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October 25, 2013

Mr. Claude Joli-Coeur
Assistant Commissioner – National Film Board
3155 Chemin Cote de Liesse, Montreal QC
H4N 2N4

Dear Claude,

Re: NFB Documentary – “Buying Sex”

On August 1, 2013 we met to discuss serious concerns I have about the integrity and objectivity of the NFB film, “Buying Sex”. In letters, dated April 30, 2013 and May 3, 2013, I wrote to the director and producer of the film to express my shock and dismay upon watching this documentary. I was recruited to participate in this film on the basis that it would serve to inform and educate the public about an ongoing constitutional challenge to various prostitution-related offences (the “*Bedford*” case). However, upon viewing the film it became apparent that the filmmakers’ intent was to trivialize the constitutional challenge and to replace the discussion of the constitutional issues of security and gross disproportionality with an attack on my character and integrity.

The filmmakers made no serious effort to accurately present for debate and discussion the legal issues raised in the *Bedford* case, instead choosing to shoot the messenger while leaving the message in a state of obscurity and confusion. Cleverly, the filmmakers create the false impression that the film is balanced and objective by interspersing throughout the film an ongoing commentary from Valerie Scott and I on the nature and objective of the constitutional challenge; however, the excerpts selected to portray the challenge were carefully edited to make most of our commentary appear vacuous and self-serving.

When we met you were very cordial and receptive while listening to my concerns. In a letter, dated September 6, 2013, you kindly provided me with raw footage materials (and transcription) of all interviews conducted with me so that I could demonstrate to you the selective editing employed by the filmmakers to achieve their purpose of trivializing the challenge and casting lead counsel in a negative light. In addition, you offered to post hyperlinks on the NFB website to allow viewers to access the court judgments and a TVO interview about the case with me, which we agreed was a more accurate representation of the case and my reasons for working on this case.

I thank you for your conciliatory approach to my concerns, but while waiting to receive the raw footage material from you, I was able to obtain through an access to information request

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thousands upon thousands of pages of e-mails, proposals and other documentary materials relating to the production of this film. Regrettably, the review of these materials reveals that the problem was worse than first imagined. Your offer, though admirable, now seems to be an inadequate response to the problem. As I followed the e-mail threads planning and preparing for this movie, it became readily apparent that the filmmakers have manipulated and used both the NFB and myself to advance a political agenda.

The filmmakers' chatter reveals a single-minded intent to advance the claims of abolitionists, and, in particular, to promote the adoption of the "Swedish model" (i.e a legal regime in which the buyer alone is criminalized) into the Canadian legislative landscape. The only reason the filmmaker chose to include the constitutional challenge in this film was to make the film appear topical and Canadian, and to secure close to \$1,000,000 in NFB funding. Assuming that a movie extolling the virtues of law reform in Sweden actually fits within the mandate of the NFB, I would not have thought that government funds would be used for political lobbying disguised as documentary-making.

In light of the documentary evidence which I have reviewed, I am writing this letter to provide you with a detailed outline of the facts I am relying upon to demonstrate the total lack of integrity and ethical conduct in the making of *Buying Sex*. I am sorry for the length of this letter but I want this letter to represent a complete and comprehensive record of the situation. To that end, I have enclosed with this letter the previous two letters sent to the producer and director earlier this year. I want the record to be complete so that you will have an informed basis upon which to decide whether you wish to take action to address my concerns. In addition, as I mentioned at our meeting, I am still considering legal action and this letter will provide my counsel with a basis for determining whether civil action is warranted in the circumstances. Ultimately, I would prefer to have the NFB propose a solution, which might include a letter of apology, the posting of this letter on your website and the insertion of a disclaimer at the beginning of the film. I leave it in your hands to propose a solution once you have had an opportunity to review the contents of this letter. However, if nothing concrete and meaningful is proposed by November 6, 2013 I will widely disseminate this letter and then consider the merits of initiating civil proceedings.

I am truly sorry to burden you with this problem and it pains me to spend time working on the preparation of the letter; however, this is a serious matter. Of course I am personally offended and hurt by the deceitful assassination of my character for no apparent reason other than to advance a political position having nothing to do with the *Bedford* case. But the problem runs deeper than the intent to damage my reputation. In making this tendentious documentary, the NFB has breached its statutory mandate to "produce, distribute and to promote the production and distribution of films designed to interpret Canada to Canadians and to other nations" (*National Film Act* R.S.C. 1985, c. N-8, s.9(a)). As I will discuss below, a film that extols the laws of another nation while completely misrepresenting the nature and function of the Canadian constitutional landscape clearly is not a film "designed to interpret Canada to Canadians and to other nations".

Sadly, in choosing to marginalize and trivialize the case, and those associated with the case, the filmmakers have silenced the voices of sex workers who do not subscribe to the political views espoused by your film subjects, Trish Baptie and Janine Benedet. Contrary to popular belief, in the debate over the future of sex work, the abolitionists have always spoken the loudest with access to government funds for their various associations and organizations. Sex worker associations and sex workers who wish to remove stigma and introduce occupational health and safety measures into their work are rarely heard and do not have access to resources, government or private, to advance their position. This constitutional challenge was one of the first opportunities for these voices to be heard in a public forum and the filmmakers managed to silence these voices with the aid of \$1,000,000 in government funding.

In turning to the evidence, I wish to note that I use the expression “filmmakers” to refer collectively to the following people: Annette Clarke (Producer); Ravidia Din (Producer); Teresa MacInnes and Kent Nason (directors); and Manfred Becker (editor). However, when I directly quote from an e-mail or other document, I specifically identify the speaker in a footnote. I should also note that despite receiving voluminous disclosure of documents there were still many documents held back or redacted in accordance with the *Access to Information Act*. Accordingly, you may wish to review all available e-mails, correspondences and memoranda to determine if the non-disclosed documents lend support, or undercut, the conclusions I have reached based upon my review of the disclosed documents and raw footage.

(1) The Evolution of “Buying Sex”

In late 2009, Teresa MacInnes and Annette Clarke were working on the development of a movie entitled: “My Daughter is not for Sale”. As Annette Clarke stated on November 5, 2009:

This is essentially a prostitution story, proposed by Teresa MacInnes and Kent Nason, and inspired by Teresa’s earlier film Teen Rebel/Teen Mom and her on-going 20 year relationship with one of the teen moms, Trisha Baptie. Over the span of 35 years Trisha has lived the life of abused daughter, institutionalized teen, teen mom, adult prostitute, citizen journalist during the Pickton trials, and now one of Canada’s most vocal and articulate activists against the decriminalization of sex work. The idea is simple – to explore the emotional, psychological, physical and sexual world of prostitution through the intimate experiences of Trisha....¹

While this documentary was in development, the *Bedford* case was being argued and was receiving media attention; however, the filmmakers did not consider the court case significant or relevant to the making of the documentary, *My Daughter is not for Sale*. Annette Clarke indicated that the timing for this proposal was good as “*issues around prostitution are surfacing in large part because of the Olympics and the associated expectations around trafficking*”.² The

¹ Email, Annette Clarke to Michelle Van Beusekom, November 5, 2009.

² *Ibid.*

proposal for this film anticipated focusing on Trisha and her mentor in Sweden, Gunila Ekberg, the architect of the Swedish model.

When the proposal and demo for the movie is shown to another NFB producer, Geeta Sondhi, she comments that *“I’m feeling like the filmmaker is trying to reinforce an already formed opinion and yet in some dimension the material is presented as though she’s still trying to make up her mind....I got the impression that this would be a film about why prostitution should not be legalized and decriminalized featuring a former sex trade worker with a very powerful and emotional story – her story helps to make and reinforce the ‘no to legalization’ argument.”*³

The filmmakers then attempt to soften the obvious bias implicit in the title “My Daughter is not for Sale” (I would have never participated in this documentary had I known of the original title and formulation of the film). It appears that Annette Clarke wished to retain the word “daughter” in the title but Teresa MacInnes writes back: *“I still don’t have a title with Daughter in it because I think it that emphasis really evokes the idea we are against prostitution. I don’t want to come off as biased with the title. Instead I want the sense that we are looking at it differently - so I have Prostitution: Shifting the Gaze”.*⁴

Despite a change in title, the draft proposal for “Prostitution: Shifting the Gaze” reveals the filmmakers bias and predisposition towards the issue. In the synopsis it is noted that Trisha *“will take us into a complex and emotional world that will provocatively link the ‘profession’ of prostitution and male violence against women – regardless of country or legal status. And we will put what is perhaps the oldest patriarchal stalwart firmly in Canadian public consciousness and responsibility – where we believe it firmly belongs”.*⁵

The director echoes this sentiment in the Director’s Forward where she writes: *“by shifting the conversation to male demand and revealing the connection to women’s equality we hope to fuel a different conversation. One that is less about personal choice and sexual liberalization and more about the causes and the reality of sexual exploitation and how our culture enables the demand for these services, no matter what the cost to those involved”.*⁶

In the fall of 2010, Madame Justice Himel released her decision in the *Bedford* case. Suddenly the filmmakers show an interest in incorporating the case into the ongoing movie about Trish Baptie and the Swedish model. Teresa MacInnes writes: *“I am much more focused and think I have the story arch figured out. Basically I am going to rest it on the court case combined with exploring three countries that have taken three different approaches (Sweden, Amsterdam, NZ).*

³ Email, Geeta Sondhi to Annette Clarke, July 9, 2010.

