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PROSTITUTION IN CANADA

by

SUSAN E. BOREHAM

A THESIS

Submitted to the Faculty of Social Sciences of
the University of Ottawa as partial fulfillment
of the requirements for the Degree of Master of
Arts in Criminology.



UNIVERSITÉ D'OTTAWA
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CURRICULUM STUDIORUM

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ABSTRACT

Although the act of prostitution between consenting adults has never been in itself illegal, attempts to control prostitution in Canada have been made through such laws as those dealing with vagrancy, keeping, frequenting and being an inmate of a common bawdy house, procuring, and most recently, soliciting for the purpose of prostitution.

An historical examination has shown that although numerous amendments were made to these criminal code laws in an attempt to control and discourage prostitution and related activity, other evidence has shown that differential law enforcement and non-effectual sentencing practices provided an atmosphere conducive to those seeking and supplying the services of prostitution and, despite the efforts of the moral reformers, prostitution in Canada flourished until the Great Depression.

Since a 1978 Supreme Court of Canada decision ruled that a solicitation must be persistent and badgering in order to arrest a soliciting prostitute, law enforcement agencies are finding it extremely difficult to control the activities of the street prostitute. This situation has created a number of problems, however, public officials are uncertain as to what type of action should be taken. The major hypothesis of this paper is, that, until a consensus can be reached regarding the issues surrounding prostitution, the law will be ineffective and unjust in its attempt to control prostitution.

ABSTRACT

In two separate Ottawa surveys it was found that the public is in fact reaching a consensus regarding prostitution. The majority of Ottawa residents do not object to prostitution on a moral basis nor do they feel it is harmful to the health and welfare of society. While they do believe that the soliciting prostitute is a nuisance, they do not consider him/her to be a criminal, and do not advocate the use of more repressive police action to solve the problem. Ottawa residents favour the legalization of prostitution. An examination of the possible solutions to the present problems created by prostitution indicate that continued police action is expensive and ineffective, that municipal by-laws would not be fairly enforced, that licensing of all prostitutes would be an impossible task, and that simple decriminalization is not the answer. All the evidence supports government control over prostitution in a legalization scheme. Either the existence of bawdy houses on a small scale or "hooker hotels" for larger populations would solve the street prostitution problem and please the public, the prostitute and the patron.

TABLE OF CONTENTS

<u>Chapter</u>	<u>Page</u>
I	INTRODUCTION 1
	I. General Problem 1
	II. Related Research and Literature 5
II.	THEORETICAL FRAMEWORK 10
	I. Prostitution Laws and the Conflict Theory 10
III.	THE LEGISLATIVE CONTROL OF PROSTITUTION 16
IV.	A STATISTICAL ANALYSIS OF PROSTITUTION 64
V.	PUBLIC RESPONSE TO THE CONTROL OF PROSTITUTION..... 86
	I. General Attitude 86
	II. The Ottawa Surveys - Methodology 87
	SAMPLE..... 89
	III. Research Questions 92
	IV. Analysis 92
VI.	SURVEY FINDINGS AND CONCLUSIONS 95
	I. Introduction 95
	II. General Public Survey 95
	III. The Merchant Survey 125
	IV. Discussion 141
	V. Conclusions 146
VII.	EXAMINING THE ISSUES AND REMEDIES 147
	I. Legal Remedy 149
	II. Municipal Intervention 155
	III. Federal Intervention 158
	IV. Recommendations 164

BIBLIOGRAPHY

CRIMINAL CODES

LIST OF FIGURES

<u>Figure</u>		<u>Page</u>
4-1	Keeping, Frequenting, and Inmates of Common Bawdy House 1910-1920 - Combination of both Indictable and Summary Offences	67
4-2	Keeping and Inmates of Common Bawdy-House, Indictable Offences - 1942-1952	72
4-3	Keepers and Inmates of Common Bawdy-House - 1949-1959	75
4-4	A Comparison of Female Vagrants Convictions 1967-72 with those of Soliciting 1972-77 (both Male and Female)	77
4-5	Trends in Prostitution in Canada	85

LIST OF TABLES

<u>Table</u>		<u>Page</u>
4-1	Keepers, Frequenters, and Inmates - 1910-1920 Number of Convictions	68
4-2	Keepers and Inmates - 1942-1952 Indictable Offences - Convictions	70
4-3	Keepers and Inmates of Common Bawdy House 1949-1959 (Convictions)	73
4-4	A Comparison of Female Vagrancy Convictions with those of Soliciting - 1967-1977	76
4-5	Combined Prostitution Related Offences The Trend in Canada from 1892-1981 (Convictions) Part A	79
	Part B	80
4-6	Disposition of Summary Conviction Offences	82 - 83
4-7	Dispositions for Indictable Offences Both Keeping and Inmates of Common Bawdy House	84
6-1	Respondents' Knowledge of the Legal Status of Prostitution in Canada	96
6-2	Respondents' Attitude Towards the Idea of Prostitution	97
6-3	Respondents' View of the Harmful Effects of Prostitution on the Family	98
6-4	Respondents' Perceptions of Society's View of Prostitution	99
6-5	Respondents' Opinion as to Whether or Not Prostitution is beneficial to Society	100
6-6	Respondents' Perception of Prostitution in Ottawa..	101
6-7	Respondents' Belief in Discriminating Prostitution Laws	102

LIST OF TABLES (cont'd)

<u>Table</u>		<u>Page</u>
6-8	Respondents' Attitude Towards Nuisance Laws	103
6-9	Respondents' Perception of a Prostitute as a Criminal	104
6-10	Respondents' Perception of Prostitution as a Victimless Crime	105
6-11	Respondents' Opinion of the Hutt vs. The Queen Decision	106
6-12	Respondents' View on the Problem of Soliciting	107
6-13	Respondents' Opinion of Punishment of Call Girls.....	108
6-14	Respondents' View on Police Action	110
6-15	Respondents' View on the Control of Prostitution Versus More Serious Crimes	111
6-16	Respondents' View on Decriminalization	112
6-17(a)	Respondents' View on Legalized Prostitution	114
6-17(b)	Respondents' Familiarity with Legalized Prostitution	115
6-18	Respondents' Location Preference	116
6-19	Respondents' Attitude Towards the Visibility of Prostitution	117
6-20	Respondents' View on Penalization of Client	118
6-21	Respondents' View on Society's Permissiveness and the Demand for Prostitution	120
6-22	Respondents' View on Prostitution and Venereal Disease	121
6-23	Respondents' View on Municipal Bylaws and Prostitution	122

