

LIKE ANY OTHER JOB?

*An Analysis of Potential Changes to Canada's Prostitution
Legislation*

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Contents

December 20 th , 2013: Supreme Court Ruling	1
Background	3
The Discussion.....	10
Legislative Approaches	38
Recent News in Canada	46
Conclusion.....	54
References	58

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December 20th, 2013: Supreme Court Ruling

On December 20, 2013, the Supreme Court of Canada struck down Canada's prostitution laws in a unanimous 9-0 ruling. The Supreme Court gave Parliament one year to produce new legislation. In the meantime, the existing legislation will remain in place.¹ Currently, prostitution is not a criminal offence in Canada, though the Criminal Code prohibits several activities related to sex work. These include:

1. **Bawdy houses:** 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.

Landlord, inmate, etc.

(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.

Notice of conviction to be served on owner

(3) Where a person is convicted of an offence under subsection (1), the court shall cause a notice of the conviction to be served on the owner, landlord or lessor of the place in respect of which the person is convicted or his agent, and the notice shall contain a statement to the effect that it is being served pursuant to this section.

Duty of landlord on notice

¹ Canada (Attorney General) v. Bedford, 2013.

(4) Where a person on whom a notice is served under subsection (3) fails forthwith to exercise any right he may have to determine the tenancy or right of occupation of the person so convicted, and thereafter any person is convicted of an offence under subsection (1) in respect of the same premises, the person on whom the notice was served shall be deemed to have committed an offence under subsection (1) unless he proves that he has taken all reasonable steps to prevent the recurrence of the offence.”²

2. **Living on the avails:** s.212 “(1) Every one who... (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.”³

3. **Communicating:** s.213 “(1) Every person who in a public place or in any place open to public view... (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.”⁴

By prohibiting common bawdy-houses (commonly known as brothels), the *Criminal Code* prevents prostitution from taking place in any fixed, indoor location—including the prostitute’s own home. The prohibition against “living off the avails” does not prevent those who are engaged in prostitution from earning money by selling sex, but it does prohibit anyone else (such as pimps) from profiting off of another person’s prostitution. This provision also means that prostitutes cannot employ others (bodyguards, managers, etc.), as that would mean that individual would be living off the avails of prostitution. Section 213, which prevents communication for the purpose of prostitution in public means that individuals caught communicating for the purposes of buying or selling sex can be subject to criminal sanctions.

These stipulations mean that the only legal way to sell sex in Canada is what is referred to as “out-call” work, where arrangements are made via telephone or the internet (not in the

² Government of Canada, 1985.

³ Government of Canada, 1985.

⁴ Government of Canada, 1985.

public view) and a prostitute meets a customer at an indoor location such as a hotel room or the customer's home.⁵

Background

This case began in March 2007⁶ when three (current or former) sex workers, Terri-Jean Bedford, Valerie Scott, and Amy Lebovitch filed a Charter challenge with the Superior Court of Ontario (Bedford v. Canada). The challenge sought to have the *Criminal Code* provisions regarding prostitution declared unconstitutional and struck down, for violating sections 7 (the right to life, liberty and security of the person) and section 2(b) (freedom of expression) of the *Canadian Charter of Rights and Freedoms*.

The case was argued before the Ontario Superior Court of Justice in October 2009, and a judgment was handed down in September 2010. Ontario Superior Court Justice Susan Himel ruled that the three laws (s.210, s. 212, and s. 213) were unconstitutional under s. 7 of the *Charter of Rights and Freedoms*, and that the "communication law" was unconstitutional under s. 2(b) of the Charter.⁷ Justice Himel sided with Bedford et al. "who argued that restrictions on prostitution in Canada's *Criminal Code* forced them onto the streets to conduct business under threats of arrest and violence."⁸ In her decision she stated, "These laws, individually and together, force prostitutes to choose between their liberty interest and their right to security of the person as protected under the *Canadian Charter of Rights and Freedoms*."⁹

In June 2011, the Attorney General of Canada and Attorney General of Ontario appealed the Superior Court decision in the Ontario Court of Appeal. The ruling was released in March 2012 (Canada (Attorney General) v. Bedford, 2012). The majority decision of the Ontario Court of Appeal stated that: s.210 was unconstitutional; s.212 was unconstitutional and should be rewritten to demonstrate that living off the avails of prostitution is illegal when the person in

⁵ Ontario Court of Appeal, 2012.

⁶ Stella, 2013.

⁷ Ontario Superior Court of Justice, 2010.

⁸ Grinberg, 2010.

⁹ Ontario Superior Court of Justice, 2010, p. 20.

prostitution is being exploited, and s.213 was constitutional and should remain in the *Criminal Code*.¹⁰

Both the Attorney General of Canada and the Attorney General of Ontario (appellant/respondent on cross-appeal) and Bedford et al. (respondents/appellants on cross-appeal), challenged the Ontario Court of Appeal decision. The Supreme Court heard the appeal and cross-appeal on June 13, 2013. Bedford et al. argued that the relevant *Criminal Code* provisions deprive them of the right to life, liberty and security of the person protected by s. 7 of the *Charter*, and that the communicating provision violates freedom of expression guaranteed by s. 2(b) of the *Charter*. They argued that neither of these infringements could be justified by s. 1.¹¹

The Attorney General of Canada and the Attorney General of Ontario disputed that sex workers' *Charter* rights were disrupted by the provisions in question. In the alternative, Canada argued that even if they were, these provisions were neither grossly disproportionate, nor overly broad, when any contribution they may have to harm, however limited, is measured against the important societal objectives served by them, including: deterring the most harmful and public impacts of prostitution; protecting individuals in prostitution; and reducing the harm to communities, children and society at large.¹²

On December 20, 2013, the Supreme Court ruled that:

- s.210 (bawdy houses) “as it relates to prostitution” is “inconsistent with the Canadian Charter of Rights and Freedoms and hence [is] void.”
- s.212 (1)(j) (living off the avails) is “inconsistent with the Canadian Charter of Rights and Freedoms and hence [is] void.”

The qualifier “in circumstances of exploitation” was inserted into the provision.¹³

- s.213 (1)(c) (communicating in a public space) is “inconsistent with the Canadian Charter of Rights and Freedoms and hence [is] void.”¹⁴

¹⁰ Ontario Court of Appeal, 2012.

¹¹ Canada (Attorney General) v. Bedford, 2013.

¹² Canada (Attorney General) v. Bedford, 2013.

¹³ Canada (Attorney General) v. Bedford, 2013.

¹⁴ Canada (Attorney General) v. Bedford, 2013.

“The Supreme Court found that these offences violate prostitutes' right to security of the person, as protected by section 7 of the *Charter*, by preventing them from taking measures to protect themselves while engaging in a risky, but legal, activity. Such protective measures include selling sexual services indoors, hiring bodyguards and drivers, and negotiating safer conditions for the sale of sexual services in public places.”¹⁵

In the decision, Chief Justice Beverley McLachlin stated that “These appeals and the cross-appeal are not about whether prostitution should be legal or not. They are about whether the laws Parliament has enacted on how prostitution may be carried out pass constitutional muster. I conclude that they do not.” Seeing the existing laws as detrimental to prostitutes, Chief Justice McLachlin wrote, “Parliament has the power to regulate against nuisances, but not at the cost of the health, safety and lives of prostitutes.” “The prohibitions all heighten the risks the applicants face in prostitution — itself a legal activity. They do not merely impose conditions on how prostitutes operate. They go a critical step further, by imposing *dangerous* conditions on prostitution; they prevent people engaged in a risky — but legal — activity from taking steps to protect themselves from the risks. That causal connection is not negated by the actions of third party johns and pimps, or prostitutes’ so called choice to engage in prostitution. While some prostitutes may fit the description of persons who freely choose (or at one time chose) to engage in the risky economic activity of prostitution, many prostitutes have no meaningful choice but to do so. Moreover, it makes no difference that the conduct of pimps and johns is the immediate source of the harms suffered by prostitutes. The violence of a john does not diminish the role of the state in making a prostitute more vulnerable to that violence.” She wrote, “Concluding that each of the challenged provisions violates the Charter does not mean that Parliament is precluded from imposing limits on where and how prostitution may be conducted, as long as it does so in a way that does not infringe the constitutional rights of prostitutes.”¹⁶

This decision gave Parliament one year to replace the existing legislation. Parliament could ask the Supreme Court for an extension on the effect of the ruling, if it has tabled

¹⁵ Government of Canada, 2014.

¹⁶ Canada (Attorney General) v. Bedford, 2013.

legislation but cannot meet the one-year deadline.¹⁷ If there is no legislative response by December 19th, 2014, the existing legislation will no longer be valid and operating a bawdy house, living off the avails of prostitution, and communicating in public for the purposes of prostitution will become legal.

“Justice Minister Peter MacKay said the government was ‘concerned’ by the ruling, and is ‘exploring all possible options to ensure the criminal law continues to address the significant harms that flow from prostitution to communities, those engaged in prostitution, and vulnerable persons.’”¹⁸ Currently, Justice Minister Peter MacKay is working to determine how to enact new legislation that will be accepted by the court. MacKay has suggested that the government will continue to prohibit prostitution in some fashion. The government is “exploring all possible options to ensure the criminal law continues to address the significant harms that flow from prostitution to communities, those engaged in prostitution, and vulnerable persons.”¹⁹

Court documents provide information about the sex workers behind the court challenge. Terri-Jean Bedford is a retired sex worker. “As of 2010, [Bedford] had 14 years of experience working as a prostitute in various Canadian cities. She worked as a street prostitute, a massage parlour attendant, an escort, an owner and manager of an escort agency, and a dominatrix.”²⁰ In 1994²¹ her home was raided²², and in 1998 she was “convicted of both keeping and being an inmate of a common bawdy-house, for which she has paid a number of fines and served 15 months in jail.”²³ “Ms. Bedford is not currently working in prostitution but asserted that she would like to return to working as a dominatrix in a secure, indoor location; however, she is concerned that in doing so, she would be exposed to criminal liability.”²⁴ Bedford reported that “she was abused as a child, entered prostitution at 16 to pay for her drug addictions and those of her 37-year-old boyfriend, and was ‘raped and gang-raped too many

¹⁷ Blanchfield, 2013a.

¹⁸ Fine, 2013a.

¹⁹ Fine, 2013a.

²⁰ Ontario Superior Court of Justice, 2010.

²¹ Rankin, 2011.

²² CBC, 1998.

²³ Canada v. Bedford, 2013.

²⁴ Canada v. Bedford, 2013.

times to talk about' as a street prostitute in Winnipeg, Calgary and Vancouver."²⁵ Bedford told the Star that she was born into a poor family and was placed in foster care at a young age. Later, Bedford had to give up custody of her own daughter. They later reunited and worked together in prostitution.²⁶ Bedford spoke in a 2011 interview of her poor health and the pain she was in, saying "I've been through quite a bit and my lifestyle has finally caught up to me," referring to living with Hepatitis C, which she thinks she caught from using injection drugs via shared needles.²⁷ Bedford has become known for attending court dressed in all leather, with a riding crop in hand, as well as for her sarcastic humour. After the 2013 decision, Bedford mocked Prime Minister Stephen Harper while talking to the media, as she has done in the past, telling him to "step up to the plate, be a man, grow some *cojones*."²⁸

Valerie Scott is currently the Executive Director of Sex Professionals of Canada (SPOC). "In the past, she worked indoors, from her home or in hotel rooms; she also worked as a prostitute on the street, in massage parlours, and she ran a small escort business... On the street, she was subjected to threats of violence, as well as verbal and physical abuse."²⁹ Court documents read: "If this challenge is successful, Ms. Scott would like to operate an indoor prostitution business. While she recognizes that clients may be dangerous in both outdoor and indoor locations, she would institute safety precautions such as checking identification of clients, making sure other people are close by during appointments to intervene if needed, and hiring a bodyguard."³⁰ Scott has said that she was accepted to the University of Toronto's business school with a proposed business plan for a brothel.³¹ In fact, Scott has already registered the name of the brothel that she plans to open— Beaver Meadows Social Club— in anticipation of changes to the legislation governing brothels.³²

Scott has been an outspoken advocate of sex work, saying "I like the work, I like the people, I like the clients, I set my own hours, I set my own price structure, I call the shots with

²⁵ Canada v. Bedford, 2013.

²⁶ Rankin, 2011.

²⁷ Rankin, 2011.

²⁸ Global News, 2013a.

²⁹ Canada v. Bedford, 2013.

³⁰ Canada v. Bedford, 2013.

³¹ Grinberg, 2010.

³² MacInnes, Nason, & Clarke, 2013.

what I will and will not do.”³³ In the documentary film *Buying Sex*, Valerie Scott says “we want men to be able to buy sex... sex is a commodity, people who think sex is not a commodity are delusional.” She adds, “I’ve had sex with over 5300 clients—I know what I am talking about!”³⁴

Court documents report that Amy Lebovitch “comes from a stable background and attended both CEGEP and university. She currently works as a prostitute and has done so since approximately 1997 in various cities in Canada. She worked first as a street prostitute, then as an escort, and later in a fetish house. Presently, Ms. Lebovitch primarily works independently out of her home... Ms. Lebovitch stated that she enjoys her job and does not plan to leave it in the foreseeable future.”³⁵

While Terri-Jean Bedford, Amy Lebovitch and Valerie Scott are the faces of *Bedford v. Canada*, it appears that the idea to challenge Canada’s prostitution legislation came from constitutional lawyer Alan Young. In the documentary *Buying Sex*, Young reveals:

Here’s the secret I want to tell you. People don’t come to me to do the case, I go to them. I come up with the issue, I come up with the argument, and then I find the right people for the case and so that’s what happened here. Initially, it was Terri-Jean—she’s a very quirky, nice person, and her story demonstrated my case. And then, I remember reading about Val. Because Val was an advocate, I thought she was a very good spokesperson on this issue, she knew the things to say, the right things to say and not histrionic, and she so much wanted to be part of it. The problem was, court would say, I don’t have standing to challenge the law because the two women, Scott and Bedford were currently not working, so court could take the view I’m only going to make the decision for someone that it impacts immediately—I didn’t agree with that, by the way, but that was fine. So I said, ‘Val, find me someone currently working’ and that’s how Amy came on board. They are important people for the case, but it was pretty much whoever was available to be able to stand up for themselves.³⁶

For this court challenge, Young has selected women who chose to start or choose to remain in sex work, and who say they enjoy prostitution. Bedford et al. “stated that this case was only about the 10% of women in prostitution voluntarily.”³⁷ Young seems to be saying that

³³ Grinberg, 2010.

