Canada’s Prohibitive Prostitution Policies: Constraining Morality and Divided Women

Kerri Neil
December 2013
Though prostitution has technically been legal in Canada since the Criminal Code was enacted in 1892, sex workers have been constrained by a variety of policies that have effectively penalized every aspect of the trade. These policies have been contested since the 1980s with only minor reform, though recent developments in Canada and around the world highlight growing emphasis on improving the rights of sex workers. Canada’s current prostitution policy is extremely harmful to the workers involved, who are forced into unsafe environments, where they are frequently subject to physical and sexual abuse, and unable to report it for fear of being countercharged. There is still much discussion over the best policy to protect prostitutes, and globally, different policies have been adopted such as regulation and legalization, increased penalties for clients, and decriminalization. Framing prostitutes as workers with health and safety rights, and the increased political organization of sex workers, have been instrumental to changing prostitution policy as the issue moves away from moral judgment of the work. This moral indignation is still the dominant ideology of the current Conservative party and has been a main factor in the prevention of more progressive policy.

Canada’s current prostitution policy has created a dangerous environment for sex workers that pushes them into unsafe situations and leaves them unable to turn to police for protection. Canada’s bawdyhouse laws prohibit women from establishing a secure work environment¹ and its vague definition has allowed the courts to conceive any public or private place, permanently or temporarily used, into a bawdyhouse.²

¹ Criminal Code, R.S.C. 1985, c. C-46, s. 210, online: Department of Justice Canada < http://laws.justice.gc.ca>
Prostitutes cannot pursue relationships, support family, or hire bodyguards for risk of having them penalized under Section 212 for living on the avails of a prostitute - an ill attempt at protecting sex workers from exploitative pimps. Government policy has focused on expensive enforcement of prostitution laws that victimize women and force them into vulnerable situations, instead of accepting the industry and letting them develop business-appropriate spaces and practices.

Sex workers have been marginalized and excluded from public policy debate but debate about sex work has prompted the government to fund exhortative policies to define the problem that have produced minimally positive outcomes. In 1985 when the state-funded Fraser Committee recommended the decriminalization of prostitution, the Progressive Conservative Party instead decided to extend prostitution legislation to criminalize public solicitation, effectively putting street walkers in more risky situations and increasing the power of police to harass known sex workers, on and off the job. This criminalization is a form of regulation that has built a stronger police force with more power over sex workers and there was a dramatic increase of prostitution arrests after this legislation was passed.

As social activist groups turned to the courts in the 1990s and 2000s to utilize the Charter of Rights and Freedoms in protecting a variety of human rights, prohibitive prostitution laws were continuously ruled as justifiable within the reasonable limits clause. These judges were not interested in the fact that they were constraining the

3 Criminal Code, s.212.
individual rights of a consenting adult who has power over her body. Their interest lay in the community, protecting the morality of the youth and promoting Christian ideals of sex occurring only within the confines of a sanctioned marriage.

Increased reports of violence in Vancouver raised concern over the safety of sex workers in the 2000s, prompting politicians to launch the most recent review into Canadian policy with the Subcommittee on Solicitation Laws Review (SSLR) in 2006. Its conclusion was the exhortative policy of increasing education to prevent people from entering the industry and to help them get out. It required little funding and was fairly ineffective at addressing the larger problem of the safety of workers who want to stay in the industry. The Conservative Party were noted as holding the strong, though numerically minority, position of defining sex work as exploitation and sex workers as victims, which was a factor in the failure of the SSLR to meet its mandate. Unable to make change through biased political means, sex workers have again turned to the courts to fight their case.

