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Missing Women Commission of Inquiry

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**THE CHALLENGE OF CHANGE:  
A STUDY OF CANADA'S  
CRIMINAL PROSTITUTION LAWS**

**Report of the Standing Committee on  
Justice and Human Rights**

Art Hanger, M.P.  
Chair

**Report of the Subcommittee on  
Solicitation Laws**

John Maloney, M.P.  
Chair

DECEMBER 2006

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# **THE STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS**

has the honour to present its

## **SIXTH REPORT**

The following motion was adopted:

That, pursuant to Standing Order 108, there be established a Subcommittee on Solicitation Laws; that the Subcommittee be composed of six (6) members including 2 members of the Conservative Party, 2 members of the Liberal Party, 1 member of the Bloc Québécois and 1 member of the New Democratic Party to be named by the Committee, in consultation with the whips; that the subcommittee ensure that all published evidence submitted to the Subcommittee on Solicitation Laws in the 38th Parliament be thoroughly referenced in their report; that the subcommittee consider if additional hearings are needed to clarify previously submitted evidence in the 38th Parliament; that the Subcommittee report to the Committee by December 8, 2006; and that the subcommittee have all the powers of the Committee under Standing Order 108(1)a) except the power to report directly to the House.

The Subcommittee examined the subject-matter and agreed to present its observations and recommendations to the Committee in a report entitled "THE CHALLENGE OF CHANGE: A STUDY OF CANADA'S CRIMINAL PROSTITUTION LAWS".

Your Committee had adopted this report which reads as follows:

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# CHAPTER ONE: INTRODUCTION

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## A. THE SUBCOMMITTEE'S APPROACH

Prostitution is an issue that gives rise to intense debate. The extensive testimony that the Subcommittee heard across the country during its study of prostitution laws reflects a diverse set of opinions. The topic of prostitution raises issues of morality, sexuality, organized crime, health and public safety, the exploitation of women and children, inequality between men and women, and human rights, among others.

Adult<sup>1</sup> prostitution is not illegal in Canada, yet most of the activities surrounding it are, making it virtually impossible to engage in prostitution without committing a crime. As a result, persons selling sexual services<sup>2</sup> or coerced into adult prostitution in Canada risk criminal sanctions for engaging in an activity that is not itself illegal. Those most likely to be criminalized are primarily vulnerable women facing various difficulties including poverty, homelessness and drug dependency. They also engage in the most dangerous type of prostitution, street prostitution.

It should be noted from the outset that our report pertains exclusively to adult prostitution — minors and children involved in prostitution<sup>3</sup> are victims of sexual exploitation and this type of exploitation must remain illegal and criminal at all times. The Subcommittee is therefore proposing a zero tolerance policy in such cases and rigorous enforcement of current legislation.

## B. MANDATE AND REVIEW PROCESS

On June 6, 2006, the Standing Committee on Justice and Human Rights gave our Subcommittee the mandate to continue the work begun by the Subcommittee on Solicitation Laws during the 38th Parliament and to report to the

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<sup>1</sup> Unlike adult prostitution, child prostitution is specifically prohibited in subsection 212(4) of the *Criminal Code*, which states: "Every person who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person who is under the age of eighteen years is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years and to a minimum punishment of imprisonment for a term of six months." The same is also true of the offence of procuring the sexual services of a person under the age of eighteen years. That offence is punishable by imprisonment for a term not exceeding 14 years. Therefore, the *Criminal Code* establishes at 18 years the legal age of consent for prostitution purposes. R.S.C. (1985), c. C-46.

<sup>2</sup> The phrases "persons practising prostitution," "persons selling sexual services," "prostitutes," and "sex workers" are used interchangeably throughout the report.

<sup>3</sup> The expression "commercial sexual exploitation of minors" will be frequently used in this report to discuss the involvement of children in prostitution.

Standing Committee by December 8, 2006.<sup>4</sup> The dissolution of Parliament in November 2005 had prevented the Subcommittee from finalizing its report and hence from carrying out the mandate assigned to it by the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness, which was "to review the solicitation laws in order to improve the safety of sex-trade workers and communities overall, and to recommend changes that will reduce the exploitation of and violence against sex-trade workers."<sup>5</sup>

This study was the second attempt to deal with a motion presented in the House of Commons in February 2003 during the 37th Parliament, 2nd Session by Libby Davies, MP for Vancouver-East, which was unanimously adopted. The Subcommittee decided early on to adopt the testimony heard by its predecessor, whose work had begun on October 2, 2003 and ended after just five meetings due to the prorogation of Parliament. The list of witnesses who appeared during that session of Parliament is provided in Appendix B.

In carrying out its mandate, the Subcommittee reviewed the relevant literature and heard testimony from approximately 300 witnesses at public and private hearings and meetings in Ottawa, Toronto, Montréal, Halifax, Vancouver, Edmonton and Winnipeg, from January 31 to May 30, 2005.<sup>6</sup> Dozens of researchers, academics, policy experts, private citizens, social service and health care workers, lawyers, police officers and persons involved in prostitution<sup>7</sup> appeared, some as private citizens and others representing advocacy associations, government services and non-governmental organizations.

During its investigations, the Subcommittee also visited various programs and services for persons selling sexual services and for children and young people subject to exploitation for the purposes of prostitution. During these visits, witnesses interested in the well-being of those selling sexual services provided information about their varied experiences.

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<sup>4</sup> That, pursuant to Standing Order 108, there be established a Subcommittee on Solicitation Laws; that the Subcommittee be composed of six (6) members including 2 members of the Conservative Party, 2 members of the Liberal Party, 1 member of the Bloc Québécois and 1 member of the New Democratic Party to be named by the Committee, in consultation with the whips; that the Subcommittee ensure that all published evidence submitted to the Subcommittee on Solicitation Laws in the 38th Parliament be thoroughly referenced in their report; that the Subcommittee consider if additional hearings are needed to clarify previously submitted evidence in the 38th Parliament; that the Subcommittee report to the Committee by December 8, 2006; and that the Subcommittee have all the powers of the Committee under Standing Order 108(1)a) except the power to report directly to the House.

<sup>5</sup> A copy of the letter from the Honourable Irwin Cotler calling upon the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness to create a Subcommittee to review prostitution laws in Canada is provided in Appendix A.

<sup>6</sup> The list of witnesses who appeared at the Subcommittee's public hearings is provided in Appendix B.

<sup>7</sup> Most of the witnesses involved in prostitution who appeared before the Subcommittee sold sexual services. A few of them sold the sexual services of others (pimps) or purchased services from prostitutes (clients).

The Subcommittee also met informally with more than a hundred individuals from different parts of the country who were involved in prostitution at the time of the study or had been in the past in order to hear their views on the impact of the criminalization of activities relating to prostitution on their daily lives and quality of life. The life experiences of these individuals, the problems they face and the solutions they recommend to reduce exploitation and violence in prostitution were extremely valuable and informative.

Throughout this report, their comments are reported anonymously. Most of the witnesses appeared before the Subcommittee anonymously and *in camera*, fearing the potential legal repercussions of their testimony under the current legislative framework. These individuals said that “selling sex for money or some other gain is not a crime in our minds nor is it under the law, yet as sex workers we are always regarded as criminals.”<sup>8</sup>

Another important part of the Subcommittee’s work was to speak to residents who are exposed to the harmful aspects of street prostitution. Many residents from all over the country shared their fears and frustrations. They mentioned the risks of used syringes and condoms littering local parks and schoolyards, the unsafe environment caused by rivalries between pimps and drug sellers, the continual harassment of clients, the prevalence of drug trafficking and drug abuse in the streets and the explicit sexual behaviour of some prostitutes. The residents also provided balance to the testimony heard by the Subcommittee, helping it carry out its mandate and in turn, address the needs and concerns of prostitutes and Canadian communities alike.

### C. STRUCTURE OF THE REPORT

The report is divided into seven chapters, including this introduction.

**Chapter Two: Overview of Prostitution** — This chapter provides an overview of prostitution in general and those involved in it, including people selling sexual services, clients, pimps and organized crime.

**Chapter Three: Prostitution and its Effects** — This chapter outlines the experience pertaining to prostitution in Canada and its impact on society in general, women and residents of neighbourhoods where street prostitution is prevalent.

**Chapter Four: The Legal Response to Prostitution** — This chapter looks at the history of the criminalization of prostitution in Canada, the current legislative framework and the problems associated with its application. The sections of the *Criminal Code* pertaining directly to prostitution are discussed, as well as the general provisions that are used to manage prostitution, including those relating to sexual assault, extortion, intimidation, trafficking in persons and organized crime.

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<sup>8</sup> *In camera*, testimony by a group of “sex workers”, 2005.

**Chapter Five: Impact of Our Criminal Legislation on Persons Practising Prostitution and on Communities in General**— This chapter addresses the positive and negative impact of the criminalization of certain prostitution-related activities under sections 210 to 213 of the *Criminal Code*.

**Chapter Six: Models for Reform — Evidence from Other Countries**— This chapter outlines the pros and cons cited by witnesses as to the various legal approaches to prostitution taken in Sweden, New Zealand and the Netherlands.

**Chapter Seven: Difficulties in Achieving Consensus — Recommendations and Conclusions**— This chapter presents the comments and recommendations of the Subcommittee members — consensus, majority, and minority views.

## CHAPTER TWO: A PROFILE OF PROSTITUTION IN CANADA

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The close to 300 witnesses from every walk of life who testified during our study of prostitution laws expressed many different and often contradictory positions. Opinions differed not only as to the nature, causes and effects of prostitution, but also as to the solutions.

Research has tended to focus on the people who sell sexual services on the street. However, as this report will indicate, prostitution operates in various other ways and involves many other players besides the person selling sexual services (client, pimp, agency owner etc.). Empirical research in the field is often silent about certain problems that are frequently associated with prostitution, including organized crime, the drug trade, and trafficking in persons for the purposes of prostitution.

This chapter reviews what the Subcommittee learned during its examination of prostitution laws in relation to prostitution as a whole, its scope, the people who engage in it and the people who profit from it, their experiences and their reasons for engaging in such activities.

### A. PROSTITUTION IN CANADA

#### 1. The Various Types of Prostitution

When prostitution is discussed, it is often the image of street prostitution that comes to mind. However, according to the testimony provided to the Subcommittee and most studies on the subject, **street prostitution accounts for just 5% to 20%**<sup>9</sup> of all prostitution activity in the country.

Street prostitution is the most visible manifestation for both the public and police, who often have to intervene when residents complain about the presence of persons practising prostitution on their street. As Chapter 4 indicates, the enforcement of prostitution laws generally focuses on people involved in street prostitution, while those who engage in other forms of prostitution “operate with

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<sup>9</sup> Numerous witnesses across Canada testified to this effect, including Yolande Geadah, who noted on 7 February 2005, that street prostitution represents just 3% of prostitution overall. See also the testimony of Joe Ceci, Elizabeth Hudson, Leslie Ann Jeffrey, Gayle MacDonald, François Robillard, Wendy Babcock and “City of Toronto Task Force on Community Safety, *A Community Safety Strategy for the City of Toronto*,” February 1999, available at [www.toronto.ca/safety/sftyvprpt.htm](http://www.toronto.ca/safety/sftyvprpt.htm), as well as Frances Shaver, “Prostitution: a Female Crime”, in *Conflict within the Law: Women in the Canadian Justice System*, Vancouver, Press Gang Publishers, 1993. According to Ronald Weitzer, the situation is the same in the United States. See, “Flawed Theory and Method in Studies of Prostitution”, in *Violence Against Women*, 2005, 11(X), p. 11.

virtual impunity.”<sup>10</sup> Moreover, the people who sell their sexual services tend to suffer the effects of that criminalization while their clients are left more or less unscathed.

There are various forms of prostitution, and many of them are assisted by advertisements and advances in communications technology, such as cell phones and the Internet. Prostitution takes place on the street, through escort and call-girl services, in massage parlours, private apartments, and in specialty clubs and bars, including strip clubs, hotels and some restaurants.

## 2. The Wide Range of Experiences and Settings

In addition to the different types of prostitution practised in Canada, witnesses pointed to the variety of settings in which prostitution takes place and the resulting experiences. They reported a range of experiences in prostitution as regards the control that prostitutes have over their bodies, hours, clients, money, etc.

John Lowman, a criminologist who has been studying prostitution for nearly 30 years, describes the Canadian prostitution scene in the following terms:

The Canadian contact sex service trade — that which is usually referred to as “prostitution” — ranges from female sexual slavery (the gorilla pimp) and survival sex (sale of sexual services by persons with very few other options, such as homeless youth and women in poverty) through to more bourgeois styles of sex trade (including some street prostitution)<sup>11</sup> where both adults are consenting, albeit it in a way that is shaped by their gender, occupation, ethnicity, socio-economic status and cultural values.<sup>12</sup>

The distinctions made by Professor Lowman were corroborated by many of the former and current prostitutes who testified before our Subcommittee.

Maggie deVries, author of a book that tells the story of her sister Sarah (who disappeared, like many other women who sold sexual services on the streets of Vancouver), argued that distinctions must be made in order to understand the fluctuations in these people’s lives and to respond more effectively. On the basis of

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<sup>10</sup> The Federal/Provincial/Territorial Working Group on Prostitution, established in 1992 by the justice ministers to study the legislation, policies and practices concerning certain prostitution-related activities, argued in its report that the focus on street prostitution “enabled a two tiered sex trade to emerge. More expensive licensed off-street prostitutes operate with virtual impunity while poorer customers and prostitutes, who are mainly on the streets, are routinely arrested.” *Report and Recommendations in respect of Legislation, Policy and Practices Concerning Prostitution-Related Activities*, December 1998, p. 65.

<sup>11</sup> A former prostitute confirmed this distinction, pointing out that street prostitution is not necessarily the same as survival prostitution. She noted that some people choose the street because of the advantages it offers in terms of flexible hours, greater control over prices and greater freedom to choose their clients.

<sup>12</sup> John Lowman, *Prostitution Law Reform in Canada*, 1998. Available at <http://mypage.uniserve.ca/~lowman/>.



conversations with prostitutes in Vancouver's Downtown Eastside, she wrote the following paragraphs, which she read to the Subcommittee:

It is important to draw a distinction between survival sex and sexual slavery. None of the women I've interviewed were being held against their will. They were doing the best they could with a tough situation; life circumstances had limited their choices. But they did not need to be rescued in the way that one would rescue people who were being held captive. They needed more choices, more connections with the larger world, more services, more education, greater safety. When we equate one thing with another, such as saying that all prostitution is sexual slavery, we limit our capacity to draw distinctions, to understand the actual permutations of people's lives. And we deny their agency.

My sister was engaged in survival sex. Her choices were limited as long as she could not see a way out of that life. She was locked tight inside her addiction. But she had dignity. Within the scope of her life, she made choices every day. She had the right, I believe, to sell sex whether she hated it or loved it. She had the right to do drugs, to be a drug addict. She could only leave that life if she did so freely. I don't think there is any way we could have helped her except by increasing her freedom.<sup>13</sup>

During her testimony, Raven Bowen, coordinator of Prostitution Alternatives Counselling and Education Society and member of the BC Coalition of Experiential Women, also addressed this subject, saying:

The PACE Society makes the distinction between sex work and survival sex. Sex work is known to you as prostitution. We define survival sex as the lack of opportunity to consistently exercise the right to refuse customers in any given circumstances.

During our study, we met with individuals who practised prostitution to cope with a drug habit, extreme poverty, mental illness or the effects of a violent past. We also heard from people who said they sold sexual services by choice and with relative autonomy. In each of these groups, women said they had chosen this trade (as the majority of them see it) of their own free will because for them it had more advantages than disadvantages, including flexible hours, decent wages for their level of education, and the opportunity to meet interesting people.<sup>14</sup>

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<sup>13</sup> Excerpt from *Missing Sarah*, Penguin Canada, 2003, testimony before the Subcommittee, 16 February 2005.

<sup>14</sup> For Anastasia Kusyik, a member of the Sex Workers Alliance of Toronto, it is important to look at the entire range of experiences in prostitution with regard to both choice and the prostitute-pimp relationship. In her testimony, she stated: "There are a lot more women who do choose sex work. At 16, I was working the street. I did not have a pimp and I never smoked crack. So you cannot put any of us in a box." Testimony before the Subcommittee, 15 March 2005. A number of other prostitutes made similar statements, including Evan Smith, coordinator of the University of Toronto Genderqueer Group. "I'm a sex trade worker because I've chosen to be. I was not abused. There was no one forcing me into it. I don't have a pimp, other than my landlord who wants rent. I've chosen this lifestyle because it's a way for me to use my body to make money." Testimony before the Subcommittee, 15 March 2005.

### *The Concept of Choice*

Not all witnesses who testified during our study of prostitution laws acknowledged the existence of a form of prostitution in which participants are engaged by choice and of their own free will.<sup>15</sup> In their opinion, if it is not due to threats from a third party, it is a lack of choice that forces individuals into prostitution.

Some witnesses simply questioned the issue of choice in the debate about prostitution. They consider the issue of choice inappropriate since they regard prostitution as an inherently violent, degrading activity that derives from the exploitation and oppression of women by men. This is what Yolande Geadah told us about the concept of choice:

Of course, when it comes to prostitution, the very concept of consent is a form of violence and exploitation. That is quite clear and all the data points to that. In that environment, you simply can't talk about consent. I think we have to change the way we see prostitution. We have to stop seeing it as an individual choice with no consequences. In fact, it is a choice that has terrible consequences for individuals, even those who were not pressured by someone else.

For the proponents of this view, people who buy sexual services and those who live off the proceeds of prostitution are necessarily abusers, while those engaging in prostitution are relegated to the status of victims: victims of life experiences marked by violence and abuse — especially sexual assault during childhood, incest or drug addiction — and victims of a society in which women are both sexually and economically oppressed by men.

As the experience of prostitution is, in their view, always marked by exploitation, society's response must be to completely eradicate prostitution in all its forms.

### **B. WHAT DO WE KNOW ABOUT THE SCOPE OF PROSTITUTION?**

Because of the illegal nature of many prostitution-related activities, the diversity of the locations where it is practised, and the social opprobrium surrounding prostitution, **it is very difficult to determine the extent of prostitution activity in Canada each year or how many people engage in or profit from it** (clients, pimps, strip club owners, hotel owners, etc).

None of the witnesses we heard during our study went so far as to provide us with an approximate figure for the scope of prostitution in Canada. Those who addressed the issue, mostly police officers and community organizations, confined their estimates to a particular city or region and generally acknowledged that such

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<sup>15</sup> Testimony before the Subcommittee, 7 February 2005.

estimates are not very reliable.<sup>16</sup> They vary with the season or the weather; the economic situation; the presence of special events, such as festivals or sports events; and the movement of prostitutes from one type of prostitution to another or from one city to another.

As to official statistics concerning arrests under sections 210 to 213 of the *Criminal Code*,<sup>17</sup> the consensus is that they tend to reflect law enforcement trends rather than the actual level of prostitution activity in Canada. Roy Jones, Director of the Canadian Centre for Justice Statistics at Statistics Canada, said:

[...] these data represent only those incidents that are reported by police and processed by the justice system, and they should not be considered general measures of prevalence relating to prostitution offences.<sup>18</sup>

Statistics on *Criminal Code* offences relating to prostitution demonstrate the fact that individuals engaging in street prostitution are more susceptible to being charged. Historically, more than 90% of prostitution-related incidents reported by police fall under section 213, which prohibits communication in a public place for the purposes of engaging in prostitution.<sup>19</sup> For an analysis of prostitution-related arrest statistics, see Chapter 4.

### **C. WHAT DO WE KNOW ABOUT THE PEOPLE WHO SELL SEXUAL SERVICES?**

It is very difficult to draw a representative picture of the people who sell sexual services in Canada for the same reasons that it is difficult to gauge the scope of prostitution. Prostitution activities are usually carried out in secret, which makes most of the people involved invisible to conventional research. It is no surprise then, that research into prostitution centres on a specific group — those who sell sex on the street.<sup>20</sup>

This situation is problematic because street prostitution makes up a very small part of prostitution in Canada. It thus undermines any attempt to generalize research results to the entire population. Claire Thiboutot outlined this difficulty in an article presented to the Subcommittee:

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<sup>16</sup> For example, there are reportedly 600 prostitutes known to the Winnipeg police services. See the testimony of Harry Lazarenko, 1 April 2005. Police officers also told the Subcommittee that on any given night in Vancouver, between 30 and 100 prostitutes are working on the streets.

<sup>17</sup> For a detailed discussion of these sections of the Act, see Chapter 4 of this report.

<sup>18</sup> Testimony before the Subcommittee, 16 May 2005.

<sup>19</sup> Department of Justice Canada, *Statistics on Prostitution-related Offences*, Criminal Justice Research Unit, Research and Statistics Division, January 2005, p. 2.

<sup>20</sup> See in particular the testimony of Aurélie Lebrun, a research officer for the Alliance de recherche IREF-Relais femmes, and Frances Shaver, a professor in the Department of Sociology and Anthropology, Concordia University. The Fraser Committee also remarked on the lack of information about the other types of prostitution.

[TRANSLATION] Since the media and most of the studies conducted to date have focused primarily on the most visible aspects of sex work, it is difficult to make generalizations about all sex workers based on their results and their profiles. We have information about prisoners, people in detox programs, and so on. Some of the information is about sex work in the lives of these women. However, we have little information about women who have been in sex work for a good part of their lives but have never been jailed, treated in a detox program or assisted by resource centre or shelters that serve prostitutes and sex workers directly.<sup>21</sup>

In recent years, social science researchers have attempted to fill these knowledge gaps by conducting empirical research in conjunction with organizations defending prostitutes' rights across the country.<sup>22</sup> Their studies tend to show that most generalizations regarding prostitution apply specifically to the people who work on the street and not to everyone who engages in prostitution.<sup>23</sup>

## 1. What do we Know about the Demographic Profile of People who Sell Sexual Services?

### (a) Women

According to the evidence gathered during this examination and most studies, it is primarily women who sell sexual services. In Canada, they represent between 75% and 80%<sup>24</sup> of all people practising prostitution. On the basis of the information the Subcommittee received, the first experience with prostitution is between the ages of 14 and 18.<sup>25</sup>

For some women, prostitution is a temporary activity, while for others it is a sporadic activity taking place over varying periods of time. During our study, a number of witnesses stressed that very few women stay in prostitution their entire

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<sup>21</sup> Claire Thiboutot (Stella), *Lutte des travailleuses du sexe: perspectives féministes*, 2005. Available at <http://www.cybersolidaires.org/prostitution/docs/ffq2.html>.

<sup>22</sup> See in particular the studies submitted to the Subcommittee by John Lowman of Simon Fraser University, Christine Bruckert and Colette Parent of the University of Ottawa, Frances Shaver of Concordia University, Deborah Brock of York University, Leslie Ann Jeffrey of the University of New Brunswick, Gayle MacDonald of St. Thomas University, and Jacqueline Lewis and Eleanor Maticka-Tyndale of the University of Windsor. Data from their studies and many others are presented in the next few sections.

<sup>23</sup> See in particular the testimony of Christine Bruckert and Colette Parent, John Lowman and Frances Shaver.

<sup>24</sup> Professor John Lowman stated in his testimony that there are "about five female sex sellers for every male sex seller [on the street]. Now, that would include boys who dress as boys; transvestites, i.e., males who cross-dress; and transgendered persons who have not finished a sex change .... When you get into the off-street trade, I think it's a lot more difficult to make an estimate." Testimony before the Subcommittee, 21 February 2005.

<sup>25</sup> It should be noted that this is a very controversial point, as indicated by the many contradictory accounts heard by the Subcommittee on the matter.

lives.<sup>26</sup> It was stated that some of them have a specific financial goal in mind, and stop when they have achieved it.

The evidence we heard suggests that there are many different reasons for getting into prostitution. Some people are forced by a third party, others do it to make ends meet, pay the rent or buy groceries, or to cope with a drug habit or a life marked by violence, incest,<sup>27</sup> rejection, etc. Many such people unfortunately become trapped in prostitution. In her testimony, Jane Runner, Program Manager for Transition, Education and Resources for Females (TERF), and a former prostitute, pointed out that it takes a person between 5 and 10 years to leave prostitution. She went on to say:

We are talking about years and years of suffering and abuse, and it takes years and years of healing and a lot of hard work and courageous work on the part of these individuals. Any programs for these people must therefore take this factor into account.<sup>28</sup>

Although the question of the motivation for going into prostitution raised a number of theories and opinions, many witnesses agreed that a significant number of women are forced into prostitution by economic hardship. In many cases, unstable, unskilled jobs in the service industries do not provide these women with the security and income they need to keep a roof over their heads or support their children. This poverty among women is also linked in particular to the shortage of affordable housing,<sup>29</sup> insufficient work experience and poor education.

Finally, it should be noted that the prostitutes we met are not all poorly educated or without work experience. Some of the women who appeared before the Subcommittee in private hearings were university graduates and/or had a

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<sup>26</sup> See in particular the testimony of Marie-Andrée Bertrand, Professor Emerita, School of Criminology, Université de Montréal, 14 February 2005.

<sup>27</sup> Some witnesses who appeared before the Subcommittee, including the Regroupement québécois des Calacs, Lyne Kurtzman of the Alliance de recherche IREF-Relais femme, and Rose Dufour, an independent researcher and author of a book on prostitution, argued that there is a close link between incest, sexual assault and prostitution. The statistics used to support the connection have been heavily criticized. Some researchers, including Frances Shaver of Concordia University, questioned the connection: "If we really want to know whether an experience or a history of childhood sexual and physical abuse has something to do with ending up in prostitution, then we need to do a study that starts first with a sample of Canadians. Then we want to sort those according to who has been abused and who hasn't, and then we want to look at the proportions of those who were abused — at what proportion ends up in the sex trade and what proportion don't — and the proportions of those who were not abused and what percentage end up in the sex trade and what percentage do not. This research has not been conducted." Frances Shaver, testimony before the Subcommittee, 7 February 2005.

<sup>28</sup> Appearance before the Subcommittee, 1 April 2005

<sup>29</sup> Kate Quinn, a member of Edmonton's Safer Cities Advisory Committee, stated in her testimony: "We know, for instance, too that a lack of affordable housing contributes to prostitution. Fifty-three per cent of the women who asked for help from our diversion program had no stable housing at the time of arrest. They are either absolutely homeless, crashing at drug houses, crowding with others into one-bedroom apartments, staying at cheap hotels, or couch surfing. Women are selling their bodies in our city for rent. It's hard to get off the street when you have no place to go. It's impossible to feel safe when you have no safe place to rest and recover."

number of years of experience in various lawful occupations, such as government, law or social work. They had chosen prostitution of their own will after assessing the pros and cons. Some said that the work gave them the opportunity to meet interesting people, work flexible hours and earn decent wages.

### ***The Prevalence of Aboriginal Women***

There is a high prevalence of Aboriginal women in prostitution in some parts of Canada. In Winnipeg, for example, city councillor Harry Lazarenko and the police service estimates that they make up 70% of street prostitutes. Winnipeg is not the only city where that is the case. In most large Canadian cities, a disproportionately large number of Aboriginal women are involved in street prostitution.

Compared to other women involved in prostitution, Aboriginal women are more likely to be dealing with drug problems and extreme poverty.<sup>30</sup> In addition, an Amnesty International Canada report points out that at least a third of the more than 70 women who disappeared from Vancouver's Downtown Eastside were Aboriginal.<sup>31</sup>

The Subcommittee heard that Aboriginal women also face special problems, including racial profiling and excessive police intervention.<sup>32</sup> This is what Cheryl Hotchkiss, a human rights campaigner for Amnesty International Canada, had to say about Aboriginal women involved in prostitution in Canada:

The isolation and social marginalization that increases the risk of violence faced by women in the sex trade is often particularly acute for indigenous women.<sup>33</sup>

Some witnesses stressed the importance of recognizing the special needs and problems of Aboriginal women and girls involved in prostitution. Pamela Downe, a professor in the Department of Women's and Gender Studies at the University of Saskatchewan, noted in her testimony that intervention on their behalf must take into account the fact that "colonial history actually does lead to a very unique and distinct experience" for Canada's Aboriginal women.<sup>34</sup> She noted

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<sup>30</sup> See in particular the testimony of Maurganne Mooney, Aboriginal Legal Service of Toronto, 15 March 2005, and Beverly Jacobs, Native Women's Association of Canada, 1 April 2005.

<sup>31</sup> See *Stolen Sisters: Discrimination and Violence Against Indigenous Women in Canada*, an Amnesty International Canada report, 2004.

<sup>32</sup> See the testimony of Maurganne Mooney, Aboriginal Legal Service of Toronto, 15 March 2005, and Beverly Jacobs, Native Women's Association of Canada, 1 April 2005.

<sup>33</sup> Testimony before the Subcommittee, 11 April 2005.

<sup>34</sup> The social, economic, and political lives of Aboriginals in Canada are shaped by the effect of assimilation policies that have often resulted in the loss of Aboriginal traditions, languages, etc. For more information, see also the testimony of Maurganne Mooney, Cheryl Hotchkiss, and Beverley Jacobs.

further that "it is wrong-headed [for society] to attempt to disentangle their personal experience from the history of their people."<sup>35</sup>

### **(b) Minors Exploited in Prostitution**

It is very difficult to determine the extent to which minors are exploited through prostitution in Canada. In addition to the difficulties associated with investigating clandestine activity, researchers face particular problems in the case of youth because of their legal status. For fear of being reported to child protection agencies, few will admit to a researcher or a street support worker that they sell sexual services; few will even give their age.

Despite these obstacles, witnesses stated that increasing numbers of young people are being exploited through prostitution in Canada. Others suggested that their numbers are about the same, but that many young people who used to work the streets have moved to other locations because of increased policing on the streets.<sup>36</sup> However, there are currently no national statistics to corroborate or refute these assertions.

According to the testimony, young people and even children enter prostitution for a number of reasons. As compared to adult prostitution, however, children and youth are more commonly forced into prostitution by a third party (pimp).

The following excerpts from testimony pertain to young people and children who are exploited for the purposes of prostitution in Canada and the reasons for that exploitation:

[...] young people working in prostitution are better conceptualized as engaged in survival sex. It is survival sex that is generally sporadic, and it may be only one source of income opportunity among a number that they participate in. Sex for these young people may be exchanged for money, food, a warm place to sleep, or drugs. It's considered by them to be a practical, utilitarian kind of transaction directed to meet their immediate needs.

Their problem is not prostitution *per se* but a whole broader array of social marginalization, lack of economic opportunities, lack of family support, and lack of social service supports. And these need to be brought into place to support these young people so they can develop their own autonomy and

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<sup>35</sup> Testimony before the Subcommittee, 20 April 2005.

<sup>36</sup> As noted by Susan Miner, Director of Street Outreach Services about the situation in Ontario, "The extent of the problem of child and youth commercialized sexual exploitation in Ontario is both blatant and hidden. Street prostitution is deemed to be very entry level and is obvious and visible. Escorting, cell phones, massage parlours, cybersex, pimping, and personal ads provide hidden venues, and the number of youths involved is indeterminable." Testimony before the Subcommittee, 15 March 2005.

be able to have the kinds of supports that make them less vulnerable to precisely to the kinds of conditions you suggest.<sup>37</sup>

In terms of the reality of why youths go there, it's because we have diminished their hopes, their dreams, and their choices. If you leave a small community and come to Toronto with less than grade 10, your options for survival, employment, and housing are minimal unless you find a way to make money. Your body is something you own, and it's readily available. The issue of addictions has been part of many of the discussions, and a lot of young people come into prostitution to support habits. Conversely, we also know a lot of young people get involved because they're dimming the issues that come with being involved in prostitution.<sup>38</sup>

There are lots of kids who come from very violent homes, and believe me, I've talked to them. I've been their outreach worker for 14 years. They were better off being on the street than they were being in the children's aid or in a hostel or being any place other than where they were.<sup>39</sup>

We learned that young runaways are very vulnerable to commercial sexual exploitation, especially those running away from family problems. As noted by Marc Drapeau, of Project Intervention Prostitution Québec Inc, a child that dissociates him or herself from his or her body due to sexual abuse is at greater risk of exploitation through prostitution.<sup>40</sup>

### **(c) Prostitution Involving Males, Transvestites and Transgendered Persons**

According to John Lowman and Frances Shaver, males, transvestites and transgendered persons make up about 20% of those involved in street prostitution. At present, there is very little information about participation by these groups in off-street prostitution. On the basis of the information gathered, however, there is every indication that male off-street prostitution tends to be confined to private establishments and clubs.<sup>41</sup>

Compared to women, studies tend to show that men are less likely to suffer physical violence at the hands of their clients.<sup>42</sup> On the other hand, they are more

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<sup>37</sup> Professor Deborah Brock, Department of Sociology, York University, testimony before the Subcommittee, 9 February 2005.

