drafted nuanced objectives into the new legislation. The Department of Justice Canada describes this alteration:

Bill C-36 reflects a significant paradigm shift away from the treatment of prostitution as “nuisance,” as found by the Supreme Court of Canada in

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<sup>19</sup> *Bedford*, *supra* note 10 at paras 130–60; the final bawdy house definitions in the *Code* still included a reference to act of indecency – the repeal of the related provisions has received royal assent on June 21 2019 – see Bill C-75, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, 2019, c 25.

<sup>20</sup> *Bedford*, *supra* note 10 at para 2.

<sup>21</sup> See generally *Criminal Code*, *supra* note 12.

*Bedford*, toward treatment of prostitution as a form of sexual exploitation that disproportionately and negatively impacts on women and girls.<sup>22</sup>

In the preamble of the bill, Parliament stated their concern for the exploitation of individuals through sex work as well as the risks involved with this activity.<sup>23</sup> Further, Parliament noted both the individual and social harms associated with selling sex and encouraged individuals to not only report incidents of violence, but to leave the sex trade altogether.<sup>24</sup> Portrayed as a legal framework targeting clients and exploiters, the bill emphasized the importance to “denounce and prohibit the purchase of sexual services because it creates a demand for prostitution.”<sup>25</sup>

An amendment to section 213(1) occurred. Under the former law, communication for the purposes of offering, providing or obtaining sexual services while in a public place or place open to public view, constituted an offence under subsections (a), to stop or attempt to stop a motor vehicle, and (b) to impede pedestrian or vehicular flow or flow of movement in and out of premises. The new law, section 213(1.1), was introduced to replace the former “communication for the purposes of prostitution” provision. Parliament enacted criminalization of:

Everyone [...] 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 school ground, playground or daycare centre.<sup>26</sup>

In other words, while it is still not a criminal offence, in all cases, to *sell* sexual services (though purchasing such services is targeted in the legislation, as discussed below), it is an offence to *communicate* for the purposes of offering or providing sexual services for consideration in the indicated circumstances. Additionally, while there is no overtly stated regulation on the sale of sexual services in the private realm, sex work continues to be controlled through the prohibition on the purchase of sex as well as the prohibition on the material or financial benefit of third-parties.

The Act is amended by adding a new provision which officially criminalizes the *purchase* of sexual services. Section 286.1(1) criminalizes anyone who, in any

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<sup>22</sup> “Technical Paper: Bill C-36, Protection of Communities and Exploited Persons Act” (2014), online: *Department of Justice Canada* <justice.gc.ca> [perma.cc/M6S9-985L].

<sup>23</sup> Bill C-36, *supra* note 11.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

place, obtains for consideration, or communicates with anyone for the purposes of obtaining for consideration, sexual services. This provision targets clients who are purchasing sexual services from other adults. Section 286.1(2) mirrors s 286.1(1) with the exception that it refers to the purchase of sexual services of a youth under the age of 18. A greater fine is warranted in the case of an offence committed in public, or open to public view, in or next to a park or grounds of a school or religious institution, or next to a place where minors may reasonably be expected to be present.<sup>27</sup>

The newly implemented s. 286.2, replicates the former “living off the avails of prostitution” offence. Section 286.2(1) criminalizes everyone who knowingly receives a financial or material benefit, either directly or indirectly, from the commission of an offence under section 286.1(1). As per subsection 2, when the individual from which the sexual services are being purchased is under the age of 18, there is the potential for greater punishment, invoking a mandatory minimum sentence and a longer potential maximum sentence. This section specifically targets the third-parties involved in sex work. Finally, no one can be held criminally responsible for receiving a material benefit derived from the sale of their own sexual services, as guaranteed in section 286.5(1)(a).

Section 286.2(3) imposes a presumption in which, for the purposes of subsections (1) and (2), evidence that the person lives with, or is habitually in the company of, a person who provides sexual services for consideration, is proof – unless evidence to the contrary is provided – that the person received a financial or material benefit from those services. The onus is on the accused to prove the legitimacy of the relationship with the sex worker, and exceptions to this rule can be made under section 286.2(4).

In attempts to narrow section 286.2 in order to only capture third-parties who exploit sex workers, and not the actions of non-exploitive third-parties, Parliament drafted exceptions to section 286.2(1) and (2). This includes evidence that the person who gained a financial or material benefit from an individual engaged in sex work did so in the context of a legitimate living arrangement; as a result of a legal or moral obligation; in the circumstances where they offer services or goods on the same conditions to the general public; and in situations where it was not solicited by the individual for whom the benefit is derived and that the benefit is proportionate to the value of the services or goods offered.<sup>28</sup> Once again, however, in attempts to criminalize

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<sup>27</sup> *Ibid*, ss 286.1(1)(a)(i), 286(1)(b)(i).

<sup>28</sup> *Ibid*, s 286.2(4).



exploitive relationships, these exceptions are nullified in the presence of any violence, intimidation, coercion, abuse of a position of power, when an intoxicating substance is provided for the purpose of aiding or when abetting that person, procuring, or when the benefit is gained in the context of a commercial enterprise.<sup>29</sup>

The procuring provisions are aimed at targeting abusive parties who exploit individuals through prostitution. The procuring provision is revamped in the new legislation. Section 286.3(1) criminalizes:

Everyone who procures a person to offer or provide sexual services for consideration or, for the purpose of facilitating an offence under subsection 286.1(1), recruits, holds, conceals or harbours a person who offers or provides sexual services for consideration, or exercises control, direction or influence over the movements of that person . . .<sup>30</sup>

Further, subsection (2) refers to the procurement of someone under the age of 18.

Finally, an entirely new provision was implemented, section 286.4, which criminalizes anyone who knowingly advertises another person's offer to sell sexual services. The intention of this section is to target newspaper and website hosts or various other third-parties that advertise another's offer to provide sexual services. As such, section 286.5(1)(b) exempts an individual from being held criminally responsible in relation to their own advertisement to offer sexual services.<sup>31</sup>

## OPPOSITION TO BILL C-36

Following the Supreme Court's decision, there was significant interest in whether or not the government would choose to change its new prostitution framework. As the Court made clear, "It will be for Parliament, should it choose to do so, to devise a new approach, reflecting different elements of the existing regime."<sup>32</sup> However, many of the new provisions in Bill C-36 closely resemble the prior legislation struck down by the Supreme Court and engendered critique from activists and scholars. The main criticisms of the legislation can be summarized as follows.

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<sup>29</sup> *Ibid*, s 286.2(5).

<sup>30</sup> Bill C-36, *supra* note 11.

<sup>31</sup> *Ibid*.

<sup>32</sup> *Bedford*, *supra* note 10 at para 165.

First, the scholarly and activist community advocated (in a broad sense) for two principal frameworks: one involving complete decriminalization/legalization of the sex trade, and one consistent with the Nordic model, which includes decriminalizing the sale of sexual services while criminalizing the purchase of sexual services and third-party involvement. While it may be argued that the new legislation is rooted in the Nordic model, Pacey derides the bill as a mere “unconstitutional variation of our broken laws that imposes more danger, more criminalization, and fewer safe options.”<sup>33</sup> The most noticeable differentiation from the legislative framework adopted by Sweden is the potential criminalization of sex workers in public places. Moreover, Pacey asserts that the criminalization of purchasers forces sex work underground, thus fostering an unsafe working environment for sex workers.<sup>34</sup>

Second, given the similarity of the new legislation to the provisions struck down by the Supreme Court, concerns arose regarding the constitutionality of the new laws. Benoit et al conducted the first national study on Canada’s sex trade, in which the authors concluded that many of the risks of sex work were not inherent in the job itself, but were created by the legal and social context in which sex work takes place.<sup>35</sup> The law, then, given that it recriminalizes many of the same conditions as the former legislation, likely enhances the risks associated with sex work and prompts the question of whether this legislation will meet constitutionality under section 7 of the *Charter*. Additionally, some

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<sup>33</sup> K Pacey, “Briefing Note – Bill C-36: An Act to Amend the Criminal Code in Response to the SCC Decision in *AG Canada v Bedford* and to Make Consequential Amendments to the Act” (2014) at 1, online (pdf): *Pivot Legal Society* <parl.gc.ca/Content/SEN/Committee/412/lcjc/Briefs/C-36/C36\_brief\_PIVOT\_Legal%20Society(Pacey-Porth)\_E.pdf>.

<sup>34</sup> *Ibid*; we note that there are a number of variations of the Nordic model, but for the sake of space, we are broadly referencing the Nordic model as a means of criminalization that focuses on purchasers of sexual services.