³⁴ MacInnes, Nason, & Clarke, 2013.

³⁵ *Canada v. Bedford*, 2013

³⁶ MacInnes, Nason, & Clarke, 2013.

³⁷ Johnston, 2011.

he does not want the side of the survivors/abolitionists heard. The only experiential evidence that Young is willing to acknowledge is that of women who chose the sex trade, as Bedford, Scott, and Lebovitch say they did. He stated “I’m here representing the intelligent, independent and well-informed sex worker,”³⁸ making it very clear in his other comments that he is not representing women who are involved in street prostitution or who were forced into prostitution. By saying that those who disagree “don’t understand what’s happened” with the court decision or “don’t have the wherewithal” to “take advantage” of a legalized prostitution regime, and saying that he represents the side of “intelligent” sex workers, Young is dismissing the effects that changes the legislation will have on the 90% of women in prostitution who did not choose to enter or do not wish to remain in prostitution.

It appears that while Alan Young’s initial wish was to see operating a bawdy house and living off the avails decriminalized, he thought it made more sense to challenge all of the legislation governing prostitution, and therefore also challenged the provisions around communication. Following the 2012 Ontario Court of Appeal decision where provisions against operating a bawdy house and living off the avails were struck down, Young said “we won, more or less,” going on to say that he had not wanted to challenge the provisions against communication, as he did not think that people wanted to see sex workers on the street, but challenged it as he is “supposed to represent the interests of sex workers.” He said that if the “bawdy house piece goes through” he would consider it a success.³⁹

After the 2012 decision, Young said “We have changed the face of Canada’s prostitution laws and although there will be detractors who don’t understand what’s happened, it will be a good thing for Canada and it will take some time for the naysayers to realize that the court has done the right thing. Not everyone will benefit from this decision—there are people who work in the sex trade who are survival sex workers who don’t have the wherewithal and the ability to take advantage of it, but the court is saying it doesn’t matter—if we save one life, we’ve saved a million lives.”⁴⁰

³⁸ Johnston, 2012; Raymond, 2013.

³⁹ MacInnes, Nason, & Clarke, 2013.

⁴⁰ MacInnes, Nason, & Clarke, 2013.

Those in favour of decriminalizing prostitution celebrated when they heard the Supreme Court decision on December 20th. “Great day for Canada, Canadian women from coast to coast,” said Bedford.⁴¹ Katrina Pacey of the Pivot Legal Society called it an “unbelievably important day, in terms of the sex workers rights movement, but for human rights for all Canadians”⁴² and Alan Young hailed the ruling as “a resounding victory for the rule of law, and a victory for liberty and security of the person and finally a long overdue recognition that sex workers are deserving of equal protection of the law.”⁴³ Bedford told the Canadian Press that these laws aren’t just for sex trade workers, but are for “every Canadian to enjoy their right to privacy”⁴⁴. She continued, “Now, the government must not tell all consenting Canadians, all consenting adults, what we can and cannot do in the privacy of our home, for money or not, and they must write laws that are fair.”⁴⁵

The Discussion

In the discussion of changes to Canada’s prostitution legislation, two distinct sides emerge. There are those who are prostitution advocates and those who envision a world without prostitution. Each side includes the experiential voices of women who work, or have worked, as prostitutes. Author, activist, and former prostitute Jane Anthony⁴⁶ sums up the two sides of the argument, by saying that both liberal defenders of prostitution and those opposed to prostitution want prostitutes “to be treated as ‘persons’ under the law, that is to have recognized civil rights so that they have legal recourse against crimes like rape or robbery.”⁴⁷ The difference is that while prostitution advocates want to see it legalized/decriminalized, abolitionists feel that decriminalization would lead to more women being exploited.

It is important to note that the terminology used varies between prostitution advocates and those opposed to prostitution. Sex workers, as presented in *Bedford v. Canada*, view the purchase of sex as work, and use language that demonstrates this view. Those in favour of the

⁴¹ Global News, 2013a; 2013c.

⁴² Global News, 2013a.

⁴³ Blanchfield, 2013a.

⁴⁴ Canadian Press, 2013b.

⁴⁵ Blanchfield, 2013a

⁴⁶ *whatispatriarchy?*, 2013.

⁴⁷ Anthony, 2007, p. 417.

abolition of prostitution view prostitution as a system that frequently victimizes women and uses language that reflects such referring to women who sell sex as survivors. Janice Raymond makes a distinction between sex workers and survivors. She says, “Both of these terms are self-designated by women who are or have been in prostitution. Both ‘sex workers’ and survivors claim to represent women in prostitution... [while] the term ‘sex workers’ describes those who are or have been in prostitution and who promote prostitution as work or as a commercial sexual service”⁴⁸, the term survivor describes those who have been victims of prostitution. Raymond states that while “many organizations and individuals believe that the terms ‘sex worker’ and ‘sex work’ dignify the women,” she feels that using terms such as ‘managers’ “serves mostly to dignify the sex industry by giving buyers, pimps, recruiters, and other key perpetrators of sexual exploitation more legitimacy.”⁴⁹ Likewise in this paper, the terminology “sex work” and “sex worker” is used to denote those who feel that prostitution is a job and a choice, such as Bedford et al., while terminology such as “survivors” and “women in prostitution” is used when discussing the women who did not actively choose to work, or do not choose to remain in prostitution.

According to Janice Raymond, sex workers have typically been featured in the media “as the authoritative voices of women in prostitution... [and] as experiential experts who speak for women in prostitution.” In the months since the Supreme Court decision, editorials and articles in the Globe and Mail, the National Post, the Star, the Ottawa Citizen, and other publications have argued the pro-sex work/pro-decriminalization side of the debate.⁵⁰ The voices of survivors have been featured in some media,⁵¹ though not as prominently. It can be argued that this media bias gives the impression that sex workers (those who chose to be in prostitution) are representative of women in prostitution. In spite of decriminalization being the dominant argument in the media, survivors of prostitution have been outspoken about the decisions made in Bedford v. Canada.⁵² Several survivors and organizations that work with survivors intervened in the Supreme Court case. Eleven interventions were brought forward in

⁴⁸ Raymond, 2013, p. xliii.

⁴⁹ Raymond, 2013, p. xliii.

⁵⁰ Bisette, 2014; Nikiforuk, 2014; Renzetti, 2014; van der Meulen, Durisin, & Love, 2014.

⁵¹ CBC Radio, 2013; Gillis, 2014; Global News, 2013d.

⁵² Raymond, 2013, p. 186.

Canada v. Bedford. These interventions came from a total of 23 organizations, acting alone or in coalitions. These intervening organizations included: Attorney General of Quebec, Pivot Legal Society, Downtown Eastside Sex Workers United Against Violence Society, PACE Society, Secretariat of the Joint United Nations Programme on HIV/AIDS, British Columbia Civil Liberties Association, Evangelical Fellowship of Canada, Canadian HIV/AIDS Legal Network, British Columbia Centre for Excellence in HIV/AIDS, HIV & AIDS Legal Clinic Ontario, Canadian Association of Sexual Assault Centres, Native Women's Association of Canada (NWAC), Canadian Association of Elizabeth Fry Societies, Action ontarienne contre la violence faite aux femmes, Concertation des luttes contre l'exploitation sexuelle, Regroupement québécois des Centres d'aide et de lutte contre les agressions à caractère sexuel, Vancouver Rape Relief Society, Christian Legal Fellowship, Catholic Civil Rights League, REAL Women of Canada, David Asper Centre for Constitutional Rights, Institut Simone de Beauvoir, AWCEP Asian Women for Equality Society, and Aboriginal Legal Services of Toronto Inc.⁵³ The interventions brought forward highlight the complexities of the issue. Some organizations agreed or disagreed with the 2012 decision (that the legislation was constitutional or unconstitutional), but for different reasons. Likewise, groups on differing sides of the debate used the same evidence to back up differing arguments.

One of the arguments made by sex workers and their advocates is that sex work should be treated like any other job. At the June 2013 support rally, a supporter told the Canadian Press "we are of the belief that sex workers deserve the same rights and dignity as other workers at other jobs; we believe it is a job like any other job, we believe in the decriminalization of sex work and sex workers."⁵⁴ One of the key issues that is frequently raised in terms of sex work as a job is the safety of the working conditions. At a support rally in June 2013, another supporter said "I think that sex work is real work, and therefore sex workers deserve to have safe working conditions that are under their own control, and therefore, if they are criminalized, it is really hard for sex workers to do that."⁵⁵ It is not possible to discuss prostitution without discussing the risks, given the high level of danger reported by those who

⁵³ Canada v Bedford, 2013.

⁵⁴ Canadian Press, 2013a.

⁵⁵ Canadian Press, 2013a.

have engaged in prostitution. In fact, the courts have acknowledged the dangers of prostitution, including indoor prostitution. The Court of Appeal recognized that “prostitution is inherently dangerous for prostitutes”⁵⁶ and “is inherently dangerous in virtually any circumstance.”⁵⁷ Those advocating for decriminalization/legalization make the argument that removing criminal sanctions would result in keeping sex workers, and even their clients, safe.

Sociologist, and researcher behind the *John’s Voice: Providing a Safe Space for Sex Buyers to Be Heard*⁵⁸ study, Chris Atchison told the Ottawa Sun, “‘Criminalization creates a shroud of stigma and secrecy. It forces people to do things in unsafe spaces. People will always sell it and moving the focus from the seller and the buyer to just the buyer is not going to get rid of the demand or the supply.’ Instead of trying to drive street workers out, communities, police and outreach groups could talk to them, find safe places where they can work, put up lights and make sure law enforcement will protect them. ‘It’s treating people like humans as opposed to dogs.’” He went on to say “I don’t know how long it’s going to take before the rest of society realizes that we all have the blood of dead sex workers on our hands.”⁵⁹ Atchison said “We’ve seen almost 30 years of legal prohibitions that have made it practically, technically impossible for people selling sex on the street to do so in a legal way and it resulted in putting them in harm’s way and in the worst case scenario being murdered.”⁶⁰

There is an argument to be made that johns are also unsafe in the business transaction and some argue that decriminalization/legalization would provide protection to the purchasers. According to Atchison’s *John’s Voice* study, johns experience a “high level of victimization... while buying sex.” This victimization is mostly in the form of robbing, but verbal and physical assaults were also reported. “When we understand these experiences of victimization in light of the fact that many sex buyers purchase sex in relative secrecy for fear of stigmatization, persecution, or prosecution, these findings become even more significant”... “It is apparent that victimization is a two-way street, and it will likely continue to be as long as we force the people

⁵⁶ Ontario Court of Appeal, 2012.

⁵⁷ Ontario Court of Appeal, 2012.

⁵⁸ Atchison, 2010

⁵⁹ Gillis, 2014.

⁶⁰ Gillis, 2014.

buying and selling sex to do so within the context of an underground economy.”⁶¹ While robbery and assault are unacceptable whether perpetrated by a john or a prostitute, it must be asked if johns should have the right to buy sex (safely).

HIV/AIDS organizations intervened in the Supreme Court case, with interventions submitted by the UNAIDS Secretariat and the HIV Coalition, which consists of the Canadian HIV/AIDS Legal Network, British Columbia Centre for Excellence on HIV/AIDS, and the HIV and AIDS Legal Clinic Ontario. The primary goal of these organizations is to examine how prostitution laws affect their ability to promote safe sex and HIV/AIDS prevention to individuals in prostitution.

UNAIDS stated their position as such:

laws that directly or indirectly criminalize or penalize sex workers or their clients can undermine the effectiveness of HIV programs and limit the ability of sex workers and their clients to seek and benefit from these programs. On the other hand, a legal environment that protects human rights and ensures access to HIV programs, without discrimination, helps to achieve an effective and rights-based response to the HIV epidemic and promote public health, including in the context of sex work.⁶²

The position of the HIV Coalition is similar, stating “a concern for the health and welfare of sex workers is profoundly inconsistent with the criminalization of prostitution, which stigmatizes sex workers and gravely threatens their health and safety.”⁶³ They also say that “where sex work has been decriminalized, sex workers’ human rights, health and safety have been advanced without deleterious consequences such as an escalation in public nuisance.”⁶⁴

Despite the fact that Young was invested in seeing brothel ownership and living off the avails decriminalized, and had not really wanted to challenge the provisions against communication,⁶⁵ Bedford v. Canada argued to strike down all of Canada’s prostitution laws. Young’s argument against the communication law was that “in an effort to avoid being arrested for communicating for the purpose of prostitution, prostituted women would hurry negotiation

⁶¹ Atchison, 2010, p. 34.

⁶² Supreme Court of Canada , 2013b.

⁶³ Supreme Court of Canada , 2013b.

⁶⁴ Supreme Court of Canada , 2013b.