LIST OF TABLES (cont'd)

<u>Table</u>		<u>Page</u>
6-24(a)	Respondents' View on the Effect of Legal Control on Prostitution	123
6-24(b)	Respondents' Attitude Towards Continued Legal Action	124
6-25	Merchants' Attitude Towards Prostitutes	125
6-26	Merchants' Experience with Soliciting Prostitutes... (No table for Question 27)	126
6-28	Merchants' Use of Police with Prostitution	129
6-29	Merchants' Perception of the Prostitute as a Nuisance	130
6-30	Merchants' Perception of the Prostitute as a Criminal	131
6-31	Merchants' View on More Police Action	132
6-32	Merchants' Knowledge of the Problems Created by Prostitutes	133
6-33	Merchants' Opinion of Customer Avoidance	134
6-34	Merchants' Acceptance of Prostitutes Into Place of Business	135
6-35	Merchants' View of Police Action as Deterrent	136
6-36	Merchants' View on Decriminalization	137
6-37	Merchants' View on the Legalization of Prostitution	138
6-38	Merchants' View of the Prostitutes Effect on Business	139
6-39	Merchants' Decision to Open Business in Area Known for Prostitution	140

CHAPTER I

INTRODUCTION

I. General Problem

Throughout Canadian history the subject of prostitution has been a controversial one. Although the act of prostitution between consenting adults has never been in itself illegal, attempts to control prostitution and its related activities have been made through such laws as those dealing with vagrancy, keeping, frequenting and being an inmate of a common bawdy house, procuring, and most recently, soliciting for the purpose of prostitution.¹ While these laws designed to control prostitution and related activities have gone through a number of alterations since they first appeared in the Canadian Criminal Code of 1892, relatively little has been accomplished in their aim to control prostitution. While there is evidence that moral reformers were responsible for maintaining the ancient vagrancy laws designed to suppress prostitution,² there were no major attempts made to decriminalize prostitution-related activities prior to the 1970's. With the advent of the 70's, concerned and prominent women's groups were successful in implementing a law which changed prostitution from a

¹Canadian Criminal Code, 1972-1983, sec. 195.1.

²References to moral reformers and their role in maintaining the vagrancy laws to control prostitution can be found throughout the book: Red Lights on the Prairies by James Gray, also in the Hansard excerpts in Chapter 3 of this paper; in John F. Decker's book Prostitution: Regulation and Control pg. 77. R. Symanski, The Immoral Landscape, pg. 108.

status offence of being a prostitute and vagrant to an action, namely soliciting for the purpose of prostitution.³ Although this new soliciting law was an improvement from the Vagrancy Laws, it also made soliciting customers impossible without fear of arrest.

Between 1972 and 1978 this amendment was extremely effective in controlling street walkers since a simple solicitation of any kind would be sufficient provocation to cause the arrest of a prostitute. While this law was a useful tool for suppressing prostitution, it was quite unfair to the woman concerned for the simple reason that while prostitution itself has never been illegal the means by which one can supply and secure this service, i.e., soliciting, became illegal. In 1978 however, this situation was completely reversed when a court decision ruled that a solicitation must be "persistent and badgering" in order to secure an arrest for soliciting.⁴ The result of this decision has made it virtually impossible for the police to arrest a prostitute for soliciting unless a formal complaint is made by a person who has been harassed or annoyed by the solicitation. Few people are willing to take the time to fill out a formal complaint and act as a witness in court for an act that may be offensive to some but is not actually harmful to the person being approached since it can easily be ignored.

For a short period of time the police were able to use harassment techniques to remove and control the street walkers without actually having to arrest them. Using these tactics a prostitute could be picked up and

³Canadian Criminal Code, sec. 195.1.

⁴Hutt vs. The Queen, 1978.

detained during her peak business hours. These tactics can no longer be used, however, under the new Canadian Constitution, which came into effect in 1981. The Constitution requires that before a person can be actually picked up and removed from her (or his) locale the reason for making an arrest must be stated.⁵ Since enforcement agencies cannot arrest the prostitute before she actually solicits someone they do not have the authority to deter the activity of street prostitution. While this is the prevailing situation, public opinion is divided over what should be done about the present street-soliciting problem and the case law which governs its enforcement.

In the last few years prostitution in major Canadian cities has attracted much attention. On the one hand, some groups advocate decriminalization or legalization of prostitution and related activities. On the other hand, there are groups who call for more repressive controls and sanctions to be imposed on the street prostitute. A major obstacle in arriving at a Canada-wide consensus to deal with street prostitution is that the control of prostitution and related activities falls under federal jurisdiction, leaving individual cities powerless to deal with street prostitution. In larger cities in which street prostitution and soliciting have become rampant, officials have tried to control the problem through municipal by-laws. These by-laws, however, tried to legislate sexual activity among consenting adults which is an unacceptable objective in this day and age. Besides being reactionary (a movement back to a less advanced condition) these by-laws were illegal. Although they were effective in

⁵The Canadian Constitution 1981. Legal Rights section, clauses: 9, 10, 11(a), pg. 5.

dealing with the number of prostitutes,⁶ it should be stressed that only the federal government can enforce laws which deal with criminal matters. As a result, these by-laws were subsequently struck down by federal legislation. In consequence, the larger cities in Canada are still faced with a severe street prostitution problem. Until a nationwide consensus can be achieved as to what should be done to control street prostitution in Canadian cities, the criminal law, as it applies to prostitution, cannot be fairly and properly enforced. In the meantime, Parliament remains stymied by the problem and prostitution thrives.

The purpose of this thesis is to examine the historical development of prostitution in Canada and to suggest alternative ways of dealing with this complex problem. Drawing on Canadian experience with prostitution, this thesis will show that throughout history, Canada's prostitution and related laws have been ineffective and unjust in their attempts to control prostitution generally and that given the current state of prostitution in Canada suggest that the control of prostitution should be removed from the jurisdiction of criminal law.

To set the stage for the discussion, an examination of the evolution of the prostitution laws from their English predecessors, the Vagrants Act, will be provided. This record will show that the original motives for controlling prostitution are no longer relevant. Just as important is the climate of public opinion, which has also changed regarding prostitution. The primary evidence cited to support this contention is a sample survey

⁶Bureau of Municipal Research, "Street Prostitution In Our Cities", pg. 8.

undertaken in the City of Ottawa. Extrapolating from this survey and other evidence, this paper will suggest that the public in Canada is now more knowledgeable and more tolerant about the issue of prostitution, that several new initiatives are open to the government in dealing with this question, and the evidence, such as it is, tends to support total decriminalization and partial legalization of prostitution and related activity in Canada.