<sup>35</sup> C Benoit et al, “A Working Paper Prepared as Background to Building on the Evidence: An International Symposium on the Sex Industry in Canada” (2014), online (pdf): *Gender, Violence and Health* <nswp.org> [perma.cc/J3VN-JFC3]; see also *R v Boodhoo and others*, 2018 ONSC 7205, which has recently upheld the constitutionality of the new regime.

groups assert that the bill undermines the spirit of the *Bedford* decision<sup>36</sup> and that the concerns identified by the Court have merely been exacerbated.<sup>37</sup>

Third, many scholars and activist groups advocated for the full decriminalization of sex work, as they believed it would provide the safest environment for sex work to occur.<sup>38</sup> They argued that the current legal framework will merely contribute to physical and sexual violence toward sex workers and that criminalization is especially detrimental for the most marginalized sex workers.<sup>39</sup> That is, fearing legal repercussions, sex workers will attempt to avoid detection from law enforcement and, as a result, will be displaced to “more isolated and dangerous areas.”<sup>40</sup> Further, their ability to screen clients is greatly diminished by the fear of criminalization.<sup>41</sup> The result of these effects will be that criminalization produces injurious risks to sex workers.

Further to the issue of decriminalization, the British Columbia Civil Liberties Association (BCCLA) argues that commercial sex between two consenting adults should not be a criminal offence.<sup>42</sup> The association contends that Bill C-36 is influenced by moral values and violates the constitutionally

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<sup>36</sup> National Criminal Justice Section and Municipal Law Section of the Canadian Bar Association, “Bill C-36, Protection of Communities and Exploited Persons Act” (2014) at 19, online (pdf): *The Canadian Bar Association* <[cba.org/CMSPages/GetFile.aspx?guid=48906310-5e27-4f2d-9023-95581d26c20f](http://cba.org/CMSPages/GetFile.aspx?guid=48906310-5e27-4f2d-9023-95581d26c20f)>; P Ballem, “Position Paper On: Bill C-36 the Protection of Communities and Exploited Persons Act” (2014), online (pdf): *City of Vancouver* <[vancouver.ca](http://vancouver.ca)> [perma.cc/M3TB-X4ZR].

<sup>37</sup> “Backgrounder for Waterloo Region Crime Prevention Council (WRCPC): Position on Prostitution Law Reform, Bill C-36” (2014) at 4, online (pdf): *Waterloo Region Crime Prevention Council* <[preventingcrime.ca](http://preventingcrime.ca)> [perma.cc/H64Z-EA4K].

<sup>38</sup> L Sampson, “‘The Obscenities of this Country’: Canada v. Bedford and the Reform of Canadian Prostitution Laws” (2014) 22 *Duke J of Gender L & Pol’y* 137; K Taylor, “Letter of Opposition to Bill C-36” (25 August 2014), online: *Victoria Sexual Assault Centre* <[vsac.ca](http://vsac.ca)> [perma.cc/526U-H2E2]; “BBCLA Reacts to Bill C36, New Sex Work Legislation” (5 June 2014), online: *British Columbia Civil Liberties Association* <[bccla.org](http://bccla.org)> [<https://perma.cc/6SWE-AWC9>]; F Shaver, “Bill C-36: Entrenched in Personal Moral Values and Inaccurate Stereotypes” (2014), online (pdf): *Concordia University* <[parl.gc.ca](http://parl.gc.ca)> [perma.cc/5N5U-E5MJ]; Waterloo Region Crime Prevention Council, *supra* note 37.

<sup>39</sup> Ballem, *supra* note 36; Taylor, *supra* note 38; Waterloo Region Crime Prevention Council, *supra* note 37.

<sup>40</sup> Waterloo Region Crime Prevention Council, *supra* note 37 at 4.

<sup>41</sup> *Ibid.*

<sup>42</sup> British Columbia Civil Liberties Association, *supra* note 38.

protected principles of free expression and autonomy and insists that the new legislation should center upon the “safety and dignity of sex workers.”<sup>43</sup>

Fourth, some advocates argue that resources are better allocated to focus on criminals who pose a “real risk to the safety of individuals and communities, or to programs to help support sex workers.”<sup>44</sup> However, there is also the concern that sex workers will be unlikely to access support programs since criminalization in general has the potential to further disadvantage them in terms of accessing health care and social services as they would fear criminal intervention.<sup>45</sup>

Fifth, some activists argue that in the drafting the legislation, Parliament did not adequately gather input from the population that this legislation directly affects.<sup>46</sup> Activists contend the consultation process with sex workers during the hearing of Bill C-36 was intended to produce answers in the government’s own interest, and only those sex workers whose opinions would advance their political agenda were consulted.<sup>47</sup>

Sixth, there were concerns that Bill C-36 will contribute to the stigmatization of sex work. Guy argues that the new legislation is flawed in the way it views sex workers as victims in some situations but not others, and as victims who lack human agency and dignity.<sup>48</sup> Despite choosing to criminalize sex workers in some situations, Parliament endorsed the exploitation discourse. Lawrence notes that Bill C-36 conceptualizes sex work as entirely coercive. It

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<sup>43</sup> *Ibid.*

<sup>44</sup> S Guy, “Prostitution Policy in Canada: Models, Ideologies, and Moving Forward” (2014), online: *Canadian Association of Social Workers* <[casw-acts.ca/en/prostitution-policy-canada-models-ideologies-and-moving-forward-0](http://casw-acts.ca/en/prostitution-policy-canada-models-ideologies-and-moving-forward-0)>.

<sup>45</sup> S Clavaz-Loranger, “Brief to the Senate Standing Committee on Legal and Constitutional Affairs Regarding Bill C-36, the Protection of Communities and Exploited Persons Act” (2014), online: *Canadian HIV/AIDS Legal Network* <[aidslaw.ca](http://aidslaw.ca)> [perma.cc/AC2D-RHDY].

<sup>46</sup> Guy, *supra* note 44; Waterloo Region Crime Prevention Council, *supra* note 37.

<sup>47</sup> Guy, *supra* note 44.

<sup>48</sup> *Ibid.*; see also Shaver, *supra* note 38.

fails to address the choice of individuals to engage in sex work, and sex workers are denied autonomy when portrayed as victims of exploitation.<sup>49</sup>

Thus, many scholars and activists support the decriminalization of sex work, arguing it will produce the safest environment for sex workers. Many condemn what is perceived as the government's purely moralistic stance on sex work, in which it is portrayed as inherently dangerous and exploitive, and criticize the government's lack of consultation with the population that this legislation directly affects. Finally, the new regime is criticized as reifying the conception that sex work is not legitimate work but rather, a highly exploitive and immoral activity.<sup>50</sup>

#### SUPPORT FOR BILL C-36 AND AFFINITIES FOR ROBSON

However, not all scholars and activists opposed the bill. Indeed, it is in this group of supporters where some of Robson's foundational assumptions find reanimation. There is considerable support in some circles for the stated goals of Bill C-36.<sup>51</sup> For example, some commend Parliament for drafting legislation that condemns and attempts to prevent the prostitution of women and girls,<sup>52</sup> as well as Parliament's conceptualization that it is male demand that fuels the

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<sup>49</sup> S Lawrence, "Expert-tease: Advocacy, Ideology and Experience in Bedford and Bill C-36" (2015) 30:1 CJS 5; this dovetails with the work of van der Meulen and Durisin (E van der Meulen and E M Durisin, "Why Decriminalize? How Canada's Municipal and Federal Regulations Increase Sex Workers' Vulnerability" (2008) 20:2 CJWL 289) who write at 291: Often couched in the language of the nineteenth-century abolitionists and the early moral reformers, this group has been highly successful in influencing prostitution policy both in Canada and internationally. Contemporary radical feminist theorizing on women's social and sexual subjugation has often conceptualized women's secondary status in relation to women's sexual subordination to men. Radical feminists have translated this ideological positioning into a clearly defined anti-prostitution stance, which has been, and continues to be, influential in informing public policy responses to prostitution-related issues. Within radical feminist debates on sex work, there has traditionally been a lack of focus on sex worker agency and, instead, an understanding that all sex workers are victims.

<sup>50</sup> Shaver, *supra* note 38; Benoit et al, *supra* note 35.

<sup>51</sup> Keira Smith-Tague, "Ending the Harm: Vancouver Rape Relief and Women's Shelter: A Submission to the House of Commons Standing Committee on Justice and Human Rights in Response to Bill C-36" (27 June 2014), online (pdf): *Vancouver Rape Relief & Women's Shelter* <rapereliefselter.bc.ca> [perma.cc/9KE6-78QL].

<sup>52</sup> *Ibid.*

sex trade.<sup>53</sup> Some activists expressed their approval of the government's attempt to lessen the social and individual harms caused by sex work and the bill's goal of eradicating the sex trade.<sup>54</sup> This same goal of eradication animates the pages of the Robson Report.