⁴ Email, Teresa MacInnes to Annette Clarke, August 10, 2010.

⁵ Email, Teresa MacInnes to Annette Clarke, July 21, 2010.

⁶ *Ibid.*

*The emphasis and what we will come back to in the analysis of each place will be women's equality".*⁷

This new focus gives rise to a change of title, "Buying Sex", and the modest development budget for My Daughter is not for Sale (\$48,000)⁸ increases exponentially (\$800,000) with Annette Clarke noting that *"this budget represents the largest budget I have proposed"*.⁹ She notes that *"the proposal for Buying Sex speaks of the film being a "different kind of romp, from the steps of the Supreme Court of Canada to three different countries...and [the case] will provide a powerful "unfolding" story arc for the Canadian layer of our film"*.¹⁰ Overt and explicit indications of ideological bias is obscured in this new proposal with the exception of some remnants from previous proposals; for example, the excitement expressed for the proposed visit to Sweden where *"it will be inspiring to see Trisha meet men who call themselves feminists and youth who feel prostitution is an absurd concept. And a shock to walk the streets of a major city where there are no signs of massage parlours, strip clubs or prostitution on the street."*¹¹

The proposal claims that *"as the public debate over the new Ontario court ruling continues and the Canadian government prepares its appeal, we'll hear why Valerie Scott, other members of Sex Professionals of Canada and many inside the legal system, from policemen to lawyers, believe a decriminalized or legalized model is the way to go."*¹² Despite the proposal's claim of hearing from a multitude of voices on the side of decriminalization, the film only presents the distorted voices of Val Scott and I.

Through brutal and clever editing, Valerie and I are reduced to sound-bite attention-seekers as the filmmakers could not overcome their inherent bias which permeated the original proposal. Annette Clarke reminds Teresa and Manfred that *"the context has always been and remains an industry rooted in gender and class privilege – important we don't stray too far from that"*.¹³ She explains that *"I have a long standing and deep interest in this story. In a former life, I worked as a researcher and spent many evenings with sex workers – eventually writing reports for several prostitution and pornography commissions. I am excited about the potential and challenge, and committed to keeping the pulse of production in that uncomfortable-for-most place – questioning liberty and freedom for some at the expense of many"*.¹⁴

The directors echo this sentiment when they reveal that *"prior to reconnecting with Trisha, both of us had witnessed prostitution while working on documentaries about human rights. Whether*

⁷ Email, Teresa MacInnes to Annette Clarke, August 2, 2010.

⁸ Email, Teresa MacInnes to Annette Clarke, October 18, 2009.

⁹ Letter, Annette Clarke to "Programming Colleagues", December 10, 2010; Email, John William Lutz to Cindy Witten, January 5, 2011.

¹⁰ Buying Sex: A Documentary Proposal, p 7, 11.

¹¹ *Ibid*, p 18.

¹² *Ibid*, p 16.

¹³ Email, Annette Clarke to Teresa MacInnes and Manfred Becker, April 23, 2012.

¹⁴ Letter, Annette Clarke to "Programming Colleagues", p 3.

*in Canada or the Philippines, our experience told us that the majority of women entered the prostitution out of desperation and were vulnerable to violence and discrimination”.*¹⁵

I fully understand that it is hard to shed one’s skin and look at an issue from an entirely different perspective when one’s past experience has solidified one’s perspective on the issue. However, it is one thing to be driven by an ideological perspective and it is another thing to believe that your perspective gives you the right and moral authority to attack those who disagree with your views. So, regardless of the concession to human frailty and prejudice, there is no justification for the approach taken by Annette Clarke to the packaging of her political message. When the directors are questioning whether or not the initial cut of the film presents an unjustifiably negative and condemnatory view on my character and my work, Annette Clark remains steadfast in her quest. She says: **“I think we have to be very strategic and firm. It is one thing to be sympathetic to men [Trisha’s revelation] but not to johns, or to Alan Young, who are part of the continuum and systemic sexism and racism that includes Pickton”.**¹⁶

This is an outrageous statement which reveals a great deal about the producer’s attitude. It is particularly remarkable, considering that when the film was transformed from “My Daughter is not for Sale” to “Buying Sex”, this transformation was predicated on adding two new components to the original documentary. The two new components (which led to a costly and more ambitious documentary) were to be a focus on male voices and male demand, and the introduction of the *Bedford* case into the mix. However, the producer did not disclose that their intent from the outset was to cast both male voices and the constitutional challenge in a negative light. I cannot believe that Annette Clark, after watching a few hours of raw footage, would be able to reach the conclusion that I am part of “the continuum and systemic sexism and racism that includes Pickton”. I will return to this bizarre character assassination shortly, but suffice it to say, it is clear that from the outset the intent of the documentary was to advocate for the Swedish model and to that end it was important to cast men, especially johns and myself, in a sinister light.

The filmmakers claim they have produced an objective and balanced documentary to kick-start an important debate. However, the acts and statements of the filmmakers undercut this purported objectivity. For example, I find it puzzling that the subject-matter of a documentary film, Trisha Baptie, received some remuneration for her participation¹⁷, and that she was allowed input into the promotion and marketing of the movie.¹⁸ Although I can understand why the filmmaker would pay for Trisha to visit Sweden as part of the unfolding of the narrative of the story, I also find it puzzling that MP Joy Smith, an ardent anti-prostitution spokesperson for the Swedish model, would have been invited by Trisha to join the filmmakers in Sweden.¹⁹ It

¹⁵ *Buying Sex: A Documentary Proposal*, p 8.

¹⁶ Email, Annette Clarke to Ravida Din, July 22, 2010.

¹⁷ Email, Annette Clarke to John William Lutz, January 20, 2010; Email, Teresa MacInnes to Alexander Kelley, April 29, 2013.

¹⁸ Email Teresa MacInnes to Alexander Kelley, March 3, 2013.

¹⁹ Email, Trish Baptie to Joy Smith, July 25, 2011.

turns out that Joy Smith could not attend as the government would not cover her expenses, but the MP did tell the director: *“I am thrilled at this opportunity. As you know, in October I hope to bring forward legislation that would adopt the Nordic model here in Canada. This trip could be very beneficial towards this legislation”*.²⁰

The filmmakers seem indifferent or oblivious to the potential conflict in relying upon government funds to advance political ambitions. Trisha Baptie asserts that she is working with the government to assist them with collecting information to support the decriminalization of “johns”²¹, and she claims she is assisting the Crown with the preparation of its appeal of the *Bedford* decision.²² These assertions should have raised red flags for the filmmakers, but no concern or caution is expressed. Instead of treading carefully, the filmmakers agree that the first private showing of the movie should be at the Emancipation Summit in Vancouver at the invitation of Trisha Baptie and Michael Markwick of Capilano University. In a series of e-mail exchanges between Markwick and the producers, with the subject-caption *“Private Screening of Buying Sex to an Audience of Change Makers”*, plans are made for inviting delegations of “influential parliamentarians” and other change makers.²³ Markwick goes as far as to suggest that *“this screening of ‘selling sex’ [sic] would set the stage for the audience to move immediately, at the rolling of the credits, to endorse a private member’s bill that would bring the Nordic model to Canada”*.²⁴

On November 21, 2012, Annette Clark outlines the final plans for the “change makers” screening:

We expect around 200 people who are participating in an “emancipation summit”, essentially a discussion around alternatives to the existing laws around prostitution, and especially the benefits of the Swedish model of law. The audience is described as a “network of networkers”, like-minded individuals who represent professional and community organizations (leaders of women’s and Aboriginal organizations, students, academics, journalists, Crown lawyers, cops and anti-trafficking authorities) who have a vested interest in ending prostitution – they look to Sweden as a model.