<sup>38</sup> Susan Miner, Director, Street Outreach Services, testimony before the Subcommittee, 15 March 2005.

<sup>39</sup> Anastasia Kusyik, an outreach worker and a member of the Sex Workers Alliance of Toronto, testimony before the Subcommittee, 15 March 2005.

<sup>40</sup> Testimony before the Subcommittee, 16 March 2006.

<sup>41</sup> See in particular the testimony of Staff Sergeant Terry Welsh, Ottawa Police Service, 6 April 2005.

<sup>42</sup> Susan McIntyre, *Strolling Away*, Department of Justice, August 2002; P Aggleton ed *Men Who Sell Sex: International on Male Prostitution and HIV/AIDS* (Philadelphia: Temple University Press, 1999); R Valera et al, "Perceived Health Needs of Inner-City Street Prostitutes" (2001)25 *American Journal of Health Behaviour* p. 50-59; Frances Shaver et al, "Gendered Prostitution in the San Francisco Tenderloin" (1999)28 *Archives of Sexual Behaviour* p. 503-521; Frances Shaver, *Prostitution Portraits: A Cautionary Tale*, paper tabled with the Subcommittee. This information was also corroborated by testimony during *in camera* hearings.



likely to be victims of violence by members of the public; this is particularly true for transvestites and transgendered individuals, who are doubly marginalized.

## 2. Drug Abuse and Prostitution

A number of the witnesses heard by the Subcommittee during its study of the legislation — persons selling sexual services, private citizens, police officers and researchers — discussed the relationship between drugs and prostitution. For some of them, the two are inseparable, especially in street prostitution. For example, Detective Howard Page of the Toronto Police Service said the following in his testimony:

From speaking with many street-level prostitutes, in the hundreds, over the last five years and in debriefing these females, it's my experience that the drug addiction to the crack cocaine is actually what's fuelling their survival on the streets. What happens is it becomes a vicious circle. The addiction to crack cocaine is so strong that \$20 is what is known on the street as a "street hit" of crack cocaine. That high will last an individual for 15 minutes.

What happens is once a female is out onto a street corner in the inner city; she is selling her body to the john for as low as \$20 for a sexual act. Again, the vicious circle is that [...] she goes back to the local street dealer who hangs around the corner, she gets her crack cocaine, and the circle continues.<sup>43</sup>

In her testimony before the Subcommittee concerning the situation in her neighbourhood, Agnès Connat, a resident of Montréal's Faubourgs area, also mentioned the apparently close link between drug abuse and street prostitution:

In our suburb, street prostitution is closely tied to drug addiction. We have seen for ourselves that the money doesn't stay in the prostitutes' hands for long. Girls step out of the car with a \$20 bill and proceed to give it directly to their pushers, because \$20 is the price of a hit. I do not know if you are aware that a cocaine addict can shoot up 20, 30 or 40 times a day. Obviously, that requires a great deal of money, and a great deal of tricks to be turned.<sup>44</sup>

While one expert suggested that there is no proof of a cause-and-effect relationship between drug abuse and prostitution,<sup>45</sup> there is no question that in some cases prostitution is a means of supporting a drug habit. However, the testimony we heard<sup>46</sup> clearly indicates that not all street prostitutes are drug addicts.

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<sup>43</sup> Detective Howard Page, Toronto Police Service, testimony before the Subcommittee, 15 March 2005.

<sup>44</sup> Agnès Connat, a member of the Association des résidents et résidentes des Faubourgs de Montréal, testimony before the Subcommittee, 16 March 2005.

<sup>45</sup> According to criminologist Serge Brochu, the connection between drugs and prostitution is in fact one of interdependence. See Serge Brochu, *Drogues et criminalité, une relation complexe*, Montréal: Presses de l'Université de Montréal, 1995.

<sup>46</sup> Including John Lowman, Maggie deVries, Frances Shaver, Valérie Boucher and persons involved in prostitution.

Studies tend to show that drug abuse by people who engage in off-street prostitution is much less prevalent.<sup>47</sup> This may be explained by the fact that taking drugs and drinking are prohibited or strongly discouraged by many prostitution establishments and escort agencies.<sup>48</sup>

Although research findings on this issue are often contradictory, there is no doubt that people who have dependency problems are more likely to be exposed to all types of violence and disease, given the vulnerability of their lifestyle, needle sharing, etc. According to Doug Le Pard, Deputy Chief of the Vancouver Police Department, people with very serious drug habits are more likely to be targeted by serial killers.

The most highly addicted sex trade workers are the most likely to be the victims of a serial killer. Their addictions are a far more powerful force than any fears for their safety.<sup>49</sup>

### 3. The Health of Prostitutes

Witnesses noted that the health of street prostitutes is often fragile, particularly those who use injection drugs.<sup>50</sup> According to street support workers, the health problems among prostitutes, especially street prostitutes, are quite varied and in many cases reflect broader difficulties associated with a lack of proper housing. Janine Stevenson, a nurse who works with prostitutes, told the Subcommittee that “[i]t’s everything from malnutrition to sleep deprivation, to pneumonia, to skin conditions [...], to mental health issues.”<sup>51</sup>

Studies have also shown that persons who engage in prostitution but are not injection drug users tend to follow safer sexual practices than the general population, particularly with regard to condom use.<sup>52</sup> Available information on this issue suggests that the danger of infection for prostitutes tends to be associated with their romantic partners rather than their clients. This can be explained by the fact that they often use condoms to differentiate prostitution from their own sex lives. It is also important to note that studies of the prevalence of HIV infection have long recognized that the risk of contracting and spreading sexually transmitted and

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<sup>47</sup> Studies by Frances Shaver and John Lowman in particular tend to show that most prostitutes do not take hard drugs. In her testimony, Frances Shaver stated that “Findings in more recent Canadian research indicate that many of the people involved in sex work are not using hard drugs, or if they are, can control their habits. This is even more likely to be the case for those involved in off-street work.” See also, Conseil permanent de la jeunesse, *Vu de la rue: les jeunes adultes prostitué(e)s — Rapport de recherche*, Gouvernement de Québec, 2004.

<sup>48</sup> *In camera* hearings.

<sup>49</sup> Testimony before the Subcommittee, 30 March 2005.

<sup>50</sup> See the testimony of Glen Betteridge, Canadian HIV/AIDS Legal Network, 15 March 2005, and Maria Nengeh Mensah, Professor-Researcher, School of Social Work, Université du Québec à Montréal, 2 May 2005.

<sup>51</sup> Testimony before the Subcommittee, 30 March 2005.

<sup>52</sup> Testimony of Maria Nengeh Mensah, Professor-Researcher, School of Social Work, Université du Québec à Montréal, 2 May 2005.

blood-borne diseases is highest among injection drug users and not among prostitutes as a group.<sup>53</sup>

#### 4. A Shared Experience: Violence

Prostitutes are extremely vulnerable members of society. They're open to personal and sexual degradation, exploitation, and violence from customers, pimps, and businesses from whose premises they work.<sup>54</sup>

With the disappearances and sadistic murders of a number of prostitutes, particularly in Vancouver and Edmonton, the public has become aware of the violence to which many prostitutes fall prey in Canada. This violence is not new, and is by no means confined to Vancouver or Edmonton. People who engage in prostitution, particularly street prostitution, are faced with many different types of abuse and violence, ranging from whistles and insults to assault, rape and murder. The violence comes from clients, pimps, drug pushers, members of the public, co-workers and even police officers.

While most studies recognize that violence is more common on the streets, it is not the only place where it occurs. In response to a question related to the presence of violence in prostitution establishments, Chief Superintendent Kevin Vickers of the Royal Canadian Mounted Police noted, "I've investigated deaths of young prostitutes who worked for escort agencies. In particular, in Calgary there are two ladies who come to mind who worked specifically for an escort service right in Calgary. So violence is there."<sup>55</sup> This point was also illustrated by Colette Parent, a professor in the Sociology Department at the University of Ottawa, who told the Subcommittee that working conditions in prostitution establishments and agencies vary from very good, respectful environments, to near-slavery. She stated that some massage parlours force women to fulfil their clients' every fantasy, while others respect their choices and take a greater interest in their welfare. Criminologist John Lowman said much the same thing in his testimony:

Another thing we want to be careful of with the off-street scene is to not look at it as all of a piece. There are some high-end places where really women do have a lot of control over their circumstances. But there are some places where women are being brought in and you have systems of debt bondage, which to me is no different from slavery. You're working off a debt that you can never pay off.<sup>56</sup>

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<sup>53</sup> Ibid. See also *Healthy Public Policy: Assessing the Impact of Law and Policy on Human Rights and HIV Prevention and Care. Summary Report*, Canadian HIV/AIDS Legal Network, 2003; *Sex, Work, Rights: Reforming Canadian Criminal Laws on Prostitution*, Canadian HIV/AIDS Legal Network, July 2005, p. 25-26

<sup>54</sup> Gwendolyn Landolt, National Vice-President, Real Women Canada, testimony before the Subcommittee, 14 February 2005.

<sup>55</sup> Testimony before the Subcommittee, 13 April 2005.

<sup>56</sup> Professor John Lowman, Simon Fraser University, testimony before the Subcommittee, 21 February 2005.

**(a) A Dangerous Activity, According to Homicide Statistics**

On the basis of homicide statistics published by the Canadian Centre for Justice Statistics (CCJS), prostitution is a very dangerous activity in Canada. Between 1994 and 2003, at least 79 prostitutes were murdered while engaging in prostitution activities. It should be noted that this is almost certainly lower than the real figures, since it includes only those cases in which the police were able to determine that the death occurred during prostitution-related activities.

Nearly all of these victims were women (95% women, 5% men). A study conducted by Statistics Canada in the 1990s suggests that in more than 85% of the cases, the people who committed the homicides were clients. Three-quarters of the 79 homicides mentioned in the CCJS study occurred in the following metropolitan areas: Vancouver, Edmonton, Toronto, Montréal, Winnipeg and Ottawa-Gatineau.<sup>57</sup>

This extreme violence against people involved in prostitution is also of interest to criminologist John Lowman of Simon Fraser University, who has compiled data on murders of persons engaging in prostitution in British Columbia between 1960 and 1999. It should be noted that in contrast to the CCJS data, Professor Lowman's homicide statistics are not limited to the murder of prostitutes while they were engaged in prostitution activities.

Professor Lowman's statistics are presented in the table below. It should be noted that the data for the 1995-1999 period are incomplete, since a number of women who apparently disappeared from Vancouver's Downtown Eastside during that time frame have not yet been found.

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<sup>57</sup> Roy Jones, Director, Canadian Centre for Justice Statistics, Statistics Canada, testimony before the Subcommittee, 16 May 2005.

**Number of prostitutes murdered in British Columbia  
1960 — 1999**

Years	Number of homicides
1960-1964	0
1965-1969	0
1970-1974	0
1975-1979	3
1980-1984	8
1985-1989	22
1990-1994	24
1995-1999*	50

\*Fragmentary data since not all the women who disappeared during this period have been found.

Source: Brief submitted to the Subcommittee by John Lowman, 2005.

The table shows a substantial increase in murders of known prostitutes in the mid-1980s, jumping from 8 in 1980-1984 to 22 in 1985-1989. According to Professor Lowman, this increase is associated with the addition to the *Criminal Code* of the section prohibiting communication in a public place for the purposes of prostitution (section 213) and with the campaign to move prostitution off the streets, which began at about the same time. Professor Lowman argued in his appearance that the criminal law jeopardizes prostitutes by forcing them to conclude their negotiations with their clients too quickly, thereby compromising their ability to report any violence they endure to the police and forcing them to be very secretive. The impact of legislation on prostitution will be discussed in detail in Chapter 5.

**(b) The Experience of Violence, Based on Data from Interviews with  
Persons Practising Prostitution**

Violence against persons who engage in prostitution is also well documented in studies based on in depth interviews with people engaging in prostitution. According to some studies, assault of all types, including sexual assault, is commonplace among people who engage in prostitution-related activities, especially those who work on the street. The results of a survey conducted in Vancouver showed that three-quarters of those interviewed had been victims of violence in the six months preceding the survey.<sup>58</sup>

Much less is known about violence against people involved in off-street prostitution. As we have seen, these people are often invisible to conventional research, or at least more difficult to reach. However, according to witnesses, it would appear that off-street prostitutes are generally subject to less violence.<sup>59</sup>

<sup>58</sup> John Lowman and L. Fraser, *Violence Against Persons Who Prostitute: The Experience in British Columbia*, Research, Statistics and Evaluation Directorate, Department of Justice, 1995.

<sup>59</sup> See for example, the testimony of Frances Shaver, Colette Parent, John Lowman, Leslie Anne Jeffrey, and many individuals engaged in prostitution.

For those who engage in street prostitution, insults and harassment from members of the public, business owners and police officers are often daily occurrences.<sup>60</sup> The stigmatization of prostitutes exposes them to various forms of violence. They are often regarded as criminals and second-class citizens, and some people feel justified in humiliating them, harassing them, throwing things at them and even physically abusing them.

According to some witnesses,<sup>61</sup> the media contribute significantly to this stigmatization. The feelings expressed by a number of prostitutes concerning the media's role are effectively summarized by Kyla Kaun, Director of Public Relations for Vancouver's Prostitutes Empowerment Education Resource Society (PEERS):

I think [the media] are the biggest contributors to [stigmatization] with the kind of language that's used, which we equate to hate speech, to be quite frank. Terminology like "crack whore" just is not a way you're going to ask the general public to be considering compassion towards someone like this. As well, there are the images. Almost always it is the worst picture that has ever been taken of this particular individual. Don't tell me there isn't a grad picture or something that is much more attractive. But no, it's their mug shots; it's when they've been strung out. It's all of those awful images they put out there that make us look at them and say, "Why would we want to save that life?" If they use her grad picture or a picture of her with her children or her family, then we are going to have a different feeling about that individual than from the image we see of her being arrested.<sup>62</sup>

In the course of its study, the Subcommittee learned that many officers are sensitive to prostitutes' lives, especially those who are part of local vice squads. In fact, many prostitutes told the Subcommittee that they had a good relationship with such officers.

However, other testimony revealed the difficult relationship that can exist between police officers and persons who engage in prostitution. Some witnesses alleged that they are physically assaulted by police officers.<sup>63</sup> Here is what Maggie deVries had to say in her testimony concerning her sister Sarah's experience with some police officers in Vancouver's Downtown Eastside:

She told me a series of stories about experiences she had with the police. These are stories about individual police officers — not about the police, but individual police officers — of being beaten by police officers. I keep hearing these kinds of stories of women who are sex workers in Vancouver

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<sup>60</sup> It is important to recognize that communities are also victims of prostitution-related activities. Finding the appropriate balance in order to minimize harm to both communities and prostitutes is the Subcommittee's primary goal. The issue of harm to communities will be dealt with further in Chapter 3.

<sup>61</sup> See, for example, the testimony of Cherry Kingsley, Nick Temette, Jen Clamen and Kyla Kaun. It is important to note that this issue was frequently raised during the Subcommittee's *in camera* sessions with prostitutes.

<sup>62</sup> Testimony before the Subcommittee, 29 March 2005.

<sup>63</sup> See in particular the testimony of Pivot Legal Society, Maggie deVries and Renée Ross of Halifax's Stepping Stone program.

who have violent experiences at the hands of police officers. It didn't happen once or twice; it has happened to them regularly, with different police officers at different times.<sup>64</sup>

Such violence was also documented by Pivot Legal Society in a report entitled *To Serve and Protect: A Report on Policing in Vancouver's Downtown Eastside*. The report describes acts of violence allegedly committed by members of the police department in Vancouver's Downtown Eastside against 50 people engaged in street prostitution in the area in 2002.<sup>65</sup>

Violence against persons who practise prostitution is also related to the fact that some police officers do not take the violence committed against them seriously, often regarding it as an inherent part of prostitution and believing that no one who engages in such activities should be surprised at being mistreated.<sup>66</sup> Darlene Palmer, a support worker with Cactus Montréal, told us the following:

Some women have told me that when they have told a police officer about an injury suffered, or a bad client in the area, the police officers simply say: "That is just part of the game, sweetheart." No. It is not just part of the game.<sup>67</sup>

In her testimony, Renée Ross, president of Halifax's Stepping Stone program, pointed out how much the attitudes of members of the Halifax police service varied:

You do have one part of the police force that is rehabilitating, that is providing support, but within that same police force you also have the vice squad, and the vice squad is where we see a lot of the problems. A couple of months ago one of our program users was violently beaten. She went home and called the police. A policeman came to her door. He saw who it was, because she was known to them. He picked up the phone and called in to headquarters and said "It's just a prostitute," and he left.<sup>68</sup>

We also learned that the majority of prostitutes do not report assaults against them for fear of not being taken seriously, of being judged or treated as criminals for engaging in prostitution.

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<sup>64</sup> Testimony before the Subcommittee, 16 February 2005.

<sup>65</sup> This document is available at <http://www.pivotlegal.org/>.

<sup>66</sup> See for example, Star team, *Safety security and the Well-Being of Sex Workers*, Submission to the Subcommittee, June 2005.

<sup>67</sup> Testimony before the Subcommittee, 16 March 2005.

<sup>68</sup> Testimony before the Subcommittee, 17 March 2005.

#### D. WHAT DO WE KNOW ABOUT CLIENTS OF PROSTITUTION?

We know very little about the clients of prostitution, except they are mostly men.<sup>69</sup> There have been few studies on the subject in Canada. During the Subcommittee's study, only a few witnesses, among them Rose Dufour, John Lowman and Richard Poulin, presented statistics about clients.

Richard Poulin stated in his testimony that 10% to 15% of men in North America buy sexual services.<sup>70</sup> John Lowman noted that contrary to popular belief, not all clients of prostitution are looking for sex. According to Professor Lowman, who has been studying clients of prostitution since the 1990s, 15% to 20% of them are actually looking for affection. He indicated that what really drives them to buy prostitution-related services is the need to be touched, to have friendly contact with someone. The testimony of people engaged in prostitution corroborates Professor Lowman's findings. Many prostitutes told us about the services they provide to clients who, for a number of reasons, must pay for this form of intimacy (they may have a serious disability, have difficulty socializing, etc).

The testimony also suggests that, rather than a single type of client, there is a wide variety. As noted by Melissa Farley, a researcher for Prostitution Research and Education, "There is no typical profile of the average customer. It's men aged 14 to 80; it's men of every age; it's men of every race and ethnic background; and it is men of every [...] level..."<sup>71</sup> Based on interviews with 64 prostitution clients, anthropologist Rose Dufour noted that two-thirds of clients had been or were married at the time of the interview, about one third were single and half were fathers. She also noted that close to 40% of clients were looking for domination in the act of prostitution.

Testimony indicated that the majority of clients are not violent men. Witnesses stated that "a lot of the johns they have, the regular johns, are good to them. They pay them. They take care of them."<sup>72</sup>

Finally, Professor Lowman's research suggests that there are significant differences between the clients of street prostitution and clients of off-street prostitution. According to Lowman, violent and abusive clients choose street prostitution rather than other forms of prostitution because of its anonymity. He noted that clients who are interested in abusing prostitutes are well aware that the risk of being seen and thus reported is higher with prostitution carried out in establishments and through agencies. He made the following remarks:

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<sup>69</sup> According to the evidence that the Subcommittee heard, increasing numbers of women and couples are using the services of persons who engage in prostitution.

<sup>70</sup> Richard Poulin, testimony before the Subcommittee, 9 February 2005.

<sup>71</sup> Testimony before the Subcommittee, 30 March 2005.

<sup>72</sup> Jeannine McNeil, Executive Director, Stepping Stone, 17 March 2005.



If a man is predatory, misogynistic, and out to hurt women, he's going to go to the prostitution strolls where he cannot be found, cannot be detected, won't be seen, or whatever the situation is.<sup>73</sup>

## E. WHAT DO WE KNOW ABOUT PIMPS AND PEOPLE WHO LIVE OFF THE AVAILS OF PROSTITUTION?

According to the *Criminal Code*, anyone who manages a prostitution business or lives off the avails of prostitution can be termed a "procurer". This definition is in fact much broader than the traditional image of the pimp, which refers to a person who exploits one or more persons in forced prostitution. According to the testimony, procuring arrangements vary according to the type of relationship — for example, coercive relationships, business relationships, romantic relationships and friendships.

The differences between this broad criminal definition of procurement and the narrower definition of pimping can explain some of the contradictions emerging from the testimony gathered by the Subcommittee on this issue. Use of the broader definition of procurement could explain the high numbers obtained by Richard Poulin, who stated that "between 85 and 90% of prostitutes in the Western world are under the control of a pimp";<sup>74</sup> and Aurélie Lebrun, who stated that a "significant proportion" of prostitutes work for a pimp.<sup>75</sup>

For the purposes of the following commentary, the Subcommittee uses the term "pimping" in reference to the traditional image of the pimp — the coercive relationship — rather than the broader scope of activities encompassed within the *Criminal Code* definition of procurement.

The public generally believes that adults who engage in prostitution are forced into it by a third party. However, according to the evidence gathered, people who are forced into prostitution against their will by a third party are by no means in the majority, at least among adult prostitutes, as our subcommittee's study focuses on adult prostitution. In her testimony before the Subcommittee, Deborah Brock, a professor in York University's Sociology Department, stated that most Canadian studies cast doubt on this virtually automatic association between the pimp and the adult prostitute:

[...] so much of the research out there — for example, the work of John Lowman, Fran Shaver, and others across the country — indicates that perhaps the role of pimps in prostitution is over-determined and that the majority of women actually do work independently in the business.<sup>76</sup>

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<sup>73</sup> Professor John Lowman, Department of Criminology, Simon Fraser University, testimony before the Subcommittee, 21 February 2005.

<sup>74</sup> Testimony before the Subcommittee, 30 May 2005.

<sup>75</sup> Testimony before the Subcommittee, 21 February 2005.

<sup>76</sup> Professor Deborah Brock, testimony before the Subcommittee, 9 February 2005.

During our study, police officers noted that more people were forced into street prostitution by drug addiction than by pimps. Detective Howard Page of the Toronto Police Service stated:

The Hollywood aspect of the pimp standing on the corner waiting for the prostitute to return to him and the money being turned over to him or to others is not what we're seeing in downtown Toronto. Again, the drug itself, the crack cocaine, is the pimp to the prostitutes who are working on the corners in downtown Toronto.<sup>77</sup>

## F. WHAT IS THE ROLE OF ORGANIZED CRIME IN PROSTITUTION?

A survey conducted in the 1980s on behalf of the Fraser Committee found that 60% of respondents regarded organized crime as a major factor in prostitution. However, that perception was not supported by the information that the Committee gathered during its study. The Fraser Committee reached the following conclusion: "On the basis of our other information, we would suggest that the public's perceptions are incorrect."<sup>78</sup> In another part of the report, the Committee stated that:

[...] we found no evidence to suggest a link between prostitution and organized crime. That is, there is no large-scale or interconnecting organization which in a highly organized way recruits, controls or moves women and men through prostitution circuits. Certainly, some street prostitutes are controlled by pimps and some call-girls are subject to the strict regulations of the madam for whom they work, but this sort of organization appears to be small-scale and each operation in a city is typically independent of the others.<sup>79</sup>

The connection between organized crime and prostitution was frequently mentioned during our study of prostitution laws.<sup>80</sup> Many witnesses asserted that organized crime is involved in prostitution in Canada and other countries. For example, Yolande Geadah, a researcher and author of the book *La prostitution : Un métier comme un autre*, stated that:

[...] all the studies carried out at the international level, in every country, recognize that organized crime controls the sex industry, including in the Netherlands, which is the country that has gone farthest with respect to liberalization. It is always organized crime calling the shots in the industry.

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<sup>77</sup> Testimony before the Subcommittee, 15 March 2005.

<sup>78</sup> Special Committee on Pornography and Prostitution, *Report of the Special Committee on Pornography and Prostitution*, Volume 2, 1985, p. 397.

<sup>79</sup> *Ibid.*, p. 378.

<sup>80</sup> See in particular the testimony of Lee Lakeman of the Canadian Association of Sexual Assault Centres, Richard Poulin of the University of Ottawa, Yolande Geadah, Janice Raymond of the Coalition Against Trafficking in Women, Chief Superintendent Frank Ryder of the Canadian Association of Chiefs of Police, Gwendolyn Landolt of REAL Women of Canada, Melissa Farley of Prostitution Research and Education, and Jacqueline Lynn.

There are two reasons for that: first, it's extremely profitable, and second, it's a way of laundering money.<sup>81</sup>

Richard Poulin also argued that the connection exists, and considers it to be very close, based on international research:

The attitude is that prostitutes are victims of a system of prostitution which is now both global and national and which is linked to organized crime, something that is very well known to police forces. This is clearly shown in the reports of Europol and Interpol and American reports as well: the link is very strong.<sup>82</sup>

However, very few people who had engaged in or were engaging in prostitution at the time of our study stated that organized crime was a major factor in adult prostitution. Many street support workers and advocates who work closely with these people and a number of researchers interested in the issue made similar statements. For example, Frances Shaver stated the following during her appearance:

[...] there's no clear indication at all of organized crime being involved. This is also a finding of the Fraser Committee over 20 years ago, and I have found nothing different, nor has it come to my attention that overall it has a major role.<sup>83</sup>

Professor Colette Parent was also critical of the tendency to associate prostitution with organized crime:

The link made between organized crime and prostitution, in my opinion, is overblown. I'm not saying that there isn't any relation between the two, but in the research we conducted, we did not note any marked presence of organized crime. I cannot say that we did.<sup>84</sup>

Although the testimony does not necessarily confirm the alleged link between organized crime and adult prostitution, concerns about the involvement of organized crime are serious and significant and warrant further investigation.

The Subcommittee therefore supports the efforts by the federal, provincial and territorial governments to step up the fight against organized crime. In 1998, the federal, provincial and territorial ministers of Justice signed the *Joint Statement on Organized Crime*, officially recognizing the need for governments and law enforcement agencies to make a concerted effort against organized crime. In 2000,

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<sup>81</sup> Yolande Geadah, independent author and researcher, testimony before the Subcommittee, 7 February 2005.

<sup>82</sup> Professor Richard Poulin, Sociology Department, University of Ottawa, testimony before the Subcommittee, 9 February 2005.

<sup>83</sup> Professor Frances Shaver, Department of Sociology and Anthropology, Concordia University, testimony before the Subcommittee, 7 February 2005.

<sup>84</sup> Professor Colette Parent, Criminology Department, University of Ottawa, testimony before the Subcommittee, 9 March 2005.

they recognized this issue as a national priority by adopting the *National Agenda to Combat Organized Crime*, which has four main components: coordination, legislative and regulatory tools, research and analysis, and communication and public education.<sup>85</sup>

#### G. WHAT DO WE KNOW ABOUT TRAFFICKING IN PERSONS (AND ILLEGAL MIGRATION) FOR THE PURPOSES OF PROSTITUTION?

Trafficking in persons came to international prominence in the 1990s. The wealth of written materials on the subject is a measure of the rising concern about trafficking in persons, often described as “the new global slavery” and “fastest growing international criminal industry.”<sup>86</sup>

The United Nations estimates that, globally, more than 700,000 people are victims of trafficking in persons each year. According to the UN, the revenues from such trafficking are US\$10 billion worldwide.<sup>87</sup>

Although Canada does not yet have the information needed to assess the scope of this problem nationally, there is no doubt that trafficking in persons is at play in prostitution activities, and that trafficked persons are among the most vulnerable in prostitution. Evidence showed that victims of trafficking face the greatest risks to their health and safety. Some people take advantage of these people’s vulnerability, knowing that they cannot file a complaint without risking deportation. Victims of trafficking and illegal immigrants who are exploited in prostitution are also particularly vulnerable because their legal status often denies them access to health care and social services.

In response to this issue, the House of Commons adopted Bill C-49 in November 2005.<sup>88</sup> This act amended the *Criminal Code* by creating new offences and making various changes to prevent this heinous crime, provide more effective protection for victims, and facilitate prosecution of traffickers.<sup>89</sup>

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<sup>85</sup> Statistics Canada’s Canadian Centre for Justice Statistics, Statistics Canada developed a tool in 2001 to gather police data nationally on the activities of criminal organizations. Some data will be available in 2006, pursuant to declaration DUC 2.2 which has since 1988 allowed the CCJS to gather national data on organized crime. For more information, see the article by Lucie Ogrodnik, “Counting Organized Crime,” *Gazette*, Royal Canadian Mounted Police, Vol. 66, No 44, 2004. available at [http://www.gazette.rcmp-qrc.gc.ca/article-fren.html?category\\_id=55&article\\_id=81](http://www.gazette.rcmp-qrc.gc.ca/article-fren.html?category_id=55&article_id=81).

<sup>86</sup> Irwin Cotler, “Minister of Justice Introduces Bill Targeting Trafficking in Persons,” News Release, Department of Justice, May 12, 2005. Available at [http://canada.justice.gc.ca/en/news/nr/2005/doc\\_31482.html](http://canada.justice.gc.ca/en/news/nr/2005/doc_31482.html)

<sup>87</sup> Department of Justice Canada, *Trafficking in Persons: A Brief Description*, May 12, 2005. Available at [http://canada.justice.gc.ca/en/news/nr/2005/doc\\_31486.html](http://canada.justice.gc.ca/en/news/nr/2005/doc_31486.html)

<sup>88</sup> Bill C-49 is a response to a commitment made by the government on October 5, 2004, during the Speech from the Throne opening the first session of the 38th Parliament. Speech from the Throne opening the first session of the 38th Parliament of Canada, October 5, 2004, p. 12. Available at <http://www.pm.gc.ca/eng/sft-ddt.asp>

<sup>89</sup> Under this Act, trafficking in persons includes the recruitment, transportation or harbouring of persons for the purposes of exploitation in prostitution or forced labour.

Bill C-49 filled a serious gap in our laws by introducing Canada's first direct legal measures to protect the rights of trafficked persons. More recently, in June 2006, the temporary residency permit program for victims of trafficking provided trafficked persons with easier access to various services that are essential for their health and safety. It is expected that these permits will make it easier for victims to testify and will in turn also facilitate the prosecution of traffickers. The new program allows immigration officers to issue temporary residency permits to trafficking victims. The holders of these permits are exempted from treatment fees and are eligible for medical and social counselling and other health care covered by the Interim Health Program.

## **CHAPTER THREE: PROSTITUTION AND ITS EFFECTS**

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Not all the witnesses the Subcommittee heard in the course of its study agree on the harm caused by prostitution. Points of view ranged from those who regard prostitution as an act of violence against all women, to the other end of the spectrum — those who believed that it amounts to an exchange of sexual services between consenting adults, which is not a problem in and of itself. This latter point of view adopts the perspective that it is not the act of prostitution that threatens communities, but rather the criminal activities of certain persons who are involved in it, including those who exploit women and children by forcing them into prostitution, or those whose behaviour has negative consequences on their environment, such as disturbing the peace and harassing the residents of a neighbourhood.

However, all witness agreed that street prostitution is the source of many problems for the residents of the neighbourhoods affected by it, including business people operating in those streets and people who walk through the affected areas every day on their way to work, school, day care, etc.