⁶⁵ MacInnes, Nason, & Clarke, 2013.

with a john before getting in his car. They argued that this decreases the time a woman has to screen a john to see if he will become violent.”⁶⁶

While awaiting the Supreme Court decision, CBC Radio interviewed Donna Lynn Lerat and Karen Trotchie, First Nations women who worked in street prostitution in Saskatchewan from the age of 13 to middle adulthood. Trotchie commented about learning to assess if johns were dangerous or not, saying “usually your instincts will tell you.” She said that one indicator is the places they would want to go if going in a vehicle, however the woman would already be isolated and in danger by the time she realized the destination. Trotchie said that she “almost died a couple times by being beaten by johns and left for dead, at one time in a ditch”—these near-deadly experiences played a big role in her choice to get out of the sex industry.⁶⁷

Global Television’s *16x9* showed Scott approaching a man in a truck, about to communicate for the purposes of prostitution. The man wants her to get in the truck right away, because, as she says, “he knows he is a target to be arrested.” As the man drives away, she says “Damn! He looked okay!” Afterwards, Scott says “I had about 3, maybe 4, seconds [to size him up]. You don’t really know.” In response to the argument that extra time to screen johns before getting in their vehicles would keep prostitutes safer, Johnston says:

To suggest that if a woman had an extra few minutes, or even an extra few hours to screen that she could identify men who will be violent is a ludicrously dangerous idea. It’s as ludicrous as suggesting that a woman should have known that the man she spent all night “screening” on a date was going to rape her. It’s as ludicrous as suggesting that a woman should have known the boyfriend she had been “screening” in a relationship for a year was going to hit her. On average, one woman a week is killed in Canada by her boyfriend or husband who she had “screened”, lived with, loved, and raised children with for years. If the women’s movement has revealed anything, it’s that any man can choose to be violent and the woman he exacts it on is not responsible for that violence.⁶⁸

Laura Johnston is a law student who worked for Janine Benedet, counsel for the Women’s Coalition for the Abolition of Prostitution. The Women’s Coalition was an intervener in the Supreme Court case, and is comprised of the Canadian Association of Sexual Assault

⁶⁶ Johnston, 2011.

⁶⁷ CBC Radio, 2013.

⁶⁸ Johnston, 2011.

Centres, Native Women's Association of Canada, Canadian Association of Elizabeth Fry Societies, Action Ontarienne contre la Violence Faite aux Femmes, la Concertation des Lutttes contre l'Exploitation Sexuelle, Le Regroupement Québécois des Centres d'Aide et de Lutte contre les Agressions à Caractère Sexuel, Vancouver Rape Relief Society. Johnston fears that the idea that decriminalizing the communication law, therefore allowing women in prostitution to screen their customers, puts the onus on women for the violence that may be enacted against them. She fears that if we accept that more time to screen johns without the threat of arrest is what will keep street prostitutes safe, "when a prostituted woman gets assaulted, raped, strangled or murdered it will be because she failed to screen her john properly."⁶⁹ Additionally, there will be women who are desperate enough for money that they may forgo screening. The reality is that some johns are violent and if nothing is done to stop them; some will succeed in picking up and harming women.⁷⁰

It is argued by sex workers that brothels are safer for women than outdoor prostitution. It has been demonstrated by countries with legalized/decriminalized regimes, however, that the creation of brothels, even if they were safer, does not eliminate street prostitution. In brothels, namely those which are to be "safe" and "regulated," the prostitutes cannot use drugs or be intoxicated while working. The many women who are in prostitution due to addictions would likely not be able to work in a brothel.⁷¹ Kim Pate, Executive Director of the Canadian Association of Elizabeth Fry Societies (a member of the Women's Coalition), said that the clients that the Elizabeth Fry Society works with would likely not be eligible for a legal brothel, due to addictions, health, or mental health issues.⁷² When talking of Bedford et al.'s vision of legalized brothels for Canada, Trisha Baptie, with EVE (formerly known as Exploited Voices now Educating) in Vancouver said, "Young has made this clear that it is for the upper echelon, the rest of us are collateral damage ... there are so many rules about working in a brothel, none of my friends will make it inside, Aboriginal women won't make it inside—blond hair, blue eyes, big boobs will make it inside, or Asian women will make it inside—there is a

⁶⁹ Johnston, 2011.

⁷⁰ Johnston, 2011.

⁷¹ Johnston, 2011.

⁷² Global News, 2013d.

very particular type that works indoors, but there is far, far more that will never make it inside the front door.”⁷³

Using the Pickton case as an example Johnston said, “It’s highly unlikely that the women Pickton killed would be allowed in a legal brothel. But even if they were, Pickton didn’t use brothels; he picked up women on the street.”⁷⁴ He often used tactics to gain trust, like bringing another woman along. Some women returned from his farm alive. There is no way that more time to “size up” a john could reveal if they may be a predator like Pickton, nor will brothels protect women from falling prey to such a predator again.

As for the safety women experience within brothels, it greatly varies on the ownership of the brothel and the way it is managed. Raymond says that while those who would like to see prostitution decriminalized “argue that violence is noticeably reduced or eliminated in most indoor settings, other pro-sex work groups admit the violence against women in their studies.”⁷⁵ For example, the Sex Workers Project at the Urban Justice Center did a study in 2005 on indoor sex work which revealed that 46% of those interviewed had “been forced by a client to do something he or she did not want to do”—including being robbed, threatened, or beaten.⁷⁶ The Sex Workers Project went on to say that

while these sex workers are largely invisible, they face many of the same problems as the more visible street-based prostitutes... the majority of indoor sex workers in this study live surprisingly precarious lives, and encounter a high level of exactly the same problems faced by street-based sex workers, including violence, constant fear of police interference, and a lack of substantive support services. In fact, some of these problems are exacerbated by the clandestine, and thus invisible, nature of indoor sex work.⁷⁷

Johnston says that Bedford et al. “claim that criminalizing communication for the purpose of prostitution contributes to men’s violence because women prostituted on the street have to move to darker, more isolated areas to avoid arrest. But if it’s true that the current laws endanger women by pushing them into isolated areas with fewer witnesses, then pushing these

⁷³ MacInnes, Nason, & Clarke, 2013.

⁷⁴ Johnston, 2011.

⁷⁵ Raymond, 2013, p. 29.

⁷⁶ Sex Workers Project at the Urban Justice Center, 2005, p. 11.

⁷⁷ Sex Workers Project at the Urban Justice Center, 2005, p. 9.

women completely out of public view behind the closed door of a brothel will not make them safer.”⁷⁸

Some survivors of prostitution gave affidavits in the 2010 case, stating that indoor prostitution is unsafe. “Some of the women said they preferred prostitution on the street because they had more control and they got to keep more of their earnings. Prostituting indoors means the brothel owner negotiates with johns. This person, whether they are called pimp, manager, or agency owner, has a vested economic interest in women pleasing johns, and is more likely to agree to johns’ demands to have sex without condoms and to engage in sexual acts women themselves wouldn’t agree to.”⁷⁹

Court documents indicate that Bedford “encountered brutal violence throughout her career — largely, she stated, while working on the street. In her experience, indoor prostitution is safer than prostitution on the street, although she conceded that safety of an indoor location can vary.”⁸⁰ Lebovitch “reported in her affidavit that when she was working in a brothel a john tied her up and raped her. No one intervened and she was left tied up for nearly half an hour until someone found her.”⁸¹ Katarina MacLeod, who worked in a brothel for 17 years also disagrees that brothels are safer. “It is complete hell inside and the customer is always right. They can beat you and take your money... The location didn't make us safer, the men who we were with made us unsafe... Even if there is a panic button in the room, how do you get to it?”⁸² Another survivor said in her affidavit: “I have been raped and sodomized by johns while working in massage parlours, and was too scared and embarrassed to make any noise, and wouldn’t have even known who to call. Sometimes I would hear other girls screaming or crying and I didn’t know if it was part of an act or real. I never intervened.... Screams in the house were frequent and no one ever got involved.”⁸³ As Johnston pointed out, it is not location that harms women—it is violent men. More important than trying to alter the

⁷⁸ Johnston, 2011.

⁷⁹ Johnston, 2011.

⁸⁰ Ontario Superior Court of Justice, 2010.

⁸¹ Johnston, 2011.

⁸² Connor, 2010.

⁸³ Johnston, 2011.

physical location in which women in prostitution work, we must work towards preventing men's violent behaviour.⁸⁴

While those who advocate for the decriminalization of brothels state that the brothel's security measures, including security cameras and checking or recording johns' identification, would protect women in prostitution, if the men who buy sex want to remain anonymous, they may still chose to purchase sex on the street rather than from a legitimate business where their visit may be documented. As well, some johns patronize prostitutes with the intention of engaging in degrading or violent acts—it can be expected that these men would likely not patronize brothels, where violence might not be tolerated, and would still patronize street prostitutes. As well, working in a brothel, as opposed to on the street, may not be financially beneficial for some individuals in prostitution. The *Behind Closed Doors* study goes into detail about the complex structure of fees and commissions negotiated between prostitutes and managers or brothel owners. The amount of their earnings that prostitutes gave to others ranged from 20% to 70%.⁸⁵ Individuals may therefore choose outdoor over indoor prostitution.

Another consideration in the discussion of legal brothels is medical testing. Many advocates of legal brothels suggest that women working in brothels would be subjected to regular medical tests, thus keeping those involved in prostitution safer. For example, Denis Hof, owner of Nevada's Bunny Ranch, was interviewed in December about his intentions to open a brothel in Toronto, should prostitution become legal. Hof said that all of the women he employs have "a weekly medical test to make sure [they are] healthy."⁸⁶

The talk of regulations within brothels mentions regular health checks for prostitutes, but it is unlikely that johns would be expected to produce a recent health check to receive services. While johns might have the assurance that the prostitute with whom they are having sex is HIV-negative, the prostituted woman will not have the same assurance about her customer. HIV infection is discovered via a blood test that detects HIV antibodies in the blood, and these antibodies can take between three and six months to appear in someone's blood

⁸⁴ Johnston, 2011.

⁸⁵ Sex Workers Project at the Urban Justice Center, 2005.

⁸⁶ Blanchfield, 2013b.

after they have been exposed to HIV.⁸⁷ A negative HIV-test is not necessarily proof that someone has not contracted HIV, when they have been continuing to engage in sex with multiple partners during the window period.

UNAIDS stated in their intervention that they believe that “a legal [brothel] environment that protects human rights and ensures access to HIV programs”⁸⁸ is the best solution. However, just because brothels are legal and rules are instituted around condom use and health checks, does not mean that the rules will be enforced. In fact, health checks may increase risk to women in prostitution. As customers may assume that women employed in brothels are “safe” or that a recent health check means that the prostitute is HIV-negative, they may insist upon engaging in sex without condoms. Scott told the Supreme Court that after awareness about HIV/AIDS increased in the 1980s “she was compelled to work as a street prostitute, since indoor clients felt entitled not to wear condoms.”⁸⁹

Safety is clearly one of the main concerns in regards to working conditions of those in prostitution. The vulnerability of sex workers, however, must be examined in the larger context of a labour market system that has basic inequalities which are fundamental to its structure. People working in the labour market as it is currently structured work not only for their own benefit but also for the benefit of those who lay claim to wealth and resources. This benefit to the owners is referred to as profit. Our economic system demands growth which means ever more production of goods and profits regardless of the consequences. We no longer work for the common good but rather only for the generation of profit. The environmental consequences, while sometimes on the public agenda, are often easy to ignore. The consequences to individual citizen’s lives, however, are perhaps more obviously manifest. These negative consequences are resisted through unionization and labour market mobility. There is an inherent tension between those who hold the wealth and lay claim to the earth’s resources and the people they employ. People struggle to regain control over their lives and their connection to the material world which sustains them. Workers in the labour market strive to address the tensions between employers and employees by struggling to improve

⁸⁷ Public Health Agency of Canada, 2012.

⁸⁸ Supreme Court of Canada , 2013b.

⁸⁹ Canada v. Bedford, 2013.

working conditions and increase wages. Many already legitimate workers struggle unsuccessfully to improve working conditions and those who are vulnerable such as new immigrants, migrant workers or temporary workers face the most challenges. Also, women still experience unequal pay and opportunities in the workforce.

Given these flaws in the current system based on the unequal relations between the owners of production and those who work for wages and salaries, working conditions, including workplace safety, will never be ideal in any profession. The question to be asked, therefore, is having sex work as part of the paid labour market a desirable course of action? Should we not instead be on the path to withdrawing labour from the market place rather than adding more professions to an inherently oppressive system? Should we not be moving towards a new system of distribution of resources which will be grounded in equality and respect for the fragile and finite resources of the planet? This is not to say that we want to return to pre-capitalist forms of economic organization. Indeed women and others were exploited before the advent of capitalism. Prostitution has a very long history and was sustained because of class systems that allowed for slaves and which considered women to be chattel. These kinds of social class constructions permitted the exploitation of people in terms of labour, and women were certainly exploited for sexual purposes.

What we want to create instead is a society in which people are treated as equally as possible. We want a society where one's access to resources for survival does not occur in an atmosphere of coercion and in an absence of real choice. What sexual relations would look like in a completely equal society is the subject of another paper, but we are working on the assumption that sexual interactions in more equal societies would be better than in less equal societies. There is documented evidence that the more equal a society the better the quality of life including reduced incidences of violence.⁹⁰

In unequal societies, some groups of people are more vulnerable and experience the exploitation inherent in the current economic system to a greater degree than others do. Marginalized people are often choosing amongst a range of less than desirable options to the extent that they may even make decisions which are harmful to themselves. The issue of how

⁹⁰ Pickett & Wilkinson, 2010.

women choose prostitution as a source of income is frequently examined in discussions about the acceptability of selling sex.

Many survivors of prostitution, such as Baptie, have referred to their entry into prostitution not as a choice, but due a lack of other options⁹¹. Edwin Schur wrote that “Relatively few prostitutes or other sex workers sell their sexuality by free choice. Even where they have not been directly coerced into such work, we might well conclude that some degree of indirect and broad social coercion has shaped their decision.”⁹²

From oral history testimony and interviews with women in prostitution, it is known that some women enter the sex industry because they have been forced, coerced, or deceived. Others enter because offenders abuse their vulnerabilities, including past and present sexual abuse, poverty, and economic disadvantage, marginalization, and loss of self, and use predatory recruitment tactics that can include peer or family pressure. Those who enter knowing they will engage in prostitution often have no idea of the conditions that await them.⁹³

A survivor of prostitution wrote on her blog:

When I think of my choices they were simply these: have men on and inside you, or continue to suffer homelessness and hunger. Take your pick. Make your ‘choice.’ People will never understand the concept of choice as it operates in prostitution until they understand the concept of constraint so active within it. As long as the constrained nature of this choice is ignored it will be impossible to understand the pitiful role of ‘choice’ for women within prostitution.⁹⁴

NWAC agrees that in many cases, women’s choice is no real choice at all. They feel that “It is not helpful to divide women in prostitution into those who ‘choose’ and those who are ‘forced’ into prostitution. In most cases, Aboriginal women are recruited for prostitution as girls and/or feel they have no other option due to poverty and abuse.”⁹⁵

Both Trotchie and Lerat commented that some women are in the sex trade “because it is the only way that they can provide for their kids.”⁹⁶ After the Supreme Court decision, Kim Pate told reporters “...and those women who have no choice because we still don’t have

⁹¹ Connor, 2010.