II. Related Research and Literature

While there has been relatively little scholarly work about the question of prostitution in Canada, one study has been especially illuminating in describing the connections between the emergence of prostitution and the related laws in Canada's formative years. In discussing such connections, James Gray, in his book Red Lights on The Prairies, recalls the developments of the early settlements in the Canadian West in terms of the "booze and brothel syndrome". He explains how brothels were as much a part of the 'firsts' of settlement as the railway stations and hotel bars; how they were invariably established before the churches and long before schools. And, if they did not actually lead the railway construction gangs across the prairies, prostitutes were in business "long before the first trains began rolling down their new tracks. Gray goes on to reveal that from the early reports of the North West Mounted Police, it was quite easy to establish a correlation between the progress of railway construction and the existence of prostitution. While Gray argues that the actual number of women involved is lost to history, for the only records now extant are

those of the convictions of keepers and inmates of houses of ill repute, he believes that there must have been scores, even hundreds, who plied their trade without police harassment. For one thing, the Mounties were spread so thinly across the West that they could not have kept the settlements under constant surveillance. Also, they followed a policy of taking action only when the activities of the whores got boisterously out of hand.

The West became overrun with brothels for the same reason that it broke out in a rash of boozeries - the first tides of immigration were composed overwhelmingly of unattached young men in their prime. According to Gray there was "a weakness, an attraction, a natural affinity... of unattached young men for booze and broads which has been commonplace since the dawn of history".⁷ On the unanimous testimony of those who claimed to know, the young men visited the brothels with the same casualness with which they went into a bar or poolroom, or even to church. It was not something done secretly, or with any semblance of a guilty feeling. It was done both singly and collectively as a matter of offhand choice over gambling or drinking. Whatever stigma became attached to the patronizing of prostitutes was in the eyes of the social reformers.

By the time the moral reformers had turned the Protestant pulpits into launching pads for their morality crusades, prostitution was such an established business that little could be done to control or eradicate it. Attempts to drive the prostitutes out of town only resulted in their convergence in so-called red-light districts just outside town boundaries.

⁷James Gray, Red Lights on the Prairies, pg. X.

With the exception of Protestant moral reformers, segregated brothels were generally accepted by the citizenry. This was perhaps because many of the brothel owners were "eminently respectable citizens, and corporations with financial interests."⁸ When pressure from moral uplifters became too great to ignore, the local police would stage token raids and take the inmates through the courts. Although minimal fines were levied, business remained open as usual. This never satisfied the clergy, but the police were adamant for very practical reasons. As long as minimum fines were imposed and raids were infrequent, the women accepted them as tantamount to licensing or a tax. They willingly pleaded guilty and avoided any complications. But if the police became serious about driving them out of business, they retaliated by pleading not guilty thereby forcing the police to convict them in Court. This type of arrangement was acceptable to all types of constituted authority who realized that prostitution was something that had to be tolerated because it could not be eradicated.⁹

While prostitution flourished in the Canadian West for more than fifty years, it reached its peak between 1900 and 1915. One Edmonton madam, in 1914, put the number of practising prostitutes at between 400 and 500. Another regarded this as a gross exaggeration and said that there were hardly more than forty or fifty brothels in town. Both figures may well have been accurate for in one token raid in 1909 the Edmonton police picked up 28 girls and 64 men in one house of ill repute where sex and gambling were

⁸ Gray, Op. cit., pg. 23.

⁹ Gray, pg. 17.

provided as a joint enterprise.¹⁰ Brothels were the most popular means of entertainment for they provided both booze and sex in a single location while the red-light districts provided many brothels from which the customers could pick and choose. The brothels were particularly popular during the early prohibition years as they always managed to maintain a private stock of liquor. But rumours about the bootlegging brothels prompted more frequent raids by the morality squads and soon drove many customers away. This, coupled with the fact that there was a sharp decline in the male population in the West as many of the younger males enlisted in the services during the First World War, took its toll on the brothels. By 1921 the male preponderance was down to 100,000 and the even balance in male-female numbers naturally caused a sharp drop in the demand for the services of prostitutes. In addition, Gray quotes that "the automobile and the changing moral values of the 1920's brought so many willing amateurs into the business that the red-light districts fell on hard times from that cause alone."¹¹ Still the brothels all survived, after a fashion, until the Great Depression turned the sin streets into ghost streets.

Perhaps it was the Great Depression which was responsible for the change in the type of prostitute. While in the early days of Canadian prostitution, the law, however lax it was applied to all prostitutes both street and brothel, those prostitutes who had the means to maintain a high style of life became call girls while those without funds or a brothel to

¹⁰Gray, pg. 12.

¹¹Gray, pg. 191.

operate from were forced to ply their trade on the streets. The collapse of the traditional brothel created a street prostitution problem which still persists today.

In response to these twin problems of street prostitution and soliciting, the Bureau of Municipal Research in Toronto conducted a study on the most recent implications of street prostitution in Canada entitled Street Prostitution in Our Cities (1982). It is an excellent discussion of the problems created by street prostitution. The study which points to the futility of the prostitution related laws in dealing with the more recent problems created by street prostitution and soliciting, advocates using the nuisance provision as well as licensing and to some extent legalizing prostitution. It also recognizes the extent of prostitution and the need to re-evaluate the present methods of controlling it.

CHAPTER II

THEORETICAL FRAMEWORK

I. Prostitution Laws and the Conflict Theory

Sociologists have emphasized that few, if any, human behaviors are universal or timeless in their criminal character emphasizing that over the centuries some acts have become less tolerable or less acceptable than others.¹² Many crimes are obviously more serious than others and thus there is societal consensus which stresses the need for punishment and a degree of severity in applying it. Among the most easily listed consensual crimes are premeditated murder, rape, incest and kidnapping. On the other hand, there is a continuing controversy which surrounds the presence of many other offences in our Criminal Code. Whereas consensual crimes are deemed "wrong in themselves", the controversial or conflict crimes are referred to as "wrong by prohibition". For example, even the word "prohibition" signified a time when the sale and consumption of alcohol was illegal. Before and after this statute was enforced, these activities were allowed and even encouraged. However, during prohibition people disobeyed the laws against drinking, but were not considered criminals. Such is the status of some of the conflictual crimes which can move back and forth between criminal and non-criminal status as a response to changing social conditions. It appears that the status of conflictual crimes rests in the power of certain interest groups and not as a view snared by the majority in society. Prostitution is among those offenses which are constantly changing in their

¹²John Hagan, The Disreputable Pleasures, pg. 15.

criminal nature. At different times in history, even Canadian history, prostitution has been accepted by the majorities, generally tolerated, moderately repressed, or severely criticized. However, none of these attitudes towards prostitution have been exclusively maintained for long periods of time due to the lack of societal consensus surrounding the issue. For this reason, prostitution has been labelled a conflictual crime.