*We believe this network will provide a valuable foundation to reach a crucial network of organizations and events that will eventually promote the film on our behalf, and encourage discussion around the issues raised in the film.*²⁵

²⁰ Email, Joy Smith to Teresa MacInnes, August 4, 2011.

²¹ Email, Teresa MacInnes to Annette Clarke and Manfred Becker, Oct 22, 2011; forwarding message from Trish Baptie, November 21, 2011.

²² *Buying Sex: A Documentary Proposal*, p 11.

²³ Email, Michael Markwick to Annette Clarke, Aug 25, 2012; Michael Markwick to Annette Clarke, Oct 29, 2012; Michael Markwick to Alexander Kelley November 22, 2012; Annette Clarke to Din Riveda, October 29, 2012.

²⁴ Email, Michael Markwick to Annette Clarke, Aug 25, 2012.

²⁵ Email, Annette Clarke to Claude Joli-Coeur, November 21, 2012.

Although this is portrayed as a marketing strategy, this is not marketing in the traditional sense. The director is pleased that she will be accompanied to the Emancipation Summit screening by the marketing co-ordinator because this would “*give her a chance to spend some time with her on the politics and special interest groups connected with this film/subject.*”²⁶ The director is not speaking about critical acclaim or financial success but, rather, she is talking about “*getting the word out*”.²⁷ To get the word out she recruits the assistance of Kate Quinn, a member of the Canadian Women’s Foundation National Task Force on Sex Trafficking and a Crown witness in the *Bedford* case.²⁸ The real strategy is revealed in Annette Clarke’s statement that the “objective is to put this film in the hands of many organizations across the country to coincide with supreme court hearings”.²⁹ In gauging the responses to the screening of the movie, Clarke measures “*success*” on whether people were “*commenting*” that “*their position shifted as a result of screening the cut*”.³⁰

Considering that one of the film’s purported objectives is the representation and discussion of the *Bedford* constitutional challenge, I always found it puzzling that the filmmakers rushed this film to completion prior to the completion of the case in the Supreme Court of Canada. When the NFB decided to provide a free live-stream of the film just days prior to the hearing in the Supreme Court of Canada, I complained and the NFB postponed the live-stream for a short period of time until the case had been argued. Now I can see that the rush to complete the film was an indeed an attempt to influence the Court and lend support to a private members bill.

It is no coincidence that just prior to the Supreme Court hearing, there was a flurry of media coverage containing critical comments about the *Bedford* case and my involvement. These comments emerged from individuals with some connection to the movie and the comments were clearly based upon viewing the movie (as negative comments of this nature never emerged during the previous four years of coverage). For example, Meghan Murphy of the Feminist Current, conducted an extensive podcast review of the movie and then wrote an editorial in the Globe and Mail a week before the hearing in which she asserts that “*the Bedford case was never about helping women working the streets... It is not about women’s rights or ‘sex worker rights’. The public has been duped by misrepresentative framing of both this case and the debate surrounding prostitution law. The only rights that will be gained should the Bedford case succeed are the rights of men to buy sex from women*”.³¹ In a discussion group regarding her editorial she defends her views by directly quoting from a transcription of the documentary.³²

²⁶ Email, Teresa MacInnes to Christine Noel and Annette Clarke, November 14, 2012.

²⁷ Email, Teresa MacInnes to Kate Quinn, February 25, 2013.

²⁸ Email, Kate Quinn to Teresa MacInnes, February 25, 2013.

²⁹ Email, Annette Clarke to Teresa MacInnes, April 22, 2013.

³⁰ Email, Annette Clarke to Manfred Becker and Teresa MacInnes, June 21, 2012.

³¹ Meghan Murphy, “Prostitution Solution: Punish the Customers, Not the Hookers”, June 3, 2013.

³² Meghan Murphy, *A Prostitution Solution: Punish the Customers, Not the Sex Workers* (June 22, 2013), online: Rabble.ca <<http://rabble.ca/babble/sex-worker-rights/prostitution-solution-outlaw-customers-not-sex-workers>>.

On a more defamatory note, members of the Women’s Coalition, an intervener group in the *Bedford* case who figure prominently in the documentary, held press conferences across the county prior to the Supreme Court hearing. They made the claim that I am “essentially a shill for the sex industry, and not a civil libertarian or a human rights activist”.³³ This demonstrates that the carefully timed release of this documentary provided abolitionists with a new strategy to attack the *Bedford* case just prior to the hearing of the final appeal of this case, and this appeared to be the underlying objective behind the notion of “getting the word out” to as many “like-minded” associations as possible. These like-minded associations never comment on the overwhelming evidence introduced in the *Bedford* case, nor do they comment on the merits of the constitutional arguments, as they would not have learnt anything about these important issues from viewing the film. However, they do believe that they have learnt something about my motivation and character, allowing them to conclude that this case is not about human rights but rather is about my performance as a “shill for the sex industry”.

Finally, the filmmakers not only distorted reality with the making of their film, but, they also attempted to influence and change other media representations of the case. In September 2012, there is an e-mail discussion about the concerns the filmmakers have over the content of a CBC news story on the *Bedford* case. The filmmakers discuss the best way to “approach” the journalist, and from the e-mail exchange it is clear the filmmakers were unhappy with the coverage provided by Aaron Saltzman of the CBC.³⁴ We contacted this journalist to inquire about whether the filmmakers did “approach” him, and he confirmed that: “*months after the story aired, someone contacted me and - if I recall correctly - asked me to change the language in my report to something they had written, for the benefit of their film. I respectfully refused. And I would have done so even if it were not explicitly against our journalistic policies (which it is).*”³⁵ Asking reporters to alter or modify their news-stories has nothing to do with legitimate documentary film-making, and the filmmakers’ zeal to influence public opinion underscores my assertion that this film was not designed to foster debate but, rather to achieve a political result.

2) The True Nature of the Constitutional Challenge and the False Conflict Created by Buying Sex

In considering the treatment of the constitutional challenge in this documentary, it is important to keep in mind the statutory mandate of the NFB to “produce, distribute and to promote the production and distribution of films designed to interpret Canada to Canadians and to other nations”. It is hard to imagine how this documentary can serve to interpret Canada when the

³³ “Brothel Boss Ready to Pounce on Canada if Supreme Court Strikes Prostitution Law” Macleans, June 11, 2013; Vancouver Province, June 12, 2013.

³⁴ Email, Teresa MacInness to Annette Clarke, Aug, 7, 2012; Annette Clarke to Teresa MacInness, Sept. 7, 2013; Teresa MacInness to Annette Clarke, Sept 7, 2012

³⁵ Email, Aaron Saltzman to Laura Young, October 24, 2013

filmmakers do not even mention or discuss the nature of the constitutional right being addressed by the Court. In the entire film there is not one mention of “security of the person” or the “principles of fundamental justice” contained in s.7 of the *Charter of Rights and Freedoms*. It is hard to imagine this film serving to interpret Canada when the filmmakers do not even give the correct name for the court in which the appeal is to be heard.³⁶ It is hard to imagine this film serving to interpret Canada when an articulate Swedish professor, Sven-Axel Månsson, is provided more time to explain the rationale behind the Swedish model than is provided to any Canadian scholar to explain the current Canadian law and/or the nature of the constitutional challenge. Revealingly, this documentary, unlike most documentaries dealing with legal issues, does not employ the services of a script consultant to vet the legal analysis for accuracy.