Robson writes that enforcement of anti-prostitution laws is required to "minimize the evil" and indicts the municipal and police policy which opined that "instead of having these festering sores all over the City [...] have one open wound..."<sup>55</sup>

Anti-prostitution activists argued that the criminalization of clients will foster societal change.<sup>56</sup> Baptie et al regard the new legislation as "a long-term strategy intended to shift the culture for future generations."<sup>57</sup> The Evangelical Fellowship of Canada explains that Bill C-36 will teach future generations of boys that purchasing sex is a result of social and gender inequalities and that it is unacceptable, exploitive, and violent.<sup>58</sup> This modern statement of moral corruptibility echoes Robson's fears that a district of vice could inexorably corrupt and change the morally vulnerable. Robson notes that sex work attracts "immoral women,"<sup>59</sup> drawing "together dissolute and debauched persons."<sup>60</sup> Robson expressed particular concerns for vulnerable children, noting:

That such a state of things should have existed and so continued is a reproach to any civilized community...That vice should be flaunted before young children in the

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<sup>53</sup> S Joy, "Advancing Women's Equality, Countering the Entrenchment of Sexualized Racism by Abolishing Prostitution" (2014), online: *Asian Women Coalition Ending Prostitution* <[awcep.org/awcep-publications/advancing-women%E2%80%99s-equality-countering-entrenchment-sexualized-racism-abolishing](http://awcep.org/awcep-publications/advancing-women%E2%80%99s-equality-countering-entrenchment-sexualized-racism-abolishing)>.

<sup>54</sup> G Gerrard, "Brief of Bill C-36 'Protection of Communities and Exploited Persons Act' For the Senate Standing Committee on Legal and Constitutional Affairs" (2014), online (pdf): *Defend Dignity* <[parl.gc.ca](http://parl.gc.ca)> [perma.cc/64VS-W5EB].

<sup>55</sup> Robson Report, *supra* note 1 at 214.

<sup>56</sup> Gerrard, *supra* note 54.

<sup>57</sup> Trisha Baptie et al, "Presentation to the Standing Senate Committee on Legal and Constitutional Affairs", (3 September 2014) at 4, online (pdf): *London Abused Women's Centre, Sextrade 101 & Eve* <[www.parl.gc.ca](http://www.parl.gc.ca)> [perma.cc/HD2J-K5QF].

<sup>58</sup> "Submission to the House of Commons Standing Committee on Justice and Human Rights" (7 July 2014), online (pdf): *The Evangelical Fellowship of Canada* <[files.efc-canada.net](http://files.efc-canada.net)> [perma.cc/XA8K-VL4V] [Evangelical Fellowship].

<sup>59</sup> Robson Report, *supra* note 1 at 217.

<sup>60</sup> *Ibid* at 219.

manner described by residents is deplorable. Nothing could be more likely to produce the "juvenile offender."<sup>61</sup>

Some activists argue that Bill C-36 can foster safety in sex work. For example, REAL Women of Canada note that the new legislation is "a step in the right direction to protect both prostitutes and society."<sup>62</sup> Others note that not only does this new legal regime afford more protection to sex workers, but, reflecting Robson-era moral corruptibility fears, it effectively protects children.<sup>63</sup> The Supreme Court's decision to uphold the ruling of the trial judge – that the law is to blame for the risks associated with sex work<sup>64</sup> – is challenged by some.<sup>65</sup> In other words, for these activists, the criminalization of clients is not responsible for decreasing the safety of sex workers; rather, the dangers sex workers face are manifested from the actions of violent men.<sup>66</sup>

Others argue that Bill C-36 was correctly drafted with the view that the majority of women do not voluntarily sell sex.<sup>67</sup> They assert that commercial sex should not be conceptualized as "work."<sup>68</sup> Baptie et al argue that most women do not "choose" to sell sex, rather they are actually trafficked.<sup>69</sup> For them, sex work does not constitute consensual sex, even between adults.<sup>70</sup> In their view, the ability to consent is diminished by the intersecting effects of poverty, violence, and inequality which effectively limit sex workers' choice to sell sex.<sup>71</sup>

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<sup>61</sup> *Ibid.*

<sup>62</sup> C G Landolt, "New Prostitution Law Passed by the Senate" (6 Nov 2014), online: REAL Women of Canada <realwomenofcanada.ca> [perma.cc/2XALU6FD].

<sup>63</sup> *Ibid.*

<sup>64</sup> *Bedford*, *supra* note 10.

<sup>65</sup> Smith-Tague, *supra* note 51.

<sup>66</sup> Joy, *supra* note 53; Smith-Tague, *supra* note 51

<sup>67</sup> Lisa Steacy, "Submission to the Senate Committee on Legal and Constitutional Affairs" (2014), online: Canadian Association of Sexual Assault Centres <casac.ca/2014/07/15/casac-submissions-to-the-parliamentary-standing-committee-on-justice-and-human-rights/>.

<sup>68</sup> Baptie et al, *supra* note 57; Evangelical Fellowship, *supra* note 58.

<sup>69</sup> Baptie et al, *supra* note 57 at 2.

<sup>70</sup> *Ibid.*

<sup>71</sup> Steacy, *supra* note 67.

One strategy employed by anti-prostitution activists is the notion that the sex trade is synonymous with human trafficking.<sup>72</sup> Not only is the criminalization of sex work said to decrease the demand for commercial sex, but it also reduces the motivation for trafficking women and girls.<sup>73</sup> The Coalition Against Trafficking in Women regard Bill C-36 as an overall victory in the fight against commercial sexual exploitation and sex trafficking, while maintaining that sex workers should not be criminalized.<sup>74</sup> The critique of sex trafficking is one of the modern arguments against a modern legalized sex trade, but these concerns also were of the moment in the Robson Report. Shearer's opening salvo against Winnipeg criticized the segregated area in Winnipeg as a "ready market for the white sex slave,"<sup>75</sup> noting that "[s]ome half a dozen of white slave victims have been marketed within the past year...Four...deported, two being sent to Scandinavia and two to the United States. One...to England." Robson noted that workers were "attracted here from all over the continent," and that the workers "frequently change as they move about from place to place."<sup>76</sup> Yet the Robson Report is not concerned with human suffering in light of the trafficking concerns, but rather the difficulty in enforcing criminal charges against "transient characters."<sup>77</sup> Robson was concerned with the relative inefficiencies in enforcement of the criminal law and the release of those charged on easy bail, as when the "sureties were foreigners"<sup>78</sup> which meant that effective policing over "evil doers" was "nullified."<sup>79</sup>

Many anti-trafficking activists, unlike the puritanical thread that runs through the Robson Report, are critical of Parliament's choice to criminalize sex workers themselves.<sup>80</sup> Former Special Advisor, Legal Affairs & Policy in the

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<sup>72</sup> Joy, *supra* note 53; Smith-Tague, *supra* note 51; The Evangelical Fellowship of Canada, *supra* note 58.

<sup>73</sup> R Hooper, T Nagy & S Ford, "Walk With Me Canada Position Paper: Domestic Prostitution Legislation and Human Trafficking" (June 2014), online (pdf): *Walk With Me Canada* <parl.gc.ca> [perma.cc/2CG8-W9BM]

<sup>74</sup> "Canada's Bill C-36 Passes the Senate, Set to Become Law" (4 November 2014), online: *Coalition Against Trafficking in Women* <catwinternational.org/Home/Article/580-canadas-bill-c36-passes-the-senate-set-to-become-law> [CATW International].

<sup>75</sup> Robson Report, *supra* note 1 at 209.

<sup>76</sup> *Ibid* at 217.

<sup>77</sup> *Ibid*.

<sup>78</sup> *Ibid*.

<sup>79</sup> *Ibid* at 218.

<sup>80</sup> Evangelical Fellowship, *supra* note 58; CATW International, *supra* note 74.



Office of the Prime Minister, Benjamin Perrin, argues that Parliament's goal should be to abolish the sex trade, done so through the criminalization of clients, traffickers, and pimps, while decriminalizing sex workers and assisting them in exiting the sex trade.<sup>81</sup> Consequently, there is support in these circles for the Nordic model or an approach at least rooted in the fundamentals of criminalizing purchasers of sexual services.<sup>82</sup>

Thus, we see throughout the modern sex trade debate some of the undercurrents that animated the Robson Report. Fears of moral corruptibility on society and its most vulnerable, fear of human trafficking, and fear of negative social change – of the conception that vice can convert the innocent into the culpable. The Robson Report further adds concerns pertaining to nuisance that still inform the modern legislation. The modern legislation certainly troubles the effect of the sex trade on local neighbourhoods, evidenced by its prohibitions of a variety of public activities related to prostitution. Consider this passage from the Report:

The place selected, i.e. parts of Rachel and McFarlane Streets, was in the neighborhood of the residence of a considerable number of highly respectable citizens. It was near the homes of residents of foreign birth. These citizens had wives and families, and most of these people, both adults and children, in going to and fro, between their homes and the City, whether to their work or to school, church or market, had to pass through the area in question. Several of the male residents and two respectable women gave evidence at the inquiry. It was evident that they were people who, not pretending to any rank, were of the highest respectability and exemplary citizens. The state of affairs describes it in detail.<sup>83</sup>

The social nuisance concern of the sex trade seems to be an ever-present concern of criminal regulation, and is one that animated the Robson Report, more than one hundred years ago. It is a concern that also seems to animate our respondents' opinions as we discuss in the study below.

## RESEARCH REGARDING PUBLIC OPINION OF BILL C-36

While it should be acknowledged that there was much variability and nuanced arguments within the various communities of advocacy, for the purposes of our discussion, in the wake of the new legislation, the positions can ultimately be

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<sup>81</sup> Benjamin Perrin, "Oldest Profession or Oldest Oppression?: Addressing Prostitution After the Supreme Court of Canada Decision in *Canada v. Bedford*" (January 2014), online (pdf): *Macdonald-Laurier Institute* <macdonaldlaurier.ca> [perma.cc/6GVU-QB6P].