The conflict theorists attempt to answer the questions as to "why do the behaviors that seem acceptable to some seem disreputable to others?" The nature of this question indicates a basic difference between the consensus and conflict theories, where the former explanation assumes a basic societal agreement about values; the latter does not. The importance of this conceptual difference involves a change of focus. The new focus is on how behaviors become valued or disvalued within particular groups and how these evaluations in turn influence further behaviors. In other words, the conflict theorists are not interested simply in deviant behaviors, but are concerned also with the disreputable status of these behaviors, and the consequence of disrepute. There are three conflictual theories which attempt to explain why parts of a society will respond disfavouredly to acts when other parts of societies do not insist on applying sanctions.

The sub-cultural theories argue that sub-groups promote values that oppose those of the surrounding society, thereby producing behaviors that society considers disreputable. The labelling theory specifies that societal response is the key element in designating and perpetuating the disreputable status of these behaviors. Group conflict theory examines the influence of socially and economically dominant groups in determining those behaviors regarded as disreputable.

These conflict theorists claim that deviance is more a matter of public evaluation and official response than actual behavior. They argue that our impressions of how much deviant behavior occurs are manipulated by the interest groups in society that control the media portrayal of deviance. Two results are said to follow: (a) deviant behavior common to powerful interest group members is ignored, while (b) the levels of deviant behavior among less powerful groups are being exaggerated.¹³ The conflict theories hold that official rates of deviance will increase as the interest groups' power in defining deviance increase the resources available for control purposes. In this way conflict theorists see the minority groups as the target for discrimination in law. This argument is important if one notes that many of the laws defined as criminal acts those which are more common among minorities while defining more leniently those acts more common to majorities. Conflict crimes also tend to fluctuate in terms of the penalty imposed, they vary in direct relationship with the social class or interest group which is promoting its cause, and thus only small groups are responsible for the change, not a societal consensus. Stricter sanctions will be imposed when the control of these offences is no longer possible and they become a threat to society.

There are a number of arguments which support the conflictual model as the way in which the legislation governing prostitution has evolved. In England, as early as 1349, it can be shown that the laws which exercised some control over the common prostitute were not established in response to societal pressure regarding the immoral nature of the act, but rather, in

¹³J. Hagan, pg. 18.

the case of vagrancy laws, were introduced in response to the desperate economic situation at the time. For example, after the Bubonic Plague had ravaged England, cutting the existing labour force in half, the vagrancy sections were enforced so that the unemployed could be forced to work for low wages. Anyone with no visible means of support (i.e., a vagrant or unemployed person) could be picked up under the vagrancy section and forced into hard labour as a penalty for vagrancy.

In 1530 the vagrancy laws were reactivated to fulfill a new function. England was now experiencing rapid growth in commerce and industry. As patterns of trade developed, business interests perceived a need to protect their goods during their transportation between sellers and buyers. In this context, the vagrancy statutes, which included provision for being a prostitute, found new purpose as a flexible means of controlling persons who "wandered" in the countryside and seemed to threaten safe transportation of goods and materials. These vagrancy laws, which were primarily activated for the benefit of the upper class and to the disadvantage of the others, remained a part of the British Criminal Code until 1959. When Canada adopted a criminal code similar to that of Great Britain, she also utilized the vagrancy laws to control prostitution. These vagrancy laws were in effect in Canada until 1972, long after their original purpose was no longer necessary. This is one of the common problems conflict theory explores in its search for answers as to why certain acts become disreputable.

Conflict theories contend that social class and interest groups are frequently cited as the roots of conflict. It appears that for every group which is in favor of repressing prostitution there is another group which

supports prostitution. The arguments for repressive legislation include concern for:¹⁴

1. protection of conventional morality;
2. a humanistic concern for the prostitute;
3. a humanistic concern for the exploited customer;
4. prevention of incidental crime;
5. control of the criminal culture which surrounds and flourishes on prostitution;
6. protection of juveniles who may be attracted to profession;
7. abatement of a "public nuisance";
8. a humanistic concern for the prostitute's family;
9. limiting evasion of income tax laws;
10. prevention of V.D.

Behind these motives for control underlies the fact that conventional morality is the issue. Indeed, it has been argued that associated crime, disease, white slavery and the like - are but camouflages set up by moralists to entice the moral liberal minded into their "reform" camp. Many groups have sought to make prostitution into one of the most degrading, vile and unethical acts there is, but to little avail. Although there are many people who believe this, there are many who enjoy the services offered by prostitutes, others who tolerate it, and still others who don't care one way or another. The most extensive concerted attack by moralists on prostitution in the United States was by the Puritans around the turn of the twentieth century. Christianity was the vehicle used to denounce illicit sexual behavior or promiscuity. The Puritans failed, however, to mention that "Christianity has at one time or another been used to defend total sexual abstinence, monogamic marriage, polygamy, polyandry, and free love".¹⁴

¹⁴ John Decker, Prostitution: Regulation and Control, pg. 273.

¹⁵ Decker, pg. 277.

In response to the social pressures created by moral reformers, the act of prostitution and related activities became illegal in the United States. Canada, on the other hand, maintained a more liberal attitude towards prostitution. Because Canada realized that any attempt to outlaw the act of prostitution would be fruitless, it followed the British example of using vagrancy laws to control prostitution and related activities.¹⁶ In consequence, the Canadian prostitution laws support the conflict theorists' explanations for creating and maintaining laws against certain behaviors, which not all society agrees with. The next chapter will trace the evolution of the Canadian prostitution laws and show how certain groups were responsible for most of the changes in the prostitution legislation. It will also explain how criminal case law serves to clarify and nullify many ambiguous interpretations of prostitution-related laws.

¹⁶ John Decker, Prostitution: Regulation and Control, p. 123.