Testimony the Subcommittee heard from the residents, business people and community groups directly affected by street prostitution suggests that the problems due to this activity often have more to do with the fact that some of the people involved in this type of prostitution are grappling with many problems, including drug addiction, homelessness and mental illness. The nuisances associated with street prostitution are screaming and fighting, abusive behaviour, harassment by clients, used condoms and needles littering public places, noise, etc.<sup>90</sup>

This chapter addresses the effects prostitution has on the people engaging in it, on women in general, and on the communities where street prostitution takes place. It presents the points of view of many people appearing before the Subcommittee who are directly affected by street prostitution, as well as the views of researchers and advocates who examined the general effects of prostitution on women, families and communities.

### **A. PROSTITUTION AND ITS EFFECTS ON WOMEN AND COMMUNITIES IN GENERAL**

Some researchers and advocates pointed to the importance of recognizing that prostitution is a violent act directed not only at female prostitutes, but indeed at all women. In their view, allowing adults to exchange sexual services for money, even if they are consenting and fully aware of what is happening, reinforces the idea that a woman's body is a commodity. In this regard, Madeline Boscoe, Coordinator of the Women's Health Clinic in Winnipeg, noted:

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<sup>90</sup> It should be noted that few residents and business owners mentioned other types of prostitution that are out of public view.

Legitimizing prostitution reinforces the belief that women and our bodies are commodities. This, in turn, reinforces the stigmatization of all women, affecting our role in society and our equality.<sup>91</sup>

The following excerpts from testimony illustrate the view that prostitution violates the human dignity of women, men and children by making their bodies commodities subject to a commercial transaction:

Prostitution is harmful. It's the selling of a human body for the sexual pleasure of someone else. It's degrading, it's dehumanizing. Simply, human dignity is lost in the act of prostitution. Prostitution has many harmful effects on the prostitutes themselves, the clients, and their families. As a prostitute sells sex as a service to a customer, the dignity of women and men is demeaned.<sup>92</sup>

We would understand that the process whereby a prostituted woman comes to view herself as product and merchandise is the worst form of dehumanization imaginable, and that prostitution in all its forms is sexual assault against all women and a violation of their basic human rights.<sup>93</sup>

Prostitution violates human dignity by distorting human sexuality and commodifying sexual intimacy. It harms its participants, both physically and emotionally.<sup>94</sup>

There is nothing about the activities related to prostitution that in any way promotes human dignity or worth. As a matter of fact, by distorting human sexuality and commodifying human intimacy [...] what should be acts of love and sexual intimacy are made into commercial transactions without a thought given to any short-term or long-term implications for the people involved. Prostitution is harmful to all its participants, both physically and emotionally.<sup>95</sup>

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<sup>91</sup> Madeline Boscoe, Women's Health Clinic, appearing before the Subcommittee on 1 April 2005. It should be noted that Michèle Roy, Spokesperson for the *Regroupement québécois des Centres d'aide et de lutte contre les agressions à caractère sexuel*, shared a similar view in her testimony before the Committee on 7 February 2005: "People making a living from prostitution are not the only ones concerned or affected by prostitution. As we have already stated, rape has an effect not only on the women who fall victim to it, but on all women, if only because of the fear many women feel, a fear that prevents them from going where they want or doing what they want, because they're afraid of placing themselves in situations where rape can occur. Similarly, prostitution affects all women, creates social models with respect to sexuality and relationships between people."

<sup>92</sup> Gwendolyn Landolt, Vice President, Real Women of Canada, testimony before the Subcommittee, 14 February 2005.

<sup>93</sup> Jacqueline Lynn, researcher, testimony before the Subcommittee, 30 March 2005.

<sup>94</sup> Janet Epp Buckingham, Director, Law and Public Policy, Evangelical Fellowship of Canada, testimony before the Subcommittee, 16 February 2005.

<sup>95</sup> Peter Veenendall, Research Coordinator, Reformed Perspective Foundation, testimony before the Subcommittee, 1 April 2005.

Those who hold this view also consider that prostitution has devastating effects on those practising it. According to Yolande Geadah, women and men who sell sexual services are destroying themselves from the inside. She compares the act of prostitution to a “slow suicide.”<sup>96</sup>

### ***A Point of View Perceived as Moralistic***

Throughout the Subcommittee’s study, this view of prostitution was strongly challenged by many former and current prostitutes, researchers and advocates. These witnesses regarded this position as moralistic. They claimed that there was nothing inherently violent in the exchange of a sexual service for money. Rather, as is explored in more detail in Chapter 5, they felt that what makes prostitution dangerous is the stigma associated with prostitutes and the way the legal system deals with prostitution.

Most of the prostitutes appearing before the Subcommittee refused to be labelled as victims and rejected the description of their “work” — which is how they regard prostitution — as alienating, inherently violent and a form of oppression of women by men. They pointed out that not all women perceive sex the same way and that some women do not feel it is degrading to engage in sex without love or intimacy. On that subject, Valérie Boucher, who works with an organization called Stella in Montréal, stated:

It’s true that sex work is very closely tied to sexuality. It is very difficult for women and for some segments of the population to imagine that certain women see their sexuality differently. And yet for many women, sex is not something that absolutely must be shared in circumstances involving intimacy and love, and without which one is degraded.

I, personally, was a sex worker for a certain period of time. I’ve been working with women now for some eight years, including four at Stella’s. I don’t feel broken inside either because of my customers or the type of work I did. What does hurt me, though, is the stigma attached to it. It’s the way people talk about me as someone who has been degraded or who consented, but not totally, because she was alienated. I didn’t know I was alienated, but it would seem that I was. As a result, I said yes, but in reality, my “yes” didn’t mean anything. That hurts me much more than the work I did, with its good and bad sides. That’s for sure.<sup>97</sup>

## **B. HARMFUL EFFECTS OF STREET PROSTITUTION**

### **1. What the Subcommittee Learned about the Effects of Street Prostitution**

Street prostitution has repercussions wherever it occurs. The Subcommittee learned in the course of its study is that when street prostitution occurs in residential areas, its effects on the community are most harmful, particularly for residents

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<sup>96</sup> Yolande Geadah, independent author and researcher, testimony before the Subcommittee, 7 February 2005.

<sup>97</sup> Valérie Boucher, testimony before the Subcommittee, 7 February 2005.



forced to deal with it day and night. The residents of these neighbourhoods often feel afraid and frustrated, as one Alberta resident noted:

I live in a community of victims deprived of their liberty and security. Residents, including women and children, who exercise their right to walk in their community, are subjected to constant john traffic, being solicited for sex, seeing prostitutes and johns having sex in cars in public view, prostitutes who indecently expose themselves, needle and condom litter, and sometimes assault or robbery. They are frustrated and frightened.<sup>98</sup>

Much harm is associated with street prostitution. For residents of affected areas especially, but also for those who walk through the neighbourhood and business people who own stores there, street prostitution raises the noise level as there are more cars on the road and more or less frequent altercations between clients or drug dealers and prostitutes. These problems are all the more bothersome for residents since street prostitution takes place at all hours of the day and night.

Used condoms and dirty needles litter the streets, parks, school yards and even private property, also making coexistence between residents, business people and prostitutes difficult.<sup>99</sup> Several residents told the Subcommittee that they feared the risks posed by condoms and needles in public and private places to their own health and that of their children. To avoid the worst consequences, some witnesses said that they did not allow their children to play on the lawn, walk to school or even wait at the bus stop.

As noted in all communities we visited, women who live and go about their business in neighbourhoods affected by street prostitution are often harassed by would-be clients. This additional element fuels their fear and insecurity. This often results in the women changing their actions, as confirmed by several Montréal residents.

[...] prostitution has a very negative impact on the lives of women who live and frequent these neighbourhoods. Women who live in an area where there is a lot of street prostitution try to be invisible. They walk quickly with their heads down and do not stop. It is not much fun to live like that.<sup>100</sup>

Being a woman in a neighbourhood where prostitutes solicit on the street means walking fast, keeping your head down, trying to be invisible. When I

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<sup>98</sup> Cristina Basualdo, Vice President, Alberta Avenue Neighbourhood Patrol, testimony before the Subcommittee, 31 March 2005.

<sup>99</sup> See also the testimony of Dennis St. Aubin, Member of the Organizing Committee, Dickens Community Group, testimony before the Subcommittee, 30 March 2005.

<sup>100</sup> Agnès Connat, Member of the *Association des résidents et résidentes des Faubourgs de Montréal*, testimony before the Subcommittee, 16 March 2005.

walk down the street, I am very careful to walk quickly and look at the ground; I do not want to be harassed.<sup>101</sup>

According to some witnesses, the harassment problem worsened after prostitutes were displaced elsewhere, increasingly plying their trade further away from one another to avoid arrest. Because it became harder to identify persons selling sexual services, clients harassed female residents more frequently, mistaking them for persons engaging in prostitution.

It would seem that some men who frequent and live in affected neighbourhoods are also changing the way they move about to avoid being accosted by prostitutes, although this is much less prevalent than the harassment of females who frequent or live in areas affected by street prostitution. For example, a resident told the Subcommittee that he did not wait for his wife in the car anymore while she was running errands because women had gotten into his car several times to offer sexual services for sale.

For business people, street prostitution often results in lower customer traffic. For fear of being harassed by clients or prostitutes, or after having been accosted, customers will choose not to enter the stores any more or will shop elsewhere, in quieter areas.

It has become more difficult for certain business people who are affected by street prostitution to hire and retain staff because of the location of their business. Many have to spend time and money to clean up their surroundings, for instance, by picking up used needles and condoms.<sup>102</sup>

Based on the testimony we gathered, the most frightening aspect of street prostitution is the violence associated with the drug trade. According to several witnesses who appeared before the Subcommittee, turf wars between members of organized crime or street gangs, fights between prostitutes and drug dealers, or strange and aggressive behaviour exhibited by drug addicts all fuel the fear and insecurity of residents, business people and passers-by. Here is what some witnesses said on this subject:

For many residents the most frightening aspect of street prostitution is the accompanying drug-related activities. As my neighbours glance out their window and see a drug transaction taking place, they worry that the drug dealers will witness them trying to record a licence number and retaliate with violence.<sup>103</sup>

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<sup>101</sup> Association des résidents et résidentes des faubourgs de Montréal, brief tabled with the Subcommittee on 16 March 2005.

<sup>102</sup> See also the testimony of Peter Rausch, Executive Director, Alberta Avenue Business Association on 31 March 2005.

<sup>103</sup> Shannon Ross Watson, testimony before the Subcommittee, 31 March 2005.

Prostitution and drugs are inextricably linked. The confluence of johns, prostitutes, and drug dealers renders some of our streets unsafe. Living next door to a drug house means 24 hours a day of screaming and fights on the sidewalk. I would invite all of you to come with me for a drive one night to follow the johns who slow to a crawl whenever they see a woman of any age walking down the street. It's terrifying, and many women in our community don't venture out after dark.<sup>104</sup>

The sex trade is directly linked to drugs, street gangs, theft, and other illegal activities. The violence it brings is a threat to our local residents and our business owners. We are a secondary victim of crime. Our businesses start their day with the chores of cleaning up the storefronts or back alleys or sidewalks of used condoms, drug paraphernalia, and empty bottles from the activities of the night before.<sup>105</sup>

These comments help explain the fear and insecurity felt by many residents having to deal with street prostitution and the fact that a number of them are afraid of turning to the police, as is reflected in the brief presented by the Association des résidents et résidentes des Faubourgs de Montréal:

The residents who are victims of street prostitution (apart from the prostitutes themselves) are reluctant to make complaints, because they are afraid of reprisals from the people involved in prostitution, who are known to be violent.<sup>106</sup>

## **2. Victims or Criminals?**

Most witnesses appearing before the Subcommittee felt that street level prostitutes are victims much more than they are criminals. Better support must be provided for prostitutes, including addiction treatment programs and emergency shelters. Several residents told the Subcommittee that measures to treat drug dependency would probably have the greatest impact in reducing street prostitution.

## **3. The Various Experiences of Communities in Canada and the Different Approaches Adopted by Communities to Counter the Negative Effects of Street Prostitution**

Street prostitution does not affect all Canadian communities the same way. In the course of our study, we learned that the experience of each community often depends on the incidence of the problem,<sup>107</sup> where street prostitution occurs,<sup>108</sup> and

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<sup>104</sup> Jeff Leiper, President of the Hintonburg Community Association Inc., Ottawa, testimony before the Subcommittee, 23 March 2005.

<sup>105</sup> Peter Rausch, Executive Director, Alberta Avenue Business Association, testimony before the Subcommittee, 31 March 2005.

<sup>106</sup> Brief tabled with the Subcommittee on 16 March 2005.

<sup>107</sup> Some communities are obviously more affected by street prostitution than others for the simple reason that there are a greater number of persons selling sexual services on their streets.

<sup>108</sup> Problems vary depending on whether street prostitution takes place in industrial, commercial or residential areas.

the relationship between the various actors involved: those selling sexual services, residents, business people, community groups and the police.

In the course of its hearings, the Subcommittee also noted that different communities adopted different approaches to try to control the harm caused by prostitution.<sup>109</sup> The Subcommittee learned that some communities rely on the criminal justice system to a great degree or adopt a punitive approach to control street prostitution on their territory (for instance, through client identification campaigns or by criminalizing persons selling sexual services), whereas other communities prefer a collaborative approach with prostitutes' advocacy groups to find alternative solutions to protect both prostitutes and the community in general.

Some communities see street prostitution more as a complex social and public health issue. A number of residents and business people in these communities were especially concerned about those practising prostitution for survival. Patricia Barnes, the Executive Director of a Vancouver business association, stated the following:

Both our businesses and residents are dismayed not only by the impact of the survival sex trade on their community and businesses, but also by the impact on the women, and the danger in which they are being placed by our society. Pushing sex work into a light industrial area increases the danger for these women, as their city turns a blind eye to their plight.<sup>110</sup>

Finally, it is interesting to note that all the witnesses we heard recognized the need for solutions to the problems associated with street prostitution, beyond the criminalization of those selling sexual services.

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<sup>109</sup> Although regional authorities do not have jurisdiction over criminal matters under subsection 91(27) of the *Constitution Act, 1867*, the provinces control its application. Further, in a provincial context, municipalities can control the different types of prostitution through municipal by-laws or other measures, such as street by-laws, business permits, prostitution and zoning by-laws. As a result, there is great variety in the way each municipality approaches the issue; this aspect is addressed in the next chapter.

<sup>110</sup> Patricia Barnes, Executive Director, Hastings North Business Improvement Association, testimony before the Subcommittee, 30 March 2005.

## CHAPTER FOUR: THE LEGAL RESPONSE TO PROSTITUTION

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Canada's prostitution laws have a long and troubled history. Stemming from England's 19th century vagrancy laws, governments have frequently attempted to control prostitution through various legislative and other reforms. Despite this and the numerous studies commissioned to resolve problems related to prostitution, nothing thus far has produced results that are satisfactory to everyone. Twenty years ago, the Fraser Report—considered to be one of the most prominent studies of prostitution in Canada—made a series of recommendations aimed at improving the lives of both prostitutes and the communities affected by prostitution. The Report proposed to amend the current contradictory legal framework, in which adult prostitution *per se* is legal, although most activities related to it are illegal.

Notwithstanding this report, the current laws pertaining to adult prostitution are quite similar to those in effect in 1972 and earlier.

This chapter sets out the history of the prostitution laws in Canada. It also describes the legal framework surrounding prostitution-related activities, and the various problems with the application of those laws.

### A. HISTORY OF THE LAW

#### 1. 1892 — Vagrancy Law

In any discussion of Canada's legislative history, it must be noted that adult prostitution has always been legal. Nonetheless, adult prostitution "has been, and continues to be, attacked indirectly"<sup>111</sup> through prostitution-related nuisance and exploitation laws. Canada's prostitution laws have evolved from social and moral reform movements of the time, ranging from those who sought to treat prostitutes as victims in need of protection to those who sought the elimination of prostitution through a moral or criminal justice approach.

The *Criminal Code* was first passed in 1892 and dealt with prostitution through both vagrancy and bawdy house laws. Adapted from the English model, these laws treated brothels and street prostitution as nuisances and violations of public order. The bawdy house law made it an offence to keep a bawdy house, to be an inmate in a bawdy house, or to be found in a bawdy house—similar to the law that still exists today. In practice, the vagrancy law essentially made it an offence for women to engage in prostitution. Section 175(1)(c) deemed "a common prostitute or nightwalker [who] is found in a public place and does not, when

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<sup>111</sup> Federal-Provincial-Territorial Working Group on Prostitution, "Report and Recommendations in respect of Legislation, Policy and Practices Concerning Prostitution-Related Activities" December 1998, p. 5.

required, give a good account of herself" to be a vagrant. These laws were obviously aimed at women prostitutes but not their clients and authorized police to charge these women soliciting for the purposes of prostitution in public.<sup>112</sup>

By the early twentieth century, the laws had been expanded to include provisions against pimping — procuring and living on the avails of prostitution. These new laws stemmed from a global concern about the "white slave trade". Seen by many today to have been guided by paternalistic notions,<sup>113</sup> this movement was grounded in the need to protect women and children from exploitation.<sup>114</sup> Like the bawdy house laws, the procuring provisions were substantially similar to those in the *Criminal Code* today.

## 2. 1972 — Solicitation Law

### (a) The Law

Although the bawdy house and procuring laws endured over time, the vagrancy law was adapted to modern sensibilities. In 1970, the Report of the Royal Commission on the Status of Women<sup>115</sup> recommended repeal of the vagrancy provision and a study of how best to deal with street prostitution. Numerous other feminist and civil liberties organizations also increased pressure for such a change. What followed was the repeal of the vagrancy law in 1972 to shift the focus from a status offence, to one prohibiting a specific behaviour, namely, the act of soliciting for the purposes of prostitution in a public place. Section 195.1 of the *Criminal Code* now stated that "Every person who solicits any person in a public place for the purpose of prostitution is guilty of a summary conviction offence." In its structure and purpose, this was the birth of the communicating law that exists today. The new law also appeared to rectify one form of discrimination that was inherent in the earlier law, since "person" could now apply equally to men and women selling sexual services.<sup>116</sup>

### (b) The Problem

However, the new law was not without its drawbacks. As stated by Richard Mosley, then of the Department of Justice,

It caused a considerable amount of difficulty, in that its interpretation was disputed over the ensuing years. There was a considerable question in the courts as to what "solicit" meant. Did it mean a wink, a nod, or a casual conversation...? What level of importuning or persuasion was required in

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<sup>112</sup> Fraser Report, p. 403-404; Richard Mosley, Legal Counsel, Department of Justice, testimony before the Subcommittee, 7 October 2003.

<sup>113</sup> Fraser Report, p. 435-436; John Lowman, Professor of Criminology, Simon Fraser University, testimony before the Subcommittee, 21 February 2005.

<sup>114</sup> Fraser Report, p. 403-404; John Lowman, testimony before the Subcommittee, 21 February 2005.

<sup>115</sup> Report of the Royal Commission on the Status of Women (Ottawa: Information Canada, 1970).

<sup>116</sup> Federal-Provincial-Territorial Working Group on Prostitution Report, p. 5; James Robertson, *Prostitution*, Library of Parliament, Current Issue Review, September 19, 2003, p. 2.

order to meet the standard of solicitation? There were questions as to whether it applied to customers, a customer soliciting someone else for the purposes in a public place. Did it apply to them? There were contradictory decisions on that. What was a public place itself was a question, and whether it applied to somebody soliciting from a motor vehicle in a public place.<sup>117</sup>

On a general level, court decisions tended to hold "that where a level of importuning or persuasion was exercised, soliciting had taken place."<sup>118</sup> However, the issue remained murky until February 1978, when the soliciting law was essentially struck down in *Hutt v. R.*<sup>119</sup> In that seminal case, the Supreme Court of Canada adopted a very narrow interpretation of "solicit", ruling that in order to meet the standard for criminal conduct, soliciting had to be pressing and persistent. Subsequently, the Supreme Court clarified that to be pressing or persistent, the impugned solicitation had to be "directed toward a single potential customer and could not consist of an accumulation of advances toward different potential customers."<sup>120</sup>

Faced with such interpretations and other decisions ruling that a motor vehicle was not a public place, police across Canada saw themselves as effectively stymied in their attempts to curb street prostitution and essentially ceased using section 195.1. By refraining from persistent behaviour, prostitutes could remain on the streets with little fear of criminal sanction. Perhaps as a consequence, street prostitution in Canada grew appreciably in the 1980s, although other commentators argue that it was the indirect and contradictory nature of the prostitution law itself that led to this increase.<sup>121</sup> John Lowman states that:

Many commentators at the time said that jurisprudence turned Canada's streets into sexual supermarkets... and they attributed the flood of street prostitution to the *Hutt* decision... I think the Fraser Committee got it right when they said that what had caused the street prostitution problem was the contradictory and self-defeating nature of our prostitution law.<sup>122</sup>

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<sup>117</sup> Richard Mosley, Legal Counsel, Department of Justice, testimony before the Subcommittee, 7 October 2003.

<sup>118</sup> Federal-Provincial-Territorial Working Group on Prostitution Report, p. 5.

<sup>119</sup> (1978), 82 D.L.R. (3d) 95 (S.C.C.). In this case, an undercover police officer allowed the accused to enter his car, at which point she identified herself as a prostitute and began to discuss her terms. The court held that such conduct was not within the scope of section 195.1, which Parliament originally intended to prohibit acts "which would contribute to public inconvenience."

<sup>120</sup> Federal-Provincial-Territorial Working Group on Prostitution Report, p. 5.

<sup>121</sup> Federal-Provincial-Territorial Working Group on Prostitution Report, p. 6; John Lowman, Professor, Criminology Department, Simon Fraser University, testimony before the Subcommittee, 21 February 2005; James Robertson, *Prostitution*, p. 3.

<sup>122</sup> John Lowman, Professor, Criminology Department, Simon Fraser University, testimony before the Subcommittee, 21 February 2005.

Whatever the cause, after *Hutt*, there was increasing public pressure to amend section 195.1 to expand the definition of soliciting. Seeking further reform, in November 1978, the Law Reform Commission of Canada Report on Sexual Offences<sup>123</sup> recommended making it clearer that the law applied to both male and female prostitutes, as well as further study of the law dealing with prostitution.

### (c) The Response

In direct response to the Law Reform Commission Report, in 1982, Bill C-127 was passed to amend the *Criminal Code*, adding a definition of "prostitute" as a person of either sex who engages in prostitution. The procuring section was also rendered gender-neutral. Two major national studies into sexual exploitation offences were also launched during this time—the Badgley Commission and the Fraser Committee.

The Badgley Commission was a study initiated by the government to look into the sexual exploitation of children and youth. In August 1984, the Commission issued its report,<sup>124</sup> recommending changes to the criminal law with respect to the sexual exploitation of youth through prostitution and pornography. The Badgley Report was a wake up call to Canadian society, documenting the early age at which many enter into prostitution, and the role played by pimps in recruiting young people into prostitution.

The Fraser Committee was the other major study commenced after the House of Commons Justice Committee issued a report on street solicitation in March 1983. In June 1983, while the Minister of Justice tabled a bill in the House of Commons rejecting most of the recommendations of the Justice Committee, he announced the formation of the Special Committee on Pornography and Prostitution, led by Paul Fraser in order to study the problems arising from street prostitution, as well as its social and economic determinants. The Fraser Committee held extensive hearings across Canada:

[...] in an attempt to obtain maximum input from the Canadian public as to its concerns about prostitution. The hearings illustrated that the street prostitution issue divided the Canadian public; it pitted municipal officials, police forces and citizens' groups, who felt that the *Criminal Code* should be strengthened to control street prostitution, civil libertarians, women's groups and social services agents who favoured some form of decriminalization.<sup>125</sup>

In early 1985, the Fraser Committee released its report which noted the absence of consensus with regard to adult prostitution, the widespread nature of all forms of prostitution, and found that economic difficulties played a significant role for many women entering prostitution. The Committee also found that although

<sup>123</sup> Law Reform Commission of Canada, *Report on Sexual Offences* (Ottawa: Law Reform Commission of Canada, 1978).

<sup>124</sup> Committee on Sexual Offences Against Children and Youth, *Sexual Offences Against Children*, 1984.

<sup>125</sup> Federal-Provincial-Territorial Working Group on Prostitution Report, p. 6.



most Canadians opposed the further criminalization of prostitution-related activities, there was wide support for initiatives that would deal with the nuisances associated with prostitution. The Fraser Committee ultimately concluded that prostitution was a social problem that required both legal and social reforms. Going against popular opinion with respect to judicial interpretation of solicitation, the Committee argued that it was the contradictory and often self-defeating nature of the various *Criminal Code* sections relating to prostitution that was at the root of the high levels of street prostitution in Canada, as despite the fact that prostitution was legal, the prostitution laws were used to control when and where it took place — essentially any time and any place. The Committee emphasized that this issue had to be addressed by any criminal law reform.<sup>126</sup>

In terms of its recommendations, the Fraser Committee provided suggestions for reform that could address the root causes of prostitution. The Committee recommended that governments commit themselves to removing social gender inequalities, ensuring the provision of social programs for women and children, and directing more funding to community groups involved with current and former prostitutes.

With respect to legal reform, the Fraser Committee leaned towards partial decriminalization. In its report, it recommended replacing bawdy house offences by a provision that allowed the use of premises for the purposes of prostitution if such use were restricted to only one or two prostitutes. The Fraser Committee also called for these prostitution establishments to be licensed and to be permitted to operate within regulatory schemes established by a provincial or territorial government. The Committee also recommended amending the various procuring and living on the avails offences by a provision that would make only clearly exploitative procurement a criminal offence — whether involving the use of force, threats or other coercive or threatening behaviour. Living on the avails would be replaced by an offence that referred to coercing an individual to support another financially through prostitution. As to street prostitution, the Committee focused on the public nuisance aspect, noting that “it would be unreasonable to relieve prostitutes of all legal responsibility for criminal acts or specific nuisances caused by their activities.”<sup>127</sup> As regards this aspect, the Committee recommended a new offence involving repeated disturbances by pedestrians or motor vehicles for the purposes of prostitution. Finally, like the Badgley Report, the Fraser report dealt extensively with reforms to address the problems of children and youth exploited through prostitution.

### **3. 1985 — The Communicating Law**

#### **(a) The Communicating Law — Bill C-49**

Responding to concerns about judicial interpretation, but ignoring the Fraser Committee’s position with respect to the soliciting law, in December 1985, the

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<sup>126</sup> Ibid.

<sup>127</sup> Fraser Report, p. 573.

government introduced Bill C-49, replacing the soliciting law with the communicating law. This provision, now section 213, criminalizes communication in a public place for the purposes of engaging in prostitution or of obtaining the services of a prostitute. Now the key provision for dealing with street prostitution, this amendment did away with the difficult term "solicitation", solidified the concept that "every person" means that both men and women selling sexual services and clients are liable to prosecution. This amendment also included a motor vehicle in the definition of a "public place."<sup>128</sup> However, by focusing on the public aspects of prostitution, the goal of the communicating law was obviously "to address the nuisance problem; it wasn't to address the overall prostitution issue".<sup>129</sup>

### **(b) Other Amendments and Studies**

Over the next number of years, frequent amendments were made to the *Criminal Code*, and studies undertaken to examine the impact of the prostitution laws and possible reforms.

In 1988, the government followed up on some of the recommendations made by the Fraser Committee, particularly with respect to the commercial sexual exploitation of minors. Bill C-15 was passed, making it an offence to obtain or attempt to obtain the sexual services of a minor, and increasing the maximum penalty to 14 years for anyone convicted of living on the avails of the prostitution of a minor.

In May 1987, the Department of Justice commenced a study to evaluate the impact of the new communicating provision, concluding in July 1989 that street prostitution was as prevalent as it had been before the enactment of C-49 in most of the cities studied.<sup>130</sup> Working within the framework of this research, the House of Commons Standing Committee on Justice and the Solicitor General released a report in October 1990, outlining its recommendations with respect to the communicating provision.<sup>131</sup> Ultimately, the Committee concluded that the law was not meeting the objective of reducing the public nuisance problem, as its primary effect in most urban centres had been to move persons selling sexual services at the street level "from one downtown area to another, thus merely displacing the problem."<sup>132</sup> The report contained three primary recommendations aimed at

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<sup>128</sup> Federal-Provincial-Territorial Working Group on Prostitution Report, p 6-7; *R. v. Smith* (1989), 49 C.C.C. (3d) 127 (B.C.C.A.).

<sup>129</sup> Lucie Angers, Senior Council, Criminal Law Police Section, Department of Justice, testimony before the Subcommittee, 31 January 2005.

<sup>130</sup> A. Brannigan, L. Knafka, and C. Levy, *Street Prostitution: Assessing the Impact of the Law*, Calgary, Regina and Winnipeg (Ottawa: Department of Justice, 1989).

<sup>131</sup> Fourth Report of the Standing Committee on Justice and the Solicitor General on Section 213 of the *Criminal Code* (*Prostitution-Soliciting*), 4 October 1990.

<sup>132</sup> Federal-Provincial-Territorial Working Group on Prostitution Report, p. 7.

providing alternatives for those wishing to get out of street prostitution, providing further deterrents for clients, and enhancing the effectiveness of law enforcement agencies:

- That government departments develop start-up programs and core funding to community-based agencies providing programs accessible and responsive to the needs of sex workers wishing to leave the industry;
- That the *Identification of Criminals Act*<sup>133</sup> be amended to allow for the fingerprinting and photographing of those charged under section 213, whether as prostitutes or as clients; and
- That section 213 be amended to provide judges with the discretion, in addition to any other penalty imposed, to prohibit persons convicted of communicating for the purposes of prostitution in instances involving a motor vehicle from driving a motor vehicle for up to 3 months.

The federal government responded to this report in March 1991, agreeing that programming was needed, but that this objective should be broadened to take into account the needs of all persons selling sexual services, not only those wishing to get out of prostitution. The government recommended further consultation with all stakeholders in this regard. However, the government rejected the other two primary recommendations, arguing that the proposed amendment to the *Identification of Criminals Act* did not strike an appropriate balance between societal concerns regarding prostitutes and the law enforcement objective of reducing and even eradicating street prostitution. The recommendation concerning driving suspensions was rejected as going beyond the sentencing discretion powers of a judge, and because the government found no rational connection between the offence and the punishment, as street prostitution did not require use of a motor vehicle. Arrest and prosecution were seen as a sufficient deterrent for the average client.<sup>134</sup>

In 1992, the Federal/Provincial/Territorial Working Group was established by the Deputy Ministers Responsible for Justice with a mandate to review legislation, policy and practices concerning prostitution-related activities and to provide recommendations. This working group issued two reports — an interim consultation paper in October 1995 which was mainly concerned with the commercial sexual

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<sup>133</sup> R.S. 1985, c. I-1.

<sup>134</sup> James Robertson, *Prostitution*, p. 13-14.

exploitation of children and which led to significant legislative reforms,<sup>135</sup> and a final report in December 1998 that made recommendations, and finalized issues and research on street prostitution and the sexual exploitation of children that had been highlighted in the earlier report. In its report, the Working Group noted that it was not able to recommend the repeal of the criminal provisions pertaining to communication for the purposes of prostitution (section 213) or bawdy houses (sections 210 and 211), due to the divergent views of the people it met during its study and the lack of conclusive findings on alternative measures.

## B. THE CURRENT LAW

Today, sections 210 to 213 of the *Criminal Code* set out Canada's prostitution laws, covering offences related to keeping or using common bawdy houses, transporting a person to a bawdy house, procuring, and prostitution.

