The Tipping Point

Tackling the Demand for Prostituted/Trafficked Women and Youth

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1st Report
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INTRODUCTION

On December 20, 2013, the Supreme Court of Canada ruled that the Criminal Code offences around prostitution were unconstitutional. This ruling has left police without important legal tools to tackle sex trafficking and organized crime with pimps and traffickers eyeing Canada as open for legal exploitation as of December 20, 2014.

Despite this ruling, the debate around prostitution is hardly settled. There are those who wish to legalize and normalize the industry, those who wish to criminalize all aspects of the industry, and finally those, like myself, who recognize prostitution as a crime that is inherently harmful to women and girls and therefore must be eliminated.

Prostitution must not be legalized because it dehumanizes and degrades individuals and reduces them to a commodity to be bought and sold. Legalizing prostitution is a direct attack on the fundamental rights and freedoms of women, girls, and vulnerable individuals. In the same regard, continuing to criminalize the women and vulnerable populations being prostituted creates barriers that prevent them from escaping prostitution and entrenches inequality.

The most effective route to tackling prostitution and sex trafficking is to address the demand for commercial sex by targeting the buyers of sex. Countries that have legalized and regulated prostitution have seen sexual exploitation, human trafficking and violence towards primarily women and girls increase drastically.

In contrast, countries like Sweden and Norway have focused on criminalizing and targeting the predators (pimps and johns) that prey on women and youth. This approach, known as the Nordic model of prostitution, has seen a significant decrease in prostitution and sex trafficking.

As a nation, we must ensure pimps and predators remain strongly sanctioned and prostituted women and girls are not criminalized. Instead, prostituted individuals must be given meaningful escape routes out of prostitution. Most importantly, Canada must focus on the real root cause of prostitution by targeting the buyers of sex.
PROSTITUTION IN CANADA

Before redrafting our prostitution laws, we must take into consideration previous and current prostitution laws. How did they evolve? What were the goals? Were they effective? Canada’s laws were developed with a profound lack of understanding of the violence inherent in prostitution and the significant inequalities placed on women, despite the availability of this information.

Prostitution as a Nuisance

The historical approach to prostitution in Canada never carried the goal of eliminating prostitution but rather only to hide it from public view. Consequently, legislators have developed laws to address adult prostitution that have weighed heavily on criminalizing activities around prostitution, instead of the act itself. Beginning with the 1892 vagrancy and bawdy house laws, followed by the 1972 solicitation law and finally the 1985 communication laws, the focus has been to discourage prostitution from becoming a nuisance to the general public.

For example the current offence under s. 213 which specifies that the offence applies to anyone in a ‘public place or in any place open to public view’ indicating an ‘out of sight – out of mind’ approach. As noted by a Justice Canada lawyer during testimony on the Subcommittee on Solicitation Laws in 2005, the intent of s. 213 was to ‘address the nuisance problem; it wasn’t to address the overall prostitution problem.’

This view was most recently expressed in the ruling handed down by the Supreme Court of Canada (SCC) on December 20, 2013. The SCC found that ‘the purpose of the communicating provision is not to eliminate street prostitution for its own sake, but to take prostitution “off the streets and out of public view” in order to prevent the nuisances that street prostitution can cause.’

It is also important to consider that s. 213 is, by far, the most commonly used law out of all the offences involving prostitution. For example, in 1995 a comprehensive report on street prostitution found that 92% of all prostitution offences reported by police were for the communication offence, followed by procuring (5%) and bawdy house (3%). Certainly, if Parliament’s goal had always been to eliminate prostitution or strongly suppress prostitution due to the harm it causes, there would not be such disparity between the communication offence and the other offences that better address the exploitive nature of prostitution.

The focus on the nuisance of the crime has also been found to exist in the bawdy house offence. In its 2013 ruling, the SCC also found that, based on the legislative record, the object of the bawdy house offence (s. 210) was not to suppress prostitution but rather ‘prevent community harms in the nature of nuisance.’ This again reinforces the argument that the goal of prostitution offences have never been aimed at eliminating the harm and inequality prostitution causes to the vulnerable individuals but rather its general nuisance to society.
Canada’s prostitution laws have also been unbalanced in application to women who have been charged with a prostitution offence. While johns are not exclusively male and prostitutes are not solely female, the 2006 Subcommittee on Solicitation Laws found that 75%-80% of individuals involved in the selling of sex prostitution are female. When examining the rates of convictions on prostitution offences between 2007 and 2012, a stark imbalance emerges.

For example, in 2007, 1,790 men and 1,536 women were charged with prostitution offences, a fairly balanced application of charges. However, only 389 men (22%) were convicted versus 926 women (60%).

Over a five year period (2007-2012), this rate remains almost unchanged: men charged with prostitution offences were convicted 19% of the time and women charged with prostitution offences were convicted 60% of the time. 5

This imbalance also applies to the sentencing upon conviction of prostitution offences. Over the same five year period (2007-2012), women received harsher sentences: 30% of women received time in prison versus only 19% of men. Keep in mind that these statistics are mostly for convictions under the s. 213, the communication offence, for street prostitution, where the women being charged are often vulnerable and exploited.
HARMS OF PROSTITUTION

Exploitation and Violence

Prostitution is not the world’s oldest profession; it is the world oldest form of oppression. Prostitution exploits women, youth and vulnerable populations. It escalates gender inequalities by turning women’s bodies into a commodity to be bought, sold, rented and exploited by men. In short, prostitution provides an avenue for abuse and violence. Research of prostitution in Canada and abroad reveals that women in prostitution, whether by coercion or by choice, experience alarming levels of violence and abuse.