CHAPTER III

THE LEGISLATIVE CONTROL OF PROSTITUTION

Prostitution itself has never been a crime. Attempts to control prostitution both in England and Canada have been made only indirectly through vagrancy laws and laws dealing with common bawdy houses. In the original codification of the 1892 Canadian Criminal Code, Vagrancy laws were contained in section 207 under part XV. These laws read as follows:

Vagrancy

207. Every one is a loose, idle or disorderly person or vagrant who -
- (a) not having any visible means of maintaining himself lives without employment;
 - (b) being able to work and thereby or by other means to maintain himself and family willfully refuses or neglects to do so;
 - (c) openly exposes or exhibits in any streets, road, highway or public place, any indecent exhibition;
 - (d) without a certificate signed, within six months, by a priest, clergyman or minister of the Gospel, or two justices of the peace, residing in the municipality where the alms are being asked, that he or she is a deserving object of charity, wanders about and begs or receives alms;
 - (e) loiters on any street, road, highway or public place, and obstructs passengers by standing across the footpath, or by using insulting language, or in any other way;

- (f) causes a disturbance in or near any street, road, highway or public place, by screaming, swearing, or singing, or by being drunk, or by impeding or incommoding peaceable passengers;
- (g) by discharging fire arms, or by riotous or disorderly conduct in any street or highway wantonly disturbs the peace and quiet of the inmates of any dwelling-house near such street or highway;
- (h) tears down or defaces signs, breaks windows, or doors or door plates, or the walls of houses, roads or gardens, or destroys fences;
- (i) being a common prostitute or night walker, wanders in the fields, public streets or highways, lanes or places of public meeting or gathering of people and does not give a satisfactory account of herself;
- (j) is a keeper or inmate of a disorderly house, bawdy house or house of ill-fame, or house for the resort of prostitutes;
- (k) is in the habit of frequenting such houses and does not give a satisfactory account of himself or herself; or
- (l) having no peaceable profession or calling to maintain himself by, for the most part supports himself by gaming or crime, or by the avails of prostitution.
R.S.C., c. 157.s.8.

208. Every loose, idle or disorderly person or vagrant is liable, on summary conviction before two justices of the peace, to a fine not exceeding fifty dollars or to imprisonment, with or without hard labour, for any term not exceeding six months, or to both. R.S.C. c. 157, s. 8.

Under the common law of England a vagrant, as such was indictable, but an idle and loose person could be apprehended and bound to his good behavior. The vagrancy laws were an attempt to control vagabonds, rogues, wandering mariners, soldiers and gypsies who may have resorted to criminal acts for subsistence.

These laws have many shortcomings and require some clarification, however, this paper will explore only those parts of the vagrancy statutes which deal with the control of prostitution. In reference to subsections (i) and (k) of section 207, the phrase "give a satisfactory account of him or herself" when suspected of loitering, presented some problems. Sub-section (i) taken from the Vagrant Act, 32 and 33 Vict. (Can.) c. 28, does not, on its true construction, declare that being a prostitute, etc., makes such persons liable to punishment as such, but only those who when found at the place mentioned, under circumstances suggesting impropriety of purpose, on request or demand are unable to give a satisfactory account of themselves (R.V. Arscott (1885)). In a case where, under the Canadian Vagrancy Act, 32 and 33 Vic., c. 28, a woman was convicted of being a common prostitute and of wandering in the public streets and not giving a satisfactory account of herself, the conviction was held illegal, because it did not allege that the woman was asked, before being taken, or when she was being taken, to give an account of herself; and it was held further than an allegation "she giving no satisfactory account" does not show that any prior demand was made upon her to give an account of herself (R. v. Levecque, 30 U.C.Q.B. 509).

Sub-section (j) of section 207 pertains to being the keeper or inmate of a disorderly house, bawdy-house, or house of ill-fame, or for the resort of prostitutes. Case law has shown that there may be a joint conviction against a husband and wife for keeping a house of ill-fame. The keeping has nothing to do with the ownership of the house but with the management of it (R. V. Warren and Ux., 16 O.R., 590). Upon a charge of

keeping or being an inmate of a bawdy-house, a conviction should not be made upon evidence of the house's general reputation, alone, without proof of acts or conduct from which the character of the house may be inferred (R. v. St. Clair, 3 Can. Cr. Cas. 551). The offence under subsection (k) of 207, consists in a person being an habitual frequenter of a house of ill-fame and not giving a satisfactory account of himself; and a conviction on such a charge must show that the accused is an habitual frequenter; or it will be void (R. v. Clark, 2 O.R., 523). A woman who is kept by a married man, and who surrenders herself to sexual intercourse with him alone, does not come within the provisions of subsection (1) in section 207 (R. v. Rehe, Que. Jud. Rep., 6 Q.B., 274; 1 Can Cr. Cas., 63).

The second set of laws which attempted to control prostitution are found in Part XIV of the 1892 Criminal Code under the title "Disorderly Houses Defined". Section 195 deals with common bawdy houses.

195. Common bawdy house. A common bawdy house is a house, room, set of rooms or place of any kind kept for the purposes of prostitution.
198. 1. Keeping a disorderly house. Everyone is guilty of an indictable offence and is liable to one year's imprisonment who keeps any disorderly house, that is to say, any common-bawdy house, common gaming-house or common betting-house, as hereinafter defined.
2. Anyone who appears, acts or behaves as master or mistress, or as the person having the care, government or management, of any disorderly house shall be deemed to be the keeper thereof, and shall be liable to be prosecuted and punished as such, although in fact he or she is not the real owner or keeper thereof.

It should be noted that article 207 (j) already cited, renders a keeper of a disorderly house liable also as a vagrant to summary punishment.

Case law allows clarification to section 195 defining a common bawdy-house; "If a lodger let her apartment for the purpose of indiscriminate prostitution, it is as much a bawdy-house as if she held the whole house" (R. v. Pierson, 2 Ld. Raym. 1197; 1 Salk. 382). In reference to section 198, "It is not necessary that there should be evidence of any indecency or disorderly conduct perceptible from the outside of the house"; "The keeper of a bawdy-house may be a man or a woman; and a married woman may be indicted for the offense either alone or with her husband" (R. v. Williams, 10 mod. 63; 1 Salk. 384). The gist of the offence appears to consist in the allurements which the place holds out to a miscellaneous and common bawdy corrupting to public morals. By way of comparison and illustration it has been said that as an inn is for all travellers, so a bawdy-house is for all persons lewdly inclined. Generally, though not necessarily, it supplies the girls, who may either dwell in the house, or visit it with or without the men accompanying, for the evil practice (King V.P. 83, N.Y. 587).

Between the original codification of the Criminal Code 1892 and the first revision in 1906 there were several amendments made to those laws pertaining to vagrancy and bawdy-houses. According to Sir John Thompson, who was a member of the committee on the House of Commons Debates in 1894, most of these changes are mere corrections of errors in printing (Hansard, July 3, 1894), pg. 5174. Bill No. 126 was introduced to further amend the Criminal Code of 1892. The first amendment to the vagrancy laws was an addition of a subsection 2 directly following section 207. This addition is as follows:

- 2. The "public place" in this section includes any open place to which the public have or are permitted to have access to any place of public resort.