<sup>82</sup> Hooper et al, *supra* note 73; Baptie et al, *supra* note 57.

<sup>83</sup> Robson Report, *supra* note 1 at 219.

positioned in two broad camps: those supporting and those opposing the bill. We have sought to make the claim that some of the undercurrents that moved the Robson Report still animate discussions of broad support for the current regulation of sex trade. Another question one could pose is whether some of these same Robsonian concerns move public sentiment.

While the scholarly and activist communities expressed complex and nuanced positions regarding Bill C-36, they are grounded in their expertise and extensive knowledge of the topic in ways that laypersons usually are not. We wondered whether a lay audience would exhibit opinions as nuanced and as strong as the activists and scholars who interrogated the new legislation. Further, we thought this would also be an interesting set of responses to capture in light of some of the historical fundamentals that undergird the Robson Report. There have been relatively few studies conducted as to the general population's opinions on legalization, in particular, regarding the newest legislative provisions in the *Code* and the polling data has been limited to broad questions about the possibility of criminalization or legalization.

The federal government conducted a poll in order to gain Canadians' input during the time in which the bill was being considered. Three thousand individuals participated in the month-long process,<sup>84</sup> administered on the Justice Canada website in mid-February of 2014.<sup>85</sup> A report of the results both indicated a roughly equal split between those in favour and opposed to legalization of both the purchase and the sale of sex, and also revealed differing levels of support based on gender.<sup>86</sup>

Another study was conducted by the Forum Poll in order to gain public responses to Bill C-36 and criminalization.<sup>87</sup> Of their 1741 respondents, only about a quarter of respondents supported the bill, while just over half of respondents disapproved.<sup>88</sup> When asked about legalizing sex work for the workers and their clients, a small majority (54%) were in favour.<sup>89</sup> Interestingly,

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<sup>84</sup> T MacCharles, "Secret Poll Shows Canadians Deeply Divided on Prostitution Approach" (16 July 2014) *The Star*, online: <<https://www.thestar.com>> [perma.cc/XV7A-8N4V].

<sup>85</sup> B Cheadle, "Conservative Government Asks Public for Help Rewriting Prostitution Laws Struck Down by Supreme Court" (18 February 2014) *The Canadian Press*, online: <<http://news.nationalpost.com>> [perma.cc/5KVQ-J9YN].

<sup>86</sup> MacCharles, *supra* note 84.

<sup>87</sup> L Bozinoff, "More Than Half Want Prostitution Legalized" (15 January 2015), *The Forum Poll*, online: <<http://poll.forumresearch.com>> [perma.cc/98LZ-KKMM].

<sup>88</sup> *Ibid.*

<sup>89</sup> Bozinoff, *supra* note 87.

there were differences in opinion based on gender. More men than women (64% vs 44%) indicated that the actions of sex workers should be legal.<sup>90</sup>

## CURRENT STUDY

While previous studies provided insight that a slight majority of the population supports the legalization of sex work, they are limited in their detail regarding which aspect(s) of sex work the general population supports and which they denounce. These studies did not seek to differentiate between attitudes toward criminalization of sex workers, clients, and third-parties. Bill C-36 is a complex piece of legislation and a simple question of agreement with the bill is inadequate in determining its support from Canadians. We began our study with one overarching inquiry: how do individuals react to the specific legal principles of Bill C-36? We then developed the first Canadian study in the new legislative environment which seeks to articulate a more nuanced look into individuals' levels of agreement with specific aspects of the new legislation. While previous studies have sought to measure support for or against criminalization of sex work quite broadly, our more specialized approach measures approval or disapproval of various and complex aspects of sex work. We also consider gender differences in respondents' answers and consider, albeit on a tentative basis, why different perceptions between purchasing and selling sex, the location in which sex work occurs, and the age of the sex worker may exist. Our work in this part of the paper is somewhat speculative, but we provide various hypotheses unpacking the results, as is relatively common practice in social science survey work. These hypotheses should not be seen as conclusions considering our investigation aims to establish more concretely the specific 'whats' of public opinion regarding individual aspects of this legislation – the 'whys' should be considered more as terrain for future investigation. Human motivations are ethereal and complex, and survey instruments at best provide a small window into the impetuses for these motivations. Our approach is to contextualize trends in order to provide possible insight. Given the limitations of survey data, insights into these causes should not be confused with empirical causation, but rather should be recast as possible explanatory explications for the results. In this regard, comparing the values that animated the Robson Report with the responses we captured in the study could also prove to be a particularly useful exercise, in the context of a study that utilizes

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<sup>90</sup> *Ibid.*

a Winnipeg-based sample. Below we describe the method of the study and our findings.

## METHOD

### A. Participants

Two hundred and twenty-seven undergraduate students enrolled in an introductory course at the University of Winnipeg participated in the study. Sixteen of these responses were removed from analysis due to incomplete answers or duplication (i.e., the participant completed the study more than once). With these exclusions, there were a total of 211 participants.

Participants had a mean age of 20.45 ( $SD = 4.07$ ), ranging from 17 - 54 years. Regarding gender, 64.5% identified as female and 35.5% as male.<sup>91</sup> Participants described their ethnicities as European (61.1%), Asian (10.9%), South Asian (7.1%), Aboriginal (4.7%), African (4.7%), and other ethnicities, including mixed ethnicities (8.1%). The vast majority of participants described their sexual identity as heterosexual (91.5%), while a small minority identified as homosexual (1.9%), bisexual (3.8%), pansexual (.5%), and asexual (.5%). Demographic categories may not add up to 100% because participants were given the option to not disclose. Participants received bonus credit towards their course grade in exchange for their participation.

### B. Survey Design

A survey was our preferred method of data collection as it allowed us to reach a large number of people, reveal general trends in reporting, and illustrate the diversity of responses to a complex topic.<sup>92</sup> We provided participants with a series of statements (e.g., “It should be legal to purchase sexual services”) and they were asked to rate their level of agreement from 0 (completely disagree) to 100 (completely agree) using a slider scale. We constructed the questions to assess participants’ level of agreement with individual aspects of the provisions

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<sup>91</sup> Although the categories of “transman (ftm),” “transwoman (mtf),” “genderqueer,” and “other” were provided, no participants identified within these categories.

<sup>92</sup> K Miner-Rubino & T Jayaratne, “Feminist Survey Research” in S N Hesse-Biber & P Leavy, eds, *Feminist Research Practice* (Thousand Oaks, CA: SAGE Publications Ltd, 2007) 292.

within Bill C-36, and in some cases, assumptions made by the legislators who drafted the bill.<sup>93</sup>

### C. Results and Discussion<sup>94</sup>

Our analyses were concerned with the participants' level of global agreement with aspects of the new sex work legislation, but we also wanted to determine if there were gender-based differences in responses. All statistical information is reported in the Table 1, below. Note that where numbers are discussed as being different from one another, this indicates that there was a statistically

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<sup>93</sup> Asking questions about individual aspects of the legislation allowed room for participants to express varying opinions regarding the different aspects of the Bill. The first author drafted the initial set of questions, and they were edited and revised by the second and third authors. All questions were assessed to ensure that they accurately captured the aspects of the proposed legislation, that the wording was as unbiased as possible, and for general clarity. When questions involved the usage of terms that had specific meanings within the context of the legislation and/or which were unlikely to be common knowledge, we provided respondents with definitions of such terms. We also considered that the students were unlikely to have sophisticated knowledge of the types of terminology and language used in the Bill, and so we sought to use 'everyday' language they would be more likely to understand. Participants completed the study between February 6 - 28, 2015. We administered the survey online using Qualtrics, an online survey software program. Participants accessed the study at their own discretion via a URL link posted on their student course website. Upon accessing the URL, the participants were provided with a letter of information and consent regarding the research and provided electronic consent to continue in the study. We then asked participants to provide their demographic information. Following this, they received the survey questions presented one at a time and in random order. Upon completion of the survey, participants were thanked for their participation and debriefed.

<sup>94</sup> Given that previous research has found gender differences, we wished to see whether there were any differences between the responses of male and female participants. Moreover, as a fundamental component of quantitative survey research, our approach contextualizes and makes sense of the results and trends in responding. Analyses were undertaken using independent samples t-tests (the independent samples t-test is a statistical technique used to compare the means of two unrelated groups to determine whether they are different from each other) or mixed-model analyses of variance (ANOVAs). For the mixed model ANOVAs, gender was used as the between-participants variable and question type was the within-participants variable because all participants answered the same questions. Note that sample sizes may vary between analyses as participants had the right to refuse to answer any questions; Note that while we asked participants several additional questions regarding their views on sex work in general, only those pertaining to our research aims are included here; See e.g. S Long, L Mollen & D Smith, "College Women's Attitudes Toward Sex Workers" (2012) 66: 1 *Sex Roles* at 117-127.

significant difference.<sup>95</sup> Where numbers are discussed as being the same or having no difference between them, this means that there was no statistical difference between them.