In a nine country study that included interviews with 854 individuals who had been or were presently in prostitution, clinical psychologist and researcher Melissa Farley found that ‘violence is the norm for women in prostitution…sexual harassment, verbal abuse, stalking, rape, battering and torture are the points on a continuum of violence, all of which occur regularly in prostitution.’

In Canada, Farley’s participants were from Vancouver’s Downtown Eastside, a total of 100 women of whom Aboriginal women represented 52%. The result of her research paints a stark picture of the violence that is prevalent in prostitution, right here in Canada as seen below:

<table>
<thead>
<tr>
<th>Out of 100 Canadian women in prostitution</th>
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<tr>
<td>Threatened with a weapon in prostitution</td>
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<tr>
<td>Physically assaulted in prostitution</td>
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<tr>
<td>Raped in prostitution</td>
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<tr>
<td>Raped more than 5 times (of those raped)</td>
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<td>Attempts made to get them to act based on action from pornography</td>
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<td>Pornography made of them in prostitution</td>
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<td>PTSD diagnosis</td>
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During the act of prostitution, 75% of Canadian women were physically assaulted including ‘stabbings and beatings, concussions, broken bones (broken jaws, ribs, collar bones, fingers, spines, skulls).’ Further, 50% of women experienced serious head injuries due to assaults with ‘baseball bats, crowbars or from having their heads slammed against walls or against car dashboards.’

Links Between Prostitution and Sex Trafficking

The United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), ratified by Canada in 2005, recognizes that the majority of victims of trafficking, women and children, are trafficked into prostitution. The UN’s 2012 Global Report on Trafficking in Persons provides the most recent estimate that 64% of human trafficking is for the purposes of sexual exploitation.
Earlier UN conventions also did not separate prostitution from human trafficking, such as the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in which Article 6 says ‘States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.’

One of the clearest links between prostitution and human trafficking is found in a recent empirical analysis of human trafficking trends in over 150 countries. Researchers at the University of Goettingen’s Department of Economics found that legalizing prostitution, on average, ‘increases human trafficking’ inflows.\(^1\)

*Johns Recognize Harm to Sellers of Sex*

It is important to also recognize that even the buyers of sex recognize the harm, physical and psychological, to prostitutes.

In the Canadian study, *Buyer Beware: A Study into the demand side of the sexual exploitation industry*, researcher Dr. Susan McIntyre conducted in-depth interviews with 20 men who had bought sex. Two important findings stand out:

- When asked who is most harmed by the act of prostitution, 40% of the men felt the prostitute was most harmed and another 50% felt client and the prostituted were harmed. In essence, 90% of those interviewed recognized that the prostitute was harmed by the act of prostitution.
- When asked what they would say to someone they knew who was considering purchasing sex, 100% of those interviewed said they would warn against it due to the harm it caused.\(^2\)

Another study conducted in Boston compared 101 men who bought sex with 100 men who had not bought sex. Again, sex buyers acknowledged an acute awareness of the harm their activities caused and that some of their victims were likely enslaved. In fact, 66% of the sex buyers ‘observed that a majority of women are lured, tricked, or trafficked into prostitution’\(^3\) and made comments such as:

- “She didn’t want to do it, she didn’t know what she was doing...she was young, she was naive. You KNOW she didn’t want to be doing what she was doing.”
- “All of them are exploited. However, they also have good incomes.”
- “The fact that there was a man in a car waiting for her and that she had to give him the money first before we did anything...I gave her more money at the end and told her not to tell him. She spoke very little English, that she didn’t want to be doing what she was doing...and that is why I would have cancelled it, but for my urges and that I thought she would get abused by the guy in the car when she arrived, she definitely didn’t want to be there...but when she left, she was happier and I think I may have touched her soul just a little bit.”\(^4\)
A NEW APPROACH

Canada’s historical approach towards prostitution has focused on the nuisances it causes to communities at large instead of the significant violence prostitution inflicts on women and communities.

This must change.

Canada is at a tipping point. We can attempt to maintain the status quo and draft laws that continue to criminalize the buyers and sellers of sex or we can legalize and regulate prostitution. Both of these approaches ignore the significant harm and inequality that prostitution causes to youth, women, and vulnerable populations and normalizes the buying of sex.

Instead, Canada must take a new approach to prostitution that clearly reflects the goal of eliminating prostitution and sexual exploitation.

Prostitution is a Form of Violence

First, Canada’s approach must recognize that prostitution is not just violent, but itself is a form of violence. This is a position that has been adopted across political lines in Canada. The 2006 Report of the Standing Committee on Status of Women, *Turning Outrage into Action*, of which I was Vice Chair, adopted this position:

> Like the majority of witnesses appearing before us, we came to the conclusion that prostitution is closely linked to trafficking in persons. **We believe that prostitution is a form of violence and a violation of human rights.** The Committee feels that the prostitute’s consent is irrelevant, because you can never consent to sexual exploitation.15

This position is also held by many women’s advocacy groups across Canada such as the Women’s Coalition which represents national and provincial groups from across Canada including: Canadian Association of Sexual Assault Centres, Native Women’s Association of Canada, Canadian Association of Elizabeth Fry Societies, Regroupement québécois des centres d’aide et de lutte contre les agressions à caractère sexuel (CALACS) and Vancouver Rape Relief Society. In a Factum submitted to the Supreme Court of Canada in June of 2013, the Women’s Coalition argued that ‘the buying and selling of women’s bodies in prostitution is a global practice of sexual exploitation and male violence against women that normalizes the subordination of women in a sexualized form.’16