I do understand that sometimes taking time in a film to explain the complexities of law can make a film dull and less captivating; however, the making of this film could not have been impeded by the complexities of the law. In fact, as will be discussed, the legal and constitutional argument, divorced of nuance and complexity, can be lucidly and accurately outlined with little effort. Although the filmmaker would not be expected to delve into all the intricate details of the case, it is remarkable that the viewers of this film would not even know some of the following simple details about the history and development of this case (all facts which should be known to the filmmakers):

- This case was completed on a *pro bono* basis with the volunteer assistance of over 30 law students over a four year period. As an associate professor of law, I had been researching issues relating to the history of the legal regulation of prostitution since 1989, and the challenge to the prostitution laws was one part of my ongoing research and advocacy in the area of the criminalization of all consensual crimes. Beyond my work in this area, the filmmaker should have known that for the past twenty years I have provided pro bono legal services to victims of violent crime.
- The constitutional challenge was supported by a voluminous record of documentary evidence, comprising 88 volumes and 27,000 pages of documentary evidence, including thousands of government reports. On behalf of the sex workers, there was expert testimony from 8 Canadian scholars who had all completed current research in Canada with respect to the impact of the law on the safety of sex work. In addition, there were 16 experiential witnesses who provided evidence in support of the claim, comprising representatives of sex worker associations and sex workers with over 15 years of experience in the trade. Seven groups

³⁶ The filmmakers mistakenly refer to the Court of Appeal as the “Ontario Supreme Court”.

intervened at the Court of Appeal in support of the Superior Court invalidation. The majority of witnesses (over 50 in total when combined with Crown witnesses) were extensively cross-examined over a two year period before the matter was argued in court.

- Both the Superior Court and the Court of Appeal provided lengthy and detailed reasons (close to 300 pages combined) and both courts made findings of fact largely supporting the claims of the sex workers and not the evidentiary claims of the government.

The film does not capture the significance of this challenge and it creates the impression that the challenge had no factual support, whether in research studies, expert evidence or experiential evidence. The court decisions are treated as arbitrary decrees with no sense that the courts grappled with difficult issues and after lengthy deliberations reached conclusions based on the evidence and the evolution of constitutional principles. There is not one paragraph, one sentence, or even one word taken from these judgments to show the viewers that there was a strong foundation supporting the merits of the *Bedford* constitutional challenge.

On many occasions, including the director's initial contact with me³⁷, the director indicated that she had interviewed, or was going to interview, key expert witnesses who testified in support of the applicants. I was assured she had interviewed Professor John Lowman and Tamara O'Doherty, the former being one of the most knowledgeable and important witnesses for the applicant and the latter having recently conducted empirical research in Canada demonstrating the increased safety of sex workers working in indoor locations. I do not know whether any of these interviews were actually conducted, but it is clear that the discussion of the constitutional challenge in this film is entirely built on misleading and uninformative sound bites from just Valerie Scott and I. Canadian scholars are ignored and the many voices of sex workers in favour of choice and safety are silenced.

It does appear that some feeble effort was made to incorporate the voices of women in support of the constitutional challenge as the directors did speak with Susan Davis and Wendy Babcock, two experiential witnesses who provided evidence in support of the challenge. Susan Davis is dismissed as "*boring*"³⁸ and "*lame*"³⁹, and I can assure you that having met Ms. Davis these are two adjectives that could not apply to her. As for Wendy Babcock, she is dismissed because "*Wendy is pro-legalization. If we want to avoid this debate, I wouldn't recommend going down that road...I thought this was a decision we made a while ago*".⁴⁰ This is a puzzling statement considering that the movie is purportedly a debate over legalization, so one is left with the

³⁷ Email Teresa MacInnes to Alan Young, April 4, 2011.

³⁸ Email, Ravida Din to Annette Clarke, April 18, 2012.

³⁹ Email Annette Clarke to Teresa MacInnes, April 19, 2013.

⁴⁰ Email, Teresa MacInnes to Annette Clarke July 6, 2012.

distinct impression that the decision “made a while ago” was that “pro-legalization” voices should be erased from the narrative.

The filmmakers were painfully aware that the documentary fell short with respect to providing a clear representation of the law and the constitutional challenge. After some screenings and initial edits, the following comments emerged on a consistent basis:

*I wasn't clear at this point just what is happening in Canada...we need to clarify what the existing laws are in Canada...We need to be much clearer about the situation in Canada.*⁴¹

*A few folks still not entirely clear on the Canadian law and the court challenge(s) but this I am sure we can resolve with some text changes on the cards.*⁴²

*Set up of the court case is still a bit confusing.*⁴³

*Now I find it confusing that there's no reference at all to how the law changed. Especially for your international audience...people won't know how prostitution was legislated in Ontario prior to the ruling...your audience doesn't have the context.*⁴⁴

*Canada, esp in set up, suffers from lack of clarity around the law and what exactly is being challenged (it is complicated but the entire film rests on understanding the situation).*⁴⁵

Ultimately, despite the clear recognition that the discussion of Canadian law is not being developed at all, much less in a coherent way, nothing is done to correct the problem. In fact, the filmmakers follow the editor's advice to “lose the details”⁴⁶ instead of making an effort to explain. As Annette Clarke notes “let's see what we can do to simplify the legal info at the top”⁴⁷ because “people [are] liking how quickly we get into the story of the women, and the debate, without having to wrap our heads around the legalities”.⁴⁸

⁴¹ Email Ravida Din to Annette Clarke, April 18, 2012.

⁴² Email, Annette Clarke to Manfred Becker and Teresa MacInnes, June 21, 2012.

⁴³ Email, Teresa MacInnes to Annette Clarke, July 30, 2012; Annette Clarke to Teresa MacInnes, April 19, 2012.

⁴⁴ Email, Michelle Van Beusekom to Annette Clarke, August 6, 2012; Annette Clarke to Teresa MacInnes, August 18, 2012.

⁴⁵ Email, Annette Clarke to Teresa MacInnes, April 19, 2012.

⁴⁶ Email, Manfred Becker to Teresa MacInnes, July 24, 2012.

⁴⁷ Email, Annette Clarke to Teresa MacInnes, August 30, 2012.

⁴⁸ Email, Annette Clarke to Michelle Van Beusekom, August 29, 2012.

A telling exchange, demonstrating that an accurate representation of the case was not an important objective in making this film, occurs when an individual writes Annette Clarke to advise her that “as one not too familiar with prostitution laws, I found myself slightly confused...I can see how detailed information might halt the story, but for me, now knowing what the law was made it very challenging to follow the story – I had no idea what each side was fighting for...The two sides are clear, but how the law plays into that is not”.⁴⁹ Annette Clarke curtly responds:

*That’s too bad – you are the first person to not understand that we are dealing with a divided debate between prostitution as a legitimate choice for women, and prostitution as a form of violence against women and inequality. These are the bigger themes that we are going after.*⁵⁰

Clearly, the filmmakers had no serious intent to accurately represent this constitutional challenge, as they were more interested in constructing the case as a “straw man” to feebly represent a counterweight and antagonist with respect to the abolitionist claims of Trisha Baptie and the Women’s Coalition. Before turning to this contrived conflict between the case and the true subject of the documentary, I will demonstrate in a few short paragraphs the ease with which the law and the constitutional challenge could have been accurately portrayed – a portrayal that virtually all media outlets had little trouble presenting in their coverage.

Selling sex is legal; however, if you conduct your business in an indoor location you could be convicted of the indictable offence of keeping a common bawdy house. In addition, if you pay someone to provide you with any services to conduct your business, even if the service is in relation to safety and security, the person providing the service could be convicted of the indictable offence of living on the avails (i.e. earnings) of prostitution. Finally, if you conduct your business in a public place and communicate with a member of the public for this purpose you could be convicted of communicating in a public place (i.e. soliciting).

Section 7 of The *Charter of Rights and Freedoms* protects the right to life, liberty and security of the person. Any state action that impairs the exercise of these rights will be unconstitutional unless the impairment is in accordance with the principles of fundamental justice. In this case, we first needed to demonstrate as a matter of fact and evidence that the law impaired a sex worker’s right to physical security on the basis that the three laws outlined above all take away the worker’s legal ability to take rudimentary safety measures, such as communicating with customers, conducting business from a safe indoor location and hiring security personnel (or even a receptionist).

⁴⁹ Email, Julie Matlin to Annette Clarke, October 30, 2012.

⁵⁰ Email, Annette Clarke to Julie Matlin, October 30, 2012.

The courts below found that our evidence provided overwhelming support for the assertion that the law contributed to an increased risk of harm to sex workers. Once the impairment of security was demonstrated the applicants needed to then demonstrate that this impairment was not in accordance with the principles of fundamental justice. Over the years the courts have developed numerous principles of fundamental justice including the principle that a criminal law should not be overbroad –i.e. it should not extend to conduct not necessary to achieve the state objective. In addition, the courts developed the principle, called gross disproportionality, that any harmful impact or effect of the law should not outweigh the importance of the state objective. The courts below accepted the argument that the bawdy house law and the living on the avails law were both overbroad and that the law’s contribution to the increased harm faced by sex workers was grossly disproportionate to the state’s objective of reducing nuisance. However, the majority of the Court of Appeal did not agree with the Superior Court’s conclusion that the street offence of communicating also violated these principles of fundamental justice.