For the purposes of discussing participants’ responses, we considered a response of 0 to represent complete disagreement and 100 to represent complete agreement. Responses of 1-44 were interpreted as representing general disagreement, and the lower the number, the greater the disagreement. Responses ranging from 45-55 were interpreted as representing neither agreement nor disagreement. Responses of 56-99 were interpreted as representing general agreement, and the higher the number, the greater the agreement.

Table 1: Mean Agreement Ratings & Significance Tests by Survey Question<sup>96</sup>

Section	M (SE)			Effect	Statistics
	Overall	Female	Male		
<b>Preamble</b>					
Adult sex workers are victims of sexual exploitation	60.62 (1.99)	67.57 (2.37)	53.68 (3.20)	Gender	F(1, 207) = 8.81, p = .003, $\eta_p^2 = .04$
				Valence	F(1, 207) = 0.80, p = .37, $\eta_p^2 = .004$
Youths (under the age of 18) who sell sexual services are victims of sexual exploitation	77.53 (1.84)	79.82 (2.20)	75.24 (2.96)	Question (Youth vs. Adult)	F(1,207) = 56.88, p < .001, $\eta_p^2 = .22$
				Gender x Valence	F(1, 207) = 0.004, p = .95, $\eta_p^2 < .001$

<sup>95</sup> In this case, where  $p < .05$ , meaning that the differences between numbers represent true differences rather than a random fluctuation between numbers.

<sup>96</sup> Significant effects are noted in bold; these are effects that remained significant after alpha corrections and both with and without any necessary data transformations. Questions analyzed using a repeated-measures analysis are indicated using italics. Alpha corrections were based on section, as follows: Preamble,  $\alpha = .025$ ; s.213,  $\alpha = .025$ ; s.286,  $\alpha = .012$ ; and No Relevant Section,  $\alpha = .017$ . Although still provided in the table for completeness, further investigation indicated that a number of significant valence effects were actually highly unstable. As a result, these effects are not flagged as significant as it is uncertain whether these effects reflect real differences. Provided means (M) are estimated marginal means, with standard errors (SE) in parentheses. Although some analyses required transformations, only raw means are presented in the table for consistency and ease of understanding.

Overall	69.08 (1.56)	73.70 (1.86)	64.46 (2.50)	Gender x Question	F(1, 207) = 4.31, p = .04, $\eta_p^2 = .02$
				Valence x Question	F(1, 207) = 1.20, p = .27, $\eta_p^2 = .006$
				Gender x Valence x Question	F(1, 207) = 1.11, p = .29, $\eta_p^2 = .005$
The demand for the sale of sexual services will decrease if clients are criminalized	46.72 (2.11)	47.15 (2.52)	46.29 (3.40)	Gender	F(1, 207) = 0.04, p = .84, $\eta_p^2 < .001$
				Valence	F(1, 207) = 25.72, p = < .001, $\eta_p^2 = .11$
				Gender x Valence	F(1, 207) = 1.13, p = .29, $\eta_p^2 = .005$
<b>213(1)</b>					
It should be legal to sell sexual services in public places	29.64 (2.33)	24.85 (2.78)	34.44 (3.75)	Gender	F(1, 207) = 8.48, p = .004, $\eta_p^2 = .04$
				Valence	F(1, 207) = 3.62, p = .06, $\eta_p^2 = .02$
It should be legal to sell sexual services in private places	49.95 (2.32)	44.33 (2.77)	55.58 (3.73)	Question (Public vs. Private)	F(1, 207) = 46.51, p = < .001, $\eta_p^2 = .18$
Overall	39.80 (1.79)	34.59 (2.13)	45.01 (2.87)	Gender x Valence	F(1, 207) = 2.36, p = .13, $\eta_p^2 = .01$
				Gender x Question	F(1, 207) = 0.08, p = .78, $\eta_p^2 < .001$
				Valence x Question	F(1, 207) = 3.79, p = .05, $\eta_p^2 = .02$
				Gender x Valence x Question	F(1, 207) = 3.25, p = .07, $\eta_p^2 = .02$
<b>213(1.1)</b>					
Youths (under the age of 18) and adults should be	63.50 (2.31)	65.04 (2.76)	61.96 (3.71)	Gender	F(1, 207) = 0.28, p = .60, $\eta_p^2 = .001$
				Valence	F(1, 207) = 6.24, p = .01, $\eta_p^2 = .03$

treated differently by law, in terms of being criminally charged, when they sell sexual services				Question (Arrested vs. Charged)	$F(1, 207) = 0.37, p = .55, \eta_p^2 = .002$
				Gender x Valence	$F(1, 207) = 0.20, p = .66, \eta_p^2 = .001$
Youths (under the age of 18) and adults should be treated differently by law, in terms of arrest, when they sell sexual services	64.78 (2.24)	65.36 (2.68)	64.19 (3.61)	Gender x Question	$F(1, 207) = 0.20, p = .65, \eta_p^2 = .001$
				Valence x Question	$F(1, 207) = 0.42, p = .52, \eta_p^2 = .002$
				Gender x Valence x Question	$F(1, 207) = 0.55, p = .46, \eta_p^2 = .003$
Overall	64.14 (2.02)	65.20 (2.41)	63.07 (3.25)		

<b>286.1(1)</b>					
It should be legal to purchase sexual services	45.65 (2.51)	34.30 (2.99)	57.01 (4.02)	Gender	$F(1, 207) = 20.54, p < .001, \eta_p^2 = .09$
				Valence	$F(1, 207) = 0.24, p = .62, \eta_p^2 = .001$
				Gender x Valence	$F(1, 207) = 0.43, p = .51, \eta_p^2 = .002$
<b>286.1(1)(a)(i)</b>					
Engaging in sex work next to a religious institution is morally acceptable	34.09 (2.35)	31.88 (2.80)	36.29 (3.78)	Gender	$F(1, 207) = 0.88, p = .35, \eta_p^2 = .004$
				Valence	$F(1, 207) = 8.08, p = .005, \eta_p^2 = .04$
				Gender x Valence	$F(1, 207) = 0.63, p = .43, \eta_p^2 = .003$
It is morally acceptable to	15.12 (1.68)	11.27 (2.00)	18.98 (2.70)	Gender	$F(1, 207) = 5.27, p = .02, \eta_p^2 = .02$



communicate for the purposes of engaging in sex work in places where minors may be present, such as next to a playground.				Valence	$F(1, 207) = 0.001, p = .98, \eta_p^2 < .001$
				Gender x Valence	$F(1, 207) = 0.94, p = .33, \eta_p^2 = .005$
<b>286.2(1)</b>					
Third-parties should legally be able to receive material benefit from sex work.	35.97 (1.97)	31.33 (2.36)	40.62 (3.16)	Gender	$F(1, 206) = 5.54, p = .02, \eta_p^2 = .03$
				Valence	$F(1, 206) = 1.04, p = .31, \eta_p^2 = .005$
				Gender x Valence	$F(1, 206) = 0.009, p = .92, \eta_p^2 < .001$

<b>No Relevant Section</b>					
The law should intervene in sexual activities that it deems problematic, regardless of whether the individuals involved are consenting	53.53 (2.13)	61.90 (2.52)	45.1 6 (3.42)	Gender	$F(1, 206) = 15.49, p < .001, \eta_p^2 = .07$
				Valence	$F(1, 206) = 10.12, p = .002, \eta_p^2 = .05$
				Gender x Valence	$F(1, 206) = 0.62, p = .43, \eta_p^2 = .003$
Regardless if youths (under the age of 18) are freely choosing to sell sexual services, they should be viewed as victims of sexual exploitation	63.76 (2.36)	69.45 (2.80)	58.0 8 (3.80)	Gender	$F(1, 206) = 5.78, p = .017, \eta_p^2 = .03$
				Valence	$F(1, 206) = 7.63, p = .006, \eta_p^2 = .04$
				Gender x Valence	$F(1, 206) = .33, p = .56, \eta_p^2 = .002$
Strict laws that criminalize the purchase of sexual services will decrease	46.04 (2.07)	45.65 (2.47)	46.4 3 (3.33)	Gender	$F(1, 207) = 0.04, p = .85, \eta_p^2 < .001$
				Valence	$F(1, 207) = 20.14, p < .001, \eta_p^2 = .09$

the amount of individuals purchasing sexual services				Gender x Valence	$F(1, 207) = 1.77, p = .18, \eta_p^2 = .008$
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**The Sale of Sexual Services: Public vs. Private**

The Robson Report is supportive of all out enforcement of criminalization against sex work. The modern debate has tended to center on private versus public activity being more permissible. In particular public sex trade would raise more of the concerns related to street and sidewalk nuisance that the Robson Report focused on. The current section 213(1) criminalizes everyone who, in a public place or an area open to public view, stops or impedes traffic for the purposes of offering, providing or obtaining sexual services for consideration. While the law only prohibits sex workers from offering or providing sexual services in ‘public places’, and subsequently decriminalizing their actions in private, selling sex in private places continues to be regulated through the criminalization of the purchase of sexual services. We asked participants to rate their agreement to the following two statements to determine how much in agreement they were with this provision. The statements were analyzed jointly to determine whether the location of the sale of sexual services created significant differences in participants’ acceptance of legalization: a) It should be legal to sell sexual services in public places; and, b) It should be legal to sell sexual services in private places.