Legalization Won’t End Violence

Secondly, Canada’s approach must recognize that decriminalization or legalization/regulation will not end the violence in prostitution. If prostitution itself is a form of violence, then legalizing prostitution will only serve to legitimize violence.
A review of countries which have legalized or decriminalized prostitution over the past two decades exposes an increase in violence in every case. (For a country by country review of the impact of legalization/decriminalization see Appendix A)

- In the Netherlands, where prostitution has been legal for decades, ‘60% of prostituted women suffered physical assaults, 70% experienced verbal threats of physical assaults, 40% experienced sexual violence and 40% had been forced into prostitution or sexual abuse by acquaintances.’ 17
- In New South Wales (Australia), 85% of prostituted women experienced extreme violence including physical assault at 65%, rape with a weapon at 40%, and rape without a weapon at 33%, with over half reporting severe depression, and three quarters confirming they had considered suicide.18

Research published in 2004 by Melissa Farley in the journal Violence Against Women found that legalization in New Zealand and other countries had alarming results. Specifically:

- In nine countries studied, Post Traumatic Stress Disorder (PTSD) had a prevalence rate of 68% among those in prostitution.
- Health protection measures contained in the New Zealand legalization bill still do not protect prostitutes from violence and abuse.
- State-sponsored prostitution endangered all women and children in that acts of sexual predation were normalized—acts ranging from the seemingly banal (breast massage) to the lethal (snuff prostitution that includes filming of actual murders of real women and children).
- Nevada, where prostitution is legal in 13 districts, had much higher counts of sexual assault than the rest of the US in the 1990s. 19

Legislation Normalizes and Encourages Prostitution

In countries where prostitution has been legalized, such as the Netherlands, Germany and New Zealand, buying sex is considered acceptable, sex tourism has increased, and legal brothels are run by organized crime using trafficked women:

- A 2008 Dutch Police Report estimated 50-90% of women in the legal prostitution industry were “working involuntarily” meaning in Amsterdam alone the legal prostitution industry would “employ” 4000 sex trafficking victims annually.20
- In 2013 German’s leading online paper Der Spiegel stated: “Germany has become a centre for sexual abuse of young women from Eastern Europe, and a playground for organized criminals from all over the world.”21
- The National Council of Women in New Zealand stated: “The only winners from the Prostitution Reform Act 2003 are men.” It was further noted that they are “still seeing girls as young as 13 and 14 on the streets selling their bodies.”22
In fact, it is often the opportunity or availability of prostitution that plays an important role in the actions of men who buy sex. For example, in a Romanian study, sex buyers, traffickers, prostituted women and law enforcement all agreed that ‘ease of access was a key factor increasing men’s demand for prostitution, further noting that sex buyers “are not interested if the girls are actually trafficked or not but are rather more interested in satisfying their sexual needs.”

States that legalize prostitution make buying sex accessible and acceptable and in turn attract sex traffickers and organized crime to set up shop.

_Eliminating Prostitution must be the Goal of Legislation_

Finally, Canada should make the elimination of prostitution the goal of future legislation around prostitution. Sections 210 [bawdy house], 212(1)(j) [living off the avails] and 213(1)(c) [communication] were struck down by the Supreme Court of Canada because the effects of the laws were disproportionate to the objective of the state. The goal of these laws was primarily to address the nuisance of prostitution and as a result was found by the SCC to be unconstitutional as this goal was grossly disproportionate to the rights of an individual under section 7 of the Charter of Rights and Freedoms.

Forthcoming legislation should reflect a goal that recognizes prostitution as a form of violence and the significant harm it causes to those involved. It should recognize that the violence and exploitation inherent in prostitution directly violates an individual’s right to life, liberty and security of person. A law that makes Canada’s goal to eliminate prostitution in order to achieve these values would satisfy section 7 of the Charter of Rights and Freedoms. The only approach to prostitution that has made equality and freedom from violence and oppression its goal is the Nordic model.
THE NORDIC MODEL: TARGETING THE DEMAND

Canada must adopt the Nordic Model of prostitution and develop a strategy to target the buyers of sex by criminalizing the purchase of sexual services instead of prostituted women. The Nordic model, as first enacted in Sweden in 1999, has a three pronged approach:

- A national awareness campaign to educate the public that the purchase of sexual services is harmful to women and vulnerable populations.
- Support programs for those trying to exit prostitution.
- Explicitly criminalizing the purchase of sexual services.

As Parliament is tasked with developing new legislation around prostitution, the third component of this three pronged approach is especially relevant and has been proven to be effective where implemented, such as in Sweden.

Sweden’s Experience

Sweden is often looked to as the model for combatting sex trafficking and violence against women. In fact, its policies were so successful in reducing the numbers of prostituted women that other countries followed suit including Norway (2009), Iceland (2009), Israel (2012 draft bill received cabinet approval), and most recently, France (2013).

The goal of the legislation criminalizing the buyers of sex was expressed in the preamble of the law:

1. Prostitution is one of the many forms of violence that men subject women to
2. Prostitution is harmful for the person in prostitution as well as for the society
3. Prostitution is an expression of the unequal power balance between men and women, since women are turned into commodities that men can buy.