With all due respect, the filmmakers surely could grasp and articulate some of these propositions so as to make the challenge come alive and have some meaning. This is not legalistically complex. While there are many interesting nuances about the evidence and the evolution of this challenge from the 1989 *Morgentaler* abortion challenge and other challenges, I had no expectation that the filmmakers were going to present a sophisticated legal analysis of this significant case. However, it is simply disrespectful to the courts, to the dozens of witnesses involved in this case and to the numerous sex workers whose voices were silenced in this film to simply gloss over the case and provide no substantive details so that the viewer can understand that this was an important moment in constitutional history and not simply some vacuous show being performed on a whimsical basis by Valerie Scott and myself.

It is clear that it was important for the filmmakers to construct the challenge as an empty and disingenuous legal maneuver conceived of by supporters of an unknown sex industry. This needed to be done for dramatic effect and because the filmmakers decided to cast the challenge as the response or counterweight to the claims of abolitionists. There was no serious intent from the outset to accurately portray the challenge; rather, the intent was to advance the political views of the filmmakers. It was a mistake by the filmmakers to believe that the constitutional challenge was in any way a direct response to claims being made by Trisha Baptie and other abolitionists. Our case was about the invalidation of a set of laws that violate the *Canadian Charter of Rights and Freedoms* because the laws, by design or by accident, increase the risk of harm for those engaged in the lawful activity of selling sex. The case is about the irrationality of the current law and the focus of the case was on the concept of the rule of law, and not on the political debate over the moral virtue or vice of engaging in the sale of sex.

Invalidating a law on the basis that it is irrational and arbitrary is an attack on the method chosen by Parliament to achieve its state objectives but it does not challenge Parliament’s right to outlaw prostitution if it wished to do so. In other words, constitutional invalidation is not a

political claim for decriminalization or legalization. It is simply a method of removing an irrational and harmful law so that our lawmakers can go back to the drawing board and come up with a new law – a law that may be more punitive or more liberal, but one that is not irrational and harmful to those engaged in legal activity. For this reason I advised the filmmakers during my interview that: *“I’m not making law, Parliament makes law. I’m asking a court to invalidate bad laws. I have no obligation, and I shouldn’t, to recommend the alternative. It should come from our lawmakers taking input from stakeholders. So people ask me, you know, ‘am I decriminalizing, am I legalizing?’ - I don’t know.”*⁵¹

Our case did not directly or indirectly engage the issues raised by the abolitionists. In a nutshell, the abolitionist position is captured by the assertion of the Coalition Against the Trafficking of Women (CATW) that “all prostitution is exploitation, regardless of consent.”⁵² Of course, this viewpoint is more sophisticated than the slogan, but suffice it to say, the abolitionists are committed to the abolition or eradication of the profession, and not to the concept of making a legal profession safer to conduct. Comparing our position with the abolitionist position is like comparing apples to oranges. Our case turns on the current operation of the law and the limited state objectives which underlie the current law, whereas the abolitionist claim speaks to the need for a new law based upon newly-designed and formulated state objectives. A constitutional challenge relates to current laws, whereas political ambitions relate to future laws.

While in the Court of Appeal I did briefly address the abolitionist claims because they had been raised for consideration by the interveners who figure prominently in the movie. I simply said (as I have said in many interviews) that the abolitionist claim is an interesting ideological or philosophical theory subscribed to by some scholars and activists, but it does not represent the current state of affairs and as such it is not relevant to the constitutional issues raised in this case. This does not speak to a dramatic conflict between the abolitionists and the case, and the filmmaker should know this. Despite hovering outside the Court of Appeal while the case was being heard, I suspect that the filmmakers were either absent from, or asleep during the actual hearing of the case. The disconnect between our case and the claims of abolitionists was apparent to everyone except the filmmakers and the abolitionists. The filmmakers were correct in believing that there is a polarized debate amongst feminists as to the correct political perspective to adopt on the issue of prostitution, but the constitutional challenge was not part of this polarized debate.

The irony of this false conflict is the failure of the filmmakers and the abolitionists to realize that from a strategic and political perspective they should have been supporting our challenge. A court of law cannot impose or create the Swedish model, but the invalidation of the current

⁵¹ Transcript of Interview, June 17, 2011 at 12:59:40.

⁵² Coalition Against Trafficking in Women (October 21, 2013), online: <<http://www.catwinternational.org/ProjectsCampaigns/Redefining>>.

laws would put this issue squarely on the legislative agenda. As things currently stand, the invalidation is the only real chance the abolitionists would have to lobby for the introduction of the Swedish model. Instead a choice was made to marginalize and trivialize the case and to fight against the very invalidation that could pave the way for the dreams of the abolitionists to be realized.

3) Shooting the Messenger and the Construction of a Villain

Most movies thrive on dramatic conflict and the construction of villains and heroes; however, this should not be a paramount consideration in the creation of a documentary designed to educate and foster debate. Yet this documentary is methodically edited and designed to cast myself (and perhaps all men with the exception of 'enlightened' Swedish men) in a villainous light. Once the filmmakers obscured and confused the message underlying the constitutional challenge, the decision to construct the messenger as a villain was designed to further drive the audience to the conclusion that decriminalization or legalization would be a veritable disaster for women. If the audience does not understand the true nature of the law and the constitutional challenge – as they could not have been given that these issues were not represented in the film – they are left with little to assess the merits of the debate other than by assessing the integrity of the messenger. At a very primitive level this documentary asks the audience to choose between an articulate and soft-spoken Swedish professor and a Canadian lawyer portrayed as self-serving, manipulative and smug.

I truly resent having to write this memorandum to defend my character and to demonstrate how the filmmakers knowingly cast aspersions on my motivations and my character. I do not wish to suggest that I am beyond reproach but the filmmakers were clearly on the prowl for snippets of dialogue from press conferences, interviews and media scrums which could be cobbled together to create a fictional representation of who I am and why I work on cases of this nature.

Let me begin by returning to Annette Clarke's admonition that: **"I think we have to be very strategic and firm. It is one thing to be sympathetic to men [Trisha's revelation] but not to johns, or to Alan Young, who are part of the continuum and systemic sexism and racism that includes Pickton"**. This idea of where to place sympathy permeates virtually every decision made by the filmmakers. Playing with sympathy explains why New Zealand is made to appear dark and dirty whereas Sweden is sunny and filled with baby carriages in parks. Playing with sympathy explains why the filmmakers decide to "tweak" the voices of all johns even those who did not wish to conceal their voices.⁵³ The sound effect can only be described as creepy. The filmmakers even discuss whether they should include interviews conducted with disabled johns for fear this may raise some sympathy for the buyers of sex.⁵⁴ Annette Clarke advises the

⁵³ Email, Annette Clarke to Teresa MacInnes, October 6, 2012.

⁵⁴ Email Michelle Van Beusekom to Annette Clarke, July 30, 2012.

director that she “feels pretty strongly that it is unfair to all the working women in the film to give the johns the last word in the credits”⁵⁵, and the other producer tells Annette: “Don’t like Alan saying ‘he’s trying to make things better’ [at the end of the film]...feels like we are trying to make him sympathetic”.⁵⁶

Of course, on the flip side, the filmmakers decide to “lose” footage of Trisha arguing with another woman at a conference as it “makes me less sympathetic to Trish...this film is not about women fighting”.⁵⁷ Of course, there is no objection to creating a false conflict between a male lawyer and an enlightened former sex worker as this advances both the dramatic content of the film and its underlying political objectives.

Once the film has been put together in the summer of 2012, there is a great deal of discussion among the filmmakers as to the construction of my role in the documentary as “villain”.⁵⁸ In fact, the director writes to Annette Clark that *“people are NOT liking Alan Young...he is a real villain, are we sure we want to do that?”*⁵⁹ It is important to note that the director is not reflecting upon whether I am a real villain but upon whether or not they want to construct me in this fashion. We already know Annette Clarke’s response about showing no sympathy to me in particular, but it should be noted that the other producer, Ravida Din, has a similar view. During this debate over my role she states: *“I would want to make sure this this is well understood. He has used Val and Terry for his own gains. What isn’t totally clear (to me) is why this case was important to him. I made the assumption that it’s for business, money, notoriety”*.⁶⁰

The idea that I was using Terri (a long-time friend) and Valerie (a strong and independent thinker) for some personal gain is preposterous and insulting to Terri, Valerie, and myself. The assumption that I brought this challenge for “business, money, notoriety” is equally preposterous. If the producers had questions about my motivations then they should have asked rather than relying upon assumptions. More significantly, if the filmmakers had conducted any research into my professional background they would have discovered that my motivations have always been transparent and public.