Overall, participants were in greater agreement with legalizing the sale of sexual services in private ( $M = 48.24$ ) as opposed to public places ( $M = 28.27$ ) (see Table 1). However, in an absolute sense, the respondents neither agreed nor disagreed regarding the legalization of sexual services in private places and they disagreed with legalization in public places. For both questions, women expressed less agreement than male participants (see Figure 1). Thus, one can surmise that nuisance-based concerns as well as concerns that public displays of the trade may interfere with liberties and freedoms of the innocent pedestrian are still live issues for a good proportion of respondents. Even in the context of a purely private transaction, a proportion of the respondents hold steadfastly to criminalization which indicates that personally held beliefs about the morality of the work may still be in play even more than a hundred years after the Robson Report.

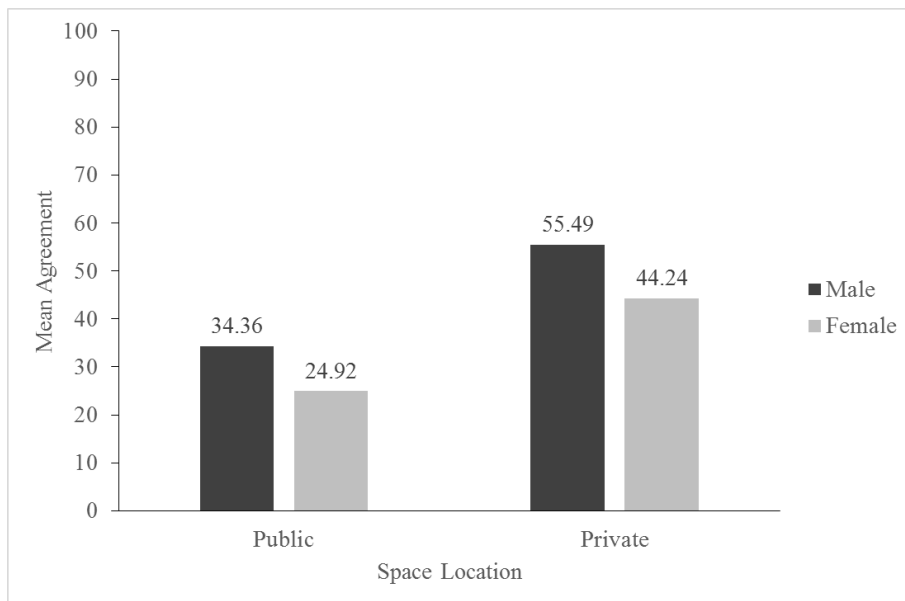


Figure 1. Male and Female participants' mean agreement regarding legalizing the sale of sexual services in public versus private spaces.

The general disapproval for legalizing the sale of sexual services could reflect the respondents' moral concerns for sex work. The greater acceptance of selling sex in the private sphere, as opposed to public, supports this hypothesis. Individuals may have a moral objection to a sexual act occurring in public places, or the actions surrounding sex work which constitutes a public nuisance. Moreover, the significant differences in responses based on gender are perhaps attributable to the traditionally gendered arrangement of sex work; women's stronger disapproval of legalization compared to men may represent their concern for the health and safety of women in the sex industry.

Finally, putting these findings into context, it is possible that participants' differential attitudes between sex work occurring in public and private places is rooted in a negative perception of the street-level sex industry in Winnipeg. Considering the high Indigenous population living in Manitoba, and the fact that researchers have found that Indigenous women are overrepresented

among those who sell sex on the streets<sup>97</sup>, it is possible that responses reflected racist attitudes. Razack explains how the communities in which sex workers work are both racialized and assumed to be naturally violent.<sup>98</sup> She goes on to explain that these areas are typically depicted as ‘slums’, associated with ‘filth’ and ‘disorder’.<sup>99</sup> As such, participants’ greater support for criminalizing sex work in public places, as opposed to private, may resonate with attitudes that promote the ‘cleansing’ of inner-city spaces to accord with the values of the white, conservative state.<sup>100</sup> Accordingly, participants’ relationally greater approval of legalizing sex work in private places can be viewed as an attempt to move sex work outside of the public’s eye, in attempts to avoid the ‘public nuisance’ of this highly racialized activity.

### THE PURCHASE OF SEXUAL SERVICES

Section 286.1(1) criminalizes anyone who, in any place, obtains for consideration, or communicates with anyone for the purposes of obtaining for consideration, sexual services. We asked participants to rate their agreement with the following statement: *It should be legal to purchase sexual services.*

Overall, respondents expressed mild disagreement that the purchase of sexual services should be legal ( $M = 42.36$ ) (see Table 1). When breaking this down further by gender, we found that while men slightly agreed with legalization ( $M = 56.97$ ), women disagreed ( $M = 34.30$ ). In addition to illustrating the gender differences, this data shows that there are vast differences in opinions regarding the topic of legalizing the purchase of sexual services, even within a student population. Yet, this mild disagreement is indicative of support for the notion that some Robson-era beliefs about the “evils” of sex work persist, even in relatively progressive student populations.

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<sup>97</sup> S Day, “Prostitution: Violating the Human Rights of Poor Women,” (2008) Action Ontarienne Contre la Violence Faites aux Femmes.

<sup>98</sup> S Razack, “Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George” in S H Razack, ed, *Race, Space and the Law: Unmapping a White Settler Society* (Toronto: Between the Lines, 2002) at 121–56.

<sup>99</sup> *Ibid.*

<sup>100</sup> P Hubbard, “Cleansing the Metropolis: Sex Work and the Politics of Zero Tolerance” (2004) 41:9 *Urban Studies* at 1687–1702.

## THE PURCHASE OF SEXUAL SERVICES NEXT TO A RELIGIOUS INSTITUTION OR NEAR MINORS

Section 286.1(1)(a)(i) mandates a greater fine for offences under s. 286.1(1) when the offence is committed in public, or open to public view, in or next to a park or grounds of a school or religious institution, or is next to a place where minors may reasonably be present. In either case, these prohibitions tap into concerns about neighborhood nuisance, disruption of the moral order and the relative corruptibility of children about exposure to vice, all virtues echoed in the Robson Report.

### RELIGIOUS INSTITUTIONS

Because the purchase of sex near a religious institution yields a greater penalty, the provision is highly grounded in morality. Thus, we asked participants to rate their agreement with the following statement to examine their moral acceptance of sex work next to a religious institution: Engaging in sex work next to a religious institution is morally acceptable.

Overall, participants indicated that it was not morally acceptable to engage in sex work next to a religious institution ( $M = 33.35$ ) (see Table 1). There was no difference between genders as both male ( $M = 36.23$ ) and female participants ( $M = 31.76$ ) disagreed with this statement.

A negative moral response by the majority of participants may be invoked due to the conception that sex work conflicts with the beliefs of most religious institutions. Perhaps our participants value religious beliefs or freedom. It is also possible that our participants' moral concern is not for commercialized sex, but for any sexual act occurring near these spaces, which are typically frequented by families with children.

### MINORS

We asked participants to rate their agreement to the following statement to determine their moral acceptance of sex work next to places where minors may be present: *It is morally acceptable to communicate for the purposes of engaging in sex work in places where minors may be present, such as next to a playground.*

Overall, participants disagreed strongly with this statement ( $M = 14.02$ ) (see Table 1). Though there was a gender difference in that males ( $M = 18.96$ ) provided a higher average rating as compared to females ( $M = 11.29$ ), clearly in the absolute sense, both disagreed strongly.

The participants' substantial disapproval may stem from the conceptualization of minors as vulnerable individuals who are in need of protection. First, participants may fear that minors, who are often understood as easily influenced and manipulated, will be recruited into sex work. Second, participants may be concerned for a minor's exposure to sexual activity, or more controversially, commercialized sexual activities.

### MATERIAL BENEFIT OF THIRD-PARTIES

Section 286.2(1) criminalizes everyone who knowingly receives a financial or material benefit, either directly or indirectly, from the commission of an offence under s. 286.1(1) (obtaining for consideration, or communicating for the purposes of obtaining for consideration, sexual services).

The Robson Report did not directly speak of the involvement of organized crime, pimps or third parties in its stinging rebuke of segregated area for prostitution. The Report did however consider the unjust enrichment of property owners in the area that sold homes for use as brothels. Referring to the segregated area policy, Robson writes:

It was going back to the old order of things which had existed for 25 years. Many of the women with the knowledge of the Chief of Police, purchased houses in the area, the Chief of Police himself sending to them a man through whom the purchases might be made. These purchases were made at exorbitant prices.<sup>101</sup>

Robson notes that the real estate dealer, J. Beaman benefited greatly in that homes that were worth \$3000 sold for up to \$12000. This concern was not overtly pointed at the unjust enrichment of Beaman but rather that the sales promulgated "immoral and unlawful traffic." The modern material benefits clause is certainly concerned with an apparent morality problem, but it is just as rooted in fears for harm to the worker as a result of exploitation, a matter seemingly absent in the Robson Report.