In 2010, Madam Justice Himel of the Ontario Superior Court ruled that the Criminal Codes provisions endangered the lives of sex workers and violated Charter rights to freedom of expression. The Ontario Court of Appeal released its decision in 2012 to strike down the bawdyhouse law, modify the law surrounding persons living on avails, and upheld the communicating law. The Supreme Court, who sat down with different groups this past summer to discuss the legal implications of prostitution, is

7 Ibid., 11.
8 Ibid., 11.
9 Ibid., 13.
10 Ibid., Pg. 13.
currently reviewing these laws and the national policy could be in the midst of change. By redefining prostitution as sex work and laying the case before a female judge, sex workers were better equipped to pursue this most recent policy reform. However, this could not have happened without powerful, wealthy interests able to bring this issue to the courts after continuously being denied by conservative, crowd-pleasing politicians who were unwilling to look past their morals.

Canada’s prostitution policy is extremely harmful to workers in the industry who are often the victims of physical and sexual abuse, but unable to turn to the police for help. Criminalization has increased the chance of sex workers contracting HIV.\textsuperscript{12} This is evidence that these women do not have the power to enforce the use of condoms, not that the contraction of HIV is an inherent part of the sex industry. Canada’s bawdyhouse laws have forced women onto the streets while the communication laws pressure them to jump into vehicles without assessing the driver. Sex workers, mostly women, and clients, mostly men, get charged under Section 213 in equal proportions and the majority of both sexes are found or plead guilty. Women, however, usually receive higher fines and longer prison sentences for the same crime as their male counterparts\textsuperscript{13}.

Known sex workers are often charged with a variety of misdemeanors usually not enforced such as jaywalking, loitering and trespassing\textsuperscript{14}, and identified workers recount getting picked up by police while walking to the store or waiting in their lobby\textsuperscript{15}. Probation and promise-to-appear conditions include not drinking alcohol, a curfew,

---

\textsuperscript{12} “Sex, Work, Rights: Reforming Canadian criminal laws on prostitution,” 1.
\textsuperscript{13} Meulen, Durisin and Love, introduction, 11.
\textsuperscript{14} Bruckert and Hannem, “To Serve and Protect?,” 302.
\textsuperscript{15} Ibid., 306.
and, most exclusive, red-zones that bar these workers from city centres that include many social support services\textsuperscript{16}. Harsher fines for women and enforcement of petty bylaws stress how these policies are just punishing women for acting ‘immorally’ and do more to hurt workers than to help them. These policies are also very expensive to enforce as they require police on patrol, guards to watch inmates, and state-appointed lawyers to defend impoverished sex workers.

Street-based sex workers have the highest mortality rates of any group of women in North America\textsuperscript{17} as emphasized in Vancouver’s ‘Highway of Tears,’ and due to their invisible jobs, they have been a target for serial killers such as the British Columbian pig farmer, Robert Pickton\textsuperscript{18}. The tense relationship between police and sex workers that has been institutionalized by these laws has promoted police harassment and brutality to these workers, and created an environment where victims are unable to seek protection from their persecutors. The reports of women being violently kicked in the face and beaten up while under arrest in prison are highly disturbing and emphasize the harsh effect of these policies, which pose sex workers as community nuisances undeserving of police protection\textsuperscript{19}.

Canada’s prostitution policy has been slow to change, and grew more discriminatory in the 1980s and 1990s, just when Canada was representing itself as a haven of human rights with the institutionalization of the Charter. Dramatic change has been passed in the Ontario courts very recently but the national policy is still up for

\begin{itemize}
\item \textsuperscript{16} Ibid., 303.
\item \textsuperscript{19} Bruckert and Hannem, “To Serve and Protect?,” 306.
\end{itemize}
debate as the male-dominated Supreme Court review our current laws and our majority Conservative government focus only on the immorality of the trade.

One difficulty with pursuing prostitution policy reform is the variety of policy instruments that have been promoted by different groups including abolition, regulation and legalization, or decriminalization. These ideas were all discussed in the SSLR and voiced by a variety of policy actors.