Most of my professional career has been devoted to challenging the criminalization of consensual, private activity. I have brought constitutional challenges over the past 20 years to numerous other consensual crimes, including gambling, obscenity, drug literature, drug paraphernalia, and possession of marijuana. Beyond these cases my academic scholarship, 4 years of bi-weekly editorials for the Toronto Star and Now Magazine and the publication of a

⁵⁵ Email, Annette Clarke to Teresa MacInnes, June 6, 2012.

⁵⁶ Email, Annette Clarke to Ravida Din, July 22, 2012.

⁵⁷ Email, Ravida Din to Annette Clarke, April 18, 2012.

⁵⁸ Email, Teresa MacInnes to Annette Clarke, July 30, 2012; Teresa MacInnes to Annette Clarke and Alexander Kelley, Nov 30, 2012.

⁵⁹ Email, Teresa MacInnes to Annette Clarke, July 30, 2012.

⁶⁰ Email, Ravida Din to Annette Clarke, June 24, 2012.

book in 2003 (*Justice Defiled: Perverts, Potheads, Serial Killers and Lawyers*) all provide a transparent and clear account of my pragmatic and principled reasons for challenging consensual crimes. The *Bedford* case is the first case in which anyone has questioned my motivations. When I challenged the gambling laws no one suggested I was a skill for organized crime, but unexplored assumptions by the filmmakers were conveniently relied upon in order to plant a the seed in the minds of the viewers that I have brought this challenge because I must be a skill for the sex industry.

Another producer at the NFB, Michelle Van Beusekom, provided Annette Clarke with her analysis of this film. She wrote:

I really appreciate the subtlety of the arc. When we're first introduced to the court case we see Alan et al using the missing women as the rationale for the new legislation. But by the end we realize this law does nothing for street workers...its more about changing legislative frameworks to permit the commercialization of women's bodies via prostitution. We also come to see that this legislative change was pioneered by Alan Young, and to understand how his two key spokespeople were recruited as part of a marketing exercise. It's a very powerful (but not at all didactic critique)....Really powerful film. I think I'm becoming an abolitionist.⁶¹

Manfred Becker is very pleased by the analysis provided by Michelle Van Beusekom. He writes to Annette Clarke: "I had a talk with Michelle Van Beusekom today: *she r-e-a-l-l-y liked your film, and 'got it'...Alan's disguise, the media manipulation, the commodification of bodies....*⁶². At the same time Manfred seems pleased to note that it is "*very clear now how Alan deceived the public regarding streetworkers. Great!*"⁶³ I am not entirely clear what all this cloak and dagger deception and disguise is all about, but it is clear that the filmmakers reached the conclusion, based on unquestioned assumptions, that I did not genuinely care about the plight of sex workers and that my only real interest was, in Annette Clarke's words, to "*masturbate with the media*"⁶⁴.

It appears that this fictional account of my disguise and mysterious hidden agenda emerges from one improvident statement I made in the course of a 90 minute interview with the filmmakers. Near the end of the interview I make a statement about how I proceeded to put together this case. I must note that in the DVD provided of the full interview, it is clear that something has been edited out prior to my making this statement. I am concerned that this statement has been taken out of context. Nonetheless, I state: "*Here's the secret, though, I*

⁶¹ Email, Michelle Van Beusekom to Annette Clarke, July 30, 2012.

⁶² Email, Manfred Becker to Annette Clarke and Teresa MacInnes, August 3, 2012.

⁶³ Email, Manfred Becker to Teresa MacInnes and Annette Clarke, July 23, 2012.

⁶⁴ Email, Annette Clarke to Teresa MacInnes, June 8, 2012.

wanna tell you. People don't come to me to do the case. I go to them. I come up with the issue, I come up with the argument, and then I find the right people for the case.”⁶⁵

Interestingly, the producer, Ravidia Din's initial response to this quotation is somewhat quizzical: *“Alan discussed his strategy and his secret (people don't come to me, I go to them) – this is interesting but I wonder what the intention is. Are we trying to point out his own personal motivations for taking the case. Does it have nothing to do with women (prostitutes) who want change? What are Val and Terry Jean's motivations for working with Alan. They are just serving his purpose? It's unclear to me. They are totally serving his purpose, just like they are serving other men...and with the right placement later, this should work, I think”.*⁶⁶ However, one month later she now sees the quotation as being of fundamental importance to the movie: *“Alan – scene when he is preparing for his case and reveals that he goes to people...i.e. he constructs the challenge. This is such a critical moment.”⁶⁷*

I acknowledge that the use of the word “secret” evokes mystery and intrigue and I regret using this word when I clearly intended to speak to my strategy and not anything of a secretive nature. However, it is inconceivable that the filmmakers could reach the conclusion that I was using the applicants for some secret purpose from a statement, which admittedly may be arrogant, but does not reveal some master plan of a diabolical nature. Of course, the filmmakers build on this “secret” by carefully selecting random and short quotations from a lengthy interview whenever I speak of “my” case or “my” people. They condense and shuffle the sequence of events captured over an hour in my home, when the Court of Appeal decision is being received by my students, Terri-Jean, and I, to create the impression of a tense atmosphere in which I exercise a loud and dominating role and tell Terri what she needs to say to the media. The highly condensed version of reality bears no relationship to the hour long footage I reviewed. There is some nervous anticipation for receipt of the judgment but the atmosphere of the event is quite relaxed, friendly and upbeat. All in all, when one reviews the selection of quotations from interviews, press conferences and media scrums it becomes clear that the selection was designed to reinforce Annette Clarke's idea that I am “part of the continuum and systemic sexism and racism that includes Pickton”.

Putting aside the poor choice of the word “secret”, it is clear from both the entire interview, and my past history with constitutional challenges, that the statement that I pick the argument and the applicants is a reflection of the legal strategy employed in all of my constitutional challenges. The consensual crimes I challenge are all minor offences and when I have brought constitutional challenges to these offences, as part of defending an accused on a criminal charge, the Crown often will withdraw the charge instead of taking the risk that the offence may be invalidated if the case proceeds. Accordingly, I now take the approach of waiting for the right

⁶⁵ Transcript of Interview, June 17, 2011, 13:20:59

⁶⁶ Email, Ravidia Din to Annette Clarke, April 18, 2012.

⁶⁷ Email, Ravidia Din to Annette Clarke, June 27, 2012.

time to bring a challenge, i.e. when the legal and political climate would be receptive to the claim, and I then find applicants who support the challenge to initiate civil proceedings to declare the offence invalid.

Although my interview did not focus on this history, I do believe that the transcripts of the interview (and my scholarship and book) demonstrate that the filmmakers would have been sufficiently aware of this strategy and it is willfully blind for them to have constructed sinister implications to surround what is nothing more than the exercise of sound litigation strategies. In my interview I briefly spoke of the consensual crime litigation strategy as follows:

My bigger issue was pot because I smoke marijuana so it became personal. But I challenged gambling, I hate gambling, I never gamble. I challenged pornography, I don't have a problem with pornography. This one [Bedford] was sort of sitting the background because of the 1990 decision [upholding the prostitution laws]. I knew I couldn't do anything about it so I didn't really think as much about it. But I think I already decided early on in my career I eventually would return to it...It was just one of those issues sitting on the back burner as a consensual crime that I would return to when I was far enough away from 1990. And then literally in 2002, when they started digging up the bodies and they caught the Green River Killer, I knew I was ready. In the same way I launched the marijuana challenge when Lisa Simpson started making jokes about Otto smoking pot on the Simpsons. I needed something in popular culture to kick start me back into the issue and so that's what happened.⁶⁸

Further, it is simply wrong for the filmmakers to portray the challenge as an exercise in media manipulation when I expressly told them in the interview that this recent challenge had little to do with arguing a case in the media. I said:

I have been working on the challenge to consensual crimes since 1989 and most of the challenges, whether it was to gambling law, whether it was to marijuana possession, were done with the knowledge that I was going to lose because it was maverick-type litigation. But by manipulating the media, which is the wrong word, I guess recruiting is a better word than manipulating, we were able to get an issue into the public agenda. So for example, marijuana, we still have the laws but since I did the challenge in '97, I mean you can't go by a month without seeing some pot story and some call for change. So when I entered this one it was pretty much in the same framework that I thought 'ok, let me just expose the issue and get people talking again'. The more I worked on the case, the more research I did, I started to feel that maybe it wasn't just a case about public relations and optics but is actually a winnable constitutional challenge. And then

⁶⁸ Transcript of Interview, June 17, 2011, 13:09:049; 13:11:32.