⁹² Schur, 2007, p. 87.

⁹³ Raymond, 2013, p. 19.

⁹⁴ FreeIrishWoman, 2012.

⁹⁵ Women’s Coalition, 2013b.

⁹⁶ CBC Radio, 2013.

guaranteed incomes here, we still have inadequate social assistance, we still have inadequate women's services, we have an equality system that is going down the tubes right now in Canada and are saying that what some people would like to call the oldest profession is actually the oldest oppression."⁹⁷ Atchison, author of *John's Voice*, "the question isn't how to help people in street prostitution, it's how to help people in poverty because prostitution is one of the things they do to survive."⁹⁸ The Women's Coalition calls for a guaranteed liveable income as well as resources to help women, who choose to do so, exit prostitution.⁹⁹ In their position on the prostitution legislation, the Saskatchewan Association of Social Workers (SASW) also calls for "an adequate standard of living (either through social assistance or a guaranteed livable income), and the provision of social services, health services and educational options."¹⁰⁰

In a letter to the Editor of the Star, the Women's Coalition wrote

Too many women do not have access to adequate incomes, education, or even minimal social assistance. No woman should have to sell her body in order to pay for housing or feed her children... Women are the most negatively impacted by the absence of a guaranteed liveable income, affordable housing and access to child care, and the erosion of other community resources. Under these conditions, the environment is ripe for the sexual exploitation of those women who are impacted by our inadequate social safety net.¹⁰¹

A former sex trade worker from Edmonton told CTV news, "Nobody wants to do this job, and I don't care who you are, I'll never believe that. I've never met a woman who says 'I choose this job, I love this job.'" She told of starting sex work due to financial hardship and how she began to contemplate suicide after becoming involved in sex work.¹⁰² Research done by Melissa Farley of Prostitution Research and Education indicates that interviews with individuals in prostitution in nine different countries indicate that 89% "want to get out now."¹⁰³ Farley says that most women in prostitution "have been caged in by racism and sexism and poverty

⁹⁷ Global News, 2013d.

⁹⁸ Atchinson, 2010.

⁹⁹ Women's Coalition, 2014c.

¹⁰⁰ SASW, 2011.

¹⁰¹ Women's Coalition, 2014c.

¹⁰² CTV News, 2013.

¹⁰³ Somarriba, 2014.

and end up involved in something that is really hard to get out of once you're in."¹⁰⁴ In the documentary *Buying Sex*, women involved in street prostitution expressed irritation that the demand (and therefore, their ability to earn money) decreased after buyers of sex were criminalized.¹⁰⁵ It is important to ensure that other economic options are put in place when criminalizing the demand side of prostitution, to ensure that women are not further impacted by the poverty that led them to prostitution in the first place.

A woman engaged in street prostitution said,

I started doing this seven years ago, smoking crack and working on the road... I don't even know where I'm going to sleep tonight. As a working girl, most of us don't have a place. They can wake you up at 3 a.m. and kick you out because you have nothing... I would not do this – never – if I did not have an addiction... If there was no johns, we wouldn't be out there.¹⁰⁶

In their intervention to the Supreme Court of Canada in *Canada v. Bedford*, Aboriginal Legal Services of Toronto stated that

Prostitution takes many different forms. The evidence before the Application Judge was that 10 to 20 percent of prostitution is street-based sex work. A subset of this category is 'survival sex'. Survival sex is defined as a person choosing to engage in prostitution in a situation where they have very few or no other choices... The risks and dangers attendant with street-based sex work and survival sex hardly make it a career choice that many individuals would seek out.¹⁰⁷

Baptie recalled choosing prostitution initially, but then later trying to get out. Baptie recalled her internal struggle during her time in prostitution, saying "What I remember about my years as a prostituted woman was how much I tried to find something empowering in what I found myself doing. That by choosing who raped me, based on their ability to pay, I was empowered. That by consenting to the abuse, I was free from it."¹⁰⁸ Consistent with what survivors of prostitution report,¹⁰⁹ Priscilla Alexander writes in *Sex Work* that previous

¹⁰⁴ Somarriba, 2014.

¹⁰⁵ MacInnes, Nason, & Clarke, 2013.

¹⁰⁶ Gillis, 2014.

¹⁰⁷ Supreme Court of Canada, 2013b.

¹⁰⁸ Baptie, 2009.

¹⁰⁹ Raymond, 2013; *Canada v. Bedford*, 2013; Supreme Court of Canada, 2013b.

experiences of sexual abuse are prevalent, sometimes being as high as 80 percent, among prostitutes. The difference is that, in Alexander's view, prostitution was "a way of taking back control of a situation in which, as children, they had none,"¹¹⁰ as opposed to a consequence of previous victimization.¹¹¹ Despite their position that sex work is a choice, both Bedford and Scott entered the sex trade before the age of consent. (The age of consent, also known as the age of protection, in Canada is 16 years, however the age of consent rises to 18 years when the sexual activity is exploitative, such as prostitution or pornography.¹¹²) Bedford entered prostitution at the age of 16,¹¹³ as did Scott, who recalled that, to her, it was not abuse.¹¹⁴

People have more or less choices in life. For the women involved in *Bedford v. Canada*, prostitution might be seen as more of a choice than for other people. The reality is that for most women in prostitution they are choosing among a range of only dismal options. In response to the statement that "this case was only about the 10% of women in prostitution voluntarily,"¹¹⁵ Johnston asked, "Why make law based on the 10% of women who say they want to continue in prostitution, rather than the 90% who say they want out?"¹¹⁶ Equality Now said that it would be "concerning to see a policy made for such a minority when so many women don't have choices."¹¹⁷

There are particular groups who have the least amount of choice when it comes to finding ways to survive. "Prostitution is one of the devastating impacts that colonialism has had on First Nations women. This must be forefront in any discussion on prostitution. First Nations women in prostitution bear the most violence and humiliation for the least money."¹¹⁸ Research shows that young Aboriginal women and girls are the most vulnerable to sexual exploitation. For example, it is estimated that between 14 and 60 percent of Aboriginal youth in British Columbia have been sexually abused.¹¹⁹ Another study states that "75 percent of

¹¹⁰ Priscilla Alexander, cited in Anthony, 2007, p. 417.

¹¹¹ Perrin, 2010.

¹¹² Government of Canada, 2013.

¹¹³ Fine, 2013b.

¹¹⁴ MacInnes, Nason, & Clarke, 2013.

¹¹⁵ Johnston, 2011.

¹¹⁶ Johnston, 2011.

¹¹⁷ Somarriba, 2014.

¹¹⁸ Johnston, 2011.

¹¹⁹ British Columbia Assistant Deputy Ministers' Committee on Prostitution and the Sexual Exploitation of Youth (n.d.).

Aboriginal girls under eighteen had experienced sexual abuse of one kind or another, 50 percent under fourteen had encountered the same treatment, and almost 25 percent under seven had been sexually abused.”¹²⁰ The Standing Senate Committee on Human Rights states “90% of the street-involved sexually exploited youth are Aboriginal, usually female and between the ages of 15-18.”¹²¹ “Some First Nations advocates have described the extremely high prevalence of sexual abuse suffered by Aboriginal youth as a factor in ‘conditioning’ them for more egregious long-term exploitation in the sex industry.”¹²²

Bridget Perrier is a First Nations woman, survivor of prostitution, and the founder of Sextrade 101, a victim advocacy group in Toronto that aims to help Aboriginal women and girls get out of the sex trade. Perrier was deeply disappointed by the December Supreme Court decision. “It feels, as a survivor, someone commercially and sexually exploited, that it’s a slap in the face. A big slap in the face... We can’t put dollars signs on our bodies.”¹²³ She fears that “the ruling is a step towards giving men the right to further victimize Aboriginal women and girls who... turn to the sex trade when they no longer have hope.”¹²⁴

NWAC stated that:

Prostitution is not a traditional activity of Aboriginal women. The state has tried to disconnect Aboriginal women from our communities, our children, our families, our traditional roles, our language, and our culture. These incidents all contribute to the disconnection Aboriginal women experience from their own bodies and sexuality that is inflicted on them through prostitution. Aboriginal women are grossly overrepresented in prostitution and among the women who have been murdered in prostitution.¹²⁵

Young women are also especially at risk. Many women in prostitution started when they were young girls. Perrier was prostituted at age 12.¹²⁶ Lerat said she has seen young girls at the age of 8, and a young boy aged 9 years old working on the street in Saskatchewan communities.¹²⁷ MacLeod said that she worked in a brothel with girls as young as 12, recalling

¹²⁰ Mclvor & Nahanee, 1998, cited in Perrin, 2010.

¹²¹ Standing Senate Committee on Human Rights, 2011.

¹²² Perrin, 2010, p. 95.

¹²³ Jackson, 2013.

¹²⁴ Jackson, 2013.

¹²⁵ Women’s Coalition, 2014b.

¹²⁶ Jackson, 2013.

¹²⁷ CBC Radio, 2013.

how they would hurry the underage girls out the back door when the police came.¹²⁸ Data from the Standing Senate Committee on Human Rights demonstrates that most women enter prostitution between the ages 14 and 18. They estimate that 10-15% of individuals involved in street prostitution are youth and also state that “many children are also involved in prostitution through indoor venues.”¹²⁹ When asked what she would say to a young girl involved in prostitution, Trotchie said she would “encourage them to get back into school, to change their lifestyle. I would share my story to let them know the dangers of what they are doing.” She went on to say “families of these children should be held accountable” for young girls that are working on the street.¹³⁰ Survivors such as Trotchie and Lerat do not advocate that prostitution is a legitimate career choice that young women may want to consider.

There is a complex philosophical argument around what constitutes choice and a “deep theoretical division over what constitutes sexual oppression and sexual liberation.” As one survivor wrote:

I think we need to really examine, as a people, what we understand about the concepts of choice and force, and I think that until we do, we will never be able to decipher that murky hinterland with which the vast majority of prostituted women are intimately familiar; that place that bridges the gap between wanting to and having to; that place where so many women must occupy before they make a decision that is not a decision, a choice that is not a choice.¹³¹

Although the evidence is overwhelming that sex work is a choice made out of necessity to survive or support an addiction, there are some sex workers who have declared that prostitution is their chosen profession and that they enjoy their work. Prostitute and former Executive Director of SPOC, Nikki Thomas, states on her website that she holds three university degrees and that she began sex work in her 20s to help her avoid student loans. She began stripping, then “moved out of the strip club atmosphere and [took] the plunge into escorting. In this world, I found that society had been even less truthful, and it was nowhere near as degrading, abusive, or violent as it had been described. I met intelligent, self-respecting women

¹²⁸ Connor, 2010.

¹²⁹ Standing Senate Committee on Human Rights, 2011, p. 15.

¹³⁰ CBC Radio, 2013.

¹³¹ FreeIrishWoman, 2012.

with strong entrepreneurial spirits, determined to become successful in what is often called the World's Oldest Profession."¹³² Thomas says that she

...considered [prostitution] a legitimate and reasonable choice. I stood up to the stigma, spoke out on behalf of the profession, and resolved to restore some dignity to the job by showing others that it wasn't always as bad as the stereotypes suggested. I've heard some absolutely horrible stories from truly abused individuals, but that never caused me to doubt the legitimacy of my experiences; it just reinforced my belief that the ridiculous laws restricting the business were putting women's lives in greater danger. I decided I would do whatever I could do to eliminate these moralistic and harmful laws, and show the world that violence wasn't inevitable; for all the tragic stories I heard, I knew for a fact that it didn't have to be that way. The sex industry could provide a safe and positive way for people to earn an honest living, if only the laws and stigma were eliminated.¹³³

Even if we were to concede that a small number of those who work in prostitution enjoy their work and have chosen this profession over other positive options they have had, the question remains, should we abandon our moral code to allow them to make this choice. Many argue against basing decisions on moral grounds. The Institut Simone de Beauvoir called the December 20th decision a "feminist victory." They believe that sex work is not necessarily prejudicial to women, women should have free choice, and that sex-workers should not be stigmatized and labeled as victims. They say: "This decision treats the question of prostitution within a legal, and not a moral framework. As feminists, we support decisions that address women's lives from a legal, and not a moral, standpoint."¹³⁴ The HIV Coalition submitted in their intervention, "Ideology and moral judgments about sex work should not be the basis for public policy. Rather, laws must be grounded in evidence and human rights."¹³⁵

Perhaps our reticence to ground a decision opposing prostitution based on morality stems from the fact that often moral arguments are connected with the religious right who frequently hold views that are antithetical to progressive thinkers. Those who advocate for equality-seeking political, economic and social reform might write off these discussions of

¹³² Thomas, 2013.

¹³³ Thomas, 2013.

¹³⁴ Institut Simone de Beauvoir, 2013.

¹³⁵ Supreme Court of Canada, 2013b.

morality as based in fundamentalist religious thinking and therefore, not rooted in logic. One can argue, however, that there is indeed logic to maintaining a moral code. The statement to the Supreme Court by the Christian Coalition touches upon this logic. The Christian Coalition, which was formed by the Christian Legal Fellowship, Catholic Civil Rights League, and REAL Women of Canada states that “Parliament has held the view that prostitution is immoral since Confederation. This moral view is not based on mere prudish sensibilities nor is it legal moralism: it is a common and fundamental social value rooted in other constitutional values such as promoting gender equality, preventing the exploitation of vulnerable persons and protecting human dignity.”¹³⁶ They say that prostitution “fundamentally demeans the dignity of the prostitute and the client. It perpetuates a fundamentally offensive and abusive gender imbalance and it exposes prostitutes to physical and psychological harm.”¹³⁷ The problem may be that the logic needs to be made more readily apparent.