In 2004, Swedish lawyer Gunilla Eckberg documented the success of Sweden’s move to criminalize the buyers of sex and not the sellers of sex in the journal Violence Against Women, finding that:

- Between 1999 and 2004 the number of women involved in street prostitution dropped by 30-50%;
- The total number of women in prostitution dropped from 2500 in 1999 to 1500 in 2002;
- An estimated 400-600 women trafficked into Sweden annually compared to Finland where a 2003 report from the Finnish Criminal Intelligence Division of the National Bureau of Investigation estimated 10,000 to 15,000 women from Estonia, Russia, Latvia and Lithuania are prostituted in Finland every year; and
- The laws are supported by a large majority of the population.
Further, an independent inquiry was commissioned by the Swedish Government to evaluate the ban on the purchase of sexual services. The independent Inquiry on Evaluation of the Ban on Purchase of Sexual Services released its final report in July of 2010 and found that:

- The ban on the purchase of sexual services has had the intended effect and was an important instrument in preventing and combating prostitution and human trafficking for sexual purposes;
- Prostitution had not increased since the introduction of the ban;
- The ban on the purchase of sexual services had counteracted the establishment of organized crime in Sweden, thus contributing to combating prostitution and human trafficking for sexual purposes;
- The ban has proved to act as a deterrent to sex purchasers; and
- Prohibiting purchases of sexual services resulted in a normative effect whereby there has been a marked change in attitude to the purchase of sexual services that coincides with making it a criminal offence to buy sex. There is now strong support for the ban on purchasing sexual services in Sweden.  

**Targeting the Demand Deters Sex Buyers**

As seen in Sweden, the Nordic Model of directly criminalizing the demand for buying sex plays an important role in denouncing prostitution and deterring the buyers of sex, both of which are integral objectives of sentencing in Canada’s Criminal Code (s. 718).

Interviews with North American sex buyers reveal that measures to target buyers of sex can be an effective deterrent. For example, in the Boston study of 101 sex buyers referenced earlier, a fine as little as $50 would deter 17% of the sex buyers and a fine of $2,000 would deter 90% of sex buyers. Coincidently, the new law recently passed in France to target sex buyers included a fine the equivalent of $2000 CAD for a first time offence.

Similarly, the same Boston study revealed that ‘any amount of time in jail’ would be sufficient to deter 22% of sex buyers and ‘one month would deter 100% of sex buyers.’

**Constitutionality of Targeting the Demand**

A common question raised about the Nordic Model of prostitution revolves around the asymmetrical nature of the offence: Can Canada implement laws that target the purchaser of sex and not the seller? After all, shouldn’t both parties be equally criminalized?

UBC Law Professor Janine Benedet explains that in Canada’s Criminal Code, ‘there are many laws that target only part of a transaction or activity, often with the recognition that imbalances of power mean that not all parties are equally culpable or culpable at all.’ Benedet goes on to list a number of these offences ‘that exhibit asymmetry: loan sharking [criminal interest rate]; incest; gaming offences etc.’
Organ trafficking, another heinous form of human trafficking, is a prime example of an asymmetrical offence currently in Canada’s *Criminal Code*. It is a criminal offence to purchase organs. It is also a criminal offence to sell another person’s organs. However, it is not a criminal offence to sell one’s own organs. This asymmetry captures the fact that while most people are coerced into giving their organs and even those who ‘choose’ to sell their own organs often do so as a result of desperation or survival.

Prostitution is no different. Many of the women involved in prostitution are controlled by violent pimps and traffickers. Even those who claim to be in prostitution by choice are often using prostitution as a means of survival or to maintain an addiction. Canadian legislation should not criminalize these women.
CANADA IS READY FOR A ‘MADE IN CANADA MODEL’

Canada is well positioned to implement a Canadian version of the Nordic Model of criminalizing the purchase of sexual services.

National Precedent

- In a 1990 ruling, the Supreme Court of Canada stated that the elimination of prostitution through law was a valid goal and one that Canada should continue to pursue.

- Canada has international commitments to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime which calls on States to:
  - shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking. (Art. 9(5))

- In February 2007, the Standing Committee on Status of Women released a report supporting Nordic Model of Prostitution. Conservative, Liberal and NDP Members of Parliament agreed to and supported the following recommendations that clearly outline the Nordic Model of prostitution:
  - Recommendation 6 - The Committee recommends that section 213 of the Criminal Code prohibiting communication for the purposes of prostitution be repealed.
  - Recommendation 7 - The Committee recommends that the Criminal Code be amended to include the criminal offence of purchasing a sexual service.

- The International Centre for Criminal Law Reform’s ‘An Exploration of Promising Practises in Response to Human Trafficking in Canada’ (prepared in 2010 for the Federal/Provincial/Territorial Forum of Status of Women Senior Officials) identified the Nordic Model as a key Promising Practise that Canada should consider.

- The 2012-2013 Human Trafficking Stakeholder Consultations National Summary Report prepared by Public Safety Canada notes that one of the stakeholder priorities is ‘the need for more targeted campaigns focussing on the issue of demand (for both sexual services and labour).’

- Over the past 4 years, I have tabled petitions calling for the Nordic Model signed by tens of thousands of Canadians from coast to coast to coast.
**Provincial Precedent**

- The Province of Quebec Government’s Conseil du statut de la femme produced a 2012 report entitled ‘Prostitution: Time to Take Action.’ The report explicitly recommends following Sweden by ‘introducing a law that would decriminalize women engaged in prostitution while criminalizing all those who exploit them.’

- In response to the 2013 Supreme Court of Canada ruling, on February 4, 2013, the Province of Alberta instructed prosecutors to continue to pursue clients and not prostitutes.