This provision is a provision about loitering in any street, road, highway, or public place, so as to include lanes, passage-ways and alleys, but which are not public places in the sense of ownership by the public.

The second amendment of July 3, 1894 was a deletion of the following words in section 208. Dealing with the punishment aspect of vagrancy the words "before two justices of the peace" were removed. The Vagrancy Act requires two justices to sit. However since this related to the offence of vagrancy it is in the jurisdiction of one justice of the peace. This was one of the errors described by Sir John Thompson and thus required no further consideration by the debate committee (Hansard, July 3, 1894; 5174).

Further amendments followed in 1900. The Criminal Code Amendment Act 1900 (Vict. 63-64 V.C. 46) provided the following changes. Directly following section 208 a provision is made for those who the vagrancy laws describe but who are exempt from them.

Provided that no aged or infirm person shall be convicted as a loose, idle or disorderly person or vagrant for any reason coming within paragraph (2) of section 207, in the country of which he has for the two years immediately preceding been a resident.

It was thought that the elderly and mentally or physically handicapped persons had no control over their situation and that due to incapability to work is not the same as those vagrants who are capable but unwilling to work.

At the revision of 1906 of the Canadian Criminal Code there were no changes made in either the Vagrancy or Common-bawdy House laws. With the amendments made since the original codification of 1892, the laws in 1906 are as follows:

Vagrancy

(Former section 207) 238. Every one is a loose, idle or disorderly person or vagrant who,

- (a) not having any visible means of subsistence, is wandering abroad or lodging in any barn or outhouse, or in any deserted or unoccupied building or in any cart or wagon, or in any railway carriage or freight car, or in any railway building, and not giving a good account of himself, or who, not having any visible means of maintaining himself, lives without employment; ((as amended Criminal Code Amendment Act 1900, 63-67 V.C. 46) does not affect the vagrancy law as it pertains to prostitution).
- Not main- (b) being able to work and thereby or by other means to taining family, maintain himself and family, wilfully refuses or neglects to do so;
- Indecent (c) openly exposes or exhibits in any street, road, exhibitions. highway or public place, any indecent exhibition;
- Begging. (d) without a certificate signed, within six months, by a priest, clergyman or minister of the Gospel, or two justices, residing in the municipality where the alms are being asked, that he or she is a deserving object of charity, wanders about and begs, or goes about from door to door, or places himself or herself in any street, highway, passage or public place to beg or receive alms;
- Loitering on (e) loiters on any street, road, highway or public place, highway. and obstructs passengers by standing across the footpath, or by using insulting language, or in any other way;

- Disorderly conduct. (f) causes a disturbance in or near any street, road highway or public place by screaming, swearing or singing, or by being drunk, or by screaming, swearing or singing, or by being drunk, or by impending or incommoding peaceable passengers;
- Wanton disturbances. (g) by discharging firearms, or by riotous or disorderly conduct in any street or highway, wantonly disturbs the peace and quiet of the inmates of any dwelling-house near such street or highway;
- Destroying property. (h) tears down or defaces signs, breaks windows, or doors or door plates, or the walls of houses, roads or gardens, or destroys fences;
- Night walker. (i) being a common prostitute or night walker, wanders in the fields, public streets or highways, lanes or places of public meeting or gathering of people, and does not give a satisfactory account of herself;
- Keeping house of ill-fame (j) is a keeper or inmate of a disorderly house, bawdy-house or house of ill-fame, or house for the resort of prostitutes;
- Frequenting. (k) is in the habit of frequenting such houses and does not give a satisfactory account of himself or herself; or,
- Supported by prostitution. (l) having no peaceable profession or calling to maintain himself by, for the most part supports himself by gaming or crime, or by the avails of prostitution. 55-56 V., c.29, s.207; 63-64 V., c.46, s.3.

(Former
Section 208)
Penalty for
vagrancy.

Proviso.

239. Every loose, idle or disorderly person or vagrant is liable, on summary conviction, to a fine not exceeding fifty dollars or to imprisonment, with or without hard labour, for any term not exceeding six months, or to both: Provided that no aged or infirm person shall be convicted for any reason within paragraph (a) of the latest preceding section, as a loose, idle or disorderly person or vagrant in the country of which he has for the two years immediately preceding been a resident.
55-56 V., c.29, s.208; 57-58 V., c.57, s.1; 63-64 V., c.46, s.3.

(Former
Section 195
Common
bawdy house
defined.

Disorderly Houses Defined

225. A common bawdy-house is a house, room, set of rooms or place of any kind kept for purposes of prostitution. 55-56 V., c.29, s. 195.

(Former
Section 198)
Disorderly
house.

228. Every one is guilty of an indictable offence and liable to one year's imprisonment who keeps any disorderly house, that is to say, any common bawdy-house, common gaming-house or common betting-house, as hereinbefore defined.

Who deemed
keeper.

2. Any one who appears, acts or behaves as master or mistress, or as the person having the care, government or management, of any disorderly house, shall be deemed to be the keeper thereof, and shall be liable to be prosecuted and punished as such, although in fact he or she is not the real owner or keeper thereof. 55-56 V., c.29, s. 198.

The first amendment to those laws dealing with common-bawdy houses was enacted in 1907. The former definition of common-bawdy house (sec. 195) was repealed and the new section 225 shows an expanded definition. The following words were added to the end of the former definition: "or resorted to by one or more persons for such purposes". There were a number of considerations taken into account before the final definition was approved. These deliberations took place on April 18, 1907 during the third session of the 10th Parliamentary House of Commons Debates (Hansard 1907, Vol. IV, pg. 7018). According to Mr. Aylesworth, "this section deals with a condition of things with regard to which very strong representations have been made by associations of clergymen and others, especially from the City of Winnipeg". Aylesworth cited that under the present definition of common bawdy-house, the court in Manitoba held,