The abolition movement enjoys Canada’s current laws enforcing the criminalization of solicitation and brothels to protect Canadians’ morality and prevent women from entering the sex trade. Proponents present women as victims, unwilling to enter the industry but incapable of getting out, and so require saving because they believe that “sex work [is] the ‘ultimate violence.’” Different faith groups, police, the Conservative Party, and mainstream media voiced this policy and have been effective in maintaining its implementation.

Regulation and legalization has been the position of many sex workers who want to frame prostitution in a labour context where workers have certain occupational health and safety rights. This model is followed in Nevada, where women are overly regulated to the point that they can only shop on certain days during certain hours. The Canadian Government already has an aggressive, expensive policy through the criminalization of prostitution and legalization would mean less money would be allocated to the police department and more to occupational health and safety

---

21 Ibid., 218.
22 Ibid., 218.
23 Ibid., 217.
divisions, though tax revenues could cover the costs of regulating this currently underground trade.

Complete decriminalization is another approach favored by sex workers who want the right to work undisturbed by police and government eager to impose rehabilitation on these ‘immoral’ men and women\(^\text{24, 25}\). These proponents argue “the state need neither condone prostitution, nor act as pimp through profiteering and stringent regulation”\(^\text{26}\) and look to countries like New Zealand where prostitution was decriminalized in 2009 with workers allowed to set up small commercial spaces, assuming they are citizens and of the legal age\(^\text{27}\).

Both legalization and decriminalization are promoted by sex workers because they frame prostitutes as consenting adults involved in legitimate employment with basic human and labour rights. This definition of sex work is imperative in moving the argument from a moral to a human rights issue. Unfortunately during the SSR, the exclusion discourse promoting prohibition of prostitution, though numerically smallest, was dominant in the review’s conclusion of conservative public education preventing people from entering the industry, and the Conservative Party’s framing of prostitution as exploitative and prostitutes as powerless victims\(^\text{28}\).

Sex work activists have promoted prostitution policy reform since the 1970s, but their efforts have been systematically ignored and marginalized as sex work is considered an immoral industry and therefore, legitimately criminalized. When women’s

---


\(^{27}\) Ibid., 165.

\(^{28}\) Meulen, Durisin and Love, introduction, 11.
rights became a powerful and organized force in world politics during the 1970s, California started the North American revolution with COYOTE (Call Off Your Old Tired Ethics) though this prompted little change. Britain’s Wolfenden Report declared the state to be separate from the bedroom and should not meddle with the affairs of two consensual adults\(^29\). Canada’s reaction to this, under the Progressive Conservative party, was to enact the ‘communication’ law, effectively criminalizing every aspect of the sex work industry.

As the courts became an effective tool in the 1990s for groups to pursue their legal rights after the enactment of the Charter, organized sex workers too attempted to bring their issue in front of supposedly unbiased judges. However, judges consistently ruled the immoral implications of the industry justified the limitations on these workers under the reasonable limits dause and these groups were silenced.

The renewal of the issue during the 2000s that resulted in the SSLR was prompted not so much by organized groups, but by public shock and media coverage over violence against women in Vancouver and in particular, the serial killings of Robert Pickton. This review, therefore, focused more so on the safety of sex workers than the larger legal issue and concluded with the ineffective recommendation that increased education would prevent people from entering the industry. This was the first time that the voices of sex workers were heard in the debate about Canada’s prostitution policy, and despite being ignored, represents an important step in the reframing of sex workers as consenting adults willingly involved in the industry.

The heightened media coverage of the sex industry due to its violence has been very helpful to the continuation of the current coverage of policy reform being pursued in Ontario’s Superior Court. Three former and current sex workers have most recently brought the issue before Madam Justice Himel, who ruled the laws as harmful to women and infringing on their rights. By framing prostitution as sex work, we are emphasizing that these are common labourers pursuing a path no less exploitative then working minimum wage for an eight-hour shift on Dead-End Street. This paradigm shift has been very influential in reshaping the issue and focusing on a need for occupational health and safety rights for these workers. By highlighting that, for many, sex work is a choice and that both workers and clients are consenting adults, sex work is shown as only exploitative because the laws limit the rights of workers to make safe choices. Canada has emerged as an accepting, multicultural society, and to marginalize workers because their work is ‘immoral’ is counter to this ideal and creates a destructive environment for people engaged in the industry.