**Law Enforcement Precedent**

Many police services across Canada have already shifted to policing models reflecting the Nordic Model approach that women, girls and vulnerable populations are victimized and profoundly harmed by prostitution.

- The Toronto Police Service, Canada’s largest municipal force, mandates their Sex Crimes Unit Special Victims Section to recognize ‘sex workers as victims first.’

- The Vancouver Police Department’s Counter Exploitation Unit acknowledges ‘that Aboriginal women are over-represented’ among prostituted women and focuses on assisting ‘young people escape from the sex trade’ The Unit also conducts projects that ‘will often target both pimps and customers.’

- The Winnipeg Police Service’s new Counter Exploitation Unit has also adopted ‘victim first’ driven investigations.

**NGO Support**

Support for the Nordic Model is also strongly supported across political, religious and ethnic lines and by groups including but not limited to:

- Canadian Association of Sexual Assault Centre’s
- Native Women’s Association of Canada
- Canadian Association of Elizabeth Fry Societies
- Action Ontarienne Contre La Violence Faite Aux Femmes
- La Concentration Des Luttes Contra L’Exploitation Sexuelle
- Le Regroupement Quebecois Des Centres d’Aide et De Lutte Contre Les Agressions A Caractere Sexual
- Vancouver Rape Relief Society
- Evangelical Fellowship of Canada
- Defend Dignity
- [free-them]
- Walk With Me
- Aboriginal Women’s Action Network
- Asian Women Coalition Ending Prostitution
- South Asian Women Against Male Violence
- London Abused Women’s Centre
- Catholic Women’s League
RECOMMENDATIONS

1. Target Buyers of Sex
   - Introduce amendments to the *Criminal Code* that explicitly criminalizes the act of buying sexual services similar to s. 212 (4).
   - Include escalating penalties that begin with fines and culminate in jail time.

2. Decriminalize Sellers of Sex
   - Introduce amendments to the *Criminal Code* to exclude prostituted women in sections 197, 210, 212, and 213.

3. Educate public
   - A national awareness campaign for all Canadians is essential to the success and effectiveness of targeting the demand.
   - A national awareness campaign must denounce the purchase of sex as contrary to Canadian values.
   - A national awareness campaign must focus on revealing the violence, inequality and coercion inherent in prostitution and promote the dignity and value of all women and prostituted individuals.

4. Exit Programs
   - Integral to the success of the Nordic Model are programs to assist prostituted women in leaving prostitution.
   - Exit programs should be coordinated with provinces to ensure national availability.
   - Consider measures to fund exit programs through fines collected from sex buyers.

5. Tackle exploitation
   - Introduce a mandatory minimum sentence for procuring to tackle pimps and traffickers.
   - Introduce amendments to the *Criminal Code* to ensure s. 212 (1)(j) continues to apply to pimps and traffickers.
   - Introduce amendments to the *Criminal Code* to restrict bawdy houses without criminalizing prostituted women.
   - Develop regulations focused on preventing the advertising of sexual services, both in print and online.
Angers, Lucie. Senior Council, Criminal Law Police Section, Department of Justice, testimony before the Subcommittee on Solicitation Laws, January 31 2005.

Canada (Attorney General) v. Bedford, 2013 SCC 72


Canada (Attorney General) v. Bedford, 2013 SCC 72


Ibid., 43.

Ibid., 59.

Ibid.


Ibid.

Standing Committee on Status of Women, Parliament of Canada, Turning Outrage into Action to Address Trafficking for the Purpose of Sexual Exploitation in Canada” 2007, p. 5.

Canada (Attorney General) v. Bedford, 2013 SCC (Factum of the Canadian Association of Sexual Assault Centres, Native Women’s Association of Canada, et al at para. 2)


The Effects of the Swedish Ban on the Purchase of Sexual Services. March 8 Initiative, 2012, Online at www.8marts.dk


Ibid.

Ibid.


Counter Exploitation Unit. Vancouver Police Department. https://vancouver.ca/police/organization/investigation/investigative-services/special-investigation/vice.html

Appendix A – Country by country review of the impact of Legalization/Decriminalization

Status of Legalization/Decriminalization

Legalized - legalizing the activities involved in and surrounding prostitution, and often imposing regulations specific to the sex industry:

- States in Australia including Victoria (1994) and Queensland (1999),
- Netherlands (2000)
- Germany (2002).

Decriminalized: repealing all laws or provisions against prostitution, and not imposing prostitution-specific regulations:

- Australian state of New South Wales (1995)
- New Zealand (2003)

Impact of Legalization/Decriminalization By Country

The Netherlands

Legalized: Brothels were legalized in 2000 with goal of improving conditions for prostitutes.

- The Dutch Institute of Social Sexological Research found that 79 percent of the prostitutes they interviewed “gave an indication that they were in prostitution due to some degree of force.”
- 2003 study done in part with the ChildRight organization in Amsterdam found that there were over 15,000 children, the majority of which were girls, being prostituted. This number increased from 11,000 in 1996.
- 2003 - Amsterdam Mayor Job Cohen said it "appeared impossible to create a safe and controllable zone for women that was not open to abuse by organized crime.”
- 2004 - Government report - Legalization did not help law enforcement tackle sex trafficking and prostitution of minors but rather caused them to go further underground as they were relocated to “municipalities where fewer inspections are carried out or where inspections are less stringent.”
- 2006 – A study by Canada’s Parliament found only 4% of prostitutes registered in The Netherlands after legalization due to stigma, leaving 96% underground and out of reach from police protection.
2007 Government report concluded that goal to regulate voluntary prostitution failed. Most of the sex industry still operated illegally.