following an English decision, that a room in which only one woman lives did not fall within this definition. In England, on a charge, under the Imperial Law Amendment Act 1885, it has been held that a place where one woman receives men for sexual intercourse is not a brothel (Singleton v. Ellison (1895) 1QB, 607; L.J., M.C., 123). And before the amendment presently being discussed, the English case just cited was followed, in several Canadian cases, in which it was held that section 225, as it then read was intended merely to define the nature of the premises in which a bawdy-house may be kept, and not what acts constitute such keeping, and that, under such definition, a woman reputed to be a prostitute, living by herself in a house and receiving men with herself alone, without other women resorting to the house for prostitution, could not be convicted of keeping a bawdy house (R. v. Young, 6 Can. Cr. Cas., 43; 14 Man. L.R., 58; R. v. Osberg, 9 Can. Cr. Cas., 180; 15 Man. L.R., 147;). In response to these cases and the pressure of the ministerial association and calls for action by those in Winnipeg, Aylesworth presented the following amendments for section 225: "A common bawdy-house is a house, room, set of rooms or place of any kind kept for the purpose of prostitution or occupied or resorted to by one or more women for such purposes". Aylesworth was asked by Mr. Foster why the word women was used and not "one or more persons". According to Aylesworth, prostitution meant prostituting of oneself. Foster countered by saying that the whole onus of prostitution should not be thrown only on the women but that the man has an active part in prostitution as well. Mr. R.L. Borden intervened. "It seems to me that if the change is made so that the word "persons" is used then it would cover the

case of occupancy of a room by a man for the purpose of bringing women there in order that prostitution might be carried on. Everyone agreed that too many precautions were not enough in dealing with this problem. Thus the word women was struck out and "persons" was inserted. Thus the amended definition states:

225 A common bawdy-house is a house, room, set of rooms or place of any kind kept for purposes of prostitution or occupied or resorted to by one or more persons for such purposes (6-7 Edw. VII., c.8, s.2).

By a decision of the Yukon Territorial Court, it has been held that under section 225 of our code, as amended in 1907, a room in a hotel habitually resorted to by only one prostitute and her paramour, for purposes of prostitution, is a common bawdy-house; and that the hotel keeper who, with knowledge of the facts, permits the continuance of such use of the room is properly convicted as a keeper, although he received only the ordinary room rent, and apart therefrom, made no direct gain from the use of the room for purposes of prostitution. The learned Judge being of the opinion that, although the section was amended, does not alter the law as isolated acts not constituting prostitution, it means that a house occupied by one person, who receives men, and prostitutes herself as a prostitute, is a bawdy-house and that the resorting by one person to a house for the purposes of prostitution constitutes that house a bawdy-house, if the owner of it or the keeper of it is aware of what the resorting is for (R. v. Mercier, 13 Can. Cr. Cas., 475; 7 WLR., 922).

The next amendments in the attempt to control prostitution were enacted in 1913. The purpose of these provisions according to Mr. Doherty,

speaking at the House of Commons Debate, was "to make, in some respects, more severe and more easily enforceable the provisions of the law imposing punishment upon people who traffic in vice. These provisions, I may say, are practically the provisions of the English Act of last year; to that subject are devoted sections 10, 11, and 12". They prescribe penalties for the keeping of bawdy-houses and upon those persons who maintain and seek to derive profit from the propagation of vice, more particularly by prostitution of women. There is also a provision intended to make the criminal law reach persons who lease their properties for use as houses of prostitution. Other than the above commentary, nothing further was discussed pertaining to these amendments before they were passed (Hansard, May 16, 1913, pg. 10073).

The first amendment enacted by Bill 211 in 1913 was to affect subsection 2 of section 228 which deals with the keeper of a disorderly house. The amendment consisted of adding the words "or as assisting in such care, government or management", to the already existing provision so that it now reads under section 228:

2. Any one who appears, acts or behaves as master or mistress, or as the person having the care, government or management of any disorderly house, or assisting in such care, government or management, shall be deemed to be the keeper thereof and shall be liable to be prosecuted and punished as such in fact he or she is, not the real owner or keeper thereof (Geo. 3-4, Chap. 13, s. 10).

By widening the scope of those punishable for maintaining or assisting to maintain a bawdy-house the law "did not intend that clerks and others in minor positions, not charged with the care, government or

management of a disorderly house, should be deemed the keepers" (R. v. Selock, 2 W.W.R., 745, 25 Alta, L.R. 504, 56 C.C.C. 243, 13 Can. Abr. 272 C.A.). "Keeping" a house does not necessarily imply a proprietary interest but refers to managing, or having a share in the management (R. v. Warren (1888) 16 O.R. 590, 13 Can. Abr. 271). Clearly then, more than one person may be guilty of keeping the same premises as a disorderly house, particularly in view of s. 228(2) under which persons assisting in the management, or behaving as managers, are deemed to be keepers, and may be convicted as such. Since several persons may be guilty of keeping the same bawdy-house, they may be convicted either jointly or separately, and on a joint information, separate convictions may be made (R. v. Blooms (1915) 5. W.W.E. 897).

The second amendment to the laws governing a common bawdy-house in 1913 was the addition of a completely new section, section 228A which was inserted immediately after section 228. It read:

Use of premises as disorderly house. "228A. Any one who, as landlord, lessor, tenant, occupier, agent or otherwise, has charge or control of any premises and knowingly permits such premises or part thereof to be let or used for the purposes of a disorderly house shall be liable upon summary conviction to a fine of two hundred dollars and costs, or to imprisonment not exceeding two months, or to both fine and imprisonment.

Liability of landlord "2. If the landlord, lessor or agent of premises in respect of which any person has been convicted as the keeper of a common bawdy house fails, after such conviction has been brought to his notice, to exercise any right he may have to determine the tenancy or right of occupation of the person so convicted, and subsequently any such offence is again committed on the said premises, such landlord, lessor or agent shall be deemed to be a keeper of a common bawdy house unless he proves that he has taken all reasonable steps to prevent the recurrence of the offence."

(Geo 3-4, Chap. 13 ss.11)

Previous to this new provision it had been held in England, that if a weekly tenant of a house used it as a brothel and the landlord receives no additional rent by reason of its immoral occupation, the latter could not be convicted of keeping a brothel, merely because, having notice of the nature of the occupation, he does not give the tenant notice to quit (R. v. Barrett, 32 L.J.M.C., 36; L+C., 263). And it is also held, further that the landlord would not be liable to be so convicted even if, at the time he let the house, he knew it was to be used as a brothel; and, by reason of its occupation as such, has received additional rent (R. v. Stannard, 33 L.J.M.C., 61; L+C., 349). It was held, however, by the Court of Queens Bench at Montreal, upon a reserved case stated by the recorder, that a person, who leases a house to another for purposes of prostitution, renders himself (under the provisions of paragraph (b) of section 69, ante,) a party to and guilty of the offence committed by his lessee of keeping a disorderly house, although he was not himself the keeper, and that he can be prosecuted, tried, convicted and punished for such offence in the same manner as the actual keeper (R. v. Roy, 3 Can. Cr. as., 472; Que. Jud. R., 9 Q.B., 312). Provision 228a is punishable on summary conviction whereas being convicted under section 228 for keeping of a bawdy-house oneself is an indictable offence with a more severe penalty.