*when I saw how the government responded I even had more confidence because they didn't seem to be responding to our claim, they seemed to be trying to create an impression that prostitution liberalized in any way is simply going to destroy the fabric of Canadian society. Their position was so ill developed, and not nuanced, and hysterical that as time went on I believed we'd win. I felt good about the application itself.*⁶⁹

In the very portion of the interview in which I reveal the “secret” I then speak to the filmmakers about the reasons for asking Bedford, Scott and Lebovitch to serve as applicants for this challenge. In the following excerpt I have put in bold the words, lines and phrases deleted from the movie as this demonstrates how carefully the filmmakers edited the interviews trivialize the applicants and to reinforce the idea that they were mere pawns with no real interest in the issue other than being sound-bite spokespersons who can entertain media but not actually educate others with insight gained from past experience. There is simply no excuse for this type of unethical editing:

Initially it was Terri-Jean **because I knew Terri, I maintained a friendship with her since I did her trial in the late 90's.** She's a very nice person, a very quirky, nice person. **And so I wanted to do the case with her because** her life story demonstrated my case **which is you know, the pimping, the drug addiction, the horrors of the street and suddenly she goes indoors as a dominatrix with a receptionist, her boyfriend is security and it's the most empowered good time of her life, till she's raided. So her story was good.**

And then I remember reading about Val. Because Val was an advocate **and had actually appeared in the House of Commons during the communication hearings.** And I met with her at the University of Toronto. I thought she was a very good spokesperson on this issue, like, she really knew what to say, the right things to say and not histrionic and she so much wanted to be part of it **because her legacy is law reform. So that was fine. So now I had my two plaintiffs.**⁷⁰

The removal of five words “because her legacy is law reform” is nothing more than a deliberate move to maintain the false image of a sound-bite spokesperson with no serious history of involvement with the political issues. And, of course, Terri is relegated to the “quirky” crowd once the filmmakers omit the significance of her involvement. And, the pattern of trivialization and dismissal continues for the third applicant, Amy Lebovitch. After a brief discussion of the concept of legal standing and the potential need to find an applicant who is currently working, I go on to say (edited portions in bold):

⁶⁹ Transcript of Interview, June 17, 2011, 12:13:34.

⁷⁰ Transcript of Interview, 13:20:59

So I said, 'Val, find me someone currently working **who can stand up for herself and talk about what she does**'. And that's how Amy came on-board. **And Amy's story is very important for the case because she doesn't want to work on the streets. She has her own home and she has serious concerns about forfeiture because bawdyhouse is more significant. I mean, communication is about as minor an offense as you can get. So think of what the government said, any movement indoors is not just a crime, it's a much more serious crime.**⁷¹

Finally, the heavily selected editing throughout the film is also designed to create an urgent conflict between the compelling stories of abolitionist and a male lawyer who is not moved by these narratives. As Ravida Din notes: *"there is a sense of urgency that really needs to be heightened as we move through the stories....For example, when Trish says "I worked with Pickton's victims..." and Alan comes back with "don't use your own experience"...these are important because Alan is negating women's experience...and by this time I feel he is using women anyway"*.⁷²

When Ravida Din refers to my statement "don't use your own experience" I was not negating anyone's experience and this was not what was actually said. In the movie the filmmakers chose this quotation from a media scrum *"I say to these people, I'm sorry for what happened to you, but don't extrapolate from your experience into public policy – there's a huge gap between these things"*.

I was not provided with the transcripts of media scrums but I did locate an article written by a reporter from the Canadian Press who was present at the scrum. The article states:

*Young, who spoke outside court as Nagy and Baptie stood behind him shaking their heads said there is no doubt many women have had horrific experiences in the sex trade and agreed that Parliament needs to address the social problems. "I say to these people, I'm sorry for what happened to you, but don't extrapolate from your experience into public policy." Young said. "What this means is the people who can take care of themselves will have the option to take care of themselves. The people who can't, the state needs to take care of them".*⁷³

As can be seen the tone and editing of the newspaper coverage is different than Ravida Din's short clip used to suggest the negation of women's experiences. The filmmakers carefully and tightly edited many of my statements to create the impression that I am smugly dismissive of the serious claims made by the abolitionists. I should also mention that I had never met Trisha Baptie and was not aware that she was one of the protestors outside the Court of Appeal and

⁷¹ *Ibid.*

⁷² Email, Ravida Din to Annette Clarke, April 18, 2012.

⁷³ "Judges Now Deciding Constitutionality of Prostitution Laws". Canadian Press, June 17, 2011.

that she was standing behind me when I was speaking with the media. I suspect that the filmmakers were hoping for some sort of confrontation between Trisha and I to support the false conflict that drives the movie. Fortunately this did not happen, and it would never have happened, as I would never deny the experience of those who have suffered while working in the sex trade. However, I do believe that one must get beyond anecdotal evidence when one is developing public policy with a view to enacting a new legal regime. It is important to determine the prevalence and frequency of bad occurrences, and the causal factors leading to this documented prevalence, before one enacts a legal response to a social problem. This may be a pedantic statement but it has nothing to do with negating the experience of women.

4) Conclusion

Again I apologize for the length of this letter, but truth be told, there are many more examples I could have provided of misrepresentation and manipulation of message and image by the filmmakers. However, I hope I have provided you with sufficient evidence to convince you that something should be done about the lack of integrity demonstrated by the filmmakers in their use of public funds to advance support for a political objective.

I do not wish to repeat myself but I do wish to emphasize that my complaints and concerns extend far beyond my sense of violation and disgust in having been recruited to participate in a film designed to denigrate my many years of hard, unpaid work on developing this challenge. I write this letter because I do think it is shameful that public funding earmarked for the production of movies designed to "represent Canada" could end up being used for a movie which trivializes the *Canadian Charter of Rights and Freedoms*, misrepresents the state of Canadian law while over-representing the value of the law of a foreign jurisdiction, and silences the voices of many women in Canada who believe that safety is more important than ideology.

Yours truly,



Alan Young

Encl.

To: r.din@nfb.ca
From: Alan Young/osgoode
Date: 05/03/2013 10:27AM
Cc: t.perlmutter@nfb.ca
Subject: Re: Buying Sex - Documentary

(See attached file: Buying Sex.Final.Letter.doc)

Ravida

Attached is a copy of a letter I sent to Teresa MacInnes with respect to her documentary, *Buying Sex*. As is apparent from the letter, I am very upset by the lack of balance and objectivity in this documentary, and in agreeing to participate in this documentary Teresa misrepresented her goals and objectives in making this film. I should have checked her background and I would have discovered her true objective, but I felt comfortable proceeding without my usual checking of background because she indicated that the film was being made for the NFB. I felt comfortable proceeding as I assumed that the NFB would not sponsor a polemic or a one-sided presentation of an issue. I have participated in over 10 documentaries in my career and this is the first time I have been manipulated and deceived by the filmmaker.

The attached letter was written on April 30, 2013 after viewing a copy of the movie. The letter represents my first impression of the problems with the film and I would be happy, if you are interested, in meeting with you to show you the other examples of distortion and manipulation by clever editing. I was advised by Teresa that the documentary would explain the nature of the court case and constitutional challenge brought on behalf of sex workers, but this was clearly not the purpose behind the making of this film. Of course, I was aware that Teresa would rightfully spend time in her documentary showing the other side of the story, but in her zeal to get to the other side (or at least what she believes is the other side) she completely trivialized and marginalized our case. I ask you this one simply question: after watching the film does the viewer have any sense of the nature of the constitutional challenge? In fact, I don't think the viewer would even know the which Charter rights have been violated. The terms "security of the person" and "principles of fundamental justice" never emerge from the discussion and the filmmaker simply has my clients and I speak to our claim that the law is harming sex workers but the basis of this claim is never explored in any meaningful way. Not only did she trivialize our claim but her presentation is disrespectful to the courts. Both levels of court issued lengthy reasons (over 200 pages) yet she presents the decisions as if they were arbitrary decrees. It is inexcusable to have treated this important case in such a cavalier and dismissive manner when the filmmaker had access to all of our 24 witnesses. If she did not want to interview our witnesses then she should have at least provided some details about the court decisions so that the viewer could understand and assess what has happened in this court case. I suspect that the filmmaker did not even read the two judgments.