- Same report - “pimps [i.e. traffickers] are still a very common phenomenon.”
- Same report - “prostitutes’ emotional well-being is now lower than in 2001 on all measured aspects, and the use of sedatives has increased.”

2008 Dutch Police Report estimated 50-90% of women in the legal prostitution industry were “working involuntarily” meaning in Amsterdam alone the legal prostitution industry would “employ” 4000 sex trafficking victims annually.

2008 – Amsterdam Mayor Job Cohen admits defeat on goals of legalization.

- “We realize that this hasn’t worked, that trafficking in women continues.”
- “We’ve realized this is no longer about small-scale entrepreneurs, but that big crime organizations are involved here in trafficking women, drugs, killings and other criminal activities.”

**Germany**

Legalized: Prostitution was legalized and regulated in 2002 with the goal of improving conditions for sex workers and eliminating the illegal sector.

- From 1999 to 2002, the number of human trafficking victims working as prostitutes in Germany escalated in 2002 from 11,080 to 22,160 victims, increasing again to 24,700 victims by 2003. This number demonstrates that the legalization leads to an increase in inward trafficking.
- 2004 - The International Labour Organization estimated that the number of victims of human trafficking victims in prostitution was around 32,800.
- The deputy chairman of the German Police Association stated that “the politicians have shot themselves in the foot by implementing [the legalized prostitution] law. Even though it was well intended, it has only strengthened the criminals.”
- 2007 - The German Government reported that their laws “has as yet contributed only very little in terms of improving transparency in the world of prostitution.” In fact, some prosecutors have admitted it has “made their work in prosecuting trafficking in human persons more difficult.”
- In 2013 German’s leading online paper Der Spiegel stated: “Germany has become a centre for sexual abuse of young women from Eastern Europe, and a playground for organized criminals from all over the world.”
- German police and women’s groups now view legalization as ‘little more than a subsidy program for pimps and makes the market more attractive to human traffickers.”
• The prostitution laws amended the German civil code by making “exploitation” of prostitution a criminal offence in place of the “promotion” of prostitution. This has resulted in strengthening the rights of the pimps, as seen by comparing 151 people convicted of procurement in 2000 to only 32 in 2011.\textsuperscript{16}
• 2009 European Network for HIV/STI Prevention and Health Promotion Among Migrant Sex Workers (TAMPEP) estimated there are close to 400,000 prostitutes in Germany. \textsuperscript{17}

\textit{New South Wales (Australia)}

Decriminalized: Street prostitution was decriminalized in 1979, hoping to see an increase in the links between prostitution and crime. Brothels were decriminalized in 1995.

• In New South Wales (Australia), 85\% of prostituted women experienced extreme violence while working including physical assault at 65\%, rape with a weapon at 40\%, and rape without a weapon at 33\%, with over half reporting severe depression, and three quarters confirming they had considered suicide.\textsuperscript{18}
• Over 90\% of prostitutes working on the streets are dealing with substance abuse, are economically and socially disadvantaged, and are at an extremely high risk of physical abuse and violence from both buyers and those on the streets.\textsuperscript{19}
• A 2005 study of female sex workers in the greater Sydney area found that 99\% of those interviewed had experienced severe trauma in their lives, the majority of which were work related; their continual exposure to violence contributed to a great increase in PTSD in street-based sex workers.\textsuperscript{20}
• In 2009 - A report stated that illegal brothers in the city of Sydney were four times the number of legal brothels.\textsuperscript{21}

\textit{Victoria (Australia)}

Legalized: Prostitution legalized in 1986 to limit negative or abusive aspects of prostitution.

• 2002 - Estimate by the Victoria Police put the number of illegal brothels operating at 400, a number four times as large as the legal brothers.\textsuperscript{22}
• 2003 - Police found in that legalization brought an increase in street prostitution as well as with high increases in the levels of violence and rape.\textsuperscript{23}
• The support group Child Wise found that there were over 1205 children, girls as young as 12, involved in prostitution in Victoria in 2003.\textsuperscript{24}
• Legalization in Victoria has perpetuated a culture of violence and exploitation.\textsuperscript{25}
2009 - Prostituted women reported that legalization increased competition between workers and also led to escalated demands by buyers for women to perform unsafe or unwanted acts.  

2010 - The government reported that women in prostitution found no difference in regards to the stigma and discrimination in which they were treated, despite it being a legal profession.

Queensland (Australia)


1999 - Increasing reports that the laws regarding prostitution failed to give any real occupational safety to persons working within the industry.

2007 - Despite the ability to legalize a brothel, there were estimates of 90 percent of brothels remaining illegal.

Queensland’s legalized brothels are highly oppressive work environments as sex workers are generally paid not as employees but as sub-contractors, which means they are exempt from sick leave, employer contributions, recreation leave, as well as paying their own taxes.

New Zealand

Decriminalized: Prostitution was decriminalized in 2003 with the Prostitution Reform Act that was passed by a margin of 60/59 parliamentary votes. The purpose was to uphold human rights and protect women from exploitation.

2008, the Prostitution Law Review Committee found that the Prostitution Reform Act had not led to any significant improvement regarding employment conditions for sex workers.

The Committee found that “onerous regulations” had been implemented at a local governmental level, including restrictive health and safety requirements and high licensing fees that resulted in more brothels going underground.

Further, the Committee in 2008 stated that the majority of prostituted women, including brothel operators, believed that the decriminalization would do little to protect women in the industry from violence.