### 1. Section 213 — The Communicating Law

Because of the focus on nuisance, the primary and most often used prostitution offence is the communicating law, section 213, which forbids communication for the purposes of prostitution in a public space.<sup>136</sup>

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<sup>135</sup> Amending the *Criminal Code* in May 1997, Bill C-27 was aimed at protecting youth from exploitation through prostitution, and at facilitating the prosecution of Canadians involved in sexual offences against children, whether at home or abroad. Bill C-27: 1) Created the indictable offence of aggravated procuring, applicable to those who force youth into prostitution through violence or intimidation; 2) Made the provision outlawing the procurement of minors easier to enforce and prosecute by providing that a person could be prosecuted for obtaining the sexual services of a person whom the offender believes to be under 18. However, the amendment allowed evidence that the procurer held the youth out to be under 18 as proof of the accused's belief to that effect, in the absence of evidence to the contrary. This amendment facilitated police use of undercover agents, rather than using juvenile decoys; 3) Extended procedural safeguards to juvenile witnesses appearing in prostitution-related proceedings, including publication bans and the ability to testify outside the courtroom, behind a screen or on videotape. Bill C-51 was also introduced in June 1998 in response to the Working Group's report and concerns with respect to sexually exploited youth. In an attempt to facilitate the investigation and prosecution of offences involving sexually exploited minors, this Bill's intent was to clarify the provision by removing the words "attempts to obtain" from the procurement of minors provision, replacing them with "communicates with any person for the purpose of obtaining." This essentially eliminated the need to prove that the accused knew the victim was under 18, as had been required by Bill C-27. Bill C-51 also further simplified the prosecution of prostitution offences by allowing police to use electronic surveillance when investigating prostitution-related cases. See Federal-Provincial-Territorial Working Group on Prostitution Report, p. 12; James Robertson, *Prostitution*, p. 19-22.

<sup>136</sup> 213(1) Every person who in a public place or in any place open to public view (a) stops or attempts to stop any motor vehicle;(b) impedes the free flow of pedestrian or vehicular traffic or ingress to or egress from premises adjacent to that place; or (c) stops or attempts to stop any person or in any manner communicates or attempts to communicate with any person for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute is guilty of an offence punishable on summary conviction.

(2) In this section, "public place" includes any place to which the public have access as of right or by invitation, express or implied, and any motor vehicle located in a public place or in any place open to public view.

It is thus illegal to engage in prostitution or to obtain the services of a prostitute in a public place.<sup>137</sup> This restriction encompasses stopping or attempting to stop a motor vehicle and communicating or attempting to communicate for the purpose of engaging in prostitution or of obtaining sexual services. The communicating law is a summary offence, meaning that the penalty cannot exceed a \$2,000 fine or six months imprisonment, or both.

In 1990, the Supreme Court of Canada upheld the constitutional validity of section 213(1)(c). The Court found that although section 213(c) does violate freedom of expression as guaranteed by section 2(b) of the *Canadian Charter of Rights and Freedoms*, this is a reasonable limit under section 1 given Parliament's objective of eliminating street prostitution and the social nuisance it creates.<sup>138</sup> As well, the Court found that the provision violates neither the Charter's section 7 guarantee of life, liberty and security of the person, nor the section 2(d) freedom of association.<sup>139</sup>

## 2. Sections 210 and 211<sup>140</sup> — The Bawdy House Laws

Section 210 of the *Criminal Code* contains the bawdy house offence that remains substantially similar in aim to that established more than a century ago.

The relevant definitions can be found in section 197(1). "Common bawdy-house" means a place that is kept or occupied, or resorted to by one or more persons, for the purpose of prostitution or to practice of acts of indecency. Courts have interpreted this to mean that any defined space is capable of being a bawdy house, from a hotel, to a house, to a parking lot — provided that there is frequent or habitual use of it for the purposes of prostitution or for the practice of acts of indecency,<sup>141</sup> and the premises are controlled or managed by prostitutes or

<sup>137</sup> Section 197(1) defines "public place" as any place to which the public has access as of right or by invitation, express or implied. This includes any place that is open to public view, including a car that is on a public street. See: *R. v. Smith* (1989), 49 C.C.C. (3d) 127 (BC CA).

<sup>138</sup> Reference re ss. 193 and 195.1(1)(c) of the *Criminal Code*, [1990] 1 S.C.R. 1123; *R. v. Stagnitta* (1990), 56 C.C.C. (3d) 17 (SCC).

<sup>139</sup> Reference re ss. 193 and 195.1(1)(c) of the *Criminal Code*; *R. v. Skinner*, [1990] 1 S.C.R. 1235; *R. v. Stagnitta*.

<sup>140</sup> S. 210(1) Every one who keeps a common bawdy-house is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

(2) Every one who (a) is an inmate of a common bawdy-house, (b) is found, without lawful excuse, in a common bawdy-house, or (c) as owner, landlord, lessor, tenant, occupier, agent or otherwise having charge or control of any place, knowingly permits the place or any part thereof to be let or used for the purposes of a common bawdy-house, is guilty of an offence punishable on summary conviction.

S. 211. Every one who knowingly takes, transports, directs, or offers to take, transport or direct, any other person to a common bawdy-house is guilty of an offence punishable on summary conviction.

<sup>141</sup> *R. v. Patterson*, [1968] S.C.R. 157; *R. v. Sorko*, [1969] 4 C.C.C. 214 (BC CA); *R. v. Rockert*, [1978] 2 S.C.R. 704; *R. v. Ikeda* (1978), 42 C.C.C. (2d) 195 (Ont CA); *R. v. Lahaie* (1990), 55 C.C.C. (3d) 572 (Qué CA); William A. Schabas, *Les infractions d'ordre sexuel* (Éditions Yvon Blais: Cowansville, 1995), p. 107; Recherche du Conseil du statut de la femme, "La Prostitution: Profession ou exploitation? Une réflexion à poursuivre" (May 2002), p. 119.

individuals with a right or interest in that space.<sup>142</sup> Further, a community standard of tolerance test is used to determine whether an act is indecent.<sup>143</sup> Within this framework, interpretation of indecency will depend on context, looking at factors such as consent, the composition of any audience and the level of privacy of the room, community reputation of the place, and any harm caused.<sup>144</sup> The bawdy house laws are summary offences.

Courts have also held that to be found guilty of keeping a common bawdy-house, a person must have some degree of control over the care and management of the premises and must participate to some extent in the illicit activities involved there — although this does not necessarily mean participating in the sexual acts.<sup>145</sup> A person selling sexual services may be found guilty of keeping a common bawdy-house if he or she uses his or her own residence for the purposes of prostitution.<sup>146</sup>

Alternatively, to be found guilty of being an “inmate” of a bawdy-house, a person must be a resident or a regular occupant of the premises. To be guilty of being “found in” a bawdy house, a person must have no lawful excuse for his or her presence and must have been explicitly found there by the police.<sup>147</sup> Finally, courts have said that to be guilty of knowingly permitting the premises to be used for the purposes of a common bawdy house, a person must have actual control of the place and must have either acquiesced to or encouraged use for that purpose.<sup>148</sup>

Finally, to be found guilty of transporting an individual to a bawdy house, the act must be done in full knowledge that the location is a bawdy house.

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<sup>142</sup> *R. v. Pierce* (1982), 37 O.R. (2d) 721 (CA).

<sup>143</sup> *R. v. Tremblay*, [1993] 2 S.C.R. 932; Recherche du Conseil du statut de la femme, “La Prostitution: Profession ou exploitation? Une réflexion à poursuivre”, p. 122.

<sup>144</sup> *R. v. Theiryneck* (1931), 56 C.C.C. 156 (SCC).

<sup>145</sup> Section 197(1); *R. v. Corbeil*, [1991] 1 S.C.R. 830.

<sup>146</sup> *R. v. Worthington* (1972), 10 C.C.C. (2d) 311 (Ont CA).

<sup>147</sup> *R. v. Lemieux* (1991), 70 C.C.C. (3d) 434 (Qué CA).

<sup>148</sup> *R. v. Wong* (1977), 33 C.C.C. (2d) 6 (Alta CA); *R. v. Corbeil*.

### 3. Section 212 — Procurement

The offence of procurement is contained in section 212,<sup>149</sup> and carries the toughest penalty for prostitution-related offences under the *Criminal Code*.

Section 212(1) lists various methods of procurement, and states that a person committing such crimes is guilty of an indictable offence and liable to imprisonment for a term not exceeding 10 years. Section 212(3) relates to the evidence necessary for a charge under section 212. Evidence that a person lives with or is habitually in the company of a prostitute or lives in a common bawdy-house is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution — a rebuttable presumption.<sup>150</sup> This offence connotes a

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<sup>149</sup> S. 212. (1) Every one who (a) procures, attempts to procure or solicits a person to have illicit sexual intercourse with another person, whether in or out of Canada; (b) inveigles or entices a person who is not a prostitute to a common bawdy-house for the purpose of illicit sexual intercourse or prostitution; (c) knowingly conceals a person in a common bawdy-house; (d) procures or attempts to procure a person to become, whether in or out of Canada, a prostitute; (e) procures or attempts to procure a person to leave the usual place of abode of that person in Canada, if that place is not a common bawdy-house, with intent that the person may become an inmate or frequenter of a common bawdy-house, whether in or out of Canada; (f) on the arrival of a person in Canada, directs or causes that person to be directed or takes or causes that person to be taken, to a common bawdy-house; (g) procures a person to enter or leave Canada, for the purpose of prostitution; (h) for the purposes of gain, exercises control, direction or influence over the movements of a person in such manner as to show that he is aiding, abetting or compelling that person to engage in or carry on prostitution with any person or generally; (i) applies or administers to a person or causes that person to take any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower that person in order thereby to enable any person to have illicit sexual intercourse with that person; or (j) lives wholly or in part on the avails of prostitution of another person; is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

(2) Notwithstanding paragraph (1)(j), every person who lives wholly or in part on the avails of prostitution of another person who is under the age of eighteen years is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

(2.1) Notwithstanding paragraph (1)(j) and subsection (2), every person who lives wholly or in part on the avails of prostitution of another person under the age of eighteen years, and who (a) for the purposes of profit, aids, abets, counsels or compels the person under that age to engage in or carry on prostitution with any person or generally; and (b) uses, threatens to use or attempts to use violence, intimidation or coercion in relation to the person under that age; is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years but not less than five years.

(3) Evidence that a person lives with or is habitually in the company of a prostitute or lives in a common bawdy-house is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution, for the purposes of paragraph (1)(j) and subsections (2) and (2.1).

(4) Every person who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person who is under the age of eighteen years is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

<sup>150</sup> *R. v. Downey* (1992), 72 C.C.C. (3d) 1 (SCC); Recherche du Conseil du statut de la femme, "La Prostitution: Profession ou exploitation? Une réflexion à poursuivre", p. 25.

form of *parasitic* living on a prostitute's earnings, where an accused must have directly received all or part of the prostitute's proceeds from prostitution.<sup>151</sup>

Procurement encompasses the following situations:

- Employers who require or attempt to require an employee to have sexual intercourse with a client;<sup>152</sup>
- Enticing someone who is not a prostitute into becoming a prostitute or into a bawdy-house for the purposes of illicit sexual intercourse or prostitution;
- Procuring a person to enter or leave Canada for the purposes of prostitution;
- Controlling or influencing another person for gain in order to facilitate prostitution;<sup>153</sup>
- Intoxicating a person for the purpose of enabling anyone to have sexual intercourse with the intoxicated person; and
- Living on the avails of prostitution.

Dealt with as a separate issue from adult prostitution, the toughest prostitution-related penalties deal with the procurement of minors (under 18). Sections 212(2) and (2.1) expand the general procurement offence contained in section 212(1) for such situations. Under section 212(2), a person who lives on the avails of prostitution of a minor is guilty of an indictable offence and liable to imprisonment for a term not exceeding 14 years. Section 212(2.1) provides a further offence punishable with imprisonment of up to 14 years, but not less than 5 years, for a person who lives on the avails of prostitution of a minor, for the purposes of profit, aids, abets, counsels or compels the minor to engage in prostitution, and uses, threatens to use or attempts to use violence, intimidation or coercion against the minor. Finally, section 212(4) states that every person who obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a minor, is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years. Thus, solicitation of the sexual services of a minor is always illegal.<sup>154</sup> It is no defence to say that the accused believed the minor was 18 years old.

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<sup>151</sup> *R. v. Grilo* (1991), 64 C.C.C. (3d) 53 (Ont CA); *R. v. Bramwell* (1993), 86 C.C.C. (3d) 418 (BC CA); *R. v. Celebrity Enterprises Ltd.* (1998), 41 C.C.C. (2d) 540 (BC CA).

<sup>152</sup> *R. v. Deutsch*, [1986] 2 S.C.R. 2.

<sup>153</sup> *R. v. Perrault* (1996), 113 C.C.C. (3d) 573 (Qué CA).

<sup>154</sup> Recherche du Conseil du statut de la femme, "La Prostitution: Profession ou exploitation? Une réflexion à poursuivre", p. 126.



#### 4. Other Criminal Code Provisions

Beyond the prostitution-related provisions, a number of other *Criminal Code* offences protect prostitutes from violence and exploitation and communities from the nuisance associated with prostitution. In terms of the protection of persons selling sexual services, these offences include human trafficking, intimidation, theft, abduction and confinement, and various forms of assault.<sup>155</sup> By contrast, communities are protected by public nuisance laws, including various disturbance and indecency laws, and those to combat organized crime. An annotated list of *Criminal Code* offences that a majority of the members of the Subcommittee believe can be used to protect prostitutes and communities is provided in Appendix D.<sup>156</sup>

The existence of these general provisions provided the basis for an argument for repeal of the prostitution-related laws among witnesses appearing before the Subcommittee, including Francis Shaver, Katrina Pacey of PIVOT Legal Society, and members of Stella, and of Maggies. This decriminalization argument was founded on the belief that appropriate use of these general provisions against exploitation, violence, and nuisance was a more effective means of combating the harms associated with prostitution than attacking prostitution as a harm in and of itself. Deborah Brock of York University stated that she wants:

[...] to see prostitutes and other sex workers protected by law. Where the exploitation of sex workers by other persons occurs, I recommend that police enforce existing legislation in the *Criminal Code*, such as sexual assault, other forms of assault, fraud, abduction, theft, extortion, forcible confinement, and so on. There are plenty of criminal laws to deal with the abuse impacts on prostitutes. These name and target the actual problem rather than relying on prostitution-specific legislation.<sup>157</sup>

#### 5. International Law

Canada is signatory to numerous human rights treaties that underscore the concept of human dignity, and attempt to resolve problems derived from prostitution by looking at the issue from a global perspective and imposing national obligations. As a foundational human rights instrument in international law, the 1948 *Universal Declaration of Human Rights*<sup>158</sup> emphasizes that “all human beings are born free and equal in dignity and rights”. These very basic equality rights are further elaborated in the two primary international human rights conventions to which Canada is a signatory — the *International Covenant on Civil and Political Rights*,<sup>159</sup>

<sup>155</sup> Children receive additional protection from specific sexual exploitation and child abduction provisions.

<sup>156</sup> Although this is not an exhaustive list, it provides an overview of the general provisions contained in the *Criminal Code*.

<sup>157</sup> Deborah Brock, Professor, Department of Sociology, York University, testimony before the Subcommittee, 9 February 2005.

<sup>158</sup> UN General Assembly Resolution A/RES/217 1948.

<sup>159</sup> 999 U.N.T.S. 171, 1976.

and the *International Covenant on Economic, Social, and Cultural Rights*.<sup>160</sup> Canada has also committed itself to international conventions specific to women and children's rights. These conventions avoid condemning or endorsing all forms of adult prostitution so as to focus attention instead on the exploitation of women through trafficking and forced prostitution. By contrast, all forms of commercial sexual exploitation of children are condemned. States are urged to punish those who exploit women and children.

The 1979 UN *Convention on the Elimination All Forms of Discrimination against Women*<sup>161</sup> (CEDAW) focuses on women's equality rights, with article 6 stating that States Parties must take all appropriate measures to suppress trafficking in women and the "exploitation of prostitution of women". Canada ratified CEDAW in January 1982.

Targeting prostitution issues with regards to both women and children, in 1995 the Fourth World Conference on Women resulted in the Beijing Declaration and Platform for Action.<sup>162</sup> Paragraph 113(b) of this document highlighted the fact that forced prostitution is a form of violence towards women. The Declaration outlined its strategic objective of eliminating trafficking in women and assisting victims of violence due to prostitution and trafficking.<sup>163</sup> Signatories were called upon to support UN efforts to prevent and eradicate the commercial sexual exploitation of children, and to enact and enforce legislation to protect girls from all forms of violence.<sup>164</sup> Canada committed itself to the Beijing Platform in September 1995.

The international community also put forward two additional documents to combat trafficking and forced prostitution in 2000. The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the UN *Convention Against Transnational Organized Crime*<sup>165</sup> included the exploitation of the prostitution of others in its definition of "trafficking in persons",<sup>166</sup> and article 5 called upon States Parties to criminalize such trafficking. Canada ratified the Protocol in May 2002.

A number of instruments also focus particular attention upon the sexual exploitation of children through prostitution. In 1989, the UN *Convention on the Rights of the Child*<sup>167</sup> was adopted to protect the human dignity and status of

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<sup>160</sup> 993 U.N.T.S. 3, 1976.

<sup>161</sup> 1249 U.N.T.S. 13, 1979.

<sup>162</sup> A/CONF.177/20 1995 and A/CONF.177/20/Add.1 1995.

<sup>163</sup> *Ibid.*, para. 130.

<sup>164</sup> *Ibid.*, paras., 230(m) and 283(d).

<sup>165</sup> UN General Assembly Resolution 55/25 2000.

<sup>166</sup> *Ibid.*, art. 3.

<sup>167</sup> UN General Assembly Resolution 44/25 1989.

children, emphasizing the fundamental rights and best interests of children under 18.<sup>168</sup> In particular, article 34 stated that signatories must protect all children from sexual abuse and exploitation by taking appropriate measures to prevent them from being forced into unlawful sexual activity, and from being exploited through prostitution. Canada ratified the Convention in December 1991.

In 1999, the international community returned to the issue of children's rights in the International Labour Organization's *Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*.<sup>169</sup> Articles 1 and 3(b) called on State Parties to take measures to eliminate the worst forms of child labour, including the use, procurement, and offering of children for prostitution. Canada ratified this convention in June 2000.

Finally, Canada ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography<sup>170</sup> in September 2005. Article 1 of the Optional Protocol calls on all parties to prohibit "child prostitution", defining the term as "the use of a child in sexual activities for remuneration or any other consideration." States are required to penalize the offering, obtaining, or providing of a child for prostitution in criminal law.<sup>171</sup>

These conventions, declarations, and protocols condemn the exploitation of women through prostitution, rather than prostitution itself. They ensure that prostitution as a whole is not the object, instead targeting the exploitation and violence linked to prostitution. The trafficking Protocol works within this same framework to condemn all trafficking in persons, with the recognition that trafficking is integrally linked to the exploitation of the prostitution or labour of others.

By contrast, these international instruments condemn all forms of commercial sexual exploitation of children. These laws target the people perpetrating the prostitution — the individual who used, procured, or offered the child.

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<sup>168</sup> Recherche du Conseil du statut de la femme, "La Prostitution: Profession ou exploitation? Une réflexion à poursuivre", p. 95.

<sup>169</sup> International Labour Organization, Convention 182 (1999).

<sup>170</sup> UN General Assembly Resolution 54/263 2000.

<sup>171</sup> *Ibid.*, art. 3.

## C. THE LAW IN PRACTICE

### 1. Section 213

Section 213, the communicating law, is the law with the greatest impact on the lives of street prostitutes. Among all the witnesses who appeared before the Subcommittee, this was the provision with the least support. Although some witnesses, primarily police officers and residents, maintained that the communicating law is one of the only tools that currently exists to combat prostitution by reducing harm to prostitutes and communities, witnesses nearly universally stated that section 213 is not an effective tool for achieving the Subcommittee's mandate relating to the safety of prostitutes and communities. One of the primary reasons for this is that the goal of the communicating law was to address the nuisance problem, not prostitution as a whole.<sup>172</sup>

#### (a) Statistics and Demographics

Section 213 is by far the most used and prosecuted of the prostitution provisions in the *Criminal Code*. The focus of the law and its enforcement is on controlling street prostitution and its associated nuisances. The Subcommittee has heard that not only is this provision the easiest to enforce, but it is also the driving force behind most complaints to police. Since section 213 came into force in 1985, communicating offences represent more than 90% of all prostitution-related offences reported by police.<sup>173</sup>

Within the statistics on the use of section 213, a gender and role imbalance (client versus prostitute) quickly emerges, both in terms of guilty findings and sentencing. While the gender breakdown for those charged under section 213 offences seems to be relatively even between men (primarily clients)<sup>174</sup> and women, prostitutes ultimately have higher conviction rates and face harsher sentences. To illustrate, in 2003-2004:<sup>175</sup>

- o 68% of women charged were found guilty under section 213, while 70% of charges were stayed or withdrawn for men charged under the same provision;

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<sup>172</sup> Lucie Angers, Senior Council, Criminal Law Police Section, Department of Justice, testimony before the Subcommittee, 31 January 2005.

<sup>173</sup> Roy Jones, Director, Canadian Centre for Justice Statistics, testimony before the Subcommittee, 16 May 2005.

<sup>174</sup> The statistics do not differentiate between male prostitutes and male clients, but are, however, based on an assumption that clients make up the largest part of this grouping. As a result, interpreting the male to female ratios in the statistics as an indicator of client to prostitute ratio, is not entirely accurate. Rectifying this discrepancy would most likely result in even higher numbers of prostitutes to clients facing convictions and harsher sentencing.

<sup>175</sup> Suzanne Wallace-Capretta, Research Manager, Department of Justice, testimony before the Subcommittee, 31 January 2005; Roy Jones, Director, Canadian Centre for Justice Statistics, testimony before the Subcommittee, 16 May 2005; and documentation provided by the Canadian Centre for Justice Statistics, *Prostitution in Canada*, (Statistics Canada), p. 12.

- o Upon conviction, just under 40% of women were given prison sentences, while just under 40% of men convicted under the same provision were fined, and the prison sentence rate for men was just over 5%;
- o 92% of those sentenced to prison for communicating offences in 2003-2004 were female.

Because of the marginalized environment in which they live, prostitutes often face criminal records<sup>176</sup> and harsher penalties than their clients. Even though section 213 is a summary conviction offence that applies equally to both prostitute and client, due to their lifestyle and the relationship prostitutes often have with the law, many prostitutes fail to appear in court, leading judges to issue bench warrants for their arrest. When they are then arrested, prostitutes are consequently charged with more serious offences such as obstructing police, attempting to obstruct justice, and failure to appear in court — all offences which may lead to a criminal record. This is particularly common since prostitutes often plead guilty to such charges early on.<sup>177</sup> Ann Pollack of the British Columbia Civil Liberties Association effectively highlighted the dilemma:

The women get charged, go to court, and then don't show up for their court date, so they get arrested on a bench warrant... What starts off as a small crime... ends up in a significant jail sentence... It usually wouldn't end up with a serious sanction, a prison sentence, if somebody was convicted of simply communicating for the purposes. But after you add on all the breaches of area restriction and the failure to attend court, you have all these crimes of process heaped up on top of what was a simple offence to begin with, and now somebody is looking at jail time.<sup>178</sup>

By contrast, statistics indicate that clients walk away with lighter penalties and fewer convictions than prostitutes under section 213. Clients usually manage to avoid full prosecution and jail sentences by attending "john school", upon completion of which they receive a stay of charges or the charge is withdrawn. It may be that clients are more likely candidates for deterrence given their fear of discovery by family members or for their reputation more generally.<sup>179</sup> Detective Howard Page of the Toronto Police Service stated that:

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<sup>176</sup> Police cannot fingerprint and photograph individuals charged under section 213, as it is a summary conviction offence. In terms of criminal records, there is a difference between indictable and summary offences. Charges and convictions for indictable offences that can be verified by fingerprints and photographs are entered at the Canadian Police Information Centre (C.P.I.C.), a national database accessible by all Canadian police forces. Police check the name of any individual who is arrested through C.P.I.C.; however, they rarely search for criminal records of summary conviction offences outside their own jurisdiction.

<sup>177</sup> Federal-Provincial-Territorial Working Group on Prostitution, p. 40-1; Suzanne Wallace-Capretta, Research Manager, Department of Justice, testimony before the Subcommittee, 31 January 2005.

<sup>178</sup> Ann Pollack, Board Member, British Columbia Civil Liberties Association, testimony before the Subcommittee, 30 March 2005.

<sup>179</sup> Fraser Report, p. 390.

I believe because of the females' unfortunate circumstances there's a great disparity between the sentences that are being given to the prostitutes and the sentences and alternatives being given to the johns... I think there's a large double standard, in the sense that I don't believe sex trade workers should receive incarceration periods from the judicial system when we have johns buying their way out of any form of criminal record. I think that's wrong, I think it's distasteful, and I think it victimizes the prostitute again because it places a stigma on the prostitute, saying that what they did is treated as a harsher offence than what the john did.<sup>180</sup>

### **(b) Enforcement Problems**

As mentioned earlier, section 213 is the easiest to enforce among the prostitution-related offences, and infractions are most often detected through the use of undercover operations involving an officer posing as a clients or prostitutes. In such cases, the undercover police officers can testify as to the illegal communication. However, it is in the operation of these "stings" that disparities in the prosecution of males and females again emerge. The report of the Federal-Provincial-Territorial Working Group on Prostitution noted, as was confirmed by police testimony before us, that police find it easier to conduct stings against those who *sell* sex rather than those who *buy* it, particularly because of the potential danger for an officer posing as a prostitute.

The situation of children and youth affected by section 213 is a difficult one, and the police approach has changed over time. On the surface, the section 213 offence applies equally to minors and adults. Age has no legal relevance to whether or not an individual may be charged with a communicating offence.<sup>181</sup> However, both police and society's philosophical approach is to see the involvement of minors as the commercial sexual exploitation of children. Minors are in the "position of committing a criminal offence while at the same time being victimized."<sup>182</sup>

As a result, police practices have begun to change. Police most often use their discretion not to lay charges against children and youth, choosing instead to employ alternative approaches, such as teaching the child about the dangers of

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<sup>180</sup> Detective Howard Page, Toronto Police Service, testimony before the Subcommittee, 15 March 2005.

<sup>181</sup> The age of consent to sexual activity is set out in section 150.1 of the *Criminal Code*. This section ensures that consensual sexual activity with or between persons 14 or over is not criminalized, unless it takes place in a relationship of trust or dependency, in which case sexual activity with persons over 14 but under 18 can constitute an offence, notwithstanding their consent. As well, consensual activity with those under 14 but over 12 may not be an offence if the accused is under 16 and less than two years older than the complainant. This age of consent is a separate issue from that of the prostitution of a minor, as criminalized in sections 212(2), 212(2.1), and 212(4). As stated by Detective Sergeant John Muise, "the reality is that it doesn't impact on these offences." These aggravated procuring offences apply regardless of any potential consent by the minor involved. As well, the section 213 communicating offence still applies to any minor involved in prostitution.

<sup>182</sup> Federal-Provincial-Territorial Working Group on Prostitution, p. 27.

prostitution, taking the child home, or to a shelter.<sup>183</sup> In 2003, juvenile prostitution offences accounted for less than 1% of all prostitution-related offences, with the number of police-reported incidents dropping from 181 in 1994, to 41 in 2003.<sup>184</sup>

## 2. Sections 210 to 211

In terms of the application and interpretation of sections 210 and 211 — the bawdy house offences — numerous concerns have been expressed as to unequal application of the law in comparison to the communicating offence, difficulties of enforcement, and overbroad application extending to contexts beyond the scope of prostitution.

### (a) Statistics and Enforcement

Unlike section 213, the bawdy house provisions are rarely enforced by police, as they often pass under the radar of the prosecution process that is driven primarily by complaints. While witnesses testified as to the wide prevalence of various types of indoor prostitution at all levels of society,<sup>185</sup> the rate for incidents involving bawdy house offences is less than one per 100,000 population.<sup>186</sup> The problem is essentially that “the work the police have to do ahead of time to target the operations on the inside is phenomenal compared with addressing it on the street... Whereas the street prostitution is complaint-driven, there are not as many complaints on the inside...”<sup>187</sup> Police appearing before us noted that enforcing sections 210 and 211 is time-consuming and expensive process, involving long surveillance operations. Added to this is the fact that operators usually hide behind charging a fee for legitimate services and claiming ignorance of any illicit activities taking place on the premises. The operator often escapes by placing the blame on those selling sexual services in their establishments.<sup>188</sup>

Numerous witnesses criticized the uneven enforcement of sections of the act, which creates a hierarchy in prostitution. When prostitution occurs out of public view, it goes unnoticed by law enforcement. The witnesses argued that the law is

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<sup>183</sup> Ibid.

<sup>184</sup> Roy Jones, Director, Canadian Centre for Justice Statistics, testimony before the Subcommittee, 16 May 2005; Department of Justice document, *Statistics Related to Prostitution Offences (s. 212 & s. 213 CCC)*, p. 2.

<sup>185</sup> As noted in Chapter 2, indoor prostitution accounts for 80% or more of all prostitution.

<sup>186</sup> Roy Jones, Director, Canadian Centre for Justice Statistics, testimony before the Subcommittee, 16 May 2005.

<sup>187</sup> Dianna Bussey, Director of Correctional and Justice Services, Salvation Army in Canada, testimony before the Subcommittee, 16 February 2005.

<sup>188</sup> Terry Welsh, Ottawa Police Service, testimony before the Subcommittee, 6 April 2005; Fraser Report, p. 412.

used to protect against nuisances that may harm the community, while ignoring the potential harm to prostitutes. A number of witnesses raised this issue during our hearings:

In Montreal, for example, massage parlours and escort agencies, where a large part of prostitution activity is carried on, are only very rarely subject to police intervention, unlike the street, where most police activity is focused... Police officers rarely go to the places where prostitution is hidden... When they hide in massage parlours or escort agencies, it's tolerated; it's even virtually accepted. On the street, it's more of a problem. There it's penalized.<sup>189</sup>

One of the problems we see with the prostitution law is that it is both illogical and hypocritical... You can have an escort service and never be bothered. A massage service is not bothered. But when you are on the streets, then the Canadian law seems to take effect. It seems that where it occurs is the offence, not that it's occurring at all.<sup>190</sup>

Now looking at law enforcement and the impact of law enforcement on prostitutes, unfortunately, across Canada our law enforcement approach is detrimentally unbalanced, targeting... an already vulnerable population of street sex workers while overlooking the johns and pimps...<sup>191</sup>

#### **(b) Excessive Scope**

During its hearings, the Subcommittee also learned that section 210 is regularly used in contexts that extend beyond the scope of prostitution. Relying on the definition of common bawdy-house contained in section 197(1), which includes a place that is used for the purposes of prostitution *or the practice acts of indecency*, police use section 210 to target bathhouses and saunas catering to the homosexual community, as well as "swingers' clubs."<sup>192</sup> While recognizing the importance of the issue, the Subcommittee feels that the examination of homosexual bathhouses and "swingers clubs" was beyond the scope of its mandate. As a consequence, the Subcommittee suggests that the House of Commons Standing Committee on Justice and Human Rights undertake an examination of this issue to ensure that the rights of all citizens are protected.

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<sup>189</sup> Aurélie Lebrun, Research Officer, Alliance de recherche IREF-Relais femmes, testimony before the Subcommittee, 9 February 2005.

<sup>190</sup> Gwendolyn Landolt, National Vice-President, REAL Women Canada, testimony before the Subcommittee, 14 February 2005.

<sup>191</sup> Janet Epp Buckingham, Director of Law and Public Policy, Evangelical Fellowship of Canada, testimony before the Subcommittee, 16 February 2005.

<sup>192</sup> For example, charges were ultimately dropped against Terry Haldane in Calgary, who is currently considering launching a *Charter* challenge to this section of the *Criminal Code*. See also *R. v. Kouri*, [2004] Q.J. No. 7724 (Que. C.A.) and *R. v. Labaye*, [2004] Q.J. No. 7723 (Que. C.A.), both of which are currently under consideration by the Supreme Court of Canada.



### 3. Section 212

Section 212, the procurement provision, targets the most clearly exploitative and abusive aspects of prostitution; however, the section is underused, primarily due to difficulties relating to enforcement and prostitutes' refusal to cooperate in investigations.

