

**Prostitution: Violating the Human  
Rights of Poor Women**  
*Executive Summary*



Prepared by Shelagh Day

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## Executive summary

For women's organizations that are dedicated to advancing the equality of the poorest and most vulnerable women, this is an important moment to take a position on the law with respect to prostitution. Not only does the ongoing, overwhelming violence of prostitution require a response, but in both political and judicial arenas, Canadian laws on prostitution are under scrutiny.

Two Parliamentary Committees have recently issued reports on prostitution and trafficking in Canada. In addition, two constitutional challenges have been filed in Ontario and British Columbia courts that seek to strike down the sections of the *Criminal Code* that prohibit communicating in public for the purpose of selling or buying sex, living on the avails of prostitution, and keeping a common bawdy house. These constitutional challenges are likely to be heard in 2009. Women's organizations need to be ready to contribute to a renewed debate.

For poor women and girls in Canada, prostitution is a means of obtaining survival income. The central question for any prostitution reform is: what will help women, particularly the poorest racialized women, to escape the violence and inequality of prostitution? There appear to be two different responses to this question in Canada, and in countries around the world. One response is to decriminalize or legalize prostitution; the other is to prohibit men from buying women and to help women to escape from prostitution.

What both sides in this debate seem to agree on is that no social good is served by using the criminal law against women who are in prostitution. Criminalizing poor women for the impact of poverty, racism, early sexual abuse, and the lingering effects of colonization does not seem just.

The disagreement is about how to deal with men who buy sex and with those who profit from the sale of sex – the pimps, brothel owners, and others who control the prostitution industry. Currently, there are two principal approaches. Advocates for decriminalization or legalization say the men who buy women, the pimps and the prostitution industrialists should be decriminalized too. Abolitionists say buyers, pimps and prostitution industrialists should remain criminalized and be barred from profiting from the sale of women's bodies.

In the current discourse, women are being asked to view decriminalization or legalization of prostitution as: a means of showing respect for women in prostitution; liberatory and pro-sex; a means of reducing prostitution's harms; and an acknowledgement that prostitution is a form of work.

To evaluate these claims, Action ontarienne contre la violence faite aux femmes (AOcVF) commissioned a report by Shelagh Day, a leading human rights analyst. *Prostitution: Violating the Human Rights of Poor Women* asks: are prostitution, and the decriminalization or legalization of prostitution, consistent with the human rights of women? The report concludes that prostitution, and the

decriminalization of prostitution, cannot be squared with women's constitutionally entrenched rights to equality and security of the person.

#### Legal Approaches: Decriminalization, Legalization, Abolition

What is the difference between decriminalization, legalization, and abolition?

Decriminalization is the legal approach espoused by those who have filed the two constitutional challenges. Decriminalization would mean removing sections 210, 212(1)(j) and 213(1)(c) from the *Criminal Code* so that there was no law prohibiting communicating, or living on the avails of prostitution, or running a common bawdy house.

This would have the effect of decriminalizing the women who are in prostitution. But it would also decriminalize the buyers, the pimps, and the prostitution industry as a whole. It would make prostitution activities, and the prostitution industry, legal.

Proponents of decriminalization favour this approach on the grounds that: 1) prostitution is sex between consenting adults and governments should not interfere; and 2) decriminalization will reduce harms to women in prostitution because women will be able to run their own brothels legally and be safer in indoor prostitution than on the street.

Decriminalization is a gender-neutral approach that treats the (mainly) women who sell sexual services and the men who purchase them as though they were the same. It also treats all of those involved in prostitution – the women, pimps, and owners of large and small brothels, massage parlours, strip clubs – as though they were the same, by rendering legal all prostitution-related activities.

Decriminalization and legalization are seen by some to be different approaches. The term 'decriminalization' is used to indicate that the goal is to remove all criminal sanctions on prostitution and prostitution-related activities and to treat it like any other business. Legalization, by contrast, refers to legal regimes that remove criminal sanctions but also regulate prostitution.

In reality, the difference between decriminalization and legalization seems to lie merely in *how much* regulation of health and safety, zoning, licensing, or advertising is put in place after criminal sanctions are removed. In Germany, the state of Nevada, (U.S.A.), some states in Australia, and the Netherlands, which have legalized prostitution, regulation includes any or all of: registration of prostituted women, health and safety regulations, licensing of prostitution-related businesses, controls on the location and size of establishments, and the creation of "tolerance zones". However, in the two jurisdictions that have 'decriminalized' – New Zealand and the state of New South Wales in Australia – governments also license brothels and impose zoning restrictions on where prostitution – indoor and outdoor – can be carried on. The main feature of both decriminalization and legalization is that prostitution is normalized by making it a legal activity and business.

The alternative legal approach to prostitution is abolition. This approach seeks to end prostitution based on the understanding that prostitution is a form of male violence against women, and an obstacle to women's equality with men. Laws that have abolition as their goal decriminalize women in prostitution, but criminalize the buyers and the prostitution industry.