The logic inherent in maintaining moral codes is the belief that there is a need to protect individuals and the community from the harm that we are capable of inflicting upon one another. As humans we are dependent on one another and this interdependence, while positive and essential for survival, is also what makes us vulnerable to injury. Interdependence is fundamental to the nature of what it means to be human. We cannot survive in isolation nor are we biologically constructed to do so. The connectedness which ensures our survival is also the source of vulnerability. Ultimately we strive to stay connected to each other in a positive way. We are, however, biologically constructed to receive pleasure from a variety of activities. These rewards ensure that we eat to survive, flee danger, and procreate. We know that these predilections can cause us to take advantage of others. Moral codes serve as a framework to keep our pleasure seeking nature in check. We can also be dominated by our fears so that moral codes can help to ensure that fear based actions are suppressed by our commitment to the rules of our society. Moral codes have been developed as systems whereby we create rules that will ensure that we are protected from the harm which others might do to us as we engage in the social relationships that are essential to our survival. Examined within the context of our

¹³⁶ Supreme Court of Canada , 2013b.

¹³⁷ Supreme Court of Canada , 2013b.

intrinsic social interdependence it is easy then to see why moral codes exist. Moral codes protect us from the flaws that are common to our existence as humans. Even though we might disagree with many of the moral codes of the religious right it would be foolish then, if not catastrophic, to abandon all notions of any kind of a moral code.

Some believe that even a strong moral code will not deter men from acting on their sexual appetites. They say that prostitution is the “oldest profession” and therefore will always exist and that men are helpless to control their sex drive. Johnston reported that when Benedet finished her arguments in the 2011 Ontario Court of Appeal case, that the “most common reaction [she] heard was, ‘wow, that was an effective argument, but you’re never going to abolish prostitution.’”¹³⁸ Indeed Trotchie and Lerat, who were prostituted from the time they were 13 years old, agreed that “prostitution will always be here” when they were interviewed in December.¹³⁹ Bedford has stated that criminalizing johns but not prostitutes is not a plausible solution, because “you can’t punish men for their natural needs.”¹⁴⁰ To suggestions of charging johns and pimps, but decriminalizing women in prostitution, Alan Young responded “You’re going to reduce the man?! This is an instinctive drive. I’m sorry, you can’t do that, we can’t rewrite human nature. People have an instinctive drive to sex. If people don’t have an outlet in their interpersonal relationship, they are going to seek it out in the commercial market...”¹⁴¹

The question that we must answer as Canadians is if we accept that prostitution is inevitable. Is it a must in our society that men have their sexual needs met by women in prostitution? Speaking of the time when Sweden answered that same question, Gunilla Ekberg,¹⁴² a Swedish lawyer, now at the University of Glasgow School of Law, says that the Swedish government could have “succumbed to resignation and accepted the proposition that prostitution is inevitable, inescapable, and necessary... something that always will exist and therefore should be accepted, because men need it, or women choose it, or because

¹³⁸ Johnston, 2011.

¹³⁹ CBC, 2013.

¹⁴⁰ Fine, 2013b.

¹⁴¹ MacInnes, Nason, & Clarke, 2013.

¹⁴² Malarek, 2009, p. 239.

prostitution is the ‘oldest profession,’”¹⁴³ however they chose to work against, rather than to accept the notion. It is defeatist to decide that the prostitution of women is inevitable and inescapable. This attitude says that we accept that sexual violence against women and girls will continue to exist because it is too overwhelming or difficult to try to combat it. Johnson says that it is highly insulting to men to assume that they require anonymous sex with prostituted women to meet their needs. Johnston says:

I believe men are capable of treating others with respect, forming intimate relationships and sharing consensual sexual pleasure with others. The only world we have lived in is one controlled by the power hierarchies of sexism, racism and classism. I have every reason to believe that in a world free from these social inequalities, prostitution will not exist.¹⁴⁴

Baptie also remarked that the “oldest profession” argument is not a valid one. She recalls that not long ago domestic violence was accepted as something that was “here” and not going away. She says, “Just because we have things with us all the time, does that mean we don’t try working against it?”¹⁴⁵ Johnson calls the “prostitution is inevitable” argument illogical and points out that in Canada, “we almost never decide to remove criminal laws prohibiting something simply because it’s been around for a long time. Can you imagine someone arguing that murder should be decriminalized because it’s been happening as far back as we have documented history of, so we might as well legalize it?”¹⁴⁶

She continued on to say,

Secondly, “you can’t stop it, so why try” has been the response to many social movements that tried to address deeply entrenched systemic inequality. When abolitionists argued that slavery in the USA should be abolished, they were met with arguments that society could never exist without slavery, many slaves were happy, slavery should just be reformed so there’s less killings, whippings and beatings. I’ve been told by anti-violence feminists who were activists in the 1970’s that when they suggested that wife battery was wrong, many resisted by saying wife battery could never be abolished, women should just go stay with

¹⁴³ Malarek, 2009, p. 239- 240.

¹⁴⁴ Johnston, 2011.

¹⁴⁵ MacInnes, Nason, & Clarke, 2013.

¹⁴⁶ Johnston, 2011.

their mom for a few days to get rest, then make peace with her man. But we do say as a society now that slavery and wife battery is unacceptable.¹⁴⁷

What concerns us also is the fervour with which morals are typically upheld. We often come to accept these rules unquestioningly. Indeed we are rewarded in our brain chemistry for being certain.¹⁴⁸ The solution to this problem is to accept that moral codes can become outdated. We must be open to identifying the potential flaws in moral codes and to changing them when necessary. There are ways in which we can challenge this certainty through self-awareness. Becoming self-aware leads to acceptance of self and a confidence based on facing our fears. We are then able to step outside ourselves and realize a deep compassion for others. This compassion and concern for the well-being of others will prompt and guide changes to our moral codes. Also, at times we believe that moral codes have served to maintain the status quo which has not been to women's advantage. But a rule that serves to keep one group dominant over another is one that needs to be examined. Our moral code should be based on our values which, it can be argued, can only be defined as such when they guide us to act in the best interests of individuals and the community. They must help us to avoid suffering and achieve happiness.

Other resistance to basing decisions based on a moral argument is rooted in the potential of morals to interfere with the maximization of profit. Milton Freedman, the modern day champion of the concept of the free market favoured legalized prostitution. The fact that he held this belief may be somewhat surprising because the religious right that eschews prostitution often espouses his beliefs. But put in the context of the free market there should be no rules that inhibit market place transactions, including rules based on morality generally and specifically those regarding prostitution. Freedman would say that everyone wins in a free market society where consumers are allowed to make unfettered demands and owners are allowed to make profit without intervention. But there are those who argue differently. They ask the question, "In a society based on the maximization of profit and accumulation of wealth, who stands to benefit if the moral rules against prostitution were abandoned?" It can be

¹⁴⁷ Johnston, 2011.

¹⁴⁸ Burton, 2008.

suggested that ending the moral rules against prostitution would result in a benefit only to current brothel owners, who would be transformed from criminals to legitimate business owners overnight,¹⁴⁹ as well as those who seek to open brothels in Canada.

Prostitution survivor Lerat agrees with this sentiment, “I think the only winner would be the one who would be an authority [brothel owner] and not those who we need to help and support with addictions, poverty, homelessness.” Trotchie said “I don’t believe that they [brothel owners] should financially benefit from it in any way whatsoever, I think they should just be there to provide safety for the girls, to give them a safe environment to be in...”¹⁵⁰ The cost of operating a brothel would be high, and it seems that should brothels become legal in Canada, it will be for-profit business owners who seek to open brothels. The operation of a not-for-profit brothel (or, rather, a safe shelter/residence for sex workers to work) would need a significant amount of revenue from donations as well as staff and volunteers, and is unlikely to happen. It is more likely that business owners such as Denis Hof from the Bunny Ranch will be operating Canada’s brothels, should they become legal.

Abandoning the moral imperative against prostitution through decriminalization or legalization would result in greater demand for paid sex. Businesses that seek to sell sex would seek the human resources necessary to fill the demand. In this context we can discuss the issue of trafficking. Evidence from Germany, where prostitution is decriminalized, shows that “brothel owners can’t find enough local women to supply the ever-increasing demand.” When prostitution became legal, German women did not rush to quit their jobs and take positions in brothels. Therefore, of the 200,000 sex workers in Germany, 85% are foreign, mostly from Russia, Ukraine, Romania, Moldova, Hungary, and Bulgaria.¹⁵¹ Legal brothels and increased demand in Canada could lead to foreign workers being exploited in these settings, as the Asian Women Coalition Ending Prostitution (Asian Women) raised in their Supreme Court intervention.¹⁵² IROKO Onlus in Italy, an association that assists sex trafficking survivors,¹⁵³ said that the decriminalization of brothels in Italy would mean that “traffickers would have the

¹⁴⁹ Raymond, 2013.

¹⁵⁰ CBC Radio, 2013.

¹⁵¹ Malarek, 2009, p. 226; Lynch, 2013.

¹⁵² Supreme Court of Canada, 2013b.

¹⁵³ CATW, 2011.

possibility of legally importing women to fill brothels or sequester them in private apartments where already isolated women from other countries could be further cut off from assistance.”¹⁵⁴ Should brothels be legalized in Canada and the jobs within them to be considered “just like any other job,” it is not unreasonable to think that brothel owners may look to bring in foreign women to fill the demand, as well as hiring new Canadians who may already be marginalized due to poverty and language barriers. According to Benjamin Perrin, Associate Professor of Law at the University of British Columbia and trafficking researcher, it is “estimated that approximately six hundred foreign nationals are brought to Canada for sex trafficking every year.”¹⁵⁵ This data came from a 2004 RCMP report, though the RCMP no longer estimates the extent of human trafficking in Canada, due to difficulty with measuring the extent of the problem with certainty.¹⁵⁶

Ruth Ross of the Christian Legal Fellowship, one of the interveners in the challenge, said that decriminalizing prostitution could “[open] the door to sexual tourism and I believe Canada would be a target for that.”¹⁵⁷ As Canadian men travel to other countries, such as Thailand, for sex tourism¹⁵⁸ and it has been noted that Germany is now a destination for sex tourists from elsewhere in Europe,¹⁵⁹ it is not unreasonable to wonder if legal brothels in Canada might attract sex tourists from other locations, such as the United States, where prostitution is illegal, except in some counties in the state of Nevada. The EFC also notes “a high correlation between the legalization of the sex industry and an increase in human trafficking for the purposes of sexual exploitation.”

The demand for prostitution, coupled with poverty and marginalization, causes many people to turn to survival sex. Survival sex workers are the “most vulnerable and most marginalized of all prostitutes”¹⁶⁰ says the ALST and are the least likely to move off the street, no matter what legal regime is in place. Similarly to the ALST, Asian Women pointed out that “the Ontario Court of Appeal acknowledged one of the ‘primary sources of survival sex workers’

¹⁵⁴ Raymond, 2013, p. 31.

¹⁵⁵ RCMP, *Project Surrender*, 2004, as cited in Perrin, 2010, p. 29.

¹⁵⁶ Perrin, 2010.

¹⁵⁷ Global News, 2012.

¹⁵⁸ Perrin, 2010; Malarek, 2009.

¹⁵⁹ The Economist, 2013.

¹⁶⁰ Supreme Court of Canada, 2013b.

marginalization' is race."¹⁶¹ Asian women put forward that "Asian and other racialized women have distinct experiences of prostitution" and that this "distinct experience arises when characteristics, real or imagined, are used to demand and promote sexual services, and when individuals, communities, and public institutions make assumptions about relative value on the basis of race. They refer to the commercial sexualization of racial subordination. They felt that there must be an "application of the 'anti-racism principle' to issues involving the commercial sexualization of racial subordination"¹⁶² and cited examples where race was used to advertise prostituted women and where buyers requested prostituted women based on race, or certain perceived characteristics of that racial or ethnic group. As well, Asian Women highlighted in their intervention that "Canada has made the international commitment to discourage the 'demand that fosters all forms of exploitation...that leads to trafficking.' They highlight that striking down the provisions against bawdy houses could increase the demand, particularly the demand for racialized women."¹⁶³

We are not prohibited from grounding our laws in morality. The Court has noted that "much of the criminal law is based on moral conceptions of right and wrong and the mere fact that a law is grounded in morality does not automatically render it illegitimate."¹⁶⁴ The 2010 decision "recognize[d] that a law grounded in morality remains a proper legislative objective so long as it is in keeping with Charter values."¹⁶⁵ However, the Supreme Court did say (in a 2011 decision regarding supervised injection sites) that "the morality of the activity the law regulates is irrelevant at the initial stage of determining whether the law engages a s. 7 right."¹⁶⁶ The Supreme Court is saying that only after ensuring that a proposed (or, in this case, existing) law does not infringe upon individuals' the right to life, liberty and security of the person, and freedom of expression will morality be considered.

Bedford et al.'s intervention in the Supreme Court case stated that "The relevant question for constitutional analysis then is whether the sex worker's legal choice has been

¹⁶¹ Supreme Court of Canada , 2013b.

¹⁶² Supreme Court of Canada , 2013b.

¹⁶³ Supreme Court of Canada , 2013b.

¹⁶⁴ Ontario Superior Court of Justice, 2010.

¹⁶⁵ Ontario Superior Court of Justice, 2010.

¹⁶⁶ Canada (Attorney General) v. PHS Community Services Society, 2011.

constrained and limited by state action (legislation) in a manner which affects her right to liberty and security.”¹⁶⁷ The premise of *Bedford et al.* is that sex workers have the right to choose sex work, and criminalizing them for engaging in sex work infringes on their *Charter* rights.