#### (a) Statistics and Enforcement

Like the bawdy house provisions, charges are rarely laid under the procurement sections of the *Criminal Code*. Under-reported and under-prosecuted by police, procuring incidents account for less than 1% of all prostitution-related incidents reported. Even when charges are actually laid, they are usually stayed or withdrawn — in 2003-2004, 51% of charges laid under section 212 were stayed or withdrawn, while only 38% resulted in a finding of guilt.<sup>193</sup>

Unlike the bawdy house provisions, these low numbers are not the result of biased law enforcement, but rather are a reflection of the difficulty of acquiring evidence sufficient for an effective prosecution under section 212. Pimping activities are most often very clandestine, and are usually only revealed when prostitutes turn to the police for help. As a result, only the most violent or exploitative cases come to light for the purposes of prosecution.<sup>194</sup>

Unfortunately, the need for a prostitute to come forward has the additional consequence of requiring that person to testify in order to secure a conviction. Yet, prostitutes are often reluctant to testify against pimps, due to threats and fear of reprisals, and a lack of trust in police. The Subcommittee heard repeatedly that when they do agree to testify, prostitutes are often also subject to "severe attacks on their credibility because of their lifestyle."<sup>195</sup> As stated by Richard Dugal, of the Ottawa Police Service:

[...] the difficulty is that a lot of times we have to rely on the evidence of somebody who has been involved in sex trade work. That witness is akin to a battered spouse, where at the best of times it's extremely hard to get a reported occurrence and for somebody to follow through in the court proceedings. The atmosphere and environment in the sex trade work is extremely exploitative. You're dealing very much with people who have been brainwashed... So even if they've been horrendously assaulted... still they wouldn't go through in following up.... [Testimony is obviously only] part of the evidence, but the courts tend to rely a lot on it, and they are very specific facts and issues we have to prove. In circumstances of a domestic assault, I guess the judiciary has taken a stance that you can allow a lot

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<sup>193</sup> Department of Justice document, *Statistics Related to Prostitution Offences* (s. 212 & s. 213 CCC), p. 10.

<sup>194</sup> Fraser Report, p. 390, 417-418.

<sup>195</sup> Federal-Provincial-Territorial Working Group on Prostitution, p. 42.

more collateral evidence — or a wider spectrum of evidence than direct evidence, I would suggest — than my experience has been when proceeding in court with pimping charges or 'living on the avails'.<sup>196</sup>

### **(b) Excessive Scope**

One of the primary complaints among prostitutes is that the living on the avails of prostitution provision is too broad in scope. These witnesses and others told the Subcommittee that section 212(1)(j) is too broad in scope since it easily encompasses everyone in the prostitute's private and professional life. As a result, they live in constant fear that their roommates or spouses could be accused of living on the avails. The provision also encompasses their employers and security guards,<sup>197</sup> individuals who are essential to ensuring the prostitutes' safety.

Although numerous courts, including the Supreme Court of Canada in *R. v. Downey*, have ruled that for a conviction under section 212(1)(j), the person accused of living on the avails of a prostitute must have undertaken a form of *parasitic* living,<sup>198</sup> the rebuttable presumption contained in section 212(3) makes the significant potential for overbroad interpretation by the charging officer or the court still a cause for fear among those in prostitutes' lives. This view was also shared by numerous organizations:

It's PIVOT's assessment that this section of the Code is overbroad and prohibits activities that could improve the safety of sex workers. For example, some sex workers would like to work for an employer or in a setting where they can work collectively and share the administrative or organizational aspects of their work; however, due to the procuring law, which makes it an offence to cause or to induce... once we engage in prostitution, which has been interpreted very broadly by our courts, certain scenarios that we may not see as necessarily a criminal offence can be prosecuted under this section. For example, a sex worker referring a good client to another sex worker and receiving some compensation actually can be captured by this law. Furthermore, anyone who takes on a managerial role can be prosecuted under this section... a husband or a partner can be criminalized for wage sharing with their partner, who is a sex worker.<sup>199</sup>

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<sup>196</sup> Richard Dugal, Ottawa Police Service, testimony before the Subcommittee, 6 April 2005.

<sup>197</sup> *R. v. Barrow* (2001), 155 C.C.C. (3d) 362 (Ont. C.A.); *R. v. Downey*.

<sup>198</sup> *R. v. Downey*, p. 45: "The true parasite whom s. 212(1)(j) seeks to punish is someone the prostitute is not otherwise legally or morally obliged to support. Being a prostitute is not an offence, nor is marrying or living with a prostitute. A person may choose to marry or live with a prostitute without incurring criminal responsibility as a result of the financial benefits likely to be derived from the pooling of resources and the sharing of expenses and other benefits which would normally accrue to all persons in similar situations."

<sup>199</sup> Katrina Pacey, Director, PIVOT Legal Society, testimony before the Subcommittee, 29 March 2005.

### (c) Minors

The primary targets envisaged by section 212 are the pimps and clients who sexually exploit children and youth through prostitution. However, even more so than their adult counterparts, children and youth are often reluctant to testify in court due to a variety of fears and lifestyle factors.

Statistics on the use of section 212 with respect to children and youth are also difficult to gauge, as practices vary among provinces. For example, police in some provinces resort to section 212(1)(h) with respect to the procurement of both youth and adults, while other provinces rely on section 212(2) when dealing with youth. As a result, some provinces have less reliable statistics to demonstrate the number of offences committed with respect to minors.<sup>200</sup>

The Subcommittee heard that one of the primary concerns with respect to the use of section 212 to punish those who sexually exploit children and youth through prostitution is that despite the harsh maximum sentences contained in those provisions, judges rarely come down with the full weight of the law in sentencing. The report of the Federal-Provincial-Territorial Working Group on Prostitution points out that courts in Alberta have traditionally imposed the harshest sentences on pimps, with penalties ranging from 3 to 9 years (the maximum sentence is 14 years). Many have expressed frustration with these relatively low sentences for such serious crimes. According to that report, the two major factors given to explain the low penalties were the courts' perceived lack of understanding of the impact of procurement offences on children and youth, and low levels of enforcement of provisions such as section 212(4).<sup>201</sup>

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<sup>200</sup> Federal-Provincial-Territorial Working Group on Prostitution, p. 19.

<sup>201</sup> *Ibid.*, p. 18-20.

## **CHAPTER FIVE: THE IMPACT OF THE CRIMINAL LAWS CONCERNING PROSTITUTION**

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Analyzing the impact of criminal laws concerning prostitution on the health and safety of those selling sexual services, as well as the health and safety of Canadian communities, was a central part of the Subcommittee's mandate. After gaining an understanding of the legal framework surrounding adult prostitution and its application, we sought to assess its impact on public health and safety through empirical research and testimony from current and former prostitutes<sup>202</sup> and social workers.

This chapter presents the analyses and views shared by the many witnesses we met throughout our study. It consists of two sections: the first documents the negative effects of the criminal laws aimed at controlling prostitution activities between consenting adults, while the second describes their positive effects.

### **A. NEGATIVE EFFECTS OF CRIMINALIZING PROSTITUTION-RELATED ACTIVITIES**

Like many of the witnesses heard during the Subcommittee's study,<sup>203</sup> the literature concerning the impact of prostitution laws on the health, safety and well-being of prostitutes indicates that criminalization intended to control prostitution-related activities in Canada jeopardizes the safety of prostitutes, as well as their access to health and social services.<sup>204</sup>

In the following paragraphs, we examine the concerns raised by witnesses<sup>205</sup> who maintained that the current provisions pertaining to prostitution are harmful to prostitutes' health and safety, as they create an illegal market that is conducive to abuse and exploitation and encourage secrecy and the isolation of those selling sexual services.

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<sup>202</sup> In preparing this chapter, we also considered the opinions of 91 prostitutes from Vancouver's Downtown Eastside, which we received in affidavits submitted by Pivot Legal Society. For more information, see Pivot Legal Society's written submission, *Voices for Dignity: A Call to End the Harms Caused by Canada's Sex Trade Laws*, 2004.

<sup>203</sup> See in particular the testimony of John Lowman, Gayle MacDonald, Leslie Ann Jeffrey, Frances Shaver, Marie-Andrée Bertrand, Colette Parent, Christine Bruckert, Valérie Boucher, Jacqueline Lewis, Kara Gillies, Deborah Brock, Maurganne Mooney, Glenn Betteridge and a very large number of current and former prostitutes.

<sup>204</sup> See in particular Canadian HIV/AIDS Legal Network, *Sex, Work, Rights: Reforming Canadian Criminal Laws on Prostitution*, July 2005; and John Lowman, "Violence and the Outlaw Status of (Street) Prostitution in Canada" 2000 6(9) *Violence Against Women* 987.

<sup>205</sup> See the testimony of Cherry Kingsley, Jennifer Clamen, Gayle MacDonald, Raven Bowen, Frances Shaver, Deborah Brock, Jaqueline Lewis and Laurie Ehler.

## 1. Section 213 of the *Criminal Code*: Prohibition of Communication in Public Places for the Purpose of Prostitution

Section 213 is the most frequently enforced of all criminal law provisions relating to prostitution. Since it was introduced in 1985, this provision has accounted for 90% of prostitution-related offences reported by the police. Yet numerous studies have shown that section 213 has not had the deterrent effect desired. It has not adequately reduced the incidence of street prostitution or even the social nuisance associated with its practice.<sup>206</sup> These studies indicate that enforcement of section 213 has instead served to move prostitution activities from one place to another, and in so doing, has made those selling sexual services more vulnerable.

### (a) Secrecy and Isolation

During our study, we heard that street level prostitutes face the following paradox in order to ensure their safety and at the same time avoid arrest under section 213 of the *Criminal Code*:

Working in an isolated area discouraged attention from police and residents but increased risks from bad dates and other aggressors; working in a well-lit, populated area discouraged bad dates but often led to unwanted attention from police and residents.<sup>207</sup>

In many of the cities we visited, a number of witnesses indicated that the enforcement of section 213 forced street prostitution activities into isolated areas, where they asserted that the risk of abuse and violence is very high.<sup>208</sup> These witnesses told us that by forcing people to work in secrecy, far from protection services, and by allowing clients complete anonymity, section 213 endangers those who are already very vulnerable selling sexual service on the street. This is what the director of Pivot Legal Society, Katrina Pacey, told us:

<sup>206</sup> Section 213's failure to combat street prostitution is well documented. As noted in the previous chapter, all the evaluation studies carried out by the Department of Justice in support of the Bill C-49 review process, as well as the study conducted in the mid-1990s by the Federal/Provincial/Territorial Working Group on Prostitution, found that section 213 had failed. Its enforcement has not reduced street prostitution activity or even the number of complaints by residents of Canada's large cities. See: Department of Justice, *Street Prostitution: Assessing the Impact of the Law*, Ottawa, 1989; Department of Justice, *Report and Recommendations in Respect of Legislation, Policy and Practices Concerning Prostitution-Related Activities*, December 1998. Yet this was the goal when section 213 was introduced. The Hon. John C. Crosbie, then Minister of Justice and Attorney General of Canada, stated as much when he tabled Bill C-49 in committee: "The customer now negotiates and consummates the deal in most cases within the privacy and security of his car. Remove that opportunity and the demand for prostitution services will be substantially diminished. When the customer knows that there is a strong possibility that he may well be arrested and charged with an offence following the passage of this legislation if he attempts this kind of transaction, I can assure you that the demand is going to fall pretty rapidly." See: House of Commons Legislative Committee on Bill C-49, *An Act to amend the Criminal Code (prostitution)*, Minutes of Proceedings and Evidence Issue No. 1, September 19, 1985, 1st Session, 33rd Parliament, 1984-1985.

<sup>207</sup> STAR (Sex Trade Advocacy and Research), *Security and the Well-being of Sex Workers*, brief submitted to the Subcommittee, June 2005, p. 25

<sup>208</sup> This opinion was shared by all prostitutes who testified, as well as a number of social workers and researchers.

In these areas, sex workers are more vulnerable to predation, robbery, harassment, and murder. In these areas, they're unable to access help if they're in trouble.<sup>209</sup>

According to Professor Lowman, the isolation resulting from the application of section 213 has made street prostitutes especially vulnerable to violence and abuse. His research suggests that predators who are looking to abuse women are generally drawn to street prostitution because it allows them to remain out of sight and anonymous.<sup>210</sup> Lowman maintains that violent men are not inclined to hire prostitutes who work for an agency or prostitution establishment for fear of being identified. According to him, it should therefore not be surprising that 80% of the women murdered in British Columbia between 1975 and 1994 were street prostitutes and did not work for prostitution establishments or agencies.<sup>211</sup>

The murder and disappearance of a large number of women prostitutes in the last 20 years are cited as the most compelling evidence of the extreme violence to which street prostitutes are subjected. Lowman maintains that these murders and disappearances are also indicative of the deteriorating conditions in prostitution since the introduction of section 213 in 1985:

I argue that the communicating law [section 213] played a pivotal role in creating a social and legal milieu that facilitated these homicides, and that Canadian prostitution law puts lower-echelon sex workers at risk.<sup>212</sup>

During our hearings, a number of witnesses maintained that the introduction of the communicating law (section 213) also led to the scattering of prostitutes, making them more vulnerable to violence and exploitation.<sup>213</sup> Whereas in the past street prostitutes frequently worked in teams in an effort to reduce the risk of violence (for example by helping take down information such as clients' licence plate numbers and descriptions), they now tend to work in isolation from one another.<sup>214</sup> While this practice has the advantage of attracting less attention from police,<sup>215</sup> it also minimizes information-sharing, making prostitutes more vulnerable

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<sup>209</sup> Testimony before the Subcommittee, 29 March 2005.

<sup>210</sup> John Lowman, testimony before the Subcommittee, 21 February 2005; Jacqueline Lewis, testimony before the Subcommittee, 2 May 2005.

<sup>211</sup> John Lowman and L. Fraser, *Violence Against Persons Who Prostitute: The Experience in British Columbia*, Technical Report TR 1996 — 14e, Justice Canada, 1996.

<sup>212</sup> John Lowman, brief submitted to the Subcommittee, 2005, p. 7.

<sup>213</sup> See in particular the testimony of Jeannine McNeil, Executive Director of the Stepping Stone program.

<sup>214</sup> See in particular the testimony of Valérie Boucher, a Stella worker, testimony before the Subcommittee, 7 February 2005.

<sup>215</sup> This practice therefore limits the risk of arrest.

to meeting violent clients since they are not as well informed and are often less aware of the resources available to assist them.<sup>216</sup>

Similarly, witnesses also indicated that prostitutes in these areas are often unable to obtain assistance and exchange information about health and safety, since access to health and social services, as well as basic services such as public transportation, restaurants and public telephones is generally limited in isolated areas.<sup>217</sup>

Finally, various social service workers reported that they have experienced, greater difficulty reaching street prostitutes to offer health services, information or to provide condoms or lists of bad clients due to the enforcement of section 213.<sup>218</sup>

### **(b) Frequent Changes of Location Due to Policing and Court Orders**

The vulnerability of persons engaging in street prostitution is also related to the fact that they frequently change locations. As a result of an arrest, fear of arrest, or a court order, such people are often forced to move to another area, effectively separating them from friends, co-workers, regular customers and familiar places. A number of witnesses indicated that this instability jeopardizes prostitutes' health, safety and well-being.<sup>219</sup>

### **(c) Screening Clients**

According to a number of witnesses, section 213 also places street prostitutes in danger by forcing them to conclude their negotiations with clients more quickly, often leading them to get into the client's car too quickly. Here is what Gayle MacDonald told the Subcommittee in this regard:

Continued criminalization, specifically the communications provision of the *Criminal Code*, puts the sex worker in danger by increasing the speed of the negotiation of terms between the sex worker and her client, which is the most critical point for her to assess the client's propensity to violence. If the sex worker is rushing to avoid encounters with the police, she may misjudge — at great peril to her — the safety of a client.<sup>220</sup>

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<sup>216</sup> STAR, *Safety, Security and the Well-being of Sex Workers*, brief submitted to the Subcommittee, June 2005, and Jacqueline Lewis, testimony before the Subcommittee, 2 May 2005.

<sup>217</sup> STAR, *Safety, Security and the Well-being of Sex Workers*, brief submitted to the Subcommittee, June 2005.

<sup>218</sup> See in particular the testimony of Susan Miner and Anastasia Kusyik, 15 March 2005, and Maria Nengeh Mensah, 2 May 2005.

<sup>219</sup> STAR, *Safety, Security and the Well-being of Sex Workers*, brief submitted to the Subcommittee, June 2005.

<sup>220</sup> Professor Gayle McDonald, Department of Sociology, St. Thomas University, testimony before the Subcommittee, 21 March 2005.

Working out the details of the transaction before getting into a vehicle or going to a private location was considered important by all the prostitutes who testified. They told us that public bargaining would give them an opportunity to assess the likelihood of a potential client having violent tendencies. Summarizing the statements of 91 street prostitutes from Vancouver, Katrina Pacey said:

Sex workers describe their fear of being caught by police while negotiating the terms of a transaction with a potential client. As a result, they feel rushed in these negotiations and are not able to take the time required to adequately assess a client and to follow their own instincts, or to maybe note if that client has appeared on a bad date list.<sup>221</sup>

Witnesses also suggested that section 213 places prostitutes in a weak bargaining position. Many current and former prostitutes stated that it is more difficult to negotiate prices and services once they are in the vehicle. They are also at a disadvantage because, to avoid being arrested in sting operations, they usually let the client determine the prices and services. Gwen Smith, a member of PEERS Victoria and the Canadian National Coalition of Experiential Women, said in her testimony, "Due to the worry of being trapped by undercover police, women generally let the john name an act for a price first, giving him the advantage in negotiations."<sup>222</sup>

## **2. Section 210 of the *Criminal Code*: Prohibition of Bawdy-Houses**

Although section 210, which prohibits bawdy houses, is seldom enforced, witnesses indicated that many people are at risk every day of being charged with being found in a common bawdy-house. Throughout our study, witnesses also maintained that this section leaves prostitutes with few options if they wish to sell their sexual services under safer conditions. One prostitute made the following points in a brief submitted to the Subcommittee:

Preventing those with the objective of engaging in prostitution from creating a safe place to do so only serves to create unsafe places to do business. As the law is now, the only possible way to carry out sex work is by going to home of a client. The unknown factors involved in a home visit (under current code) for the sex worker create a dangerous situation. One does not know if the client has any cemented connections to the address provided and therefore cannot be provided with security even if measures are taken to inform a friend or colleague where they are and who they are with. In fact, article 212 actually prevents a sex worker from taking such precautionary measures.<sup>223</sup>

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<sup>221</sup> Testimony before the Subcommittee, 29 March 2005.

<sup>222</sup> Testimony before the Subcommittee, 29 March 2005. See also the testimony of Kara Gillies, President, Maggie's: The Toronto Prostitutes' Community Service Centre, 2 May 2005.

<sup>223</sup> Anonymous brief submitted to the Subcommittee.



In addition to prohibiting prostitutes from creating a stable environment, whether by using their residence or some other fixed location, witnesses argued that section 210 makes their lives more insecure by encouraging landlords to rescind the lease of anyone suspected of committing acts of prostitution.<sup>224</sup>

According to some witnesses, prostitutes' family, social and working relationships are also disrupted by section 210, which states that anyone who visits the place where they sell their sexual services may be charged with being found in a common bawdy-house, no matter the reason for being there. They indicated that this seriously complicates the social lives of people who decide to sell sexual services from their homes.

### **3. Section 211 of the *Criminal Code*: Taking or Transporting Someone to a Bawdy-House**

Since section 211 of the *Criminal Code* criminalizes the act of referring a client to a prostitute and prohibits the establishment of a working relationship with anyone who might direct or transport a client to a place of prostitution, many witnesses maintained that this provision hinders the establishment of a safe, healthy environment in which persons may sell their sexual services. In particular, Eleanor Maticka-Tyndale noted:

In our research we found that sharing known clients and having people you trust refer clients, people such as taxi drivers and hotel staff with whom you've established a relationship, both enhance security.

In addition, strategies used by sex workers are also used by workers who have similar work environments, such as when they work late at night or in areas of the city that are considered less safe. For them, having someone you know give you a ride to work enhances your security. However, when those who provide you with transportation are at risk of being arrested and charged because they are transporting you for the purposes of sex work, his form of security enhancement no longer works to the benefit of those involved.<sup>225</sup>

### **4. Section 212 of the *Criminal Code*: Procuring a Person to Engage in Prostitution or Living Wholly or in Part on the Avails of Prostitution of Another**

According to the testimony of a number of former prostitutes, section 212 increases the isolation of those who engage in prostitution by criminalizing cohabitation and the establishment of an employer-employee relationship. Witnesses indicated that this prohibition is often disadvantageous for prostitutes who in some cases regard such options as having economic and safety benefits. Prostitutes told us that cohabitation is a good way to save money and can also

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<sup>224</sup> Kara Gillies, President, Maggie's: The Toronto Prostitutes' Community Service Centre, testimony before the Subcommittee, 2 May 2005.

<sup>225</sup> Professor Eleanor Maticka-Tyndale, Department of Sociology and Anthropology, University of Windsor, testimony before the Subcommittee, 2 May 2005.

reduce the risk of abuse and violence by reducing prostitutes' isolation. Some witnesses indicated that the relationship with a manager or employer can also be beneficial. Some people reported feeling more comfortable and safer when a third party is responsible for finding and screening clients for them and providing them with a place to carry on their prostitution activities.

## 5. Other Effects of the Criminalization of Prostitutes

Throughout our study, a number of prostitutes told us that they lived every day with the fear of losing custody of their children, losing their lawful employment, being stigmatized and having to live with the devastating effects of the stigma of being a prostitute for their entire lives.

[TRANSLATION] The stigma associated with prostitution activity is a powerful social label that discredits and taints anyone to whom it is attached. It radically changes the way that person perceives himself/herself and is perceived as a person. Stigmatization exposes such people to various forms of violence, abuse and contempt. The stigma that sex workers feel or the fear of discrimination has a huge effect on their lives. As a result, they seldom trust government-run systems because they feel judged and categorized by those systems.<sup>226</sup>

To avoid this stigma and facing criminal charges, the Subcommittee heard that the vast majority of prostitutes do not report violence committed against them. Greg Paul, Executive Director of Sanctuary Ministries in Toronto, made the following statement:

I think it's inevitable that somebody who's engaged in an illegal activity, which solicitation currently is, is going to be uncomfortable going to the police for protection if in the process of that illegal activity, they are abused, which is so often the case.<sup>227</sup>

Witnesses said that prostitutes are thus deprived of police protection, since the police are seen as an adversary rather than an ally due to criminalization. This leaves prostitutes more vulnerable to predators.

A number of witnesses indicated that criminalization also contributes to the violence against prostitutes by making violence easier to justify. Kara Gillies told us that:

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<sup>226</sup> Maria Nengeh Mensah, Réponse au rapport du Comité du Bloc Québécois sur la prostitution de rue, March 2002, p. 5.

<sup>227</sup> Greg Paul, Executive Director, Sanctuary Ministries of Toronto, testimony before the Subcommittee, 15 March 2005.

The criminal laws increase the risk of violence by prohibiting a series of safety-enhancing measures. The law also reinforces the characterization of sex workers as aberrant and therefore, in some way, acceptable targets of derision and abuse.<sup>228</sup>

Witnesses said that another consequence of criminalization is the criminal record. This is certainly a destabilizing factor in the life experience of people who have already been in conflict with the justice system. It is also a real obstacle to social integration. For example, people who have a criminal record will have more difficulty finding a conventional job, housing or travelling abroad.

Finally, some witnesses also noted that the current legal framework can jeopardize prostitutes' economic security. These witnesses noted that incarceration and fines can often put people in a difficult position with regard to housing, employment, etc.<sup>229</sup> Other witnesses, including Kara Gillies, argued further that prostitutes' economic security is also jeopardized by "proceeds of crime" legislation, which "hinders workers' capacity to save or invest for our futures and indeed, the futures of our families."

## **B. THE POSITIVE EFFECTS OF CRIMINALIZATION**

### **1. An Important Message in the Campaign Against Prostitution in all its Forms**

Other witnesses noted how important the criminalization of clients of prostitution and pimps was in the broader campaign that they feel Canada should conduct to eradicate prostitution in all its forms, whether between consenting adults or not. The witnesses who made this argument regard persons who engage in prostitution as victims of an inherently violent, alienating activity that makes up part of the oppression of women by men.

This viewpoint is reflected in the testimony of Lyne Kurtzman of the Alliance de recherche IREF-Relais femmes of the Université du Québec à Montréal:

We believe it is time to take a stand on prostitution and to define our position as a society. [...] prostitution practice [is based on] an unequal relationship between the sexes and specific exploitation of a small percentage of women. We must avoid introducing provisions that remove barriers to the trade in women's bodies and legitimize the fact that men have unlimited access to the bodies of a certain number of women, thus creating two classes of female citizens: so-called respectable citizens and those dedicated to the sexual comfort of men.<sup>230</sup>

Most of the people who define prostitution in these terms feel that it is Parliament's responsibility to censure the act of prostitution by criminalizing men

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<sup>228</sup> Kara Gillies, President, Maggie's: The Toronto Prostitutes' Community Service Centre, testimony before the Subcommittee, 2 May 2005.

<sup>229</sup> Maggie's: The Toronto Prostitutes' Community Service Centre, testimony before the Subcommittee, 2 May 2005.

<sup>230</sup> Testimony before the Subcommittee, 9 February 2005.

who buy sexual services, as well as those who live on the avails of prostitution of another person, and in so doing, support all women who are engaged in prostitution and who are, consequently, victims of sexual exploitation and inequality between the sexes. The aim of the message is to discourage prostitution. For the proponents of this view, the primary purpose of criminalization is deterrence by sending the message of disapproval of prostitution.

## **2. An Instrument of Prevention and Intervention for Prostitutes and for their Clients**

Like the vast majority of the witnesses who testified before us, police officers generally recognize that enforcement activity based on section 213 of the *Criminal Code*<sup>231</sup> does not lead to a reduction in the incidence of street prostitution. They agree that such activity merely moves the problem to another area or disperses it. Nevertheless, many police officers view section 213 as a useful and necessary instrument of prevention and intervention.

According to a number of police officers who testified before the Subcommittee, enforcement of section 213 offers them the opportunity to protect female prostitutes from a drug habit, from their pimp or from the inherent dangers of prostitution.<sup>232</sup>

A police officer who testified in a private hearing argued that simply taking prostitutes off the street, even for a short period, is itself a significant benefit of criminalization. This view is also evident in the testimony of Doug Le Pard, Deputy Chief of the Vancouver Police Department:

When we charge a sex trade worker, it is often in an attempt to create a gap or wedge between the sex trade worker and her pimp. With conditions placed on her, she becomes less of a marketable commodity and less of an asset. With less peer and pimp pressure on her, she may have the chance to work towards getting her life together and exiting the sex trade. Criminal charges can be and are stayed to assist sex trade workers who are seeking to exit the sex trade.

[...] the criminal law [has been used] as a tool to compel young women to seek or take advantage of resources that may help them exit the sex trade. For example, it might be a condition of probation that requires they meet with a counsellor who can help them develop exit strategies.<sup>233</sup>

During the Subcommittee's hearings, police officers also stated that section 213 was useful in deterring clients. They said that many clients buy sexual services because they do not understand the harm that they are doing to society by

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<sup>231</sup> As noted earlier, this section prohibits communication in public places for the purpose of prostitution.

<sup>232</sup> This argument was particularly prevalent in discussions of police response to juvenile prostitution. As noted earlier, the Subcommittee prefers the term "sexual exploitation for the purpose of prostitution" when the people involved are minors. This is a serious crime and should be subject to severe penalties.

<sup>233</sup> Doug Le Pard, Deputy Chief, Vancouver Police Department, testimony before the Subcommittee, 30 March 2005.

engaging in such activities and very often are unaware of the desperate situation of most women who engage in prostitution. Having these factors explained to them in "john school" often discourages them from taking part in this kind of activity. Sergeant Matt Kelly of the Vancouver Police Department's vice squad stated that:

[...] with the johns, section 213 allows us to educate and reduce some of the myths you've heard that exist around the sex trade industry, such as that the women actually enjoy it and they've chosen to go into it. These, of course, are myths.<sup>234</sup>

In the same vein, Staff Sergeant Terry Welsh of the Ottawa Police Service made the following statements:

Over the past seven years I've been dealing with using section 213 to assist with the education of both the customers and the sex trade workers. In dealing with section 213, it gives me the authority to arrest individuals, give them the option of attending an educational program — john school — and give them the education, show them the risks, the threats, the issues that are on the street to allow them to make a conscious decision about what is really happening in our community.<sup>235</sup>

In this respect, criminalization or arrest is seen as a form of social intervention.

In conclusion, although the witnesses differed in their opinions on the effects of these laws on prostitution and on the appropriate legislative response to prostitution, they all agreed that, at present, the most marginalized individuals are the ones most likely to experience the consequences of criminalization.

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<sup>234</sup> Testimony before the Subcommittee, 30 March 2005.

<sup>235</sup> Testimony before the Subcommittee, 6 April 2005.

## CHAPTER SIX: MODELS FOR REFORM — EVIDENCE FROM OTHER COUNTRIES

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### A. INTRODUCTION

The approximately 300 witnesses who appeared before the Subcommittee across Canada presented us with a variety of recommendations and proposed legal approaches for dealing with the issue of adult prostitution. Despite the wide divergence of views heard, two broad conflicting perspectives did emerge from this testimony concerning the very basic nature of prostitution. All of the important prostitution reform initiatives that have taken place around the globe can be traced back to one or the other of these competing philosophical views. Any made-in-Canada solution will necessarily have to choose between these views, and from that, derive a legal and social model tailored to the needs of our society.

The divergence between the models is philosophical. One sees prostitution as a form of violence against women — a form of exploitation in and of itself. The second sees prostitution among consenting adults as a form of work. This chapter will explore these two approaches and the various ways that they have been applied in countries around the world.

### B. THE SWEDISH MODEL

#### 1. Overview

The first of these two approaches is based on the perception that all prostitution is a form of violence, and by extension, that one can never choose to sell sexual services. As a result, the law must strive to eliminate all forms of prostitution. Two broad legal solutions emerge from this approach: strengthening the law, and changing the law to penalize only clients and pimps. Only a very small number of individuals appearing before the Subcommittee proposed strengthening the current law and its enforcement in order to combat all aspects of prostitution. The goal of such a model would be to ensure that persons selling sexual services are incarcerated or pushed towards exit strategies, while strict enforcement and sentencing are used against clients and pimps in order to reduce exploitation, abuse, and prostitution itself, and through that, to reduce harm to communities<sup>236</sup>

By contrast, changing the law to penalize only clients and pimps was advocated by a significant number of witnesses.<sup>237</sup> This approach is based on the legal model adopted in Sweden in 1999. It views prostitution as exploitation and a

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<sup>236</sup> To this end, witnesses generally suggested making section 212, or sections 212 and 213, a hybrid offence with the potential for mandatory minimum sentences. This approach also approves of provincial laws allowing for impoundment of client's vehicles and advocates particularly strict penalties for those exploiting children through prostitution.

<sup>237</sup> Including Gunilla Ekberg, Yolande Geadah, Lyne Kurtzman, Janice Raymond, Richard Poulin, Janet Epp Buckingham, Laurie Ehler, Michèle Roy.

human rights violation akin to slavery—an individual can never consent to prostitution. In other words, consent is irrelevant. This approach argues that prostitution promotes the commodification of women and strips them of their human dignity. Prostitution is an obstacle to sexual equality. Proponents state that those who purport to choose prostitution have in fact been forced into it because they did not have any other options (due to poverty, current and past living conditions involving violence, sexual assault, etc.). As a result, any form of prostitution can be equated with trafficking in persons. Gunilla Ekberg, Special Advisor on Issues Regarding Prostitution and Trafficking in Human Beings to the Government of Sweden noted in her testimony that:

In Sweden, prostitution and trafficking in human beings for sexual purposes are seen as issues that cannot and should not be separated. Both are harmful, intrinsically linked practices.<sup>238</sup>

She stated that the overwhelming goal of traffickers is to sell individuals into prostitution.