We asked participants to rate their agreement to the following statement to examine their agreement regarding this provision: Third-parties should legally be able to receive material benefit from sex work. We note that because participants may not have been familiar with the terminology, we provided them with the following definition of 'third-parties': Third-parties are individuals who are peripheral to sex work, such as sex workers' bodyguards, managers or drivers.

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<sup>101</sup> Robson Report, *supra* note 1 at 214.

Overall, participants disagreed with legally allowing third-parties to receive material benefit from sex work ( $M = 34.63$ ) (see Table 1). While men ( $M = 40.59$ ) were more in favour than women ( $M = 31.32$ ), they both disagreed in the absolute sense.

The sample's lack of support for legalizing third-parties' receipt of a material benefit from sex work may indicate a condemnation of the exploitative nature of third-parties in which they profit from someone else's services. The sample may also hold the common ideology that third-parties – especially pimps – are coercive or manipulative, and therefore choosing to not support their legalization. It is possible that respondents did not consider the potential ameliorative security that could be provided by third parties. However, the use of the term “bodyguard” in the statement suggests that even with the security benefits, third-party support was considered undesirable. It is also worth noting that if one thought the sex trade was immoral, certainly third-party enrichment would be viewed negatively. One cannot rule out moralistic thinking as underpinning the results we observed.

#### LEGAL INTERVENTION IN SEX

In the Robson Report, shades of nuance in sex work are decidedly absent. Sex work is a blight that corrupts the vulnerable and disrupts communities. Consider the following passage penned by Robson:

...houses of prostitution had become a great nuisance in the City. The fact was emphasized by the evidence of residents in the neighborhood of houses in other parts of the City which, up to that time, had been occupied for that purpose. They told of a most deplorable state of affairs. Domestic privacy was intruded upon by men seeking for the evil houses, respectable women were accosted[,] on the street drunkenness was much in evidence, conditions were unbearable for respectable people and there was an accompanying injury to the value of property.<sup>102</sup>

We referred earlier to Robson's fear that a segregated area could create juvenile delinquents from exposure to the disordered neighbourhoods. Thus, nuisance and moral corruptibility created a toxic blend of harms – the community degrades, the innocents are corrupted and rowdy consumers are drawn into the dens of the sex trade. These intertwining threads of social and attitudinal harm still inculcate the new sex work laws, and modern conceptions of personal liberty are often parked as notions of consent are absent from the legislative

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<sup>102</sup> *Ibid* at 218.

regime. The conception of the banality of private sex for profit may still not inform the average person's view of sex work.

The law attempts to manage sex work despite the existence of consenting participants. Thus, we asked participants to rate their agreement with the following statement in order to study their attitudes on legal intervention in sex: *The law should intervene in sexual activities that it deems problematic, regardless of whether the individuals involved are consenting.*

Overall, participants slightly agreed with legal intervention in this scenario ( $M = 56.05$ ) (see Table 1). In general, men neither agreed nor disagreed ( $M = 45.16$ ), while women agreed with legal intervention ( $M = 61.98$ ).

Since this question was asked within the context of a study on sex work, there is the possibility that participants were responding with this in mind. Sex work is an activity where, regardless of the existence of consent, the law has traditionally intervened.

While all parties may express consent to a sexual act, lawmakers ultimately decide which sexual acts are considered problematic and should be regulated. The issue of legal intervention might provoke a response that reflects the societal concern for sexual immorality, including sexual violence. Participants' responses are perhaps best contextualized within the broader dynamic of society in which women are more often the victims of sexual violence and exploitation. This then helps us understand the female respondents' agreement with legal intervention, as women may be more conditioned to understanding these realities. Another possibility, is that consent is seen as relatively irrelevant in the context of sex work criminalization, and like Robson's reasoning, some respondents believed that regulation in the name of moral policing was appropriate.

## CRIMINAL INTERVENTION FOR YOUTH

While youths who sell sexual services can be charged under the new legislation under s. 213(1.1), the dominant discourse surrounding youths is one of sexual exploitation – maintaining that they are victims, not criminals. As discussed above, Robson's construction of youth was one of corruptibility. He was mainly concerned of children being exposed to the atmosphere of prostitution and vice which would breed a youth criminal. Current legislation is aimed at protected youth as more vulnerable members of society and only part of this conception might be appraised of corruptibility fears.

We asked participants to rate their agreement with the following two statements to determine whether they thought youths should receive



differential treatment under the law compared to adults: a) *Youths (under the age of 18) and adults should be treated differently by law, in terms of arrest, when they sell sexual services;* b) *Youths (under the age of 18) and adults should be treated differently by law, in terms of being criminally charged, when they sell sexual services.*

Overall, respondents agreed with the statements regarding treating youth differently than adults regarding arrest ( $M = 65.00$ ) and criminal charges ( $M = 64.03$ ) (see Table 1). There were no differences based on question type or gender of the participants, nor was there an interaction between variables.

Responses indicated that participants believe youth sex workers should be treated differently by law than adult sex workers in both circumstances. Thus, the age of the sex worker is a determining factor for participants when deciding if the sex worker should be arrested and criminally charged. Participants' responses are likely influenced by the association of age with autonomy. While adults are often associated with the ability to make fully autonomous choices, consequently being held more responsible for their actions, youths are often not. It is also interesting to note that conceptions of fears of corruptibility do not seem to animate these responses so much as the notion that youth may be less deserving or capable to receive the moral approbation of the law.

## YOUTH VS. ADULTS AS SEXUALLY EXPLOITED

The preamble of Bill C-36 states that the "Parliament of Canada has grave concerns about the exploitation that is inherent in prostitution."<sup>103</sup> The Robson Report was not concerned about exploitation inherent in prostitution, save for the morally corruptible and exposed child and perhaps other innocent bystanders. The language of exploitation can be understood to more deeply mine the human rights-based harms that may exist in the sex trade. For Robson, the women involved in the trade were portrayed as depraved, evil, cunning and resourceful. The preamble of the bill seeks to make the consideration of the sex worker centric. However, it is also the case that the modern legislative cousin of moral corruptibility have been described as social harms, particularly attitudinal harms of those exposed to sex work, affronts to the liberty of the passerby, and harms to the worker themselves.<sup>104</sup> Thus a straight line can be

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<sup>103</sup> Bill C-36, *supra* note 11.

<sup>104</sup> Richard Jochelson & James Gacek, "Reconstitutions of Harm: Novel Applications of the Labaye Test Since 2005" (2019) 56:4 *Alta L Rev* 991.

drawn between Victorian moral corruption fears and modern conceptions of social harm and indeed that is the language mined in the current legislation

We asked participants to rate their agreement with the following statements in order to determine whether their perception of sexual exploitation differed based on the age of the individual selling sex: a) *Youths (under the age of 18) who sell sexual services are victims of sexual exploitation*; b) *Adult sex workers are victims of sexual exploitation*. We note that we provided participants with the following definition of sexual exploitation: *Sexual exploitation can be described as the real, or attempted, abuse of power, trust or dependency for a sexual purpose*.

On average, respondents agreed that both youth ( $M = 78.24$ ) and adults ( $M = 62.63$ ) who sell sexual services are victims of sexual exploitation (see Table 1). However, respondents more strongly agreed that youths were victims of exploitation opposed to adults. There was an interaction between the participants' gender and how they responded to the questions regarding exploitation of youth and adults (see Figure 2). There were no differences between men's ( $M = 75.25$ ) and women's ( $M = 79.88$ ) ratings of how sexually exploited they thought youth were (see Table 1). The averages indicate that both male and female participants strongly agreed with the statement that youth who sell sexual services are victims of sexual exploitation. However, male and female participants responded differently regarding whether adult sex workers were victims of sexual exploitation: male participants expressed neither agreement nor disagreement with this statement ( $M = 53.69$ ) while female participants expressed somewhat strong agreement ( $M = 67.56$ ). This means that while both males and females strongly agreed that youths can be viewed as victims of sexual exploitation, females expressed greater agreement than males that adults can be viewed as victims of sexual exploitation. The interaction could be attributed to the significant difference in the way men and women may view adult sex workers, in which women were more much likely to view them as sexually exploited. Considering our participants' distinction between adults and youths, it is likely that the age of the sex worker alters their perception of a sex worker's personal responsibility for their circumstances.

Adults are often attributed with the ability to make rational decisions and have personal agency, whereas youth often are not – or to a lesser extent. Thus, the perception of whether to hold adults versus youth criminally responsible for their actions differs. Additionally, youth may be regarded as a vulnerable population who are in greater need of protection.

Women were more likely than men to agree that adult sex workers could be seen as victims of sexual exploitation in sex work. Sex work is a gendered activity and female participants' responses may have reflected a concern for the exploitation of other women.