Sweden's 1998 law is the leading example. Sweden's *Act Prohibiting the Purchase of Sexual Services* makes it a criminal offence to obtain sexual services for payment whether they are purchased on the street, in brothels, or in massage parlours. Having embraced women's right to equality, Sweden's policy seeks to end prostitution, rather than manage or legitimise it.

The AOcVF report shows that, so far, decriminalization and legalization approaches are not achieving their espoused goals – that is, making women in prostitution safer, reducing health risks, and reducing street prostitution.

Jurisdictions that have legalized cannot show that women are safer, or that street prostitution is diminished. On the contrary, at the conclusion of a 2003 comparative study of legal regimes in the state of Victoria in Australia, Ireland, the Netherlands, and Sweden, Julie Bindel and Liz Kelly at London Metropolitan University, warned that legalization leads to an expansion of the sex industry, trafficking increases and organized crime flourishes<sup>1</sup>.

In Canada, the federal all-party Subcommittee on Solicitation Laws of the Standing Committee on Justice and Human Rights rejected legalization as an approach to prostitution law reform and accepted evidence that “legalization has not alleviated violence against individuals selling sexual services – violence may even have increased.”<sup>2</sup> Pimps have not disappeared in jurisdictions that have legalized prostitution; neither has street prostitution<sup>3</sup>.

A new report on New Zealand, one of the two jurisdictions that has decriminalized, seems to show a similar pattern. Street prostitution has not reduced since the introduction of the *Prostitution Reform Act 2003*; the law has had no impact on street-based prostitution, and little effect on the violence that women in prostitution experience<sup>4</sup>.

By contrast, both supporters and critics of Sweden's law agree that street prostitution has been reduced by about 40 per cent since its law was introduced in 1998, and that the number of women trafficked into Sweden is low because the country is not viewed as an attractive destination country.

However, even if the record of decriminalization and legalization were better, the AOcVF report asks: is some reduction in the harms of prostitution an adequate goal, given Canada's commitments to the substantive equality of women? The report concludes that harm reduction, at bottom, is a position of capitulation. Decriminalization advocates have given up on the fundamental struggle to achieve equality and autonomy for the most vulnerable, racialized, poor women.

They have turned instead to a defensive attempt to protect women from the worst harms that prostitution can bring, not by changing the conditions that catapult women into prostitution or by helping them out of prostitution, but rather by, ostensibly, giving them better market conditions in which to be self-employed prostitution entrepreneurs.

## **Violence in Prostitution**

To answer the question about whether prostitution is consistent with women's rights to equality and security of the person, the report examines research on violence in prostitution, and on the factors that influence women's entry into prostitution.

There is little dispute that prostitution is a dangerous activity. Dr. John Lowman, a criminologist, reports that “[M]uch of the available empirical research on commercial sex indicates that at least some sex workers experience high levels of violence, including, but not limited to, physical assaults, sexual assaults, verbal threats or abuse, psychological abuse, robbery and kidnapping...”<sup>5</sup>.

In an authoritative 9-country study, Dr. Melissa Farley, a clinical psychologist, concluded that “... the physical and emotional violence in prostitution is overwhelming”<sup>6</sup>.

Dr. Farley, and a team of researchers, interviewed 854 people currently or recently in prostitution in Canada, Columbia, Germany, Mexico, South Africa, Thailand, Turkey, United States and Zambia. The study concluded that prostitution causes many traumas. 71% of respondents were physically assaulted in prostitution; 63% were raped; and 68% had the clinical symptoms of post-traumatic stress disorder. Of the Canadian women participants, 75% were injured during prostitution. These injuries included: “stabblings and beatings, concussions, broken bones... Half of the Canadian women suffered traumatic head injuries as a result of violent assaults with baseball bats, crowbars or from having their heads slammed against walls or against car dashboards.”

Women in prostitution also have other prostitution-related health problems, including high rates of HIV and sexually transmitted diseases (stds), and increased risk for cervical cancer and chronic hepatitis.

Those who advocate for decriminalization claim that indoor prostitution is safer than outdoor prostitution. However, physical violence also occurs frequently in indoor settings in the form of rape, threatened rape and threats with a weapon, and the experience of psychological trauma is comparable in both types of prostitution<sup>7</sup>.



This violence - assaults, rape, verbal abuse, etc. - must be seen as *in addition* to the inherent violence of prostitution itself. Prostitution itself is a form of sexualized male violence.

Women around the world, over the last three decades in particular, have worked – with some success – to establish an understanding that non-consensual or coerced sex constitutes violence against women. The right of women to make decisions about when and whether to have sex, and with whom, is understood to be integral to women’s equality with men, and to their autonomy and dignity as human persons.

The bargain inherent in prostitution is that women have unwanted sex with men they do not know, and feign enjoyment, in exchange for money. Calling this sex between consenting adults ignores the fundamental inequality in the sexual and human transaction for the women and the men. This is not a transaction in which a woman and a man together, voluntarily, seek to give and receive sexual pleasure. Prostitution is a transaction in which women provide commodified sexual services to men, in exchange for money. It is a form of social and sexual subordination.

### **Which women are in prostitution?**

There are also important facts about *which* women are in prostitution today. The Farley 9-country study shows that 47% of participants entered prostitution before age 18; 63% had been sexually abused as a child; 75% had been, or were, homeless; and 89% wanted to leave prostitution.