I am still considering my options on how to proceed with this matter but I would like to raise a few points or questions with you before making a decision on how to proceed. First,

would you consider adding a brief disclaimer to the film to the effect that the Applicant and lawyers who brought this case to court do not believe that the film accurately depicts the nature of this successful constitutional challenge and that the viewers are directed to read the court decisions themselves. Second, would you be willing to disclose Teresa's sources of external funding? Third, I would like to receive from you copies of any waivers/consents signed by Val Scott as I do not have a copy and I do not recollect signing one (though I suspect that I did).

I am sorry to trouble you about this and I am not writing this letter because I am unhappy with the filmmaker's treatment or depiction of me in a negative and arrogant light. I have a thick skin and realize that a negative portrayal is a risk one takes when agreeing to participate. However, I allowed Teresa and her team into my home on two occasions and conducted extensive interviews about the nature and function of our case yet she only uses highly-edited portions of these interviews to attempt to make Val Scott and I look uninformed and in pursuit of fame and glory. Putting aside that I worked on this case for over a decade and did all my work on a pro bono basis (with lost billings of over \$500,000), I do not know why the filmmaker felt the need to make us look opportunistic and insincere in her attempt to present both sides of the story. The film should not be about me but about the case and no serious effort was made to focus on the latter but a great deal of energy was spent focusing on the former.

There are a lot of people upset by this manipulative and one-sided documentary and I will not allow all our hard work, dedication and compassion to be erased from this unfortunate record of the case. I hope you will address this problem and I hope you can provide the signed waivers/consents as soon as possible so that I do not need to engage the services of counsel to secure these forms.

Thank you and again I am sorry that I need to drag you in to this conflict but I believe that the NFB should be concerned when there is clear evidence that a filmmaker has used the reputation of the NFB to create a false impression that she has completed a balanced documentary which adequately and accurately portrays two sides to a divisive debate.

Alan Young

ALAN N. YOUNG

*Barrister and Solicitor
Associate Professor of Law
Director of the Innocence Project*

April 30, 2013

Teresa MacInnes
Sea to Sea Productions Ltd.
477 Island View Drive
Boutilier's Point, NS B3Z 1R3

Re: National Film Board – Buying Sex

Dear Teresa

I am writing to explain my reasons for not attending the premiere of your documentary on Wednesday. I have always felt it is wrong to rain on someone's parade, and, after watching the film last night, I would not be able to attend this viewing without feeling a compelling need to speak out against the lack of balance and objectivity in your representation of the nature of the constitutional challenge we have brought before the courts. In light of my perspective on your documentary I felt it is best not to attend the premiere but I also thought it is important to convey to you my reasons for taking exception to the way in which you have portrayed the court case. I do believe you have completed an interesting and provocative documentary on the sex trade; however, your attempt to cast the constitutional challenge as a political move to achieve decriminalization or legalization of prostitution demonstrates a fundamental misunderstanding of the nature and purpose of this case.

We spent a fair amount of time together in interviews discussing this challenge and I know it was clear to you that we brought this challenge not to advance the commercialization and industrialization of the sex trade, but rather to address an irrational component of the current legal regime which was contributing to an unsafe working environment for sex workers. The challenge concerned the law's complicity in prohibiting rudimentary safety measures which could protect sex workers from predators and pimps. The successful invalidation of the law in our case was not designed to be a solution to a complex social issue, nor was it part of a corporate plan to commercialize the sex trade. It was designed to invalidate bad laws which were hurting people, and then it would be up to our lawmakers to enact a new set of laws, hopefully ones which would be more coherent, rational and effective.

Although you do try to accurately portray or convey the nature of our constitutional claim in the first 4 minutes of your film, the remainder of the film distorts and shortchanges our work by isolating and marginalizing our position. There were compelling factual and legal arguments advanced in this challenge to prove that the current law endangers sex workers yet the film makes it appear as if the only support for the argument comes from Val, Terry and I. Serious legal issues concerning a tragic situation have been raised in this case yet your coverage of the claim is limited to tightly edited sound bites you took from interviews with Val and I or from media scrums at court. There are very few occasions when Val or I are allowed to elaborate despite the fact that you allow other interviewees ample time to develop their thoughts.

More significantly, we had over 25 witnesses, both experiential and expert, with a wealth of knowledge and experience, and you did not interview even one person for this film. We had the support of numerous intervener groups in court, yet in the film you only speak with the one intervener group who took the position that all sex work is exploitive. We also had eight Canadian scholars present expert evidence about the impact of the current law on the security and safety of sex work, yet you did not interview one nor report on the findings in their studies (although you do take a great deal of time allowing an articulate Swedish professor to explain the basis for the Swedish model). Finally, although Val has been the spokesperson for one sex worker association for many years, there are numerous other sex worker associations in this country and their voices have been completely silenced in this film.

When you travel to New Zealand you do not interview anyone from the Prostitutes' Collective (the sex worker association primarily responsible for the law reform efforts in that country), or any of the social scientists who have studied the impact of the country's law reform initiative. Beyond the highly selective nature of the interviews you do present, the lack of objectivity is also clearly demonstrated by the visual representations of the two countries. New Zealand is made to appear dark, murky and inhabited by exploitive men looking to make some quick money in the new legal regime; whereas, Sweden looks postcard perfect as you show people picnicking in parks on sunny days. The people you interview in New Zealand are crass and opportunistic; whereas everyone you find in Sweden is enlightened and principled.

Not only did you not attempt to represent the evidence and arguments presented in the case, the manner in which you cover the successful court cases is dismissive and uninformative. The courts did not just issue an arbitrary decree but both levels of court issued very lengthy and detailed reasons, yet there is never any mention or discussion of these reasons to allow the viewer to assess whether they should agree or disagree with

the decision. When you cover public reaction to the court cases you only hear the voices of those who believe that all sex work is exploitation and must be eradicated and through these voices you create the impression that this court decision was primarily about paving the way for brothels and business. It is implied that this was the motivation and objective behind the challenge, yet you know from our discussions that invalidation of bawdy house law has more to do with paving the way for Grandmas' house and other barrier-free housing units designed to provide street sex workers with a safe haven to conduct their legal business. I am sorry to say, you have completely failed to capture in any meaningful way the constitutional challenge, the wide-ranging support for the result and the motivations leading to the challenge.

In the end the viewer of this movie will fully understand the claims being made about the dangers or evils of sex work, but will have no understanding of the dangers or evils of the current law. To create dramatic conflict you used our court case as the counterweight to the abolitionists' claims but you completely erase from the equation any discussion of what the case is really about. Though you purport to be educating your viewers by presenting a balanced perspective, the end product is more in the nature of a subtle indoctrination.

On a more personal note, I found your highly selective editing of my interviews created the impression that I have acted as a puppet- master advancing a high profile constitutional case for personal or professional gain. In fact, your selective editing and representation has led one reviewer of your documentary to mistakenly conclude: "It is fascinating to learn that Bedford, Scott and Lebovitch are offering their time to Young for no pay, rather than the other way around" (Point of View, April 23, 2013 - <http://povmagazine.com/articles/view/hot-docs-2013-buying-sex>)

It is not surprising that the reviewer would come away from your documentary with this mistaken impression as you never mention (as you well know) that I am a law professor who had been researching these issues for over a decade before deciding to take on this challenge on a pro bono basis. The case was completed with the volunteer assistance of more than two dozen law students over a six year period. Everyone worked for free not for personal gain but simply because we all believed that the current legal regime was causing more harm than good.

I did enjoy meeting you and working on your film, but you should be more transparent when you ask someone to participate in your project, and you really should try harder to adequately present a side of a story you clearly do not agree with or understand.

If you feel so inclined it would be appreciated if you would read these comments to the audience after the movie during the Q + A period in lieu of my attendance. I understand if you choose not to do so, especially in light of my decision not to rain on your parade, but this would be the right thing to do.

Yours truly

Alan Young