

# Reconvening the federal committee on prostitution law reform

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Although legislation cannot solve all of the problems associated with prostitution, it will be difficult to solve many of them with the law in its current form. As things stand, one of the main problems with Canadian prostitution law — and there are many<sup>1</sup> — is that it is not clear what it is trying to achieve. Even judges in the Supreme Court of Canada cannot agree whether the law is designed to abolish prostitution, or to regulate it.<sup>2</sup>

Twenty years ago the Special Committee on Pornography and Prostitution (the Fraser Committee)<sup>3</sup> was charged with reviewing prostitution law in light of the “nuisances” created by the expansion of street prostitution in many Canadian cities in the late 1970s and early 1980s. The committee concluded that the contradictory and self-defeating nature of the law was responsible for the increase of street prostitution at that time, and recommended sweeping changes to the Criminal Code. If prostitution is to remain legal, the committee said, we must decide where and under what circumstances it can occur. However, the government of the day ignored this logic, and in 1985 the street prostitution law was rewritten to make convictions easier to obtain.

Many researchers, social service providers and health care workers argued that the new communicating law — which prohibits communicating in a public place for the purpose of buying or selling sexual services — would not have much impact on levels of street prostitution, but would merely serve to relocate the street trade in a way that exposed sex trade workers to more violence. Sadly, they were right. In British Columbia, for example, 11 prostitutes were murdered in the 25-year period before the introduction of the communicating law, as compared with approximately 100 in the 15-year period immediately after.

For a while it appeared that this slaughter would at least have the effect of putting prostitution law reform back on the federal agenda. Indeed, in September 2003 almost every newspaper in the country reported that an all-party committee had been formed to assess the situation and make recommendations for law reform (i.e., the Subcommittee on Solicitation Laws of the Standing Committee on Justice and Human Rights). However, when the committee was dissolved a few months later without even making a report (apparently because the government had decided to hold an election), the media did not notice.

Given the eminently sensible premise of the Fraser Committee — that we must decide what prostitution law is trying to achieve — why has nothing changed? One reason is that the prohibitionist lobby has managed to scuttle almost every attempt to introduce harm-reduction strategies for prostitutes, reasoning that creating safer working conditions would legitimize prostitution and sustain patriarchy. Prostitution, they say, hurts all women by reinforcing the ideology that women are sexual objects for the enjoyment of men. They assert that no woman would choose to become a prostitute if she really had a choice, in which case prostitution is effectively a form of sexual slavery. Prostitutes who insist that they do make choices are dismissed as being “in denial.” The prohibitionist solution is to adopt the Swedish system, which criminalizes the buyer of sexual services but not the seller.

Having studied prostitution in Canada since 1977, I have come to believe that this logic is fundamentally flawed. To begin with, commercial sex is not monolithic. A distinction can be drawn between: (a) sexual slavery, including debt bondage; (b) survival sex, which is driven by poverty, drug prohibition and addiction in situations where participants have few if any viable income alternatives; and (c) prostitution, which is a choice made by a person who has other choices. These 3 forms of commercial sex should not be conceived as discrete categories, but rather as positions on a continuum. But the distinctions between them are important, because the women working at the more lucrative end of the sex trade in municipally licensed facilities are not the ones being murdered. Few are intravenous drug users. Further, on the basis of formal and informal discussions with dozens of women and men involved in different kinds of prostitution, I do not believe that the people who insist that they choose to prostitute are deluding themselves. And, rather than seeing prostitution as harming all women, I agree with pro-choice feminists who argue that denying women control of their own bodies, including the decision to sell sexual services, denies them full and equal personhood. (A succinct review of the two main feminist positions is given by Annette Jolin.<sup>4</sup>)

The biggest problem with the prohibitionist agenda is that it rules out harm-reduction approaches for street prostitutes; these women, who are the most victimized, are being sacrificed to the long-term radical feminist political

goal of a society without prostitution. Against this view, pro-choice feminists argue that the overall goal of social and legal policy should be to ensure that prostitution really is a matter of choice.

In places like Vancouver's Downtown Eastside, the area from which more than 50 women went missing between 1995 and 2000, we need to develop long-term policies to address the plight of Aboriginal people, the increasing feminization of poverty, child abuse, addiction and drug prohibition. We need to create viable opportunities for people to leave prostitution if they so choose, and we need to get prostitution off the street so that children and youths cannot be lured into it unaware of what they are getting into. In the short term, we need to figure out where adult prostitution can occur in a way that minimizes health risks, and this is where community and health professionals can provide the most important assistance.

But, before any of this can happen, we need to put prostitution law reform back on the federal agenda. Lobbying the federal government to reconvene the committee on sex trade law reform is thus the indispensable first step.

*Author's note:* I have used the terms "prostitute" and "prostitution" instead of "sex trade worker" and "sex trade" to avoid ambiguity. I am talking specifically about the purchase and sale of direct-contact sexual services; "sex work" includes many other types of commercial sex, such as adult films, exotic dancing, phone sex, and so on.

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*Competing interests:* None declared.

## References

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2. See the conflicting opinions of Justices Lamer and Wilson, 1 SCR [1990], ref. re ss. 193 and 195.1(1)(c) of the Criminal Code (Man).
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