The Swedish model argues that it is society's responsibility to outlaw the purchase of sexual services through the use of *Criminal Code* provisions in order to provide support to women who are victims of sexual exploitation and of inequality between men and women. Persons selling sexual services should be treated as victims of crime and should never be criminalized themselves. Society must accordingly provide enhanced options for those working in prostitution by introducing social and economic reforms and programs making it easier for them to exit the trade and reintegrate into society.

These witnesses argued that the focus of the law should be trained on tackling the demand for prostitution. Witnesses such as Gunilla Ekberg argued that without men's demand for prostitution, the industry would fail. Thus, those who exploit prostitutes or who abuse them by creating the demand for prostitution must be criminalized. The view is that creating harsh penalties for clients will reduce demand and thus reduce prostitution in the long run, while strengthening the law against pimps will reduce the supply side of the equation in an attempt to eliminate organized crime and trafficking in persons.

## **2. Application of the Law**

Sweden's legal model came into force in 1999. Encompassing all forms of prostitution (indoor and outdoor), the law ensures that those selling sexual services are never criminalized, while clients and pimps are specifically targeted by the criminal law. Yet even for clients and pimps, the penalties are not elevated in comparison with Canadian standards. Individuals who obtain or attempt to obtain a casual sexual relation in exchange for payment are liable to a fine or imprisonment

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<sup>238</sup> Gunilla Ekberg, Special Advisor, Issues Regarding Prostitution and Trafficking in Human Beings, Government of Sweden, testimony before the Subcommittee, 4 May 2005.

for up to six months.<sup>239</sup> Anyone who promotes or encourages or improperly exploits for commercial purposes casual sexual relations entered into by another person in exchange for payment is liable to imprisonment for up to four years. An individual found guilty of aggravated procurement — considering the extent of the operation, the gain or the exploitation of the individual — is liable to between two and eight years' imprisonment.

Gunilla Ekberg emphasized that this relatively low sentencing scheme is consistent with Sweden's broader approach to criminal law, in which the harshest sentence contained in the Penal Code is 10 years. Michèle Roy, Spokesperson for the Regroupement québécois des Centres d'aide et de lutte contre les agressions à caractère sexuel, also noted that in Sweden, the budget for social programs is six times higher than that for law enforcement. The government traditionally focuses its energies on support services, public awareness campaigns, reporting, and reintegration. Certainly, Sweden's approach to prostitution has been implemented in conjunction with an extensive education strategy aimed at clients and the general public, raising awareness of the negative consequences of prostitution.

Like many of the models reviewed in this chapter, the impact of the Swedish law has been difficult to ascertain. Advocates of this approach pointed to significant reductions in prostitution in the country, while others argued that the industry had simply gone underground since implementation of the new measures. Even Swedish government reports on the impact of the law were unable to draw a clear picture. A report by the Working Group on the Legal Regulation of the Purchase of Sexual Services released by the Swedish Ministry of Justice and the Police<sup>240</sup> and a report by the Swedish National Board of Health and Welfare,<sup>241</sup> both released in October 2004, noted that statistics are highly uncertain and that it is not possible to form an exact picture of prostitution in Sweden.

Proponents of the Swedish approach, such as Yolande Geadah, author and researcher, argued that Sweden "is the only country that has truly succeeded in protecting and guaranteeing the safety of female prostitutes."<sup>242</sup>

Witnesses pointed to statistics indicating that prostitution has been halved since the law was introduced. Gunilla Ekberg pointed out that before the law there were 2,500 to 3,000 individuals selling sexual services in Sweden with 650 on the

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<sup>239</sup> Gunilla Ekberg noted that if another person has promised to give or has given compensation for the purchase of a casual sexual service, he may be punished as an accomplice.

<sup>240</sup> Working Group on the Legal Regulation of the Purchase of Sexual Services, "Purchasing Sexual Services in Sweden and the Netherlands: Legal Regulation and Experiences" Swedish Ministry of Justice and the Police, 8 October, 2004, available at: [http://www.odin.no/filarkiv/232216/Purchasing\\_Sexual\\_Services\\_in\\_Sweden\\_and\\_The\\_Nederlands.pdf](http://www.odin.no/filarkiv/232216/Purchasing_Sexual_Services_in_Sweden_and_The_Nederlands.pdf)

<sup>241</sup> Socialstyrelsen, "Prostitution in Sweden 2003: Knowledge, Beliefs & Attitudes of Key Informants" October 2004, available at <http://www.childcentre.info/projects/exploitation/sweden/dbaFile11751.pdf>

<sup>242</sup> Yolande Geadah, Independent Author and Researcher, testimony before the Subcommittee, 7 February 2005.



streets. Today there are approximately 1,500 persons selling sexual services with no more than 350 to 400 involved in street prostitution. This, in a total population of nine million. Sweden's National Board of Health and Welfare notes that the number of individuals selling sexual services has certainly decreased in major city centres. Research presented to the Subcommittee by the Prostitution Awareness and Action Foundation of Edmonton indicates that the law is seen as a deterrent, that groups working with prostitutes are indicating that more individuals are coming to them for assistance in exiting prostitution, and that a good number have left the trade permanently.<sup>243</sup> A document referred to us by PIVOT Legal Society notes that there has been a decrease in the recruitment of children into the sex trade, and that some individuals selling sexual services have indicated that they now feel more comfortable reporting crimes to the police.<sup>244</sup> Witnesses such as Laurie Ehler, Administrative Coordinator for the Elizabeth Fry Society in Nova Scotia, and Janice Raymond, Executive Coordinator of the Coalition Against Trafficking in Women, also referred to police reports indicating that prostitution in Sweden has not gone underground, and that prostitution has not increased in sex clubs, escort agencies, and brothels.

A number of witnesses also pointed to the apparent drop in the number of clients. Gunilla Ekberg cited statistics stating that 914 males were reported under the law between January 1999 and March 2005, and that 234 males were convicted of purchasing sexual services in the first five years of the law's application. Laurie Ehler and Janice Raymond noted that 70% to 80% of clients had left "public places."

Gunilla Ekberg argued that the Swedish law also appears to have had a chilling effect on trafficking in persons. She told us that the Swedish national rapporteur on trafficking in human beings estimates that between 400 and 600 women are trafficked into Sweden every year, compared to the thousands that are trafficked into neighbouring countries. The Swedish numbers have remained constant since the laws came into force. She also noted that the involvement of foreign women in street prostitution has almost come to an end. Janice Raymond commented that both police and non-governmental organizations believe that trafficking in persons is no longer financially advantageous in Sweden since implementation of the law.

Finally, Gunilla Ekberg informed the Subcommittee that opinion polls conducted in Sweden between 1999 and 2002 demonstrate that approximately 80% of the population supports the law prohibiting the sale of sexual services.

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<sup>243</sup> D. Scharie Tavcer, "An Analysis of Five Countries that Have Reformed Prostitution Legislation: Looking at Legislation and Responses Within Australia, Belgium, the Netherlands, New Zealand and Sweden" June 2004, available at: [http://www2.mtroval.ca/~stavcer/PAAFE\\_5country\\_study2004.pdf](http://www2.mtroval.ca/~stavcer/PAAFE_5country_study2004.pdf)

<sup>244</sup> Judith Kilvington, Sophie Day, Helen Ward, "European Prostitution Policy: A Time of Change?" (2001)67 *Feminist Review* 78, available at <http://www.europap.net/download/Europeanprostitutionpolicy.pdf>

Not all witnesses agreed with this evaluation of the Swedish law.<sup>245</sup> Critics voiced concerns that the Swedish approach is a paternalistic one that ignores issues of consent and choice. They argued that it is wrong to treat all persons selling sexual services as victims, and that it is futile to attempt to eradicate all prostitution rather than focussing on exploitation. These witnesses argued that under the Swedish law prostitution has not decreased, but has been pushed underground, putting prostitutes in more dangerous situations where they are increasingly vulnerable to pimps and violent clients. As evidence, they cite discussions with prostitutes in Sweden, and point to reports such as the Working Group on the Legal Regulation of the Purchase of Sexual Services' report, which states that despite an immediate reduction in street prostitution after the law was implemented, the numbers have since stabilized, street prostitution having increased in Malmö and decreased in Gothenburg and Stockholm.<sup>246</sup> The National Board of Health and Welfare also noted that although the number of persons selling sexual services seemed to have diminished in major urban centres after the law was introduced, numbers had not diminished on a national scale — the theory being prostitutes had left major urban centres and gone towards side streets in the suburbs. They argue that this means that persons selling sexual services have become more geographically and socially marginalized, and it is harder for services to get in touch with them. These reports also emphasized increasing use of cell phones and the Internet, suggesting that prostitution did not disappear, it has just adapted.

These witnesses<sup>247</sup> argued that Swedish prostitutes feel endangered by the laws, and that because the industry has gone underground, the violence has increased. There are fewer safe places to work, there is limited time for screening clients, and only the more dangerous clients — who are not afraid of the law — remain. Because there is more competition and less money to be made, individuals selling sexual services are also more willing to take risks, for example, no longer insisting on the use of condoms. This fact is compounded by the fact that police look for condoms as evidence of prostitution, so prostitutes are less likely to carry them. Witnesses commented that individuals selling sexual services are also apprehensive about the legal protections afforded them under the new law and are thus less likely to report abusive clients to police. Because prostitutes must remain hidden, witnesses point out that informal networks between persons selling sexual services have weakened, increasing opportunities for abuse from dangerous clients or exploitative pimps. The Working Group on the Legal Regulation of the Purchase of Sexual Services points out that there is no documentary evidence from the hospitals or police indicating more violence directed towards prostitutes, but there is significant evidence indicating that the market has become tougher and more prone to violence.

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<sup>245</sup> Including Frances Shaver, Anna-Louise Crago, Ellen Woodsworth, Jacqueline Lewis, Leslie Ann Jeffrey, Katrina Pacey, and Christine Bruckert.

<sup>246</sup> Report of the Working Group on the Legal Regulation of the Purchase of Sexual Services.

<sup>247</sup> Including Frances Shaver, Anna-Louise Crago, Ellen Woodsworth, Jacqueline Lewis, Leslie Ann Jeffrey, Katrina Pacey, and Christine Bruckert.

Witnesses such as Katrina Pacey, Director of the PIVOT Legal Society, expressed concern that by pushing prostitution underground, the Swedish law is having a significant detrimental effect upon the most marginalized persons. A document referred to the Subcommittee by Frances Shaver also indicates that prostitutes live a marginalized existence in Sweden, making it potentially even harder for them to exit the trade. They are unable to live with partners because it is illegal to receive any of a prostitute's income, and many individuals also fear loss of custody of their children if it is ever revealed that they sell sex.<sup>248</sup>

Finally, it is important to note difficulties with enforcement of the Swedish law. The Working Group on the Legal Regulation of the Purchase of Sexual Services noted that indoor prostitution is not a significant target of law enforcement in Sweden, as it is too resource intensive, although two thirds of prostitution in Sweden takes place indoors.<sup>249</sup> Other commentators have observed the difficulty of prosecuting clients who must essentially be caught in the act to be charged. Evidence against pimps is also elusive, as it necessitates the cooperation of clients and persons selling sexual services, neither of which party is usually willing to reveal their activities to the police.<sup>250</sup>

### **C. TAKING CONSENSUAL ADULT PROSTITUTION OUT OF THE CRIMINAL CONTEXT**

The second of the two broad approaches to prostitution is founded on the perception that violence is not inherent in the sale of sexual services. A number of witnesses told the Subcommittee that although exploitation and coercion do exist in prostitution, they represent many who genuinely choose to sell sexual services for a living and contended that they should have the freedom to use their bodies as they wish. They saw the criminalization of prostitution between consenting adults as a violation of human rights. Proponents of this approach emphasized that they make a significant distinction between consensual sex between adults for consideration, and the exploitation of children and others forced into the prostitution. Trafficking in persons is one manifestation of such extreme exploitation. Witnesses argued that it is unrealistic to try to eradicate prostitution between consenting adults, and that, consequently, it is important to create conditions that are most conducive to safety and respect for the rights of those in the trade, while providing services and exit strategies for those exploited within it or wishing to leave. Those supporting this position agreed that section 213 of the *Criminal Code* is not working and would like to see it repealed. Two broad legislative solutions emerge from this approach: decriminalization, and legalization/regulation.

<sup>248</sup> Petra Östergren, "Sex Workers Critique of Swedish Prostitution Policy" 2004, available at: <http://www.petraostergren.com/content/view/44/108/>

<sup>249</sup> Report of the Working Group on the Legal Regulation of the Purchase of Sexual Services.

<sup>250</sup> D. Scharie Tavcer, "An Analysis of Five Countries that Have Reformed Prostitution Legislation: Looking at Legislation and Responses Within Australia, Belgium, the Netherlands, New Zealand and Sweden".

## 1. Decriminalization

### (a) Overview

The decriminalization model was advocated by a significant number of witnesses, calling for repeal of many of the prostitution-related provisions from the *Criminal Code*.<sup>251</sup> This approach is based on the view that prostitution will never disappear, that some individuals do choose to enter into the trade, and that there is nothing intrinsically wrong with the adult exchange of sex for money provided that there is no exploitation involved. As a result, these witnesses favoured creating an environment that protects prostitutes' rights as human beings — citizens like any other.

Those advocating decriminalization ultimately wish to ensure that prostitution is not treated differently from other professions. They advocate the establishment of an effective support network and exit strategies for those who are exploited or who have not freely chosen to be where they are, while ensuring that the same network of laws that apply to all other citizens apply to the sex trade and those selling sexual services.

If implemented in Canada, decriminalization would involve significant repeal of prostitution-related provisions in the *Criminal Code*. For some, this would involve repealing sections 210 and 213, as neither of these provisions targets exploitation but rather criminalizes the every day lives of those selling sexual services. Section 212 could be kept to protect children and prostitutes from exploitation. Other witnesses called for repeal of all or part of section 212 as well. Ultimately, proponents of decriminalization argued that the *Criminal Code* is replete with provisions that can already be used to effectively protect all adults and children from abuse, and that the prostitution-related provisions are redundant. For adults, these pre-existing *Criminal Code* provisions include assault, sexual assault, kidnapping, forcible confinement, intimidation, uttering threats, robbery, theft, extortion, and trafficking in persons. For communities, these provisions include causing a disturbance, loitering, common nuisance, criminal harassment, indecent exhibition, and organized crime.

### (b) Application of the Law

#### i) In Other Countries

Very few models of decriminalization exist in the world, however, witnesses frequently pointed to New Zealand and the state of New South Wales in Australia as examples of what they were advocating.

New Zealand's *Prostitution Reform Act* came into force in 2003 with the goal of creating a framework to safeguard the human rights of persons selling sexual services and to protect them from exploitation, to promote their welfare and

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<sup>251</sup> Including Jennifer Clamen, Valerie Scott, Katrina Pacey, Eleanor Maticka-Tyndale, Frances Shaver, and Kara Gillies.

occupational health and safety, to bolster public health, and to prohibit the commercial sexual exploitation of children. The new law eliminated criminal laws that outlawed indoor and outdoor prostitution among adults in an attempt to accept the reality that prostitution exists and to minimize the harm involved, while ensuring that criminal laws that deal with exploitation, abuse, and the commercial sexual exploitation of children remained. Street prostitution is now tolerated and independent prostitutes are unregulated by the state. There are no "red light districts". In terms of indoor prostitution, up to four individuals selling sexual services may now operate from the same location without a licence. However, more than four individuals working together or for a third party must be licensed and regulated. There is no restriction on the number of individuals that can work for one operator. Operator certificates are both granted and held by the Registrar of the Court, and the identity of these individuals remains confidential — lists of registered operators cannot even be accessed by the police.<sup>252</sup>

In New Zealand, local districts are now responsible for the regulation of indoor prostitution within their jurisdictions, creating regulations surrounding zoning, licensing and advertising. These regulations are only constrained by the fact that they must be within the jurisdiction of the district to make, must not be repugnant to general laws of New Zealand, and must be reasonable. Among other things, districts may create bylaws to control offensive behaviour associated with prostitution, as long as these bylaws do not prohibit prostitution all together. Offensive behaviour is also dealt with through the *Summary Offences Act*.

Other generic laws regulating businesses are also now applicable, with some special provisions determining issues such as age limits and constraints on who can sell sexual services or own, finance, operate or manage a prostitution business. Occupational health and safety codes have been expanded to include prostitution, and inspectors have the authority to enter a premises believed to be a prostitution business at any reasonable time to ensure compliance with the *Health and Safety in Employment Act*, and to ensure that the operation, prostitutes and clients have adopted safe sex practices. Such safe sex practices entail individuals involved taking all reasonable steps to ensure that condoms are used, and employers making free condoms accessible. As well, operators must provide health information to persons selling sexual services and their clients.<sup>253</sup>

It is important to note that the law explicitly states that an individual may not have welfare payments denied if he or she refuses to work in the prostitution industry. Legislation also addresses the issue of trafficking in persons by denying immigration permits to anyone who has or who intends to work in, invest in, or to operate a business of prostitution. Finally, the new legislation has strengthened

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<sup>252</sup> Local Government New Zealand, "Prostitution Reform Act Guidelines" 2003.

<sup>253</sup> Occupational Safety and Health Service, "A Guide to Occupational Health and Safety in the New Zealand Sex Industry" Department of Labour, June 2004, available at: <http://www.osh.govt.nz/order/catalogue/pdf/sexindustry.pdf>; Local Government New Zealand, "Prostitution Reform Act Guidelines".

penalties against exploitative practices, including harsh penalties for clients and operators surrounding the commercial exploitation of children.<sup>254</sup>

The state of New South Wales in Australia also decriminalized prostitution over 10 years ago, in 1995. The only prostitution-related activities that remain regulated are:

- Procurement offences — living on the earnings of a person selling sexual services (with an exemption for those who own or manage a brothel), and causing or inducing prostitution;
- Advertising offences — using premises for prostitution that are portrayed as being available for massage, sauna baths, steam baths, or as facilities for exercise, or as photographic studios; and advertising for individuals selling sexual services or advertising that a premise is being used for prostitution;
- Street solicitation — soliciting for prostitution near or within view of a dwelling, a school, a church, or a hospital.

However, despite the restrictions on street solicitation, street prostitution is legal and is complemented by the provision of safe houses where prostitutes can go with their clients. These houses provide rooms, showers, needle exchange, and condoms for a small fee paid by the client. Drug injection sites are also available. Like in New Zealand, local authorities are charged with licensing, regulating locations and implementing other policies with respect to indoor prostitution establishments. Despite the decriminalization of brothels, the *Restricted Premises Act* still ensures that indoor establishments creating a real nuisance for the surrounding neighbourhood may be shut down.<sup>255</sup>

A final example of decriminalization was mentioned by Paul Fraser in his discussion of the law in England. Although England has in no way decriminalized prostitution, a gap in the legislation provides another example of how the decriminalization model can apply on the ground. Essentially, in England brothels are illegal, but a brothel is defined as existing where more than one individual is

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<sup>254</sup> Katrina Pacey, Direct, PIVOT Legal Society, testimony before the Subcommittee, 29 March 2005; Local Government New Zealand, "Prostitution Reform Act Guidelines".

<sup>255</sup> Valerie Scott, Member, Sex Professionals of Canada, testimony before the Subcommittee, 15 March 2005; William Fisher, High Commissioner, Australian High Commission, testimony before the Subcommittee, 9 May 2005.

working together to offer sexual services. Thus, provided that an individual selling sexual services is working alone in his or her home and is over 18, this activity is legal.<sup>256</sup>

## ii) The Impact

The impact of these various decriminalization models is difficult to ascertain. The Subcommittee was provided with almost no statistical information about prostitution in New South Wales, and the legislation implemented in New Zealand is so new that few statistics were available tracking the impact of the law. A review process is currently being conducted by the Department of Justice in New Zealand, but those results are not yet available. When examining the impact of the law in New Zealand compared to Sweden's law, it is important to note that New Zealand has an estimated 8,000 prostitutes in a population of almost four million,<sup>257</sup> while Sweden implemented its new law with an estimated 2,500 to 3,000 prostitutes in a population of almost nine million.

Certainly witnesses in favour of the decriminalization model indicated that the number of individuals involved in street prostitution had not increased in New Zealand.<sup>258</sup> Proponents argued that decriminalization reduced violence against persons selling sexual services by easing the stigma created by the criminalization of prostitution, thus reducing their vulnerability, and allowing sexual transactions to take place in a safer, more transparent environment. Valerie Scott, Member of the Sex Professionals of Canada noted that "Bad brothel owners don't last long"<sup>259</sup> in a decriminalized regime, while Jennifer Clamen of Stella and the Canadian Guild for Exotic Labour emphasized that in New Zealand the laws allow operators of brothels to be pursued for bad practices.<sup>260</sup> It was unclear from the evidence whether violence has increased or decreased against persons selling sexual services in New Zealand.<sup>261</sup> In New Zealand, prostitutes can now legally demand the use of condoms, and Valerie Scott pointed out that both police and the courts in New

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<sup>256</sup> UK Home Office "Paying the Price: A Consultation Paper on Prostitution" July 2004, available at: [http://www.homeoffice.gov.uk/documents/paying\\_the\\_price.pdf?view=Binary](http://www.homeoffice.gov.uk/documents/paying_the_price.pdf?view=Binary); Paul Fraser, Lawyer and Chair of the Special Committee on Pornography and Prostitution, Department of Justice, from 1983 to 1985, testimony before the Subcommittee, 2 February 2005. However, there are a number of caveats to this blanket statement. Firstly, if more than one person provides sexual services within that property, whether or not they are working at the same time, the activity becomes illegal — such an arrangement would be classified as a brothel. As well, if rooms in a particular building are let out to more than one person offering sexual services, this will be considered a brothel if it can be proven that the individuals are effectively working together.

<sup>257</sup> D. Scharie Tavcer, "An Analysis of Five Countries that Have Reformed Prostitution Legislation: Looking at Legislation and Responses Within Australia, Belgium, the Netherlands, New Zealand and Sweden".

<sup>258</sup> In particular, see brief submitted by Jennifer Clamen.

<sup>259</sup> Valerie Scott, Member, Sex Professionals of Canada, testimony before the Subcommittee, 15 March 2005.

<sup>260</sup> Brief submitted by Jennifer Clamen.

<sup>261</sup> The only comment that the Subcommittee received on this issue was from Eleanor Maticka-Tyndale, Professor at the University of Windsor, who noted that there *may* be evidence that violence has decreased against persons selling sexual services in New Zealand.

South Wales take reports of violence and exploitation very seriously. Ms. Scott noted that in 2003 there was only one report of a "bad date" in Sydney, a case in which the prostitute's purse was stolen. Witnesses emphasized that decriminalization allows police more time for investigations and enhancing cooperation and collaboration with persons selling sexual services. Katrina Pacey also pointed out that the new law in New Zealand has opened dialogue between individuals involved in prostitution and communities, while others noted that there appears to be broad public acceptance of the new law's approach to adult prostitution, although some municipalities are trying to get around it by imposing restrictive laws in their districts.

However, not all witnesses agreed with this evaluation of the decriminalization model as applied in New Zealand and Australia.<sup>262</sup> A number pointed out that decriminalization has increased prostitution in the countries where it has been implemented. Yolande Geadah and Laurie Ehler told the Subcommittee that four years after implementation of the law in New South Wales the number of brothels in Sydney had tripled. By 1999 there were 400 to 500 brothels operating in Sydney, mostly unlicensed, and thus, illegal. A July 2005 report released by Manukau City, the second largest city in New Zealand, estimated that the number of persons selling sexual services at the street level has quadrupled since implementation of the law.<sup>263</sup> In addition, witnesses such as Melissa Farley of Prostitution Research and Education and Janice Raymond indicated that organized crime had increased dramatically in New Zealand, while trafficking in persons had not declined. Janice Raymond suggested that child prostitution was also on the rise. As well, a number of witnesses pointed to the important link between drugs and prostitution in Sydney, particularly at Kings Cross, the largest zone of street level prostitution in New South Wales.<sup>264</sup> These witnesses noted that decriminalization legitimates prostitution, bringing it too close to mainstream society. They expressed concern for communities dealing with prostitution in their neighbourhoods and with respect to the normalization of prostitution as just another form of work. For those who viewed all prostitution as violence against women, decriminalization was an unacceptable solution for Canada.

## 2. Legalization/Regulation

Within this broader approach, only a very small group of individuals appearing before the Subcommittee proposed the regulation, or legalization, of prostitution. Unlike decriminalization, which involves the repeal of criminal laws

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<sup>262</sup> Including Yolande Geadah, Laurie Ehler, Melissa Farley, Janice Raymond, and Shannon Ross Watson.

<sup>263</sup> Manukau City Council, "Report of Manukau City Council on Street Prostitution Control" July 2005, available at [http://www.manukau.govt.nz/uploadedFiles/manukau.govt.nz/Publications/Plans & Policies/mcc-report-on-street-prostitution-aug-2005.pdf](http://www.manukau.govt.nz/uploadedFiles/manukau.govt.nz/Publications/Plans%20&%20Policies/mcc-report-on-street-prostitution-aug-2005.pdf)

<sup>264</sup> Laurie Ehler, Administrative Coordinator, Elizabeth Fry Society, testimony before the Subcommittee, 17 March 2005; Shannon Ross Watson, Individual, testimony before the Subcommittee, 31 March 2005; William Fisher, High Commissioner, Australian High Commission, testimony before the Subcommittee, 9 May 2005.



surrounding adult prostitution, leaving other laws to apply as they would to any other context, legalization involves repeal of criminal laws accompanied by regulation of the trade. Models of legalization take many forms — prostitution is generally permitted in certain defined forms, and accompanied by registration, and various other rules and laws that apply only to prostitution-related activities, such as rigorous health checks and zoning requirements. The aim is control of prostitution rather than criminalization or repeal of the criminal laws. In a sense, this is the meeting point between criminalization and decriminalization.

Legalization models have been adopted in jurisdictions such as Germany, parts of Nevada, and some states in Australia (eg. Victoria, Queensland, the Northern Territory, and the Australian Capital Territory). The most famous example of legalization exists in the Netherlands, where prostitution has been relatively accepted under the law for much of the last century. The red light district in Amsterdam is a well-known tourist destination. In 2000, the Dutch government pushed its laws further, repealing all sections of the Penal Code related to adult prostitution, effectively legalizing the sale and purchase of sexual services, while at the same time increasing penalties against pimps, particularly with respect to the sexual exploitation of children. Adult European Union residents who sell sexual services in the Netherlands and who register with the authorities are now considered to be salaried (those who work in legal brothels) or self-employed workers with the same social, legal, and labour rights and obligation as other citizens. They receive social benefits, pay taxes and are subject to the *Working Conditions Act* and most other legislation that applies to businesses.

Local authorities regulate the conditions under which prostitution takes place in the Netherlands, including dealing with licensing and health and safety regulations, and controlling the location and the size of establishments. Police conduct frequent patrols of brothels, which must not interfere with or disrupt public life. Local authorities have also established tolerance zones for street prostitution, which are often complemented by a lounge for individuals selling sexual services to shower and rest, obtain coffee, and speak to a counsellor if needed. Street prostitution outside of these zones is a criminal offence. Finally, medical checkups are not compulsory in the Netherlands, but are strongly encouraged.<sup>265</sup>

The evidence emerging from the Netherlands is conflicting, as some reports note a rise in large brothels, drugs, exploitation of children, and organized crime, while others claim that it is difficult to tell the impact of the law. Witnesses noted that full legalization appears to have led to a massive expansion of prostitution — particularly unregulated prostitutes operating in the underground industry.<sup>266</sup> Due to concerns about the stigma of being officially recognized as a prostitute (including

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<sup>265</sup> Netherlands Ministry of Foreign Affairs, "Dutch Policy on Prostitution: Questions and Answers 2004" 2004, available at <http://www.mfa.nl/contents/pages/743/prost.pdf>.

<sup>266</sup> In the Netherlands, it is important to again note that before the 2000 legal reform there were approximately 25,000 individuals selling sexual services in a total population of 16 million. This is a significantly higher ratio of prostitutes than in Sweden, although it is lower than that in New Zealand.

difficulty in accessing bank loans, day care, etc.<sup>267</sup>), only 4% of individuals selling sexual services in the Netherlands have registered with the authorities. Ninety-six percent thus operate illegally, underground. Not only does the concept of prostitute registration not appear to be working, but the tolerance zones established to protect individuals selling sexual services at the street level have not always proven effective. By late 2003, the Amsterdam city council decided to close its tolerance zone for street prostitution. Unlike zones in many other cities, this one was located outside the city centre and prostitutes were bussed in daily. According to the mayor, it had become impossible to create a safe and controllable area where women would not be abused by members of organized crime groups. Observers have commented that the intensely regulated nature of the tolerance zone did not suit the lifestyle of persons selling sexual services at the street level, many of whom are drug addicted and unwilling or unable to travel to organized prostitution zones far from the city centre. Many such individuals continued to sell sexual services illegally outside the zone.<sup>268</sup>

Other witnesses told the Subcommittee that legalization has not alleviated violence against individuals selling sexual services — violence may have even increased. Although pimps may have disappeared from legal brothels and shop windows, they have moved into the tolerance zones, escort businesses, and bars.<sup>269</sup> Increasingly vulnerable populations are also being noticed in prostitution. The Child Rights Organization in Amsterdam estimates that the number of children exploited through prostitution in the Netherlands has increased by 11,000 since 1996.<sup>270</sup> The number of foreign prostitutes has also increased, a fact that many feel indicates an increase in trafficking in persons, although others argue that it is due to the enhanced protections for persons selling sexual services in the Netherlands. Before the 2000 legal reform, two thirds of individuals selling sexual services in the Netherlands were non-Dutch. Today, it is estimated that between 80% to 85% of prostitutes in Amsterdam are non-Dutch and that between 70% to 75% have no

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<sup>267</sup> Kara Gillies, President, Maggie's: the Toronto Prostitutes' Community Service Centre, testimony before the Subcommittee, 2 May 2005.

<sup>268</sup> Yolande Geadah, Independent Author and Researcher, testimony before the Subcommittee, 7 February 2005; Report of the Working Group on the Legal Regulation of the Purchase of Sexual Services; Janice Raymond, Executive Coordinator, Coalition Against Trafficking in Women, testimony before the Subcommittee, 4 April 2005.

<sup>269</sup> Report of the Working Group on the Legal Regulation of the Purchase of Sexual Services; Kara Gillies, President, Maggie's: the Toronto Prostitutes' Community Service Centre, testimony before the Subcommittee, 2 May 2005.

<sup>270</sup> Yolande Geadah, Independent Author and Researcher, testimony before the Subcommittee, 7 February 2005.

papers.<sup>271</sup> Based on this evidence, individuals selling sexual services, academics, law enforcement agencies, and others appearing before the Subcommittee almost uniformly condemned the possibility of looking to the legalization/regulation model for a made-in-Canada solution.<sup>272</sup>

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<sup>271</sup> Netherlands Ministry of Foreign Affairs, "Dutch Policy on Prostitution: Questions and Answers 2004"; Report of the Working Group on the Legal Regulation of the Purchase of Sexual Services; Yolaride Geadah, Independent Author and Researcher, testimony before the Subcommittee, 7 February 2005; Laurie Ehler, Administrative Coordinator, Elizabeth Fry Society, testimony before the Subcommittee, 17 March 2005.

<sup>272</sup> Including Yolande Geadah, Laurie Ehler, Suzanne Jay, Janice Raymond, Melissa Farley, Hermina Dykxhoom, Richard Poulin, Gunilla Ekberg, Kara Gillies, and Catherine William-Jones.

# CHAPTER SEVEN: DIFFICULTIES IN ACHIEVING CONSENSUS — RECOMMENDATIONS AND CONCLUSIONS

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## A. INTRODUCTION

As in other countries, there is little consensus in Canada surrounding the issue of adult prostitution, although there is unanimous agreement that the sexual exploitation of minors through prostitution must not be tolerated. This conclusion became clear to the Subcommittee after hearing the testimony of approximately 300 witnesses at public and private hearings held in Ottawa, Toronto, Montréal, Halifax, Vancouver, Edmonton and Winnipeg, from January 31 to May 30, 2005. As we have seen throughout our review of the *Criminal Code* provisions dealing with prostitution, differing opinions relate to the nature of prostitution, its causes and effects, as well as the measures that should be taken to address it.