The National Council of Women in New Zealand stated: “The only winners from the Prostitution Reform Act 2003 are men.” It was further noted that they are “still seeing girls as young as 13 and 14 on the streets selling their bodies.”
2011 - Research found that “sex buyers were more aggressive after prostitution was decriminalized”, with buyers becoming much more bold with women in brothels.\(^{36}\)

The same report found that human trafficking in children had increased after decriminalized, especially in ethnic minority groups.\(^{37}\)

2013 - There is large concern in New Zealand that the decriminalization has led to a rise in prostitution.\(^{38}\)

**Nevada (United States)**

Partial Legalization: Nevada remains the only American state to have one form of legalized prostitution venue, a licensed brothel. The purpose was to try and manage the health risks surrounding prostitution work.

- A 2013 analysis examining the evidence heard by the Supreme Court of Canada in *Bedford v. Canada* documented the following evidence:
  - 57% of women in legal brothels a Nevada study indicated they gave ‘part or all of their earnings to someone other than those controlling the legal brothel.’\(^{39}\)
  - At least half the women in those brothels were ‘controlled by external pimps.’\(^{40}\)
  - Prostitutes within legal brothels were told they were ‘strictly forbidden to use condoms unless the customer asked for one...’\(^{41}\)
  - Others admitted to beatings and rape performed by the customer, allowed by the brothel operators as long as the buyer paid extra to the brothel.\(^{42}\)
  - There remain several levels of controlling and exploitative third parties within the brothels, including pimps from outside the brothel. These third parties are driven by profit, making the women involved more vulnerable to violence and unsafe acts.\(^{43}\)
2 Bindel, Julie and Liz Kelly. *A Critical Examination of Responses to Prostitution in Four Countries: Victoria, Australia; Ireland; the Netherlands; and Sweden*. Child and Woman Abuse Studies Unit. London Metropolitan University, 2003, p. 15.
7 “Korps landelijke politiediensten”. Schone Schijn: *De signalering van mensenhandel in de vergunde prostitutiesector [Keeping Up Appearances: The Signs of Human Trafficking in the Legalized Prostitution Sector]* (KLPD, Driebergen, 2008).
10 Ibid., 19.
13 Ibid., 79.
15 Ibid.
16 Ibid.
20 Roxburgh, 6.

Bindel, 15.

Ibid. 50.


Mossman, Dr. Elaine. *International Approaches to Decriminalising or Legalising Prostitution.* Crime and Justice Research Centre. Victoria University of Wellington, October 2007., p. 20.


Barnett., 8.

Ibid. 16.


Ibid.

Barnett., 7.

Waltman., 16.

Ibid.

Ibid., 15.

Ibid.

Ibid., 16.
Appendix B – Common Misconceptions of Legalization

Don’t most women choose to work in prostitution?

- **NO.** The Dutch Institute of Social Sexological Research found that 79 percent of the prostitutes they interviewed “gave an indication that they were in prostitution due to some degree of force.”¹
- A 2003 study done in part with the ChildRight organization in Amsterdam found that there were over 15,000 children, the majority of which were girls, being prostituted. This number increased from 11,000 in 1996. Young girls don’t choose to be prostituted.²
- A 2008 Dutch Police Report estimated 50-90% of women in the legal prostitution industry were “working involuntarily” meaning in Amsterdam alone the legal prostitution industry would “employ” 4000 sex trafficking victims annually.³
- From 1999 to 2002, the number of human trafficking victims working as prostitutes in Germany escalated in 2002 from 11,080 to 22,160 victims, increasing again to 24,700 victims by 2003. Legalization leads to an increase in inward trafficking.⁴
- In 2004, the International Labour Organization of Germany estimated that the number of victims of human trafficking victims in prostitution was around 32,800.⁵
- The support group Child Wise found that there were over 1205 children, including girls as young as 12, involved in prostitution in Victoria, Australia during 2003.⁶

 Doesn’t legalization prevent prostitutes and brothels from going underground and being exploited?

- **NO.** In 2003, Amsterdam Mayor Job Cohen said that with the current system of legalization it “appeared impossible to create a safe and controllable zone for women that was not open to abuse by organized crime.”⁷
- A 2004 Dutch Government report stated that legalization did not help law enforcement tackle sex trafficking and prostitution of minors but rather caused them to go further underground as they were relocated to “municipalities where fewer inspections are carried out or where inspections are less stringent.”⁸
- A 2002 estimate by the Victoria Police put the number of illegal brothels operating at 400, a number four times as large as the legal brothers.⁹
- A 2006 study by Canada's Parliament found only 4% of prostitutes in the Netherlands registered after legalization due to stigma, leaving 96% underground and out of reach from police protection.¹⁰
• Despite the ability to legalize a brothel, there were estimates of 90% of brothels remaining illegal in 2007 in Queensland, Australia.11
• A 2009 report stated that illegal brothers in the city of Sydney were four times the number of legal brothels, despite decriminalization.12
• In New Zealand, a Prostitution Law Review Committee found that “onerous regulations” had been implemented at a local governmental level, including restrictive health and safety requirements and high licensing fees that resulted in more brothels going underground.13

Won’t legalization keep prostitutes safer?