The Women’s Coalition says that “criminalizing johns, brothel owners and those who live off the avails of prostitution (‘pimps/profiteers’) does not violate the *Charter* rights of prostituted women. Instead, such laws support prostituted women’s security of the person. It is contrary to principles of fundamental justice to decriminalize men’s prostitution of women in order to protect women from those same men.”¹⁶⁸ With questions surrounding the buying of sex, whether you believe that women are being sold or that they are simply selling a service, it is too simplistic to decide that prostitution should be allowed on the basis of avoiding infringing on the *Charter* rights of those who may choose prostitution as work. It has long been recognized that prostitution is unlike any other profession in the level of dangers faced by the women within the system of prostitution and because of the severe, long-term impacts cited by countless survivors. Baptie said, “It has been argued here that Canada’s laws are what makes prostitution unsafe. For them [*Bedford et al.*], there is no talk of the large, systemic issues that force women into prostitution. No talk of the societal harm, no talk of the emotional harm, the mental harm, the spiritual harm. It is the johns who we must shift our gaze to, for they have gone unnoticed for far too long, lost in the noisy argument of women’s personal choice.”¹⁶⁹

The Evangelical Fellowship of Canada (EFC) submitted an intervention stating that “any benefits awarded to the legalization of prostitution are disproportionate to the harm of those involved in prostitution and to Canadians.”¹⁷⁰ They argue that “The right to life, liberty and security of the person includes freedom from exploitation.”¹⁷¹ The EFC cites research from other countries and says that “Attempts at legalization have not resulted in benefits to either society or the individuals engaged in prostitution.”¹⁷²

¹⁶⁷ Supreme Court of Canada, 2013b.

¹⁶⁸ Supreme Court of Canada, 2013b.

¹⁶⁹ MacInnes, Nason, & Clarke, 2013.

¹⁷⁰ Supreme Court of Canada, 2013b.

¹⁷¹ Supreme Court of Canada, 2013b.

¹⁷² Supreme Court of Canada, 2013b.

The position of the Women’s Coalition, as well as many others who believe in the abolition of prostitution is that it is mainly men who benefit from prostitution—as johns who purchase sex, and as pimps and brothel owners who make money off of women’s prostitution. Many of the women that organizations in the Women’s Coalition work with were victimized as young women and ended up in prostitution because of poverty and addictions.¹⁷³ The position of the Women’s Coalition is that criminalizing prostitutes makes it even harder for women to break free from the sex industry. This position is based on the “Nordic Model” that exists in Sweden, as well as in other Nordic countries, such as Norway and Iceland.¹⁷⁴

The Women’s Coalition takes the position that prostitution is a harm to women perpetrated by pimps and johns that should be abolished. They argue that prostitution exists because there is male demand for it, and it is this demand that should be criminalized. They asked the court to criminalize the prostitution behaviour of pimps and johns and decriminalize prostituted women. Legally, this means that the Women’s Coalition argued that the provisions criminalizing living on the avails of prostitution and keeping a common bawdy house were constitutional in whole and that the provision criminalizing communicating for the purpose of prostitution was unconstitutional to the extent it applied to prostituted women but was constitutional in its application to johns.¹⁷⁵

While the basis of the *Bedford v. Canada* decision is that prohibitions in the *Criminal Code* against owning a brothel, living off the avails of prostitution, and communicating for the purposes of prostitution violate the sections of the *Canadian Charter of Rights and Freedoms* pertaining to the right to life, liberty and security of the person, and freedom of expression, what is at stake is actually much deeper than determining if *Charter* rights have been violated. The complex issues of risk, economic inequality, and morality must be considered in depth and with insight and knowledge of the structures within which we work and live.

¹⁷³ Blanchfield, 2013b.

¹⁷⁴ Blanchfield, 2013b.

¹⁷⁵ Johnston, 2011.

Legislative Approaches

Canada's current legislative approach is a hybrid of decriminalization and prohibition—prostitution itself is legal but almost all activities associated with prostitution are criminalized.¹⁷⁶ Canada's legislation is similar to that of England, Ireland, and Scotland.¹⁷⁷ "There is no consensus amongst the G8 countries on sex work," said University of Toronto law professor Brenda Cossman.¹⁷⁸ She said that the recent decision to the existing prostitution legislation is unconstitutional puts us "'in about the middle' of industrialized nations," which vary from the criminalizing buyers to complete legalization. It is unknown, however, what legislation Canada's government will put into place this year and how this will relate to other jurisdictions.¹⁷⁹

While advocates from different sides of the argument criticize Canada's existing legislation for different reasons, it is generally agreed upon that the current legislative scheme has not been effective. "Numerous Parliamentary committees have pointed out flaws – in one year, 92 per cent of those charged with communicating for the purpose of prostitution were female (i.e. prostitutes – the same report found that almost all 'clients' are male). Among the few men that were charged, 70 per cent had their charges withdrawn or stayed – whereas among women charged, 68 per cent were convicted."¹⁸⁰

The most common legislative approaches are decriminalization, legalization, abolition, and prohibitionism. "Decriminalization implies the repeal of prostitution-related criminal law. In Canada, decriminalization would involve repealing all criminal law relating to prostitution, including communicating for the purposes of prostitution, operating a bawdy house and/or brothel, and living off the avails of prostitution."¹⁸¹ In this model, there are no penalties for aspects of prostitution, such as communicating. Prostitution is decriminalized in Germany, New Zealand, and Australian Capital Territory (which is decriminalization with controls).¹⁸²

¹⁷⁶ Government of Canada, 2014.

¹⁷⁷ Government of Canada, 2014.

¹⁷⁸ Boesveld, 2012.

¹⁷⁹ Boesveld, 2012.

¹⁸⁰ Perrin, 2013.

¹⁸¹ Barnett, Casavant & Nicol, 2011, p. 2.

¹⁸² Barnett, Casavant & Nicol, 2011.

Legalization is another approach to prostitution law. “Legalization refers to the regulation of prostitution through criminal law or some other type of legislation. This approach treats prostitution as a legal occupation, but nevertheless controls it by a set of rules that govern who can work and under what circumstances they may do so. Typically, governments that have adopted the legalization approach regulate the trade through work permits, licensing and/or tolerance zones.”¹⁸³ “Legalization of prostitution means that the state makes parts of the prostitution system legal by regulating prostitution and the sex industry through, for example, registration of women in sex venues, health monitoring, location of brothels, and taxation.”¹⁸⁴ Examples of legalized and regulated regimes are Victoria, Australia; The Netherlands; and Nevada, USA.

Alan Young stated that *Bedford v. Canada* “was launched in an effort to bring Canada’s policies in line with countries like New Zealand and Australia, where prostitution has been decriminalized.”¹⁸⁵ Not everyone agrees that decriminalization/legalization is the best approach. One brothel owner in New Zealand says more things are going wrong now that prostitution is legal. He said that more women are being murdered and more women are working on the street, despite legal brothels.¹⁸⁶ In 2002, Germany decriminalized prostitution, which allows women in the sex industry to get social insurance benefits and sue customers who do not pay. The legalization, however, has resulted in 200,000 or more prostitutes working in Germany in total, many of whom are from the poorest countries in Europe and many of whom have been victims of trafficking.¹⁸⁷ It has been reported that the German government is now looking into making it illegal to purchase sex from women who have been forced or coerced.¹⁸⁸

Clay Nikiforuk wrote in the *National Post* that,

With decriminalization, sex workers can work together indoors (which has repeatedly been shown to be the safest method), can pay taxes, can screen their customers thoroughly, can hire guards and drivers, and even unionize. Most importantly, they can report crimes committed against them to the police without

¹⁸³ Barnett, Casavant & Nicol, 2011, p. 2.

¹⁸⁴ Raymond, 2013, p. xlii.

¹⁸⁵ Grinberg, 2010.

¹⁸⁶ MacInnes, Nason, & Clarke, 2013.

¹⁸⁷ Malarek, 2009, p. 226; Lynch, 2013.

¹⁸⁸ Lynch, 2013.

fearing of being arrested themselves. This is the safest, most reasonable course of action.¹⁸⁹

While legalization/decriminalization would allow prostitutes to work together indoors, it remains that not all women in prostitution would be offered jobs in brothels. While some legal brothels might be reputable, it has been shown that women face a similar, or higher, level of risk when working behind closed doors. It also remains to be seen how pay schemes inside brothels would be organized, as information coming from existing brothels that are not legal¹⁹⁰ shows that the women who work there are being financially exploited by brothel owners. While decriminalization might allow some sex workers to open their own businesses, the reality is that most would likely not be able to afford the costs of setting up and operating a business, and would end up working for—and losing profits to—someone who opens a brothel to capitalize on women’s prostitution.

Gunilla Ekberg, from the Ministry of Industry, Employment, and Communications in Sweden, stated that legalization/decriminalization normalizes prostitution to seem like an acceptable form of sexual entertainment, presenting it as a business where consenting adults with equal power exchange services for money. She states that “employment centers in the Netherlands... suggest *brothel worker* as an appropriate professional choice. What previously was viewed as a severe form of sexual exploitation is now a woman’s right to do what she wants with her body and a way to sexual liberation and self-determination.”¹⁹¹

Benjamin Perrin called legalization/decriminalization “a flawed social experiment” in the countries that have tried it. He states that even in countries with legalized prostitution, a large illegal prostitution sector still exists. He says that 50% of prostitution in the Netherlands and 75% of prostitution in the State of Queensland in Australia are outside of the legal sector. He also states that the situation for women in prostitution in Germany was not reported to improve after decriminalization, and in Amsterdam, which is famous for its red light district, sections of the district had to be closed due to control by violent pimps. It has been demonstrated in New Zealand and the

¹⁸⁹ Nikiforuk, 2014.

¹⁹⁰ Sex Workers Project at the Urban Justice Centre, 2005.

¹⁹¹ Ekberg, 2004, p. 1188.

Netherlands, that street-based prostitution was not eliminated despite legal brothels being put into place. “Officials in the Dutch city of Utrecht even experimented with converting 14 outdoor parking stalls into trick pads by dividing them with concrete blocks”—of this, Perrin asks, “Is this what women’s equality looks like?”¹⁹²

An opinion piece written by sex worker advocates in the Toronto Star said that “The Netherlands’ strict regulation of prostitution has resulted in a two-tier sex industry: a legalized sector the state attempts to control, often through confusing and contradictory laws and bylaws; and an unlicensed ‘underground’ sector where coercion and forced labour still occur.”¹⁹³ Job Cohen, the Mayor of Amsterdam said in January 2006 that “Almost five years after the lifting of the brothel ban, we have to acknowledge that the aims of the law have not been reached. Lately, we’ve received more and more signals that abuse still continues. The police admit we are in the midst of modern slavery.”¹⁹⁴ Johnston reasoned that it makes sense that the prostitution industry, both legal and illegal, expands when legalized/decriminalized: “In a capitalist system, increased competition between prostitution ‘businesses’ leads to decreases in price, increased demand for riskier and more violent sex acts and increased pressure on women to tolerate the ‘customer’s’ behaviour.”¹⁹⁵

When examining the arguments presented in *Bedford v. Canada*, it appears that if all aspects of prostitution were to be legalized/decriminalized, as Bedford et al. would like to see, those who buy sex (johns) and those who profit from others prostitution (pimps and brothel owners) would have the most to gain. There has also been speculation that *Bedford v. Canada* has been funded, in part, by johns. Bedford has spoken of a group of anonymous supporters called “The Dozen,” five of whom were clients. She says The Dozen have been helping her fight prostitution laws by donating “huge sums of money”¹⁹⁶ since her 1994 arrest. Bedford has stated that The Dozen help to pay for her expenses, such as providing her with a house.¹⁹⁷ Young, however, writes, “This case was completed on a *pro bono* basis with the volunteer

¹⁹² Perrin, 2013.

¹⁹³ van der Meulen, Durisin, & Love, 2014.

¹⁹⁴ Prostitution... Danmark (n.d.); Johnston, 2011.

¹⁹⁵ Johnston, 2011.

¹⁹⁶ Rankin, 2011.

¹⁹⁷ Rankin, 2011.

assistance of over 30 law students over a four year period.”¹⁹⁸ It is unclear, then, if funds received from The Dozen have strictly went to Terri-Jean Bedford or have been put toward the legal case in Bedford v. Canada.

One of the arguments made by Bedford et al. is that legalization/decriminalization will enable sex workers to hire bodyguards and drivers, as under the current legislation, a bodyguard or driver employed by a prostitute would be “living off the avails.” It seems unlikely, however, that self-employed prostitutes would be able to afford to hire staff, as Valerie Scott has stated that the average sex worker makes roughly \$40,000 annually¹⁹⁹ and Terri-Jean Bedford has mentioned living in poverty.²⁰⁰ Another argument used by Bedford et al. for eliminating s.212 is that a spouse or common-law partner or an adult child with a disability could be arrested for living off the avails if they live with a prostitute. Johnston refutes this claim, stating that a search of the case law reveals that not a single person arrested for living off the avails has been a supportive partner or dependent child.²⁰¹ As well, the living off the avails provision is the only prostitution related charge in the *Criminal Code* that allows police to charge perpetrators without a statement from the victim. As victims of prostitution are often too afraid to testify against those who exploit them on the other charges, the living off the avails provision is one of the only ways pimps can be prosecuted.²⁰²

Prohibitionism is a perspective which seeks to eliminate prostitution by criminalizing all aspects of the prostitution trade.²⁰³ The United States, with the exception of some counties in the state of Nevada, prohibits both the purchase and sale of sexual services. Canada’s current model is a combination of decriminalization (prostitution is legal) and prohibition (almost all activities associated with prostitution are illegal). A similar approach is taken in England, Ireland and Scotland. In light of the Supreme Court decision deeming sanctions against activities related to prostitution unconstitutional, it is unlikely that prohibition will be the new

¹⁹⁸ Young, 2013, p. 10.

¹⁹⁹ Côté, 2014.

²⁰⁰ Rankin, 2011.

²⁰¹ Johnston, 2011.

²⁰² Johnston, 2011.