The fight against improving prostitution policy has been entirely based on moral beliefs against using the human body as a commodity for sex. This issue has united religious organizations, police, political parties, and even some feminists, who see prostitution as inherently exploitative and sex workers as helpless victims too brainwashed to seek guidance. The Supreme Court has used the immorality of the industry to justify the repressive Criminal Code through the consensus of previous rulings that judges may make decisions based on morality for the purpose of “safeguarding the values that are integral to a free and democratic society”30. This was

not an issue for highly debated rulings on abortion or gay marriage but morality was cited as justifiable reasoning to infringe rights of prostitutes three times in the 1990s.\(^ {31}\)

The Women’s Coalition for the Abolition of Prostitution\(^ {32}\) frames sex work as slavery, where young women hooked on drugs are forced to sell their bodies to appease abusive pimps.\(^ {33}\) This position has been taken up in national newspapers like The Globe and Mail, where Margaret Wente argues, “prostitution turns women into lumps of meat that are bought and sold for the sexual gratification of men”\(^ {34}\), and Lorna Dueck headlines “Faith Groups Oppose Legal Prostitution Because They Care About Women’s Lives”\(^ {35}\). This presents women as unwilling victims with no control of their own lives, which is not the case for most sex workers and is extremely degrading to these women.

The Native Women’s Association of Canada supports the Swedish model of decriminalizing prostitutes but inflicting harsher penalties on clients and pimps. They want to charge these men for taking advantage of Aboriginal women and “exploiting their poverty, addictions, and [adding] to their histories of abuse”\(^ {36}\). This too frames sex workers as victims unable to make independent decisions and in need of external help. Police witnesses often use the victim frame, describing prostitutes as “brainwashed”\(^ {37}\).

---

\(^ {31}\) Meulen, Durisin and Love, introduction, 10.

\(^ {32}\) This coalition includes Canadian Association of Sexual Assault Centres, the Native Women’s Association of Canada, and the Canadian Association of Elizabeth Fry Societies.

\(^ {33}\) Blanchett, “Supreme Court Grapples With Prostitution Laws, Hears ‘Fear Mongering’ Behind Decriminalization Foes.”

\(^ {34}\) Margaret Wente, “Legalize Prostitution? Are We Nuts?,“ The Globe and Mail, June 24, 2013.


\(^ {37}\) Goodyear and Auger, “Regulating Women’s Sexuality,” 219.
dependent on drugs and men, and incapable of making better decisions. Many people have trouble condoning sex work, and this has shifted their focus away from the trauma that Canada’s current policy inflicts on sex workers. The moral issues have overshadowed the safety and health of workers in the industry, making legal reform difficult and persuading public opinion to marginalize sex workers.

Women in Canada have been fairly successful in fighting for their rights: the Female Employees Equal Pay Act was passed in 1956, abortion was legalized in 1988, and today there are five female Premiers in Canada. Women’s rights have been a powerful force in shaping Canadian history since suffrage movements began more than a century ago, but prostitution policy reform has divided women. There are many different policies that could be pursued, and each has its champions, but this is just one reason for the delay of prostitution policy reform. Overwhelmingly, Canadians have a moral dilemma with prostitution and unwilling to condone the work, they tend to despise the worker. This has hurt sex workers in the courts and on the streets, where they are easy targets of violence because even the police will not stand up for them. Many sex workers participate in the industry by choice, pursuing a job that, to them, is less exploitative than working minimum wage. Canada has seen dramatic improvements in human and labour rights in the past century, and it is important to extend these rights to all workers, in all industries, to create a safer environment for everyone.
Works Cited