## B. THE SUBCOMMITTEE'S UNANIMOUS RECOMMENDATIONS

Despite many differences in opinion and contradictory points of views in the testimony and among members of the Subcommittee, a few points of agreement emerge from our study that provide the basis for strong recommendations.

First of all, the Subcommittee agrees that violence, discrimination and intimidation against individuals selling sexual services must never be tolerated.

### **Commercial Sexual Exploitation of Minors**

Like all witnesses, the Subcommittee also agrees that the sexual exploitation of minors (under 18 years of age) is a serious crime that should be subject to severe penalties. In order to create an environment where commercial sexual exploitation of minors is strongly condemned, law enforcement authorities must be provided with sufficient resources and training to ensure the full punishment of those who use and sexually exploit children and youth through prostitution.

### **RECOMMENDATION 1**

**The Subcommittee recommends that the Government of Canada ensure that the commercial sexual exploitation of minors (under 18 years of age) remains a serious crime subject to severe penalties and that law enforcement authorities be provided with sufficient resources and training to ensure the full punishment under the law of those who use and sexually exploit children and youth through prostitution.**

## **Trafficking in Persons**

The Subcommittee also wishes to reinforce the fact that trafficking in persons must remain prohibited and effectively prosecuted, and victims provided with adequate assistance and services. While the Subcommittee applauds the initiatives taken in Canada to counter this serious crime, it recognizes that more needs to be done particularly with respect to the training of law enforcement authorities and the provision of services and programs to victims. In order to effectively prosecute traffickers, law enforcement authorities must be provided with sufficient resources and training. Therefore:

### **RECOMMENDATION 2**

**The Subcommittee recommends that the Government of Canada ensure that the problem of trafficking in persons remains a priority so that victims are provided with adequate assistance and services, while traffickers are brought to justice.**

#### **Status Quo is Unacceptable**

The Subcommittee had a mandate seeking to improve the safety of individuals selling sexual services and communities overall. After reviewing the criminal laws pertaining to prostitution with that mandate in mind, members agree that the status quo is unacceptable. The social and legal framework pertaining to adult prostitution does not effectively prevent and address prostitution or the exploitation and abuse occurring in prostitution, nor does it prevent or address harms to communities. This framework must therefore be reformed or reinforced. This view reflects the position of the vast majority of witnesses who appeared before the Subcommittee, as well as the conclusions of the major studies on prostitution conducted over the last 20 years.

#### **Criminal Laws Pertaining to Prostitution are Unequally Applied**

Members also agree that the existing laws on prostitution are unequally applied, enabling a "two tiered sex trade to emerge [where] more expensive licensed off-street prostitutes operate with virtual impunity,"<sup>273</sup> while those already most vulnerable and marginalized — street-level prostitutes, particularly Aboriginal and transsexual/transgendered persons, as well as drug addicts — are routinely arrested. Unlike section 213 of the *Criminal Code*, the other provisions pertaining to prostitution (210 to 212) are rarely enforced by police, often passing under the radar of the complaint-driven prosecution process. Given that street prostitution makes up only 5% to 20% of all prostitution-related activities, yet historically accounts for more than 90% of all prostitution-related incidents reported by the police, the bias in application of the law is clear. Therefore:

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<sup>273</sup> Federal/Provincial/Territorial Working Group on Prostitution, *Report and Recommendations in respect of Legislation, Policy and Practices Concerning Prostitution-Related Activities*, December 1998, p. 65.

### **RECOMMENDATION 3**

**The Subcommittee recommends that the Government of Canada recognize that the status quo with respect to Canada's laws dealing with prostitution is unacceptable, and that the laws that exist are unequally applied.**

#### **Urgent Need for Legislation and Programs**

The Subcommittee came to the conclusion that legislation and programs must be set up to prevent and protect persons from exploitation and assist them in regaining control of their lives. Education campaigns and programs dealing with underlying concerns, such as poverty, social inequality and sexual exploitation, are desperately needed to prevent people from entering prostitution because of lack of choice or coercion, while exit strategies are also needed to assist the individuals who wish to leave prostitution in regaining control of their lives. Like many witnesses, the Subcommittee strongly believes that reducing the incidence of survival sex requires various social programs and services to address the underlying factors that leave individuals with no other choices but prostitution. Therefore:

### **RECOMMENDATION 4**

**The Subcommittee recommends that the Government of Canada establish and develop education campaigns and programs to prevent people from entering prostitution because of lack of choice or coercion, and to raise the awareness of young people, children, and society to the risks of being coerced into prostitution. The government must also work with other levels of government, institutions, and non-governmental organizations to develop exit strategies to assist those involved in prostitution who wish to leave in regaining control of their lives.**

#### **Need for Research and Data Collection**

Throughout its study, the Subcommittee noted a lack of information about prostitution in Canada and agrees that more research is needed to ensure a better understanding of its causes and impacts. As mentioned in Chapter 2, empirical research in the field is too often silent about certain problems that are frequently associated with prostitution, including organized crime, the drug trade, and trafficking in persons for the purposes of prostitution. Therefore:

### **RECOMMENDATION 5**

**The Subcommittee recommends that the Government of Canada fund research on prostitution to obtain a clearer picture of prostitution activities in the country, the associated problems, and the needs of people involved in those activities. The Subcommittee believes that a better understanding of the**

**causes and impacts of prostitution is essential to the implementation of policies and programs that will have a positive impact on the lives of individuals engaged in prostitution and communities in general.**

Throughout its study, the Subcommittee also noted the absence of a legal analysis of the existing *Criminal Code* provisions dealing with prostitution (sections 210 to 213), as well as those dealing with violence, exploitation and nuisance. Some of the questions that remain unanswered in this regard include,

- Given the high number of minors exploited through prostitution, why is section 212 of the *Criminal Code* so rarely used to eradicate this pressing problem?
- Why are sections 210, 211 and 212 of the *Criminal Code* so rarely applied in comparison to section 213?
- Many police officers told the Subcommittee that they would prefer to tackle demand for prostitution instead of the prostitutes themselves. If so, why are clients so rarely the target of law enforcement initiatives?
- Why do law enforcement officials and prosecutors not seem to use general application provisions of the *Criminal Code*, like kidnapping, extortion, sexual exploitation and assault to address the violence in prostitution?

Finally, the evidence emerging from our testimony with respect to the legal and social approaches to prostitution adopted in other countries was also incomplete and contradictory. The Subcommittee feels that further research into the impact of these approaches and the Canadian approach on issues such as trafficking in persons and the sexual exploitation of women and children is required. In addition, the Subcommittee feels that more comprehensive data and analyses of the legal and social frameworks available to address crime in the context of prostitution would assist the government in finding a viable and effective solution to address prostitution in Canada. Therefore:

#### **RECOMMENDATION 6**

**The Subcommittee recommends that the Department of Justice coordinate research on prostitution on a priority basis with other levels of government, institutions, and non-governmental organizations, as well as persons selling sexual services. This research should include an examination of best practices adopted in Canada and abroad.**

## **C. A MAJORITY AGREEMENT — THREE PARTIES' PERSPECTIVES**

### **Prostitution as a Public Health Issue**

Members of the Subcommittee could not agree on a strategy to address the safety of individuals selling sexual services and communities overall. That said, the majority of the Subcommittee — members from the Liberal, New Democratic, and Bloc Québécois Parties — strongly believe that prostitution is above all a public health issue, and not only a criminal law issue. What they propose is therefore a pragmatic approach that recognizes the importance of prevention, education, treatment and harm reduction measures for all persons involved in the many forms of prostitution, from sexual slavery and survival sex, to the exchange of sexual services between consenting adults. While recognizing that programs are desperately needed to enable those who wish to leave prostitution to do so, and to support and protect those coerced in prostitution; they also recognize the importance of providing harm reduction measure to address the underlying concerns of poverty and social inequality and to meet the needs of individuals engaged in prostitution with respect to their health and safety (including sex education, distribution of condoms, bad date list, etc). Therefore:

### **RECOMMENDATION 7**

**The majority of the Subcommittee calls for concrete efforts to be made immediately to improve the safety of individuals selling sexual services and assist them in exiting prostitution if they are not there by choice. In addition, the federal government should consider increasing transfer payments to the provinces to enable them to provide significant resources for income support, education and training, poverty alleviation, and treatment for addictions, while respecting provincial areas of jurisdiction.**

### **Canada's Approach to Adult Prostitution is Contradictory**

Members from the Liberal, New Democratic, and Bloc Québécois Parties believe that Canada's current quasi-legal approach to prostitution — in which adult prostitution is legal *per se*, but nearly impossible to practise without breaking the law — should be recognized as contradictory. Much like the conclusion reached by the Fraser Committee 20 years ago, they feel that since adult prostitution is legal in Canada, the conditions under which it can be practised must be stipulated. Moreover, after hearing the testimony, they came to the conclusion that the current situation causes more harm than good. It marginalizes prostitutes, often leaving them isolated and afraid to report abuse and violence to law enforcement authorities. In the view of members from the Liberal and New Democratic Parties, the Canadian government must come to terms with this contradiction and the inefficiency of the law, and engage in a process of law reform that will consider changes to laws pertaining to prostitution, thus allowing criminal sanctions to focus on harmful situations.



### **Striking a Balance without Judging**

Members from the Liberal, New Democratic, and Bloc Québécois Parties are of the view that sexual activities between consenting adults that do not harm others, whether or not payment is involved, should not be prohibited by the state. They feel that it is essential to strike a balance between the safety of those selling sexual services — without judging them — and the right of all citizens to live in peace and safety. In order to ensure that both individuals selling sexual services and communities are protected from violence, exploitation and nuisance, the majority of the Subcommittee urges reliance on *Criminal Code* provisions of general application targeting various forms of exploitation and nuisance, such as public disturbance, indecent exhibition, coercion, sexual assault, trafficking in persons, extortion, kidnapping, etc. The approach proposed by these members is premised on the idea that it is preferable to concentrate our efforts on combating exploitation and violence in the context of prostitution, rather than criminalizing consenting adults who engage in sexual activities for money.

### **D. THE CONSERVATIVE PARTY'S PERSPECTIVE**

#### **Prostitution as a Form of Violence, not Commerce**

In contrast, like many witnesses who appeared before the Subcommittee, members from the Conservative Party see prostitution as a degrading and dehumanizing act, often committed and controlled by coercive or opportunistic individuals against victims who are frequently powerless to protect themselves from abuse and exploitation. They believe that the most realistic, compassionate and responsible approach to dealing with prostitution begins by viewing most prostitutes as victims.

#### **Questioning Consent and Harmlessness**

Unlike other parties, the Conservatives do not believe it is possible for the state to create isolated conditions in which the consensual provision of sex in exchange for money does not harm others. They believe that all prostitution has a social cost, and that any effort by the state to decriminalize prostitution would impoverish all Canadians — and Canadian women in particular — by signalling that the commodification and invasive exploitation of a woman's body is acceptable. In their view, such a notion violates the dignity of women and undermines efforts to build a society in which all members are respected equally, regardless of gender. Furthermore, considering that gender-linked social and economic hardships are often what push women into prostitution in the first place, the Conservatives question how often "consent" is truly given out of choice, and not necessity.

These members also feel that because of the negative elements it attracts, prostitution is unacceptable in any location — commercial, industrial or residential, including massage parlours and private homes. They feel it would be unethical for a government to voluntarily degrade or endanger any community by permitting increased prostitute, john and pimp traffic, and subsequently exposing locals to elevated levels of harassment, luring and drug use.

## The Conservative Approach

The Conservative members agree that the status quo with respect to the enforcement of laws is unacceptable, but disagree that decriminalization is the solution. They cite the example of Sweden, which decriminalized prostitution in the 1960s then recriminalized it in 1999 after concluding that decriminalization had in fact entrenched the very problems it was expected to resolve. The Conservatives are also deeply concerned about evidence from other countries that links decriminalization to an increase in both adult and child prostitution<sup>274</sup>, and to a stronger control over prostitution by organized crime.<sup>275</sup>

The Conservatives therefore call for legal and social reforms which would reduce all prostitution through criminal sanctions that clearly target abusers (johns and pimps), and improve the ability of those engaged in prostitution — the victims — to quit. They propose a new approach to criminal justice in which the perpetrators of crime would fund, through heavy fines, the rehabilitation and support of the victims they create. These fines would also act as a significant deterrent. As for the prostitutes themselves, the Conservatives recommend a system in which first-time offenders and those forced or coerced into the lifestyle are assisted out of it, and avoid a criminal record. However, those who freely seek to benefit from the “business” of prostitution would be held accountable for the victimization which results from prostitution as a whole. To address the problem of the two-tiered sex trade, these members emphasize that law enforcement must deal equally and consistently with all forms of prostitution, whether it be found on the street, in escort services, massage parlours, bawdy houses, or other locations.

The Conservatives reject any attempt to characterize the *Criminal Code* provisions listed in Appendix D as adequate protection for either prostitutes or communities. In their view, such an effort is part of a decriminalization agenda that would eliminate tools required to separate communities from prostitution, and prostitutes from exploitation and abuse. While cognizant that solicitation laws may be improved, they believe that marginalization is not a function of the laws themselves, but of attempts to circumvent them. The fact that such attempts are made points to the need for intervention.

The Conservatives agree that there is a significant public health component to prostitution, but cannot support majority Recommendation 7 insofar as it enables prostitutes to remain in a dangerous and degrading lifestyle. The Conservative Party calls for the establishment of far-reaching educational strategies and programs that are focused on the reduction of all forms of prostitution, and encouraging all prostitutes towards exit programs.

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<sup>274</sup> Testimony of Richard Poulin with respect to the Netherlands and the Australian states that decriminalized prostitution, 9 February 2005.

<sup>275</sup> See testimony by Yolande Geadah, Julie McNeice as well as Richard Poulin of the University of Ottawa.

## **E. DIFFICULTIES IN FINDING A CONSENSUS**

The Subcommittee's examination of the law has revealed significant elements of agreement and disagreement with respect to the appropriate legal and social response to prostitution, probably reflecting the conflicting views of Canadians more broadly.

Much like our testimony, the divergence between members' views on prostitution is often philosophical. This is certainly one of the major impediments for the Subcommittee to finding consensus on how to address adult prostitution. Some members see prostitution as a form of violence against women—a form of exploitation in and of itself. Others see prostitution among consenting adults as a human rights issue—the right of an adult to use his or her body to provide sexual services in exchange for money and to operate in a safe environment.

As noted earlier, despite the Subcommittee's extensive study, many questions remain unanswered. There is an obvious lack of research and data with respect to prostitution and issues such as the commercial sexual exploitation of children and youth, trafficking in persons for the purposes of prostitution, and the involvement of organized crime. In addition, the Subcommittee was unable to find an answer as to why the many laws of general application that can be used to control violence and exploitation in the context of prostitution and the negative impacts of prostitution on communities are rarely used to address such crimes. In the same vein, the Subcommittee feels that it did not hear sufficient evidence with respect to the impact of the legal and social reforms emerging from other countries to address prostitution.

Answers to these questions and others would facilitate consensus building as to what changes need to be made in order to ensure that the law more effectively protects individuals involved in prostitution and communities overall.

# APPENDIX A

## LETTER FROM THE MINISTER OF JUSTICE

Minister of Justice  
and Attorney General of Canada



Ministre de la Justice  
et procureur général du Canada

The Honourable / L'honorable Irwin Cotler, P.C., O.C., M.P./c.p., o.c., député  
Ottawa, Canada K1A 0H8

NOV 19 2004

The Honourable Paul DeVillers  
Member of Parliament  
Chairman  
Standing Committee on Justice, Human Rights,  
Public Safety and Emergency Preparedness  
Confederation Building, Room 172  
Ottawa, Ontario K1A 0A6

Dear Mr. DeVillers:

The purpose of this letter is to suggest that a sub-committee of the Standing Committee on Justice, Human rights, Public Safety and Emergency Preparedness be struck to study the laws related to prostitution. The sub-committee could have a mandate similar to the solicitation laws in September 2003. The purpose of the new sub-committee could be to improve the safety of sex-trade workers and communities overall, and to recommend the changes necessary to reduce the exploitation of and violence against sex-trade workers.

Given the importance of this matter, for all Canadians and, in particular, for sex-trade workers, I decided, once I was appointed Minister of Justice, to meet with numerous stakeholders directly affected by the issues surrounding prostitution in Canada. Thus, in March 2004, I publicly indicated the need to more adequately protect individuals involved in prostitution against exploitation, violence, and abuse and I pledged to support the reconstitution of the sub-committee as a democratic process for law reform and social change with regard to the prostitution problem in Canada.

Since then, a number of reports and research papers have been produced on this issue including, among the most recent, the report from Pivot Legal Society entitled *Voices for Dignity; A call to End the Harms Cause by Canada's Sex Trade Laws* and the report from the Conseil permanent de la jeunesse du Québec entitled *Vu de la rue : Les jeunes adultes prostitués*, which advocates the repeal of the solicitation laws because they encourage violence against prostitutes. The Canadian Medical Association has also urged doctors to lobby the federal government to change Canada's prostitution laws in order to, in particular, protect street prostitutes.

Canada

There appears to be a consensus regarding the need to review and amend the prostitution related provisions of the Criminal Code as soon as possible. However, there is no unanimity in relation to how to improve the safety of prostitutes, even within the different interest groups, such as feminist groups.

The importance of dealing with this issue and the variety of views in relation to how it should be addressed leads me to recommend the prompt constitution of the sub-committee of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness. This sub-committee should allow Parliamentarians to establish a dialogue between the different interest groups and determine the best possible solution for both protecting the individuals involved in prostitution-related activities and responding as appropriately as possible to the concerns of Canadians about prostitution.

My officials will be happy to assist the new sub-committee in its work.

Original signed by :

Hon. Irwin Cotler  
Minister of Justice and Attorney General of Canada

## APPENDIX B LIST OF WITNESSES

Associations and Individuals	Date	Meeting
<b>37th Parliament, 2nd Session</b>		
<b>Department of Justice</b>	2003/10/07	2
Lucie Angers, Senior Counsel, Criminal Law Policy Section		
Richard Mosley, Assistant Deputy Minister, Criminal Law Policy and Community Justice Branch		
<b>International Centre to Combat Exploitation of Children</b>	2003/10/21	3
Cherry Kingsley, Special Advisor		
<b>Statistics Canada</b>		
Roy Jones, Director, Canadian Centre for Justice Statistics		
<b>Senate of Canada</b>	2003/10/28	4
Hon. Landon Pearson, Senator		
<b>University of Ottawa</b>		
Christine Bruckert, Professor, Department of Criminology		
Colette Parent, Professor, Department of Criminology		
<b>Canadian Association of Sexual Assault Centres</b>	2003/11/04	5
Lee Lakeman, Regional Representative for B.C. & Yukon		
<b>Senate of Canada</b>		
Hon. Landon Pearson, Senator		
<b>38th Parliament, 1st Session</b>		
<b>Department of Justice</b>	2005/01/31	3
Lucie Angers, Senior Counsel, Criminal Law Policy Section		
Patrice Corriveau, Senior Policy Analyst, Criminal Law Policy Section		
Catherine Latimer, Acting Assistant Deputy Minister, Criminal Law Policy and Community Justice Branch		
Suzanne Wallace-Capretta, Research Manager, Research and Statistics Division		
<b>As an Individual</b>	2005/02/02	4
Paul Fraser, Lawyer and Chair of the special Committee on Pornography and Prostitution, Department of Justice 1983-85		
<b>Concordia University</b>	2005/02/07	5
Frances Shaver, Professor, Department of Sociology and Anthropology		

<b>Associations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>Regroupement québécois des centres d'aide et de lutte contre les agressions à caractère sexuel</b> Michèle Roy, Spokesperson	2005/02/07	5
<b>As Individuals</b> Valérie Boucher Yolande Geadah		
<b>Alliance de recherche IREF-Relais femmes</b> Lyne Kurtzman, Research Officer Aurélie Lebrun, Research Officer	2005/02/09	6
<b>University of Ottawa</b> Richard Poulin, Full Professor, Department of Sociology		
<b>York University</b> Deborah Brock, Professor, Department of Sociology		
<b>Canadian National Coalition of Experiential Women</b> Cherry Kingsley, National Coordinator Samantha Smythe, Member of the Steering Committee	2005/02/14	7
<b>REAL Women of Canada</b> Gwendolyn Landolt, National Vice-President Diane Watts, Researcher		
<b>University of Montréal</b> Marie-Andrée Bertrand, Professor Emeritus of Criminology, Criminology and Sociology of Law		
<b>Evangelical Fellowship of Canada</b> Janet Epp Buckingham, Director, Law and Public Policy	2005/02/16	8
<b>Salvation Army</b> Dianna Bussey, Director, Correctional and Justice Services Danielle Shaw, Director, Government Relations		
<b>As an Individual</b> Maggie deVries		
<b>Simon Fraser University</b> John Lowman, Professor, School of Criminology	2005/02/21	9
<b>University of Ottawa</b> Christine Bruckert, Professor, Department of Criminology Colette Parent, Professor, Department of Criminology	2005/03/09	11
<b>Aboriginal Legal Services of Toronto</b> Maurganne Mooney, Member	2005/03/15	12

Associations and Individuals	Date	Meeting
<b>Canada-China Business Association</b> Benson Li, Vice-President	2005/03/15	12
<b>Canadian Centre for Abuse Awareness</b> Mary Bone, Director of Program Services John Muise, Public Safety Advisor		
<b>Canadian HIV/AIDS Legal Network</b> Glenn Betteridge, Senior Policy Analyst		
<b>City of Toronto</b> Kyle Rae, Councillor		
<b>Jubilee Centre for Christian Social Action</b> Dominic Tse, President		
<b>London Alliance to Support Sex Trade</b> Cindy Campbell, Co-chair James Watkin, Co-Chair		
<b>Parkdale Action Committee for Street Improvement</b> Sheila Lipiatt, Chairperson		
<b>Sanctuary Ministries of Toronto</b> Stephen Martin, Coordinator Greg Paul, Executive Director		
<b>Sex Laws Committee</b> Richard Hudler Maria-Belair Ordonez		
<b>Sex Professionals of Canada</b> Amy (Unknown), Member Wendy Babcock, Member Valerie Scott, Member		
<b>Sex Workers Alliance of Toronto</b> Anastasia Kusyk, Member		
<b>Sexual Exploitation Education and Awareness Campaign of Toronto</b> Lea Greenwood, Coordinator		
<b>Street Outreach Services — SOS</b> Susan Miner, Director		
<b>Streetlight Support Services</b> Natasha Falle, Counsellor Lorraine Hewitt, Development Manager Beverley McAleese, Executive Director		



<b>Associations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>Toronto Police Service</b> Wendy Leaver, Detective Howard Page, Detective George Schuurman, Detective Constable	2005/03/15	12
<b>University of Toronto Genderqueer Group</b> Evan Smith, Coordinator		
<b>As an Individual</b> Leslie Milne		
<b>Action Séro Zéro</b> Kathy Tremblay, Development and Communications Officer	2005/03/16	13
<b>Association des résidants et résidentes des faubourgs de Montréal</b> Agnès Connat, Member François Robillard, President		
<b>Batshaw Youth and Family Centres</b> Lynn Dion, Resource Person, STI/HIV Prevention and Youth Sexuality		
<b>Cactus Montréal</b> Darlène Palmer, Group Coordinator Marianne Tonnelier, General Director		
<b>Coalition for the Rights of Sex Workers</b> Jennifer Clamen, Member and Coordinator for the XXX Forum Anna-Louise Crago, Member		
<b>Journal de la rue</b> Danielle Simard, Assistant Director Raymond Viger, General Director		
<b>Projet d'intervention auprès des mineurs prostitués</b> Jacques Moïse, Coordinator		
<b>Projet Intervention Prostitution Québec Inc.</b> Marc Drapeau, Coordinator		
<b>Montreal City Police Service</b> Mario Leclerc, Inspector, Community Service, South Shore		
<b>World March of Women</b> Diane Matte, Coordinator		

<b>Associations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>As Individuals</b> Lise Béland Paul Boyer Marlène Caron Pat Nowakowska Catherine Prévost Pierrette Thomas	2005/03/16	13
<b>Direction 180</b> Cynthia MacIsaac, Program Director	2005/03/17	14
<b>Elizabeth Fry Society of Mainland, Nova Scotia</b> Laurie Ehler, Administrative Coordinator		
<b>Halifax City Council</b> Dawn Sloane, Councillor		
<b>Halifax Regional Police</b> Brian Johnston, Constable Doug MacKinnon, Constable		
<b>Stepping Stone</b> Jeannine McNeil, Executive Director Rene Ross, Chair Daniel Roukema, Vice-Chair		
<b>Women's Innovative Justice Initiative</b> Pam Rubin, Research Coordinator		
<b>St. Thomas University</b> Gayle MacDonald, Professor, Department of Sociology	2005/03/21	15
<b>University of New Brunswick</b> Leslie Ann Jeffrey, Professor, Department of History and Politics		
<b>Hintonburg Community Association Inc.</b> Jay Baltz, Board Member Jeff Leiper, President Cheryl Parrott, Chair, Security Committee	2005/03/23	16
<b>As an Individual</b> Brian Gilligan		
<b>Change the Code</b> Jamie Lee Hamilton, Co-Founder	2005/03/29	17

<b>Associations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>PIVOT Legal Society</b> Katrina Pacey, Director	2005/03/29	17
<b>Prostitutes Empowerment Education and Resource Society, Victoria</b> Lauren Casey, Member Gwen Smith, Member		
<b>Prostitutes Empowerment Education and Resource Society, Vancouver</b> Kyla Kaun, Director, Public Relations Shelley Woodman, Executive Director		
<b>Prostitution Alternatives Counselling and Education Society</b> Sue Carruthers, Board Chair		
<b>Prostitution Alternatives Counselling and Education Society and BC Coalition of Experiential Women</b> Raven Bowen, Coordinator		
<b>Sexworkers Action Network</b> Cynthia Low Davi Pang		
<b>WISH Drop-in Centre</b> Lucy Alderson, Coordinator Kate Gibson, Executive Director		
<b>As Individuals</b> Raigen D'Angelo Sandra Laframboise		
<b>Asian Society for the Intervention of AIDS</b> Mandip Kharod, Volunteer Coordinator Raymond Leclair, Executive Director	2005/03/30	18
<b>B.C. Ministry of the Attorney General</b> Jacquelyn Nelson, Director, Federal/Provincial Policy		
<b>British Columbia Civil Liberties Association</b> Ann Pollack, Member, Board Micheal Vonn, Policy Director		
<b>City of Vancouver</b> Ellen Woodsworth, Councillor		
<b>Community Partners' Group</b> Liz Bennett, Volunteer		

<b>Associations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>Covenant House Vancouver</b> Charles Cooke, Executive Director	2005/03/30	18
<b>Dickens Community Group</b> Dennis St. Aubin, Member, Organization Committee		
<b>Downtown Eastside Youth Activities Society</b> Judy McGuire, Executive Director		
<b>Focus on the Family Canada</b> Jennifer Allen, Member		
<b>Hastings North Business Improvement Association</b> Patricia Barnes, Executive Director		
<b>Pink Triangle Press</b> Garth Barriere, Barrister and Solicitor		
<b>Prostitution Research and Education</b> Melissa Farley		
<b>Vancouver Police Board</b> Lynne Kennedy, Member, Board		
<b>Vancouver Police Department</b> David Dickson Matt Kelly, Sergeant, Vice Unit Doug Le Pard, Deputy Chief		
<b>Vancouver Rape Relief and Women's Shelter</b> Suzanne Jay, Collective Member		
<b>As Individuals</b> Perry Bulwer Scarlett Lake Loraine Laney Jaqueline Lynn Annie Parker Janine Stevenson		
<b>Alberta Avenue Business Association</b> Peter Rausch, Executive Director	2005/03/31	19
<b>Alberta Avenue Neighbourhood Patrol</b> Cristina Basualdo, Vice-President		
<b>Alberta Federation of Women United for Families</b> Hermina Dykxhoom, Executive Director		

<b>Associations and Individuals</b>	<b>Date</b>	<b>Meeting</b>		
<b>Calgary Police Service</b> Leonard Dafoe, Detective	2005/03/31	19		
<b>City of Calgary</b> Joe Ceci, Alderman				
<b>City of Edmonton</b> Janice Melnychuk, Councillor Michael Phair, Councillor				
<b>Community Action Project</b> Pieter de Vos, Community Organizer				
<b>Edmonton Police Service</b> Jim Morrissey, Detective				
<b>Edmonton's Safer Cities Initiative</b> Kate Gunn, Coordinator Kate Quinn, Member, Advisory Committee				
<b>Exit Community Outreach</b> Madelyn McDonald, Program Manager				
<b>House of Commons</b> Peter Goldring, Edmonton East				
<b>Kindred House</b> Shawna Hohendorff, Program Coordinator				
<b>Parkdale/Cromdale Community Leagues</b> Victoria Hemming, President				
<b>As Individuals</b> Elisabeth Hudson Julie McNeice Shannon Ross Watson Shelly Severson Carol-Lynn Strachan				
<b>Aboriginal Council of Winnipeg</b> Larry Wucherer, President			2005/04/01	20
<b>City of Winnipeg</b> Harry Lazarenko, Councillor Harvey Smith, Councillor				
<b>John Howard Society of Manitoba</b> Graham Reddoch, Executive Director				

Associations and Individuals	Date	Meeting
<p><b>New Directions</b> Jane Runner, Program Manager, TERF Program, Member of the Canadian National Coalition of Experiential Women (CNCEW)</p>	2005/04/01	20
<p><b>New Life Ministries</b> Harry Lehotsky, Director</p>		
<p><b>North End Community Renewal Corporation</b> Nanette McKay, Executive Director</p>		
<p><b>North End Safety Network</b> Carolyn Buffie, Coordinator Myfanwy Cawley, Spokesperson</p>		
<p><b>Reformed Perspective Foundation</b> Peter Veenendaal, Research Coordinator</p>		
<p><b>Residents' Sex Trade in Winnipeg Forum</b> John Wilmot, Spokesperson</p>		
<p><b>Sage House</b> Gloria Enns, Director</p>		
<p><b>Spence Neighbourhood Association Inc.</b> Inonge Aliaga, Executive Director Mzilikazi Ndlovu, Safety Coordinator</p>		
<p><b>University of Manitoba</b> Morgan Abi, Graduate Student, Department of Sociology, Member of the Canadian National Coalition of Experiential Women (CNCEW) Susan Strega, Assistant Professor, Faculty of Social Work, Member of the Canadian National Coalition of Experiential Women (CNCEW)</p>		
<p><b>Women's Health Clinic</b> Madeline Boscoe, Coordinator Laurie Helgason, Board Member</p>		
<p><b>As Individuals</b> Nick Termette George Vanwoudenberg</p>		
<p><b>Coalition Against Trafficking in Women, International</b> Janice Raymond, Co-Executive Director</p>	2005/04/04	21

<b>Associations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>Canadian Association of Chiefs of Police</b> Brian Malone, Manager, Policy and Planning Frank Ryder, Co-Chair, Law Amendments Committee Vincent Westwick, Co-Chair, Law Amendments Committee	2005/04/06	22
<b>Ottawa Police Service</b> Richard Dugal Terry Welsh		
<b>Amnesty International Canada</b> Cheryl Hotchkiss, Women Human Rights Campaigner	2005/04/11	23
<b>Native Women's Association of Canada</b> Beverley Jacobs, President		
<b>Royal Canadian Mounted Police</b> Kevin Vickers, Director General, National Contract Policing Branch, Community, Contract and Aboriginal Policing Services	2005/04/13	24
<b>Egale Canada</b> Laurie Arron, Director, Advocacy Stephen Lock, Member, Board of Directors	2005/04/18	25
<b>Université du Québec à Montréal</b> Rose Dufour, Associate Researcher, Collectif de recherche sur l'itinérance, la pauvreté et l'exclusion sociale		
<b>University of Saskatchewan</b> Pamela Downe, Professor, Department of Women's and Gender Studies	2005/04/20	26
<b>Maggie's: The Toronto Prostitutes' Community Service Centre</b> Kara Gillies, Chairperson	2005/05/02	27
<b>Université du Québec à Montréal</b> Maria Mensah, Professor-Researcher, School of Social Work		
<b>University of Windsor</b> Jacqueline Lewis, Associate Professor, Department of Sociology and Anthropology Eleanor Maticka-Tyndale, Professor, Department of Sociology and Anthropology		
<b>Swedish Government</b> Gunilla Ekberg, Special Advisor, Issues regarding Prostitution and Trafficking in Human Beings	2005/05/04	28
<b>Australian High Commission</b> William Fisher, High Commissioner	2005/05/09	29

<b>Associations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>Federation of Canadian Municipalities</b> Berry Vrbanovic, Chair, Standing Committee on Community Safety and Crime Prevention	2005/05/11	30
<b>Street Teams Initiatives</b> Ross MacInnes		
<b>Statistics Canada</b> Roy Jones, Director, Canadian Centre for Justice Statistics	2005/05/16	31
<b>New Opportunities for Women Canada Society</b> Doug Lang, Director Catherine Williams-Jones, Founder and Executive Director	2005/05/18	32
<b>Aboriginal Legal Services of Toronto</b> Maurganne Mooney, Member	2005/05/30	33
<b>Canadian Association of Sexual Assault Centres</b> Lee Lakeman, Regional Representative for B.C. & Yukon		
<b>Coalition for the Rights of Sex Workers</b> Jennifer Clamen, Member and Coordinator for the XXX Forum		
<b>Concordia University</b> Frances Shaver, Professor, Department of Sociology and Anthropology		
<b>Federation of Canadian Municipalities</b> Berry Vrbanovic, Chair, Standing Committee on Community Safety and Crime Prevention		
<b>PIVOT Legal Society</b> Katrina Pacey, Director		
<b>Prostitution Awareness and Action Foundation of Edmonton</b> Kate Quinn, Member		
<b>Royal Canadian Mounted Police</b> Darrell LaFosse, Assistant Commissioner, Community, Contract and Aboriginal Policing Services		
<b>Simon Fraser University</b> John Lowman, Professor, School of Criminology		
<b>Stepping Stone</b> Rene Ross, Chair		
<b>University of Ottawa</b> Richard Poulin, Full Professor, Department of Sociology		



## **APPENDIX C LIST OF BRIEFS**

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### **Organisations and individuals**

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**Aboriginal Legal Services of Toronto**

**Access to Media Education Society**

**Amanda**

**Arsenault, A Iain**

**Association des résidants et résidentes des Faubourgs de Montréal**

**Audet, É Iaine**

**Benedet, Janice - Osgoode Hall Law School, York University**

**British Columbia Civil Liberties Association**

**Canada-China Business Association**

**Canadian Association of Sexual Assault Centres**

**Canadian Centre for Abuse Awareness**

**Canadian HIV/AIDS Legal Network**

**City of Edmonton Licensed Escort**

**Coalition Against Trafficking in Women - International**

**Coalition for the Rights of Sex Workers**

**D'Angelo, Raigen**

**Dufour, Rose - Université du Québec à Montréal**

**Egale Canada**

**Evangelical Fellowship of Canada**

**Federation of Canadian Municipalities**

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## Organisations and individuals

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Fraser,Paul I

Geadah,Y olande

Hudson,E lizabeth

Jones, Craig - Queen's University

Journal de la rue

Laframboise, Sandra

Laney,Lorraine

Lawman, John - Simon Fraser University

MacDonald, Gayle - St. Thomas University

Matiation,S tefan

Maticha-Tyndale, Eleanor - University of Windsor

McNeice,Julie

Montreal City Police Service

Pink Triangle Press

PIVOT Legal Society

Poulin, Richard - University of Ottawa a

Projet Intervention Prostitution Québec Inc.