• **NO.** In 2013, German’s leading online paper Der Spiegel stated: “Germany has become a centre for sexual abuse of young women from Eastern Europe, and a playground for organized criminals from all over the world.”14
• In New South Wales (Australia), 85% of prostituted women experienced extreme violence while working including physical assault at 65%, rape with a weapon at 40%, and rape without a weapon at 33%, with over half reporting severe depression, and three quarters confirming they had considered suicide.15
• A 2005 study of female sex workers in the greater Sydney area found that 99% of those interviewed had experienced severe trauma in their lives, the majority of which were work related; their continual exposure to violence contributed to a great increase in PTSD in street-based sex workers.16
• In Victoria, Australia, during 2003, police found in that legalization brought an increase in street prostitution as well as with high increases in the levels of violence and rape.17
• In 2009, prostituted women living in Victoria reported that legalization increased competition between workers and also led to escalated demands by buyers for women to perform unsafe or unwanted acts.18
• During 2009 there were increasing reports in Queensland that the laws regarding prostitution failed to give any real occupational safety to persons working within the industry.19
• In 2008, the Prostitution Law Review Committee in New Zealand found that the Prostitution Reform Act had not led to any significant improvement regarding employment conditions for sex workers.20
• In 2011, one researcher found that in New Zealand, “sex buyers were more aggressive after prostitution was decriminalized”, with buyers becoming much more bold with women in brothels.21
Doesn’t legalization give the prostitutes greater control over their work and the buyers and owners less?

- **NO.** The deputy chairman of the German Police Association stated that “the politicians have shot themselves in the foot by implementing [the legalized prostitution] law. Even though it was well intended, it has only strengthened the criminals.”
- German police and women’s groups now view legalization as ‘little more than a subsidy program for pimps and makes the market more attractive to human traffickers.’
- Queensland’s legalized brothels are highly oppressive work environments as sex workers are generally paid not as employees but as sub-contractors, which means they are exempt from sick leave, employer contributions, recreation leave, as well as paying their own taxes.
- The National Council of Women in New Zealand stated: “The only winners from the Prostitution Reform Act 2003 are men.” It was further noted that they are “still seeing girls as young as 13 and 14 on the streets selling their bodies.”
- A 2013 analysis examining the evidence heard by the Supreme Court of Canada in *Bedford v. Canada* documented the following evidence:
  - 57% of women in legal brothels a Nevada study indicated they gave ‘part or all of their earnings to someone other than those controlling the legal brothel.’
  - At least half the women in those brothels were ‘controlled by external pimps’.
  - Prostitutes within legal brothels were told they were ‘strictly forbidden to use condoms unless the customer asked for one...’

2 Bindel, Julie and Liz Kelly. A Critical Examination of Responses to Prostitution in Four Countries: Victoria, Australia; Ireland; the Netherlands; and Sweden. Child and Woman Abuse Studies Unit. London Metropolitan University, 2003, p. 15.


5 Ibid., 19.

6 Ibid., 15.


9 Bindel, 15.


16 Ibid., 6.

17 Bindel, 15.


20 Barnett, 14.


Spiegel Staff.


Ibid.

Ibid., 15.
Appendix C – Recommended Resources

The Nordic Model

2014 - Oldest Profession or Oldest Oppression?: Addressing Prostitution after the Supreme Court of Canada Decision in Canada v. Bedford
http://www.macdonaldlaurier.ca/new-mli-paper-benjamin-perrin-on-how-to-fix-canadas-prostitution-laws/

2013 - Out of Business: Prostitution in Canada – Putting an End to Demand
http://files.efc-canada.net/si/Prostitution/Out%20of%20Business.pdf

2012 - The Effects of the Swedish Ban on the Purchase of Sexual Services
http://8marts.dk/upl/14431/TheEffectsoftheSwedishBanonthePurchaseofSexualServicesOK.pdf

2011 - Prohibiting Sex Purchasing and Ending Trafficking: The Swedish Prostitution Model
http://su.diva-portal.org/smash/get/diva2:460417/FULLTEXT01

2010 – Ten Reasons for Not Legalizing Prostitution And a Legal Response to the Demand for Prostitution

2010 - Prohibition on the Purchase of Sexual Services: An Evaluation 1999-2008
http://www.regeringen.se/content/1/c6/14/92/31/96b1e019.pdf

2004 - Prostitution and Trafficking in Women

Canadian Research on Prostitution and Human Trafficking

2013 - Assessing Evidence, Arguments, and Inequality in Bedford v. Canada

2012 – Prostitution: Time to Take Action
2012 - Buyer Beware: A Study into the Demand Side of the Sexual Exploitation Industry

2011 - Prostitution in Canada: International Obligations, Federal Law, and Provincial and Municipal Jurisdiction

2011 - Prostitution: A Review of Legislation in Selected Countries

2010 – An Exploration of Promising Practices in Response to Human Trafficking in Canada

2008 - Prostitution: Violating the Human Rights of Poor Women

International Research on Prostitution and Human Trafficking

2011 - Comparing Sex Buyers with men Who Don’t Buy Sex: ‘You can have a good time with the servitude’ vs. ‘You’re supporting a system of degradation’

2011 - Does Legalized Prostitution Increase Human Trafficking?
http://www.lse.ac.uk/geographyAndEnvironment/whosWho/profiles/neumayer/pdf/Article-for-World-Development_-_prostitution_-_anonymous-REVISED.pdf

2006 – The Links between Prostitution and Sex Trafficking: A Briefing Handbook

2003 - A Critical Examination of Responses to Prostitution in Four Countries: Victoria, Australia; Ireland; the Netherlands; and Sweden
http://nordicbaltic-assistwomen.net/IMG/pdf/Study_in_4_countries_Kelly_Bindel.pdf