Being abused as a child appears to be a kind of training course for prostitution, a preparation for treatment as a non-present being. Also, almost half - in the Canadian cohort, more than half – enter prostitution while they were still children.

Poverty is a significant coercive factor. Women usually enter prostitution to survive – to pay the rent, support kids, because they have run away from home, or because they are not eligible for welfare.

In Canada, and in Vancouver in particular, there are disproportionate numbers of Aboriginal women in prostitution. The Aboriginal Women’s Action Network, which rejects decriminalization as a prostitution reform strategy, says that Aboriginal women “have a long, multi-generational history of colonization, marginalization, displacement from our Homelands, and rampant abuse that has forced many of our sisters into prostitution”<sup>8</sup>.

The proposition that prostitution is a choice for women like any other does not ring true when so many coercive factors are present. Given the facts about prostitution, and women in prostitution, prostitution should be recognized as 1) a form of violence in itself; and 2) a violation of women’s right to equality.

## **Prostitution As Work**

Advocates for decriminalization believe that women in prostitution should be recognized as workers like any other workers in the society; 'sex workers' is now a preferred term. This claim assumes that prostitution, were it decriminalized, could fit itself within existing regulatory frameworks for work.

This report concludes that prostitution cannot meet one of the core labour rights that is recognized internationally and domestically - the right to non-discrimination. Employing women to provide sexual services to men constitutes discrimination against women because it perpetuates their sexual subordination to men and exploits their economic vulnerability. Also, the essence of the prostitution offering, which is that men can select which women will provide sexual services to them based on age, race, and gender-related characteristics (attractiveness, breast size, etc.), is antithetical to anti-discrimination principles.

Prostitution businesses cannot be made to fit within the framework of anti-discrimination law. If prostitution were decriminalized in Canada, legislators could be faced with a conundrum: try to amend human rights laws so that prostitution could fit within the anti-discrimination framework, to the detriment of all women; or set prostitution outside the parameters of human rights law, contrary to the goals of the decriminalization advocates.

## **Conclusions and Recommendations**

If prostitution is, by its nature, a form of male violence against women, harmful to health, and discriminatory, and if women mainly enter it because of poverty, racism, homelessness, previous sexual abuse, and lack of social supports, should women's advocates accept harm reduction as a sufficient goal?

Prostitution is fundamentally an issue of the equality rights of the poorest and most vulnerable women. For both practical and conceptual reasons, this report concludes that abolition is the best strategy for women's equality advocates to adopt; it is the only approach to prostitution law reform that is consistent with the legal concept of substantive equality and with feminist understandings of violence against women. The report recommends that women's organizations: engage in concerted advocacy to change the conditions that cause women and girls to enter prostitution; design and support new exit strategies to assist women to leave prostitution; and plan collaborative strategies and public education campaigns to work towards the elimination of prostitution.

The report concludes that women's organizations should repudiate any devaluation of the rights of poor, Aboriginal, or racialized women. When defending and promoting the human rights of women, the rights of the poorest women must be central, and the fight for the poorest women to enjoy equality belongs to everyone.

# Endnotes

- 1 Julie Bindel and Liz Kelly, “A Critical Examination of Responses to Prostitution in Four Countries: Victoria, Australia; Ireland; the Netherlands; and Sweden” *Routes Out Partnership Board* (2003), online: Network of Sex Projects <http://www.nswp.org/pdf/BINDEL-CRITICAL.PDF>.
- 2 House of Commons, Standing Committee on Justice and Human Rights, “The Challenge of Change: A Study of Canada’s Criminal Prostitution Laws” in *Report of the Subcommittee on Solicitation Laws*, (December 2006), online: <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?SourceId=190754>.
- 3 Melissa Farley, “Bad for the Body, Bad for the Heart: Prostitution Harms Women Even if Legalized or Decriminalized” *Prostitution Research and Education* (7 September 2004), online: Prostitution and Research Education <http://www.prostitutionresearch.com/FarleyVAW.pdf>.
- 4 Prostitution Law Reform Committee, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003* (2008) online: Government of New Zealand <http://www.justice.govt.nz/prostitution-law-review-committee/publications/plrc-report/index.html>
- 5 Chris Atchison & John Lowman, “Men Who Buy Sex: A Survey in the Greater Vancouver Regional District” (2006) 43.3 CRSA/RCSA 281.
- 6 Ann Cotton, Melissa Farley, Jacqueline Lynne, *et al*, “Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder” (2003) 2(3/4) *Journal of Trauma Practice* 33 at 35, online: Prostitution Research and Education <http://www.prostitutionresearch.com/pdf/Prostitutionin9Countries.pdf>
- 7 Melissa Farley, “Prostitution Harms Women Even If Indoors: Reply to Weitzer” (2005) 11(7) *Violence Against Women* 950.
- 8 Aboriginal Women’s Action Network, *Aboriginal Women's Statement on Legal Prostitution, Canada* (2007) online: Prostitution and Research Education <http://www.prostitutionresearch.com/racism/000153.html>.