²⁰³ Barnett, Casavant & Nicol, 2011, p. 2.

legislative model put forward by the federal government in 2014, though MacKay has indicated that the new legislative model will include some criminal sanctions.

Abolitionism, or the model often known as the “Nordic Model” was pioneered by Sweden in 1999. This model criminalizes johns and pimps and decriminalizes individuals in prostitution. Prostitution was decriminalized in Sweden before the country, recognizing the need for change, moved to their current model.²⁰⁴ Sweden, Norway and Iceland have adopted a criminal law response that seeks to abolish the exploitation of persons through prostitution by criminalizing those who exploit prostitutes (clients and third parties) and decriminalizing prostitutes themselves. These countries have also implemented social programs to help prostitutes leave prostitution (e.g. exit strategies and supporting services).²⁰⁵ Sweden also instituted a national awareness campaign to educate the public about the harmful effects that prostitution has on women.²⁰⁶ Last year, France also criminalized the purchase of sex (criminalizing the johns, but not the prostitutes), as in Sweden.²⁰⁷ France and Ireland are also considering adopting similar laws.²⁰⁸

Sweden “accompanied this legislative change with a public education campaign aimed at deterring men’s demand for prostitution and social service programs to provide exit services, housing, detox, education and job training to prostituted women.”²⁰⁹ The Nordic model “asserts that defending the rights of women in prostitution requires prosecuting their perpetrators including pimps and prostitution users, and giving assistance to victims.”²¹⁰ If Canada takes a similar stance, deciding to work toward the eradication of prostitution, federal funding must be made available to provinces to provide services to help survivors. Perrin suggested that if perpetrators (pimps and johns) were to be fined, the money collected from fine payments could be used to fund services for victims of prostitution.²¹¹ Regardless of the

²⁰⁴ Johnston, 2011.

²⁰⁵ Government of Canada, 2014.

²⁰⁶ Jackson, 2013.

²⁰⁷ Lynch, 2013.

²⁰⁸ CBC News, 2014b.

²⁰⁹ Johnston, 2011.

²¹⁰ Raymond, 2013, p. 9- 10.

²¹¹ Perrin, 2013.

position that Canada adopts, it should be recognized that assistance needs to be available for victims of prostitution and those who wish to exit the sex trade.

The premise of Sweden's Sex Purchase Law, or *Sexköpslagen*, is that "In Sweden prostitution is regarded as an aspect of male violence against women and children. It is officially acknowledged as a form of exploitation of women and children and constitutes a significant social problem... Gender equality will remain unattainable so long as men buy, sell, and exploit women and children by prostituting them."²¹² Sweden rejects "the notion that some women and children should be used as commodities than can be bought and sold," said Ekberg.²¹³ "The law is a concrete and tangible expression of the belief that in Sweden women and children are not for sale... It effectively dispels men's self-assumed right to buy women and children for prostitution and questions the idea that men should be able to express their sexuality in any form and anytime."²¹⁴

It was also necessary for Sweden to provide training for police officers about prostitution, trafficking, and the effects that this exploitation has on victims. Ekberg stated that after the training, "The initial criticism of the law as being difficult to enforce has ceased. One year after the [training] program began in 2003, there was a 300% increase in arrests, believed to be the result of the investigating officers' better understanding of the reasons behind the legislation, their deeper comprehension of the conditions that make women vulnerable to becoming victims of prostitution and trafficking, and the development of better investigation methods."²¹⁵

Ekberg estimates that women's involvement in the sex trade is now 60% of what it used to be. She says that criminalizing the purchase of sex has led to less men purchasing sex, and therefore less women and girls being recruited for the sex trade.²¹⁶ In 2004, Korea passed similar legislation which criminalized johns and put measures in place to assist women in

²¹² Malarek, 2009, p. 238.

²¹³ Malarek, 2009, p. 239.

²¹⁴ Malarek, 2009, p. 240.

²¹⁵ Ekberg, 2004, p. 1196.

²¹⁶ Malarek, 2009, p. 241.

prostitution. This led to hundreds of women exiting prostitution, and a 56% decrease of women in prostitution²¹⁷ in the two year period from 2004 to 2006.²¹⁸

Not everyone agrees that the Swedish model protects prostituted women, however. Pye Jakobsson, a former prostitute in Sweden, “said she is hoping Canada’s Supreme Court will strike down the prostitution laws. She also urged Canada not to follow Sweden’s example, arguing that it makes a risky line of work even more dangerous. ‘Criminalizing sex work and things around sex work is not the solution. It makes us more marginalized and vulnerable.’”²¹⁹ Heartfield wrote in the Ottawa Citizen that applying the Nordic model in Canada could “create the same sorts of harms, by pushing the transactions into the shadows.”²²⁰

Janice Raymond, however, says that there is a “blatant contradiction” in arguments for legalization or decriminalization based on the premise that “indoor prostitution is safer than on-street prostitution.”²²¹ Often the same critics claim “that indoor locations are more dangerous because they are more ‘underground.’”²²² Kajsa Wahlberg, Swedish National Police detective-superintendent, says people want to know if this kind of legislation pushes prostitution underground, but she says even before the law, most prostitution took place indoors. “If buyers can find women in prostitution, then the police can do that. I mean, you cannot say that the buyers are smarter than police. If police want to find out where prostitution takes place, they can.” Swedish police follow prostitutes and buyers and gather evidence through photography and wiretaps to build a case.²²³

Nikiforuk wrote that with this legislative model “the number of law-fearing customers drops off, leaving increasingly desperate sex workers with a thinning pool of law-evading clients.”²²⁴ While it is true that law-fearing customers would be much less likely to purchase sex if it was illegal, than if it was legal, the law-evading clients would be present either way. As previously discussed, it has been demonstrated that screening does not always pinpoint which

²¹⁷ Rahn, 2006, cited in Raymond, 2013.

²¹⁸ Raymond, 2013.

²¹⁹ Lynch, 2013.

²²⁰ Heartfield, 2014.

²²¹ Raymond, 2013, p. 65.

²²² Raymond, 2013, p. 65.

²²³ MacInnes, Nason, & Clarke, 2013.

²²⁴ Nikiforuk, 2014.

johns will be violent and which will not. It seems that the goal of Canada's new model should work to put into place exit strategies and adequate income assistance for women, so that they will not become "increasingly desperate" and be forced into prostitution, or into choosing clients they otherwise would not. Benedet said that "it is simply not acceptable that the male demand is completely decriminalized. Once you decriminalize that demand, then it validates the need to produce a supply."²²⁵

While those who view women as survivors of prostitution want to see the demand criminalized, Bedford et al. and their supporters do not. The concern of the sex workers is that criminalizing the men who buy sex will result in them seeing far less clients and earning less money. Raymond suggested that the role of criminalizing johns who buy sex and individuals who operate brothels and live off the avails of prostitution could be difficult for governments as those who keep women in prostitution and benefit from their prostitution have been rebranded by some sex workers as business managers who will offer them protection and safety.²²⁶ Criminalizing these individuals would no doubt be criticized by sex workers and put them at further risk by denying them the right to institute safety measures. Indeed, the issue is complex as the living off the avails legislation that prevents pimps and brothel owners from profiting from prostitution also prevents individuals in prostitution with the means to do so (likely the 10% of women in prostitution by choice, who earn enough money to afford it) to hire business managers or other staff.

Recent News in Canada

In reference to Sweden's prostitution laws, Ekberg stated, "In determining how to respond to the problem, the government and public considered what kind of society they wanted."²²⁷ Now is the time for Canada to decide what kind of society we want. Parliament has the opportunity to rewrite the existing prostitution legislation in a way that protects citizens' *Charter* rights, protects women and girls from violence and exploitation, and speaks to the values of Canadian society. As well as putting in place legislation to uphold the values of

²²⁵ MacInnes, Nason, & Clarke, 2013.

²²⁶ Raymond, 2013.

²²⁷ Malarek, 2009, p. 239.

Canadian society and protect our most vulnerable, Canada must also consider the example we set for other nations, as the decision will no doubt be watched around the world.

Ekberg said, “As with all laws, the Law has a normative function. It is a concrete and tangible expression of the belief that in Sweden women and children are not for sale. It effectively dispels men’s self-assumed right to buy women and children for prostitution purposes and questions the idea that men should be able to express their sexuality in any form and at any time.”²²⁸ Whatever law Canada chooses to put in place will have a similarly normative function on Canadian society. The new legislation could normalize the idea that it is okay to purchase sex from women in prostitution, or that women are not for sale. It is also important to note that a prescribed law takes time before it becomes accepted by citizens as normative.²²⁹ When the legislation changes, depending what the changes instituted by the federal government are, it will likely take time for public opinion to change and for police and prosecutors to get used to the new rules. Trisha Baptie said if we criminalize, every woman in prostitution won’t say “okay, I’ll get another job.” Things will not change overnight, and not every woman in prostitution will not choose to quit, but as Baptie said, “it is about creating legacy.”²³⁰

On February 1st, 2014 “Justice Minister Peter MacKay [said] the government will introduce its new prostitution legislation well ahead of a December deadline... MacKay said Ottawa has already started to draft the legislation, but more consultations must happen with police and provincial governments.”²³¹ McKay did not say when the bill would be introduced, just that “it would be ‘well before’ the one-year time frame it was given.”²³² It is unknown what the new laws will look like, only that “MacKay said the new legislation will continue to protect women from violence and sexual abuse.”²³³ It is somewhat disconcerting that the federal government said on February 1st that it had already started to draft legislation. The “Public Consultation on Prostitution-Related Offences in Canada”²³⁴ was announced on February 17th and remains open for 4 weeks. MacKay’s announcement alludes to the fact that the

²²⁸ Ekberg, 2004, p. 1205.

²²⁹ Ekberg, 2004.

²³⁰ MacInnes, Nason, & Clarke, 2013.

²³¹ Globe and Mail, 2014.

²³² Globe and Mail, 2014.

²³³ Globe and Mail, 2014.

²³⁴ Government of Canada, 2014.

government had already made its decision on which way it will go with the legislation before the public consultation took place. It has been speculated that the government will base its decision²³⁵ on Member of Parliament Joy Smith's February 2014 report, *The Tipping Point: Tackling the Demand for Prostituted/Trafficked Women and Youth*.²³⁶ The report highlights the dangers of legalizing prostitution and recommends that Canada "implement a Canadian version of the Nordic Model of criminalizing the purchase of sexual services."²³⁷ The made-in-Canada model recommended by Smith includes targeting buyers, decriminalizing people in prostitution, educating the public, putting exit programs in place for those who wish to leave the sex trade, as well as tougher sanctions against pimps and traffickers.²³⁸

The Justice Canada consultation website states "The Government of Canada is seeking the public's input on the criminal law's response to adult prostitution (i.e. the sale and purchase of sexual services from persons 18 years of age or older.)"²³⁹ The one-month long online consultation is open until March 17, 2014. The consultation, which can be completed anonymously, consists of 5 questions about prostitution legislation, plus a 6th question: "Are you writing on behalf of an organization?" The consultation instructs respondents to be concise and brief, and each response has a 500-word limit. An email address to send responses is also provided.²⁴⁰

Some women working in prostitution have expressed displeasure that they are not specifically being consulted. Celine Bisette, an escort in Toronto, wrote in the *Ottawa Citizen* that "It would be so easy to contact us and solicit our input. Sex sellers and buyers participate in many online sex-work communities..." Bisette said that she got in touch with sex worker organizations to see if the government had contacted them for consultation, and it had not. Bisette wrote, "I find myself extremely frustrated by the Conservative government's apparent lack of interest in inviting sex workers to the table."²⁴¹ It is important to note that if escorts and sex workers who advertise online are not being contacted, street-based prostitutes most

²³⁵ Ivison, 2014.

²³⁶ Smith, 2014a.

²³⁷ Smith, 2014a, p. 14.

²³⁸ Smith, 2014a.

²³⁹ Government of Canada, 2014.

²⁴⁰ Government of Canada, 2014.

²⁴¹ Bisette, 2014.

definitely are not being consulted. The most vulnerable women in prostitution have not been as vocal or present in the media, as many of the sex workers have. While advocates are speaking out on behalf of women in prostitution who did not choose their line of work, voices from those without a choice are often drowned out by media coverage of those that do.

CBC reported that since the Supreme Court decision, provinces have been moving away from prosecuting individuals for prostitution.²⁴² Even though the Supreme Court deemed the current prostitution legislation unconstitutional, they deemed that it would be careless to invalidate the current legislation (thus legalizing prostitution), without allowing the government to put new legislation in place. Therefore, the Supreme Court decided that the existing legislation would stand for one year, giving the federal government time to draft new legislation to replace it. Despite this, some provinces have decided that as the Supreme Court found the legislation unconstitutional; they would no longer abide by the legislation, and have ceased prosecuting prostitution offenses.

The Ontario Ministry of the Attorney General stated that “Ontario will not be pursuing cases involving charges of keeping a common bawdy house, living on the avails of prostitution, or communicating for the purposes of prostitution in a public place — the three prostitution-related offences the Supreme Court struck down as unconstitutional. It will, however, continue to prosecute other relevant charges... Having carefully reviewed the Supreme Court’s decision, the Ministry recognizes that there are several prostitution-related offences under the Criminal Code which were not affected by the Court’s decision.”²⁴³ They state that the laying of criminal charges is a function of the police, and that the Ministry of the Attorney General has confidence that the police will carry out their investigative responsibilities consistent with the principles articulated by the Supreme Court of Canada,” and that Crown would continue to prosecute cases in which there was “a reasonable chance of conviction.”²⁴⁴ It is unclear as to what other prostitution-related offences Ontario is prosecuting. Sections of s.212 that refer to persons under age 18 still stand, as do prohibitions against prostitution of intoxicated persons and

²⁴² CBC, 2014a.

²⁴³ CBC News, 2014a.