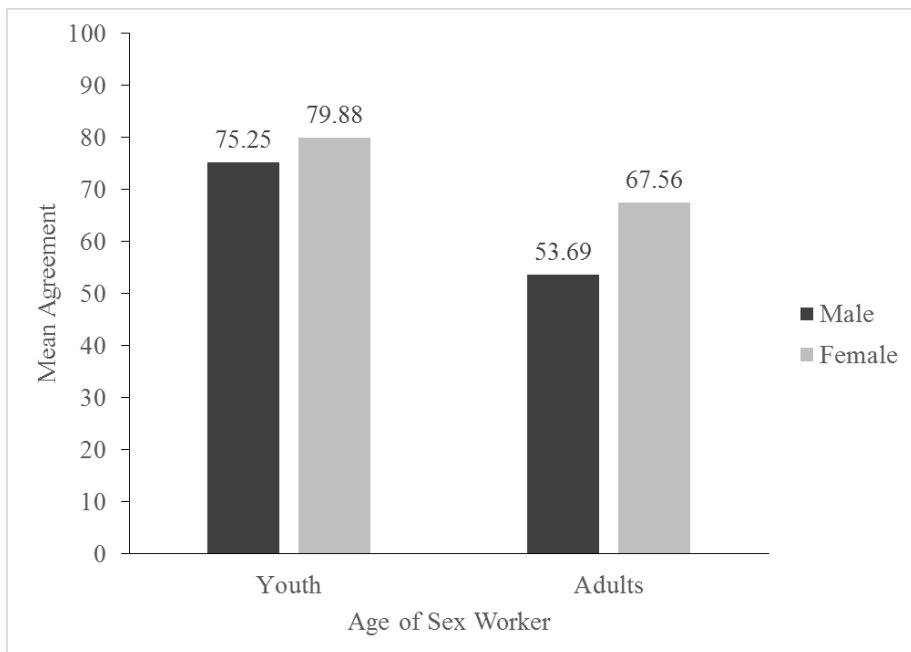


Figure 2. Males and females' mean level of agreement regarding whether adult and youth sex workers are victims of sexual exploitation.

We asked participants to rate their level of agreement with the following statement in order to discover whether or not they conceived of youth as sexually exploited, regardless of their choice to participate in sex work: *Regardless if youths (under the age of 18) are freely choosing to sell sexual services, they should be viewed as victims of sexual exploitation.* We note that we provided participants with the same definition of sexual exploitation as in the preceding section.

In general, respondents agreed ( $M = 65.57$ ) that, youths should be viewed as victims of sexual exploitation regardless of whether they were freely choosing to sell sexual services (see Table 1). Both males and females expressed agreement with this statement, but women ( $M = 69.52$ ) more strongly agreed than men ( $M = 58.30$ ).

The question of youths as sexually exploited could have invoked a moral response from participants due to youths' more vulnerable status. Further, participants' responses may reflect the ideology that youth cannot make a fully rational choice to engage in sex work. Women demonstrated greater agreement in viewing youth as sexually exploited, regardless of the voluntariness of their sex work, perhaps attributable to the broader social context in which socialization and traditional gender roles may create an expectation that women are more considerate in the protection of the young. Whether one views the worker as corrupted or exploited may be of little moment. The stigma we ascribe to workers whether as exploited victim or as a corrupted actors may mean little when the law seeks to attach consequence to acting in either role. Though the Robson Report dates to 1911, whether one views a sex worker as a person exploited or as a purveyor of vice, the law still seeks to constrain the liberty and success of the worker. The softer language of exploitation does not alone change the direction of legislative management of the alleged social problem.

#### DECREASING DEMAND AND THE NUMBER OF PURCHASERS

The Robson Report is unequivocal: more law enforcement, less passive toleration of sex work, less bureaucratic management of a segregated brothel zone and more criminal justice deployment would be the antidote to end vice in Winnipeg. In the context of the Robson Report, the lens of enforcement is pointed squarely at the women workers. The latest legislative incarnation of law attempts to target purchasers to still minimize the trade but to bring less workers under the criminal justice process. In other words, a moral judgement has been made to reduce the trade but to focus on purchasers. In both cases, the morality of sex work remains in clear view as the motivating legislative impetus. Our respondents were unsure if these new law enforcement approaches would be successful.

We asked participants to rate their level of agreement with the following statement to see whether they thought that laws against the purchase of sexual services would decrease the amount of purchasers: *Strict laws that criminalize the purchase of sexual services will decrease the amount of individuals purchasing sexual services.* In other words, could law be an effective tool in controlling sex work?

Overall, respondents neither agreed nor disagreed ( $M = 46.04$ ) as to whether criminalizing the purchase of sexual services would decrease the amount of individuals purchasing sexual services (see Table 1). There were no differences in the responses of men ( $M = 46.59$ ) and women ( $M = 45.74$ ).

Participants' responses indicate neither agreement nor disagreement that the number of individuals purchasing these services would decrease. This seems to indicate a belief that even in spite of strict laws that criminalize the purchasers, sex work will occur regardless of criminalization. Perhaps the respondents understand sex work as an inevitable social condition. Additionally, our findings could support the argument that, even if strict laws are enforced, those involved in sex work will evade law enforcement detection.

The preamble of the new legislation provided that "...it is important to denounce and prohibit the purchase of sexual services because it creates a demand for prostitution."<sup>105</sup> To discover whether participants' believed that criminalization can decrease the demand, we asked them to rate their level of agreement to the following statement: *The demand for the sale of sexual services will decrease if clients are criminalized.*

Overall, respondents neither agreed nor disagreed that the demand for the sale of sexual services would decrease if clients were criminalized ( $M = 46.99$ ) (see Table 1). There were no gender differences as men ( $M = 46.47$ ) showed similar levels of agreement as women ( $M = 47.27$ ).

The respondents' lack of agreement or disagreement as to whether criminalization would reduce the demand for the sale of sexual services may be attributable to the commonly held perception that there will always be a demand for sexual services, as discussed previously. Interestingly, this same assessment of inevitability was also explicated by Robson in 1911:

Even although, as is said, this evil can never be wholly eradicated in any City, there is no doubt that once these offenders are subjected to a rigorous application of the law, the nuisance will be reduced to the lowest possible point. But the whole system must be made equally strong. Prison doors must not be opened to straw bail or because of technical objections.<sup>106</sup>

## CONCLUDING THOUGHTS

There are several general trends in the results that are worth noting. On the surface, our participants' perception of what the law should look like does resonate with respect to some principles of Bill C-36. Specifically, there is some agreement with the prohibitions on the sale of sex in public places, the purchase of sex, and the benefit of third-parties. However, there was incredible variation in participants' responses. For every single question, the full range of responses were selected by participants. That is, for all questions, there were participants

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<sup>105</sup> Bill C-36, *supra* note 11.

<sup>106</sup> Robson Report, *supra* note 1 at 222.

who rated their level of agreement at 0% while others gave ratings of 100% agreement. The variance in attitudes, signaled by participants' polarized responses, exemplifies the divergence of positions that complicate the issue of criminalization.

While overall disagreement exists within this sample's perception of criminalization, strong trends were illuminated regarding the treatment of youth and issues of morality. There was overwhelming support for the protection of youth and distancing them from the sex industry. The sample also employs a differing perception of youth and adults in the sex trade and seems to expect a higher level of culpability for adults. In general, male respondents seemed more supportive of a legalized approach to sex work compared to the responses of women in the participant pool. These differences might be explained by greater sensitivity amongst women to the lived realities and social conditioning of women to sexual violence in their own lives and communities.

There can be little doubt that many of the forces that animated the Robson Report are in play today. The moral judgment cast at sex work is clearly embedded in the legislation, and surprisingly our respondents, a potentially progressive group of university students, still ascribe to many of the tenets of morality that undergird sex work regulation.

While many activists push for a decriminalization of sex work, and perhaps advocate for a work-based regulated regime, police tactics of passive toleration have happened and failed in Canada. The Robson Report analyzes one such moment in Winnipeg where law enforcement attempted to contain and facilitate the trade geographically. In Robson's stinging rebuke of the tactic, he critiques the ensuing community nuisance, the immorality of vice, judgment against the purveyors of the trade including the insidiousness of the 'white slave trade', and the moral corruptibility of the innocent children and exposed pedestrians.

Modern legislation has added concerns for exploitation of the worker to the equation of criminalization and indeed has focused, recently, more squarely on purchasers and exploiters in the Canadian context. Yet we have seen that our respondents and indeed many of the supporters of the current legislation are still moved by concerns that are largely moral - they are concerned by the wrongness of the sex trade that in their view creates exploited workers (women and children largely), supports human trafficking, blights neighborhoods and, in total, degrades society by fostering these and other social harms. It would seem the Robson Report, despite its dated and often misogynistic and racist

prose (which were of its time), was apprised of many of these same concerns. Fears of moral harm are thus less protean than connected by a common thread of fear, prevention and precaution. The Robson Report document is one of many archaeological antecedents to the modern 'prevention of social harm' approach that animates the current Canadian landscape of sexual regulation. The Report draws a link between Victorian antecedents of moral harm and directly connects them to modern conceptions of social harm in a human-rights era, and it haunts and animates the beliefs that guided many of our respondents, and in our view, the current state of the law.