Prostitution Alternatives Counselling and Education Society

Prostitution Awareness and Action Foundation of Edmonton

REAL Women of Canada

Roback,Gor don

Ross Watson , Shannon

Royal Canadian Mounted Police

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## Organisations and individuals

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**Salvation Army**

**Shaver, Frances - Concordia University**

**Statistics Canada**

**Stepping Stone**

**Strachan, Carol-Lynn**

**Street Outreach Services - SOS**

**Vancouver Police Board**

**Woode, Pat**

**Woods, Elizabeth**

**Young, Patricia**

## **APPENDIX D — NON-EXHAUSTIVE LIST OF GENERIC PROVISIONS WITHIN THE CRIMINAL CODE AVAILABLE TO PROTECT PROSTITUTES, CHILDREN AND YOUTH, AND COMMUNITIES**

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The majority of the Subcommittee believes that beyond the prostitution-related provisions (sections 210 to 213), a number of other *Criminal Code* offences offer protection to prostitutes from violence and exploitation, and to communities from various forms of nuisance related to prostitution. In terms of the protection of individuals selling sexual services, these offences include intimidation, theft, abduction and confinement, and various forms of assault. Minors receive additional protection from specific sexual exploitation and child abduction provisions. By contrast, communities are protected by public nuisance laws, including various disturbance and indecency laws, and those to combat organized crime. Below is an annotated list of *Criminal Code* offences that can be used to protect persons selling sexual services and communities. While this list is not exhaustive, it does provide an indication of the framework available beyond the prostitution-related provisions.

### **A. PERSONS SELLING SEXUAL SERVICES**

#### **1. Intimidation**

- o **Uttering threats** — Section 264.1 describes the kinds of threats prohibited in criminal law. Any person who utters, conveys, or causes another person to receive a threat of death, or serious bodily harm is liable to a maximum sentence of five years' imprisonment. A person who threatens to damage or destroy another person's property or to kill or injure an animal belonging to another person is liable to a maximum sentence of two years' imprisonment.

Section 264.1 has been used successfully in *R. v. Patterson*,<sup>1</sup> in which the Ontario Court of Appeal upheld a 7 year sentence for a series of offences, including kidnapping, forcible confinement, procuring, living off the avails of prostitution, and uttering threats; in *R. v. Bodnaruk*,<sup>2</sup> in which the Saskatchewan Court of Appeal

<sup>1</sup> (2003), 64 O.R. (3d) 275 and [2000] O.J. No. 3189 (Ont. C.A.) — The appellant was convicted of kidnapping, terrorizing, abusing, and forcing a 19-year-old woman into prostitution for a week. The victim was kidnapped in Toronto and forced under threat of harm to herself and her family to work there as a prostitute and stripper. Her earnings were seized, and she was placed under constant surveillance, tortured with cigarette burns, and forced to perform humiliating and degrading acts to demonstrate her loyalty to the accused. The accused worked with two other individuals to control the victim until she escaped.

<sup>2</sup> (2002), 217 Sask. R. 89 (Sask. C.A.) — He had beaten and threatened serious harm to three Saskatoon prostitutes after refusing to pay for their services.

sentenced the accused to 3 years' imprisonment, including an order for DNA analysis, for a series of offences, including sexual assault, assault causing bodily harm, assault with a weapon, common assault, and uttering threats; in *R. v. Graves*,<sup>3</sup> in which the Manitoba Court of Appeal upheld convictions for living on the avails of prostitution, robbery, assault, and uttering threats against an 18 year old worker; in *R. v. Nest*,<sup>4</sup> in which the Alberta Court of Appeal upheld a conviction for sexual assault, uttering death threats, attempted anal intercourse, unlawful confinement, and choking during attacks on two prostitutes; in *R. v. Hayes*,<sup>5</sup> in which the British Columbia Court of Appeal upheld a 5 year sentence for the attempted enslavement of a 19 year old woman; in *R. v. Senior*,<sup>6</sup> in which the Supreme Court of Canada upheld a 16 year sentence for kidnapping, aggravated assault, assault with a weapon, uttering threats, use of a firearm, and living off the avails of prostitution; in *R. v. Murray*,<sup>7</sup> in which the Alberta Court of Appeal upheld a 5 year sentence for living off the avails of prostitution, uttering threats, and assault causing bodily harm; in *R. v. Barton*,<sup>8</sup> in which the accused was convicted of sexual assault, living off the avails of prostitution, and of uttering death threats, all committed with respect to a woman whom the accused caused to become a street level prostitute to provide him with money; and in *R. v. Mooney*,<sup>9</sup> in which the British Columbia Court of Appeal upheld an 8 year sentence for sexual assault, robbery, and uttering a threat.

- o **Intimidation** — Section 423 creates the offence of intimidation, which is committed where a person is intending to compel someone to abstain from doing something he has a right to do, or to do something that he has the right to abstain from doing, and wrongfully and without authority uses violence or threats of violence

<sup>3</sup> [1999] M.J. No. 413 (Man. C.A.) — The sentences imposed were 18 months consecutive for robbery, a further 6 months for uttering threats, and a 1 month concurrent sentence for a minor assault.

<sup>4</sup> (1999), 228 A.R. 369 (Alta. C.A.).

<sup>5</sup> [1998] B.C.J. No. 2752 (B.C.C.A.) — The appellant was convicted of extortion, assault, and uttering threats for attempting to have his girlfriend act as a prostitute, assaulting her when she refused, and charging her a "leaving fee" of \$1,000.

<sup>6</sup> [1997] 2 S.C.R. 288 — The appellant had carried out a brutal and lengthy kidnapping of his former girlfriend who was also forced to work as a prostitute under his direction.

<sup>7</sup> (1995), 169 A.R. 307 and (1995) 165 A.R. 394 (Alta. C.A.) — The court considered as aggravating factors, the fact that the charges covered several offences involving four different victims, that one of those victims was a "vulnerable and fragile young woman who had not previously acted as a prostitute", and that the accused used violence to control those who interfered with his prostitution business.

<sup>8</sup> (1994), 129 N.S.R. (2d) 395 (N.S.C.A.) — He was sentenced to three years' consecutive imprisonment for each of the sexual assault and pimping charges, and two years' concurrent for the death threats, all to be served concurrently with a three year sentence for living off the avails of prostitution.

<sup>9</sup> [1993] B.C.J. No. 523 and [1992] B.C.J. No. 1448 (B.C.C.A.) — The accused had picked up a prostitute in the Downtown Eastside, taken her to an isolated parking lot, and "viciously sexually assaulted" and robbed her, all the while accompanied by numerous threats of death or bodily harm whenever she resisted.

against the person or his spouse or children, injures his property, intimidates or attempts to intimate the person or a relative by threats of violence or injury to property, persistently follows the person, hides or deprives the person of the use of his property, or watches the residence, workplace or other place where the person happens to be. The maximum sentence for this offence is five years' imprisonment.  
Section 423 was used successfully in *R. v. Yu*,<sup>10</sup> in which the Alberta Court of Appeal upheld a conviction for the kidnapping, intimidation, and assault of a 40 year old woman who had been a prostitute.

## 2. Theft

- **Theft** — Section 322 creates the offence of theft. Any person who fraudulently takes something with the intention of depriving the rightful owner of its use, or who moves something with the intent to steal it, is committing theft. The maximum sentence for this offence is 10 years' imprisonment where the object is valued at over \$5,000, and 2 years' imprisonment where the object is valued at less than \$5,000.

Section 322 was used successfully in *R. v. Boivin*,<sup>11</sup> in which the British Columbia Court of Appeal upheld a conviction for sexual assault, unlawful confinement, and theft from a prostitute.

- **Robbery** — Section 343 creates the offence of robbery. Any person who steals and uses violence or threats of violence to another person is committing robbery. The maximum sentence for this offence is life imprisonment.

Section 343 has been used successfully in *R. v. Gregory*,<sup>12</sup> in which the British Columbia Court of Appeal upheld a conviction for extortion and robbery; in *R. v. Roper*,<sup>13</sup> in which the Ontario Court of Appeal upheld a conviction for robbery and sexual assault of a 15 year old girl who had been a prostitute, but who was not working

<sup>10</sup> (2002), 171 C.C.C. (3d) 90 (Alta. C.A.).

<sup>11</sup> [1993] B.C.J. No. 910 and [1993] B.C.J. No. 1686 (B.C.C.A.) — The appellant was sentenced to 4 years, 1 year, and 90 days respectively. The appellant was a member of the Vancouver City Police Department who picked up a 19 year old prostitute who was seven months pregnant in the Downtown Eastside. He held her in the car with him for an entire night, forcing her to perform sexual acts, and taking some of her clothes, jewellery, money, and a walkman.

<sup>12</sup> [2001] B.C.J. No. 1100 (B.C.C.A.) — The appellant was a regular of the Downtown Eastside, who had sexual intercourse with a prostitute in exchange for cocaine. When she later sold drugs for him, he demanded money from her, threatening to kill her and her children.

<sup>13</sup> (1997), 32 O.R. (3d) 204 (Ont. C.A.) — The court refused to allow defence counsel to cross-examine the complainant on the alleged fact that she was selling sexual services at the street level at the time of the offence, as the credibility of that argument was unsatisfactory, the probative value was substantially outweighed by its prejudicial effect, and the jury already had substantial evidence of the complainant's criminal record for prostitution-related offences, among others.

as such at the time of this offence; in *R. v. Omer*,<sup>14</sup> in which the Manitoba Court of Appeal upheld a six month sentence for robbery in conjunction with another conviction for living off the avails of prostitution; in *R. v. Graves*; and in *R. v. Mooney*.

**Extortion** — Section 346 creates the offence of extortion, which encompasses any person who, without reasonable justification or excuse, and with intent to obtain anything, induces or attempts to induce another person by means of threats, accusations, menaces or violence, to do anything or cause anything to be done. The maximum sentence for this offence is life imprisonment. Section 346 has been used successfully in *R. v. Yews*,<sup>15</sup> in which the British Columbia Court of Appeal upheld a low sentence of two years less a day on a conviction for sexual assault and extortion against two young prostitutes, one of whom was pregnant; in *R. v. Allan*,<sup>16</sup> in which the Ontario Court of Appeal imposed a sentence of three years' imprisonment for extortion, and two year's less a day (concurrent) for forcible confinement and living off the avails of prostitution; in *R. v. Hayes*; in *R. v. Gregory*; in *R. v. Patterson*; and in *R. v. Schnepf*.

### 3. Abduction and confinement:

- **Kidnapping and forcible confinement** — Section 279 creates the offences of kidnapping and forcible confinement. Any person who kidnaps another person against his or her will, with intent to confine him or her, to cause him or her to be sent out of Canada, or to hold him or her for ransom or to service, is liable to life imprisonment. Any person who confines, imprisons, or forcibly seizes another person without lawful authority is liable to up to 10 years' imprisonment. As well, evidence that the victim did not resist does not constitute a defence, unless the accused proves that the failure to resist was not caused by threats, duress, or force.

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<sup>14</sup> (1990), 66 Man. R. (2d) 45 (Man. C.A.) — Two prostitutes who had been working in a massage parlour, began sexual services under the appellants' direction. The appellants' gave the prostitutes a knife and instructed them to rob another prostitute. The money stolen was subsequently turned over to the appellants.

<sup>15</sup> [1999] B.C.J. No. 2675 (B.C.C.A) — The sentence was low to enhance the accused's chances for rehabilitation and because of the mitigating factors surrounding his "background of the most appalling misery" — the accused was born a drug—addicted baby to a 12 year old mother who shared the same father as the accused. The accused's mother supported herself, her child, and her drug habit through prostitution.

<sup>16</sup> [1993] O.J. No. 3432 (Ont. C.A.) — The appellant ran an escort agency and, in order to get more money from a particular account, locked a prostitute in a room and assaulted her.

Section 279 has been used successfully in *R. v. Niedermier*,<sup>17</sup> in which the British Columbia Court of Appeal upheld a conviction for sexual assault, aggravated assault, assault with a weapon, unlawful confinement, and attempting to choke a victim to assist in unlawful confinement; in *R. v. Ford*,<sup>18</sup> in which the Ontario Court of Appeal upheld concurrent sentences of five years for confinement and aggravated assault against a pimp for his actions against a prostitute under his control; in *R. v. McDonell*,<sup>19</sup> in which the Manitoba Court of Appeal imposed a nine month sentence for unlawful confinement; in *R. v. Patterson*; in *R. v. Senior*; in *R. v. Yu*; in *R. v. Boivin*; in *R. v. Allan*; and in *R. v. Nest*.

#### 4. Trafficking in Persons

- o Section 279.01 lays out the offence of trafficking in persons, defined as the recruitment, transport, transfer, receipt, concealment or harbouring of a person, or the exercise of control, direction or influence over the movements of a person, for the purpose of exploitation. A victim's consent to trafficking is never a valid defence because of the exploitation that is inherent in the trafficking offence. Exploitation is defined in section 279.04 as any situation where a person exploits another by causing them to provide, or offer to provide, labour or a service by engaging in conduct that could reasonably be expected to cause the other person to fear for their safety or the safety of someone known to them if they fail to comply. This primary trafficking offence is punishable with a maximum of 14 years imprisonment, or life imprisonment under aggravated circumstances.

Section 279.02 prohibits a person from benefiting economically from trafficking and carries a maximum penalty of 10 years' imprisonment.

Section 279.03 outlaws the withholding or destroying of identity, immigration, or travel documents to facilitate trafficking in persons, and carries a maximum penalty of five years' imprisonment.

Sections 279.01 to 279.03 came into force in November 2005 and have yet to be used in court.

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<sup>17</sup> (2005), 193 C.C.C. (3d) 199 (B.C.C.A.) — The accused traded crack cocaine for sexual services with five prostitutes, one of whom he tied to a chair for more than a day while he had sexual intercourse and assaulted her and burned her with a cigarette; another of whom he told she could not leave, assaulted and sexually assaulted her, and tied a telephone cord around her neck and tied her hands; and another whom he assaulted, and put a tie around her neck and hung her over a door.

<sup>18</sup> (1993), 15 O.R. (3d) 173 (Ont. C.A.).

<sup>19</sup> (1991), 73 Man. R. (2d) 305 (Man. C.A.) — After a prostitute willingly entered the accused's van, the accused drove out of the city to a motel. Fearing for her safety, the prostitute jumped out of the moving van and sustained injuries, however, she only managed to escape when the accused was absent.



## 5. Physical Harm

- **Bodily harm** — Section 269 creates the offence of unlawfully causing bodily harm. Any person who causes hurt or injury to a person that interferes with the health or comfort of that person and that is more than merely transient or trifling in nature is guilty of unlawfully causing bodily harm. The maximum sentence for this offence is 10 years' imprisonment.
- **Assault** — Sections 265 to 268 establish the offence of assault — to apply force intentionally to another person, or to attempt or threaten to do so. The Code also considers assault to encompass situations in which a person stops another while openly wearing a weapon. It is important to note that consent is not a defence to a charge of assault if the victim submitted because force was applied or was threatened to be applied to the victim or another person, or as a result of fraud or the exercise of authority by the accused. The maximum sentence for basic assault is five years' imprisonment. However, a person who commits assault while using or carrying a weapon, or who causes hurt or injury that is not transient or trifling in nature and interferes with the complainant's health or comfort, is liable to a maximum sentence of 10 years' imprisonment. Finally, a person who wounds, disfigures, or endangers the life of a complainant is guilty of aggravated assault and faces a maximum sentence of 14 years' imprisonment.

Sections 265 to 268 have been used successfully in *R. v. Caine*,<sup>20</sup> in which the Nova Scotia Court of Appeal upheld a conviction for attempting to procure two women, and for assault against one of those women, and sexual assault against the other; in *R. v. Grouse*,<sup>21</sup> in which the accused was convicted of living off the avails of prostitution and procurement, as well as assault causing bodily harm; in *R. v. Bodnaruk*; in *R. v. Hayes*; in *R. v. Senior*; in *R. v. Yu*; in *R. v. Murray*; in *R. v. Niedermier*; in *R. v. Ford*; in *R. v. Graves*; and in *R. v. Murray*.

- **Sexual assault** — Sections 271 to 273 lay out the offence of sexual assault — an assault which is committed in circumstances of a sexual nature, such that the sexual integrity of the victim is violated. Sexual assault is punishable with a maximum sentence of five years' imprisonment. However, the sentence increases for

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<sup>20</sup> (1996), 156 N.S.R. (2d) 74 (N.S. C.A.).

<sup>21</sup> (1994), 71 O.A.C. 79 (Ont. C.A.) — He had exercised total control over the victim for approximately three years, and obtained more than \$60,000 from her prostitution activities. Assaults inflicted upon the victim were prolonged and brutal, and included beating her while she was pregnant, attempting to drown her in the bathtub, and burning her with a cigarette and curling iron. The accused was given a 4 year concurrent sentence for the three prostitution offences, and a 5 year consecutive sentence for the assault causing bodily harm — particularly given that the victim was in a state of near-slavery, and brutalized mercilessly for three years.

sexual assault with a weapon — maximum 14 years'; and aggravated sexual assault — maximum life imprisonment.

Sections 271 to 273 have been used successfully in *R. v. James*,<sup>22</sup> in which the Nova Scotia Court of Appeal upheld a conviction for various weapons, prostitution, and sexual assault related offences; in *R. v. Bagot*,<sup>23</sup> in which the Manitoba Court of Appeal upheld the 12 year sentence for 3 counts of sexual assault; in *R. v. Adams*,<sup>24</sup> in which the Supreme Court of Canada upheld a publication ban on the name of the complainant who was under 18 and allegedly the victim of a sexual assault; in *R. v. Barton*; in *R. v. Bodnaruk*; in *R. v. Boivin*; in *R. v. Yews*; in *R. v. Nedermier*; in *R. v. Caine*; in *R. v. Mooney*; in *R. v. Nest*; and in *R. v. Roper*.

## B. MINORS

### 1. Sexual exploitation

- **Sexual interference** — Section 151 makes it an offence to touch the body of a person who is under 14 for a sexual purpose. The maximum sentence for this offence is 10 years' imprisonment.

Section 151 was successfully used in *R. v. Schnepf*,<sup>25</sup> in which the accused was convicted of sexual interference, living on the avails of prostitution of a minor, counselling a minor for prostitution through the use of violence and coercion, and various extortion charges.

- **Invitation to sexual touching** — Section 152 makes it an offence to invite, counsel, or incite a person under 14 to touch any person's body for a sexual purpose — this could include the child or the accused's body. The maximum sentence for this offence is 10 years' imprisonment.
- **Sexual exploitation** — Section 153 expands the sexual interference and invitation to sexual touching offences to children between 14 and 17, where a relationship or trust or dependency exists with the accused. The maximum sentence for this offence is five years' imprisonment.

<sup>22</sup> [2005] N.S.J. No. 40 (N.S.C.A.) — The accused became involved with a 15 year old deaf girl. He first got her addicted to crack cocaine, and then made her pay for it through prostitution, threatening her and her family with violence if she did not obey. He also subjected her to various forms of sexual assault.

<sup>23</sup> (2000), 145 Man. R. (2d) 260 (Man. C.A.) — Two of those offences involved young prostitutes, who originally agreed to perform sex acts, but were then driven to a remote location, threatened, physically assaulted, and gang-raped.

<sup>24</sup> [1995] 4 S.C.R. 707 — During the course of the trial, the trial judge discovered that the complainant was sexually exploited through prostitution, and ultimately dismissed the charges because neither the complainant nor accused were credible.

<sup>25</sup> [2000] B.C.S.C. 1661 (B.C.S.C.) — The accused had been running a juvenile prostitution ring from his house with numerous girls who had been living in foster homes and on the street.

Section 153 has been used successfully in *R. v. P.(G.E.)*,<sup>26</sup> in which the Nova Scotia Court of Appeal upheld a conviction for offences including keeping a common bawdy house, procuring, sexual exploitation, and householder permitting sexual activity; and in *R. v. Léon*,<sup>27</sup> in which the Quebec Court of Appeal upheld a conviction for sexual exploitation, procuring a minor, and living on the avails of prostitution of a minor.

- **Parent or guardian procuring sexual activity** — Section 170 makes it an offence for the parent or guardian of a minor to procure the minor for the purpose of engaging in a proscribed sexual activity with a person other than the parent or guardian. The maximum sentence for this offence is five years' imprisonment.
- **Householder permitting sexual activity** — Section 171 makes it an offence for a householder to knowingly permit the premises to be used for proscribed sexual activities by minors. The maximum penalty for this offence is five years' imprisonment.

Section 171 was used successfully in *R. v. P.(G.E.)*.

- **Luring a child** — Section 172.1 makes it an offence to use a computer system to lure a child for the purposes of committing listed sexual offences. The offence is committed whether the child is under the age specified by the particular offence or whether the accused believed the child to be under that age. A rebuttable presumption exists where that the accused believed the person to be under the specified age where the person was represented to be under that age; however, it is not a defence that the accused believed that the person was over the age unless the accused took reasonable steps to ascertain the person's age. The maximum sentence for this offence is five years' imprisonment.
- **Indecent exposure** — Section 173(2) makes it an offence to expose one's genitals to a person under 14 for a sexual purpose. The maximum sentence for this offence is six months' imprisonment.

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<sup>26</sup> (2004), 192 C.C.C. (3d) 432 (N.S.C.A.) — The accused had instructed his daughter how to perform sexual acts in order to exploit her through prostitution. He took photographs and videotapes of his daughter and other female children engaging in sexual activities for payment by clients, which he live streamed onto the Internet. He was sentenced to three years and eight months. Although the Court of Appeal felt that this was an extremely minimal penalty for the crimes committed, mitigating factors included the accused's early intention to file a guilty plea to spare the witnesses the pressure of testifying.

<sup>27</sup> (1990), 44 O.A.C. 143 (Que. C.A.) — The accused lived on the avails of prostitution of many homeless girls, and retained more than half of the earnings of this particular complainant. He threatened the victim, and warned her to change her testimony. He was sentenced to two years' imprisonment for sexual exploitation, five years for living off the avails of prostitution of a minor, and 3 years for procuring a minor — to be served concurrently with time he was already serving for other offences.

## 2. Abduction

- **Removal of a child from Canada** — Section 273.3 makes it an offence to do anything for the purpose of removing a child from Canada with the intention of committing a listed sexual offence. The prohibited age specific to the particular offence would apply. The maximum sentence for this offence is five years' imprisonment.
- **Non-parental child abduction** — Section 280 makes it an offence for anyone, without lawful authority, to cause an unmarried person under 16 to be taken from the possession of a parent or guardian, without that parent or guardian's consent. The maximum sentence for this offence is 5 years' imprisonment. Finally, section 281 creates the offence of abduction of a person under 14 — when anyone other than the parent or guardian takes, entices away, conceals, detains, receives, or harbours a person under 14, with the intention of depriving the parent or guardian of possession of that person. The maximum sentence for this offence is 10 years' imprisonment.

## C. COMMUNITIES

### 1. Disturbance

- **Cause disturbance** — Section 175 creates the offence of causing a disturbance, including fighting, indecent exhibition, loitering, and other public nuisance activities. A person who is not in a dwelling house causes a disturbance when, near a public place, that person fights, screams, shouts, swears, sings, or uses insulting or obscene language; is drunk; or impedes or molests other people. One can also cause a disturbance by exposes an indecent exhibition in a public place, loiters in a public place, or obstructs persons in a public place. Finally, a person is guilty of disturbing the peace who, through disorderly conduct in a public place, disturbs the occupants of a dwelling house. The maximum sentence for this offence is six months' imprisonment.
- **Loitering** — Section 177 creates the offence of loitering at night near a house on another person's property. The maximum sentence for this offence is six months' imprisonment.
- **Common nuisance** — Section 180 creates the offence of common nuisance. A person is guilty of creating a common nuisance where he or she endangers the lives, safety, health, property, or comfort of the public, or obstructs the public in the exercise of any right. The maximum sentence for this offence is two years' imprisonment.

- o **Criminal harassment** — Section 264. creates the offence of criminal harassment. A person is guilty of criminal harassment who repeatedly follows or communicates with an individual or who engages in threatening conduct towards that person or his or her family, such that the individual reasonably fears for their safety or the safety of anyone known to them. The maximum sentence for this offence is 10 years' imprisonment.

## 2. Indecency

- o **Indecent exhibition** — Section 173 creates the offence of committing an indecent act in a public place, or in any place if there is intent to insult or offend any person. The maximum sentence for this offence is six months' imprisonment.
- o **Nudity** — Section 174 creates the offence of nudity. A person is guilty of nudity who, without lawful excuse, is dressed so as to offend public decency or order in a public place, or is nude and exposed to public view while on any private property, including his or her own. The maximum sentence for this offence is six months' imprisonment, but no proceeding may be commenced without the consent of the Attorney General.

The generic *Criminal Code* provisions available to protect the communities surrounding prostitutes have proven unsuccessful, primarily because police seem both unaware of,<sup>28</sup> and unwilling to use these provisions due to negative rulings in the past. Faced with dubious cases of actual public nuisance caused by prostitution, courts have been wary extending interpretation of these generic nuisance provisions to cover situations involving prostitution. As a result of these narrow interpretations, the nuisance provisions have been of limited value to police in dealing with street prostitution.<sup>29</sup> One of the only times that a generic public nuisance provision has proven successful with respect to prostitution-related activities is in *R. v. Gowan*,<sup>30</sup> in which the Ontario Court of Justice convicted the accused of indecent exhibition.

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<sup>28</sup> Kevin Vickers, Director General of the National Contract Policing Branch, Community, Contract and Aboriginal Policing Services, Royal Canadian Mounted Police, testimony before the Subcommittee, April 13, 2005.

<sup>29</sup> Federal-Provincial-Territorial Working Group on Prostitution, p. 63.

<sup>30</sup> [1998] Carswell Ont 1748 (Ont. C.J. Prov. Div) — She had walked down a commercial public street fondling her naked breasts, making suggestive comments and leaning into passing cars. The court found that the purpose of the accused's acts was prostitution.

### **3. Organized Crime**

Section 467.11 creates the offence of knowingly participating in or contributing to any activity of a criminal organization for the purpose of enhancing the ability of the criminal organization to facilitate or commit an offence. The maximum sentence for this is five years' imprisonment.

Section 467.12 creates the offence of committing an indictable offence for the benefit of, at the direction of, or in association with a criminal organization. The maximum sentence for this offence is 14 years' imprisonment.

Section 467.13 makes it an offence to take leadership in a criminal organization — for a member of the criminal organization to knowingly instruct any person to commit an offence for the benefit or, at the direction of, or in association with a criminal organization. The maximum sentence for this offence is life imprisonment.

## REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this report.

A copy of the relevant Minutes of Proceedings (Meeting No.40) is tabled.

Respectfully submitted,

Art Hanger, M.P.  
*Chair*

## MINUTES OF PROCEEDINGS

December 12, 2006  
(Meeting No. 40)

The Standing Committee on Justice and Human Rights met *in camera* at 9:05 a.m. this day, in Room 209, West Block, the Chair, Art Hanger, presiding.

*Members of the Committee present:* Hon. Larry Bagnell, Hon. Sue Barnes, Patrick Brown, Joe Comartin, Art Hanger, Derek Lee, Réal Ménard, Rob Moore, Brian Murphy, Daniel Petit and Myron Thompson.

*Acting Members present:* Christian Ouellet for Carole Freeman.

*Associate Members present:* John Maloney.

*In attendance: Library of Parliament:* Robin MacKay, Analyst; Lyne Casavant, Analyst.

The Committee proceeded to the consideration of matters related to Committee business.

The Committee resumed consideration of the First Report of the Subcommittee on Solicitation Laws.

It was agreed, — That the report of the Subcommittee on Solicitation Laws (version distributed to members on December 8, 2006) be adopted as the report of the Committee.

It was agreed, — That in accordance with Standing Order 109, the Committee requests that the Government table a comprehensive response to the report.

It was agreed, — That the Chair, Clerk and analysts be authorized to make such grammatical and editorial changes as may be necessary without changing the substance of the report.

It was agreed, — That the Chair present this report to the House.

It was agreed, — That the Clerk of the Committee make the necessary arrangements for a press conference to be held on Wednesday, December 13, 2006, after the tabling of the Committee's report to the House.

At 10:02 a.m., the Committee adjourned to the call of the Chair.

Diane Diotte  
*Clerk of the Committee*