²⁴⁴ CBC News, 2014a.

trafficking in persons.²⁴⁵ Prostitutes of Ottawa-Gatineau Work Educate and Resist (POWER), who agree with the position put forward by Bedford et al., called in 2010 for an immediate “moratorium on the enforcement of sections 210-213 by the Ottawa Police Service.”²⁴⁶

Despite the fact that the provisions against prostitution which were struck down remain in the *Criminal Code* until December 2014, New Brunswick decided to drop most of prostitution cases currently before the courts. New Brunswick will also not be pursuing new cases involved charges under s.210, s.212, or s.213. MacKay said that while enforcing laws falls to provinces, the federal government expects provinces to continue to enforce the existing laws which will remain in place until the end of 2014. Despite this, New Brunswick will not reverse its decision, stating that it would be “unfair to request a person to answer to charges that we now know have been deemed unconstitutional.”²⁴⁷

British Columbia has also decided not to prosecute “some or all prostitution offences”²⁴⁸ in light of the December ruling and it has been reported that Alberta has been selectively charging and prosecuting people for prostitution offenses since this announcement. After hearing that police officers were not laying charges because they didn't believe the cases would be prosecuted, Alberta’s Minister of Justice and Attorney General issued a directive to Crown prosecutors.²⁴⁹ Conservative MP Joy Smith, an outspoken advocate of the abolition of prostitution, commended Alberta’s Minister of Justice and Attorney General for the decision to uphold the law as directed by the Supreme Court. MP Smith called it a reckless move “to set a precedent that arbitrarily applies the laws unequally across our nation, as Ontario and New Brunswick have done.”²⁵⁰ She urged Canadians to help to ensure that laws are enforced contacting the Attorney General to express concern.²⁵¹

Since the decision, there have been several parties who have expressed interest in opening brothels in Canada. The Adult Entertainment Association of Canada suggested placing brothel management “in the hands of experienced and qualified establishments”—strip clubs

²⁴⁵ Government of Canada , 2014.

²⁴⁶ Bruckert & Chabot, 2010.

²⁴⁷ CBC News, 2014a.

²⁴⁸ Gyapong, 2014.

²⁴⁹ CBC News, 2014a.

²⁵⁰ Smith, 2014b.

²⁵¹ Smith, 2014b.

that would offer an “enhanced experience.”²⁵² Toronto City Councillor Giorgio Mammoliti has been raising the issue of a red light district in Toronto for some time. Originally, he suggested confining brothels to Toronto Island, an idea that was not supported by the people of Toronto and subsequently fell through. Mammoliti has suggested that brothels could be added to the roster of services provided at strip clubs, should brothel ownership become decriminalized. Immediately after the ruling on December 20th, Denis Hof, owner of the Bunny Ranch, a brothel in Nevada, spoke to Global News saying that he was “working on getting up to Toronto and taking a look around... that’s going to be our first spot” [if brothels become legal in Canada].²⁵³ Hof said, “the Bunny Ranch will be there, and we’ll be there in force.”²⁵⁴

Valerie Scott expressed concern over the idea of strip club owners creating a monopoly over brothel ownership in Toronto. She said “that licensing fees meant to create revenue for the city are likely to approach those of erotic massage parlors (\$11,794.02), which would be anything but affordable to the average Canadian sex worker, who earns around \$40,000 a year; and would be unable to open her own ‘practice’ as it were. If this were to be the case, the club owners would have virtually unlimited power over the women, who would be left with limited control over their work and diminished revenue.” As it’s been estimated that sex workers like Scott make up only 10% of women in prostitution in Canada²⁵⁵, it is debatable that the average salary for a prostitute is as high as \$40,000 per year, especially when considering the number of women involved in street prostitution. Scott went on to suggest “a more independent model” where sex workers would be independent owners of their own businesses.²⁵⁶ The issue, however, is that legislation that would legalize brothel ownership and living off the avails, would not differentiate between business owners seeking to make money of women’s prostitution, and sex workers like Scott, who want to own brothels.

SPOC has stated that they do not want to see prostitution legalized like some countries in Europe, where brothels are regulated by governments. They want prostitution

²⁵² Côté, 2014.

²⁵³ Global News, 2013b.

²⁵⁴ Blanchfield, 2013b.

²⁵⁵ Johnston, 2011.

²⁵⁶ Côté, 2014.

decriminalized, so that brothels can be operated as private businesses.²⁵⁷ While a lack of regulation and enforcement would eliminate the increased workload that would likely be placed on municipalities with decriminalization of brothels, leaving brothels and other prostitution businesses unregulated would greatly increase danger for women in prostitution. Scott said that if prostitution is decriminalized and regulated, municipalities will need to charge a “reasonable” fee, highlighting what has happened in Amsterdam, with organized crime purchasing licenses for brothels, while individual sex workers cannot afford them.²⁵⁸

In 2012, the city of Saskatoon put *The Adult Services Licensing Bylaw* (Bylaw No. 9011) into place.²⁵⁹ The cost of the license brings revenue to the city—the license is \$500 initially for an Adult Service Agency license and \$200 annually to renew. For an “Independent Adult Service Agency,” Adult Service Performer, or Adult Service Worker the cost of the license is \$250 initially and \$100 to renew.²⁶⁰ Not all prostitutes, escorts, and others employed in the adult industry in Saskatoon are expected to have licenses. The Saskatoon police chief said that the rule doesn’t affect street prostitution and he doesn’t expect all sex trade workers and businesses to get licenses, but that the bylaw gives police the power to check to make sure adult services are not employing underage girls.²⁶¹ It is unclear if the Saskatoon police check adult businesses that do not have licenses. While this method of licensing may help to give police power to investigate the existing adult services, a bylaw that suggests licensing but does not make it mandatory for all in the industry to be licensed would likely not be feasible should prostitution become legalized/decriminalized. If brothels were to be allowed in Canada, it stands to reason the registration and regulation should be consistent for all operating within the jurisdiction, whether it is regulated municipally, provincially/territorially, or federally.

Enforcing the registration process and doing regular inspections would increase municipalities’ workloads, however, and enforcement processes would likely end up varying from municipality to municipality. For example, both Regina and Saskatoon recently revised zoning rules for strip clubs. Regina decided that strip clubs will remain restricted to industrial

²⁵⁷ Global News, 2012.

²⁵⁸ Hannay, 2012.

²⁵⁹ City of Saskatoon, 2012.

²⁶⁰ City of Saskatoon, 2012.

²⁶¹ CBC, 2012.

areas only. Saskatoon similarly restricted strip clubs to industrial areas, but will also allow other bars to hold strip shows once or twice a month.²⁶² After the Saskatoon decision, bar owners complained that the rules make it very hard for small businesses to make a profit. One booking agency said that the women it employs were planning to relocate to another province, due to the fact that the bylaw change reduced their income by seventy-five per cent.²⁶³ It is probable that if brothels were to be allowed, similar zoning regulations would be put into place. Regulations would likely also vary among jurisdictions, and could become much more complex in small cities and towns that do not have an industrial area, where adult entertainment or prostitution could be put to keep it away from public view.

Raymond cautioned that, “After decriminalization, local councils are inevitably burdened with a host of regulatory measures. Council duties include dealing with complaints, including those alleging violence and abuse of women. However, local councils have neither police authority nor resources to investigate or penalize, and in most cases, have no capacity to confront illegal brothel operators. Thus, unlawful sex venues proliferate in cities and countries that have decriminalized prostitution and the sex-industry and, as in the Netherlands and Australia; the same pimp-entrepreneurs control the legal and illegal brothels.”²⁶⁴ Indeed, if prostitution activities, namely brothels, were to become legalized/decriminalized, there would be an increased demand on municipalities to regulate. There would also be a need for the federal and provincial/territorial governments to work in partnership with municipal governments, city police forces, and the RCMP to regulate, investigate, and to connect survivors with appropriate services. In an interview with VICE Media (an alternative media source, formed as a punk 'zine and expanded into a global youth media company)²⁶⁵, a sex worker named Monica Forrester, was asked what things she expected the government might choose to put in place, even if prostitution is legalized/decriminalized. She listed licenses, house or brothel inspections, and being regulated to work in certain areas only. She also suggested that a regulated system could put women who work in street prostitution at greater

²⁶² CBC News, 2014c.

²⁶³ CBC News, 2013.

²⁶⁴ Raymond, 2013, p. xliii.

²⁶⁵ VICE Media, 2014.

risk—if they could not afford a license, or only worked in survival sex intermittently, that might mean that they were operating illegally and could be at risk of arrest or might not be able to seek assistance from law enforcement if they were in trouble.²⁶⁶

Another argument for legalization/ decriminalization is the revenue that governments would bring in from the registration of brothels and prostitution services, as well as generating tax revenue. Dennis Hof said that “legalized prostitution would be an economic winner in Canada,” citing the fact that he paid \$500,000 in taxes last year.²⁶⁷ Decriminalized/legalized, taxation from prostitution businesses would add to government revenue in the same way that excise taxes (often referred to as “sin taxes”) on cigarettes and alcohol do.

Conclusion

Janice Raymond says,

Sexual exploitation is not inevitable. Stopping sexual exploitation requires the same resources that are provided to other victims of violence against women. But most of all, it requires effective actions, programs, policies, and legislation on a national, regional, and international level, as well as intergovernmental cooperation to prevent further violations of women and girls.²⁶⁸

Perrin says that the harms within prostitution “are inherent and cannot simply be regulated away.”²⁶⁹ For this reason, Canada should look to abolishing prostitution by rewriting the prostitution laws, in consideration with the Supreme Court decision regarding Charter rights.²⁷⁰

We want more than prostitution for women. We want meaningful employment options to actually give women choices. We want affordable education. We want addictions services, and health care. We want affordable child care and opportunities for all women and girls.—*The Women’s Coalition*²⁷¹

²⁶⁶ Ratchford, 2013.

²⁶⁷ Blanchfield, 2013b.

²⁶⁸ Raymond, 2013, p. 193.

²⁶⁹ Perrin, 2013.

²⁷⁰ Perrin, 2013.

²⁷¹ Women’s Coalition, 2014c.

We want women to be free from the poverty and abuse that targets them for prostitution, and to stop being blamed for their prostitution.—*NWAC*²⁷²

Kim Pate said that the Women’s Coalition’s “position is linked to the substantive equality needs of women and girls in this country and as long as we will allow women and girls to be unequal, as long as we will allow them to be sold, as long as we will allow them to not enjoy where there is economic, social, or legal equality then we will continue to see them subjected to this kind of violence.”²⁷³ In a letter to the Editor of the *Toronto Star*, the Women’s Coalition wrote, “Our position is rooted deeply in the belief that women are equal and should be treated as equal, not by decriminalizing men’s access to their bodies, but by providing a social climate in which women have access to a full array of resources and opportunities.”²⁷⁴ Decriminalizing men’s purchase of paid sex will increase demand for women in prostitution, and decrease women’s equality in Canada. While the Canadian *Charter of Rights and Freedoms* guarantees citizens the right to life, liberty, security of the person, and freedom of expression, it does not guarantee men the right to purchase sex from women in prostitution.

Eliminating prohibitions against s.210, which would legalize/decriminalize brothels, would allow people—mainly men—to make a profit from women’s prostitution. Those who choose to purchase sex or profit off of women’s exploitation should be criminalized, while individuals in prostitution should be decriminalized and free from prosecution. Women in prostitution should not be criminalized. As feminists, we never want to discount women’s experiences and women’s opportunity to choose what is best for themselves. While Terri-Jean Bedford, Valerie Scott, Amy Lebovitch and others like them say that they enjoy prostitution and would like to continue, legislation must be put in place that supports those who cannot advocate for themselves, those who are in the most danger, and those who represent the majority of women in prostitution. Criminalizing prostituted individuals further punishes them for the poverty and exploitative circumstances that led to their involvement in prostitution, and makes it more difficult for them to exit prostitution. As well as criminal sanctions, men who are

²⁷² Women’s Coalition, 2014b.

²⁷³ Canadian Press, 2013b.

²⁷⁴ Women’s Coalition, 2014c.

arrested for purchasing sex from a woman in prostitution should participate in mandatory programming such as john school, which aims to teach men about the harmful effects that prostitution has on women. Men should not be allowed to avoid criminal sanctions by attending programming, as they have been in the past.

All women in Canada deserve equality. If a guaranteed income was in place for all Canadians, women would not turn to prostitution due to poverty and those who wish to exit prostitution would be able to do so. Legislation, economic opportunities, and support services must be put into place so that women truly have a choice. Ensuring economic equality and decriminalizing women in prostitution would not interfere with the idea that some women feel they have a right to work in prostitution, but would support those who wish to exit prostitution. Canada's new prostitution legislation must promote equality and offer opportunities for women to exit prostitution.

When examining prostitution legislation, it is of utmost importance to consider the circumstances of Indigenous women and take note of the harmful effects that Aboriginal people in Canada have suffered due to colonization. Indigenous women in Canada are at an increased risk of violence and of being forced or coerced into the sex trade. More must be done to support Aboriginal women who have been victimized by prostitution and violence and to protect young Aboriginal people from sexual abuse and entry into prostitution.

If society accepts men's demand for purchased sex as inevitable, this means that prostitutes must be available to meet this demand. If this is the case, Indigenous women, immigrant women, and other racialized women, as well as women living in poverty and with addictions will continue to be overrepresented in prostitution.

Perrin said "Prostitution creates a second class of women – disproportionately disadvantaged women and underaged girls that can be bought and sold. The fact that most enter as minors, were sexually abused as kids, and many are Aboriginal is haunting. Legalizing prostitution would legitimize their sexual exploitation by men."²⁷⁵ He said, "It is high time for a change – but not one that would legalize or normalize prostitution. Instead, a new approach is

²⁷⁵ Perrin, 2012.

needed with the aim of ending prostitution.”²⁷⁶ As Canadians we have the opportunity to decide if we will be a country that says that prostitution is acceptable or unacceptable. It is a challenging decision based on numerous contingencies. If we explore this age-old issue thoroughly and deeply, however, we will certainly come to a resolution that will take us to the kind of society we envision for the future. It is surely a society based on the values of respect and equality, a society where positive social relationships ensure the security and well-being of all.

²⁷⁶ Perrin, 2012.

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