The last amendment in 1913 was the addition of a clause which is aimed at public participation and punishment. This new section 229 describes the penalty for a person being found in any disorderly house which includes any common bawdy-house, common gaming house, common betting-house or opium joint.

229. Being found in any disorderly house, - every one who without lawful excuse, if found in any disorderly house shall be liable on summary conviction to a penalty not exceeding one hundred dollars and costs, and in default of payment to two months imprisonment

(3-4 Geo. V., C. 13, s. 12).

This provision is similar to provision (k) in the vagrancy statutes section 238, however it does not require that the person be an habitual frequenter of any disorderly house and that one visit would suffice to warrant a conviction. This provision eliminates that problem of proving habitual resorting to a prostitute, and widens the scope of those who may be penalized by supporting the profession. Again it can be seen that a person who is charged upon section 238 (k) could also be charged under this new section where imprisonment would only be applicable in default of payment instead of a possible sentence of a term not exceeding six months. Section 229 also raised the fine from a sum not exceeding \$50.00 in section 238 (K) to a sum not exceeding \$100.00. Both provisions are punishable under a summary conviction. Together, these three amendments (3-4 Geo. V, c. 13, s. 10, 11, 12) have extended the reach of the law to all those persons involved in prostitution, either as prostitutes, clients, managers or owners or leasers, or assisters of bawdy-houses although punishment is more severe for those whose monetary gain is the most.

Due to the confusion surrounding the offence and the various laws under which a single offence may fall under at the discretion of the justice, it was felt that some laws could be repealed under certain conditions and the essence applied to other existing laws in somewhat of a collaboration attempt. This was the case with the Criminal Code Amendment Act of 1915.

The first business discussed in the House of Commons Debate was the fact that an inmate of a common bawdy-house was either punishable under the vagrancy section 238 of the Criminal Code or could be included under section 229 as being found in a disorderly house, both of these summary convictions and neither having severe enough penalties. A new provision for being an inmate of a bawdy-house was presented in the 1915 debates. Mr. Doherty, member of the Committee, explained the following amendment, which would be inserted immediately following section 229, "Found In ...". Section 229A is as follows:

229A. Every one is guilty of an indictable offence and liable to a penalty not exceeding one hundred dollars and costs and, in default of payment to imprisonment for a term not exceeding two months or to imprisonment for a term not exceeding twelve months, who is an inmate of a common bawdy-house.

According to Mr. Doherty, "the purpose (of this amendment) is to make possible the imposition of a longer terms of imprisonment upon persons who are found guilty of the offences here described. With regard to young girls who unfortunately find themselves inmates of institutions of this kind, under the law as it stands at present, there is no means by which they can be placed under guidance and direction for a sufficiently long period/of time to bring about a reformation. Doherty clarifies his view by saying that this amendment on its face, looks like the exercising of greater severity towards these "unfortunate" children but in actual fact the more time they spend in an institution such as The Bon Pasteur or Women's Jail in Montreal, the greater the chance in bringing about the reform of young women of this class. It is made applicable even on the first

offence so that the girl has not gone past the stage of effective reform. This section was agreed to and the amendment passed (Hansard, March 18, 1915, pg. 1227).

The house further recommended that subsections (j) and (k) of the vagrancy section which deal with the keeping or being an inmate of a bawdy-house (k) and (j) a frequenter of such a house, be now repealed as they are covered under sections 229 and 229A of the Criminal Code. Before the repeal by section 7 of the Criminal Act of 1915, of clauses (j) and (k) of section 238, it was held that a prosecution against the keeper of a common bawdy-house might be brought either by indictment (s.228) or under the procedure for Summary Trials (s.773); or the keeper might be charged as a vagrant and be tried under the Summary Conviction procedure; and neither the provisions for summary trial nor that for summary conviction abrogated the right of the Crown to bring an indictment; the different methods of procedure with the varying penalties, depending upon the class of tribunal selected, not being inconsistent, but alternative (R. v. Smith, (Sarsh), 9 Can. Cr. Cas., 338). By the repeal of clause (j) of section 238, the keeping or being an inmate of a bawdy-house is no longer a summary offense of vagrancy.

One additional provision was added under section 229A "inmate of..." a common bawdy-house. It reads as follows:

Anyone who has been convicted three or more times of any of the offences mentioned in sections 228 and 229A, shall be liable on the third or any subsequent conviction for a term of not less than three months and not exceeding two years (5 Geo. V., c. 12, s. 6).

No discussion in the House of Commons Debate occurred except for the statement that bawdy-houses and their proprietors are a great source of concern in Montreal. (Mr. Marcil, Hansard, March 18, 1915, pg. 1228). The amendment was passed, and the penalties for many aspects of prostitution became much more severe as a result of the 1915 amendments. It should further be noted that by repealing subsection (k) of section 238 that patronizing or frequenting a bawdy-house is no longer an offense under the vagrancy clause, however, if a person was patronizing a bawdy-house and was apprehended, he would have been "found in a bawdy-house" which was an offense.

The next change to the prostitution related laws came in 1917. This change dealt with the definition of a common bawdy-house. At present such a place is described as a house, room, set of rooms or place of any kind kept for the purpose of prostitution or occupied or resorted to by one or more persons for such purposes (section 225). It was proposed by Mr. Doherty, member of the House of Commons Debate Committee, that this definition should be enlarged to include the phrase "place where indecencies are practiced", because "it has been represented to us by different police authorities that there has unfortunately grown up in different cities under the guise of legitimate places of business - such as massage, etc., establishments which are resorted to not for the purpose of prostitution, but for the purpose of the commission of acts of indecency. It has been thought proper that they should be put on the same footing as the bawdy-house" (Hansard, August 13, 1917). This motion to amend the definition was agreed to and passed and the resultant definition of a common bawdy-house becomes:

225. A common bawdy-house is a house, room, set of rooms or places of any kind kept for the purposes of prostitution or for the acts of indecency, or occupied or resorted to by one or more persons for such purposes.

Here again we can see how the legislation of the laws governing prostitution are expanding and becoming much more severe in hopes of stopping those who are profiting from immoral acts and also to guard against the corruption of young girls and their morals

During the next ten years the provisions for those laws pertaining to prostitution remained unchanged. These laws at the revision of 1927 are stated as follows (Chapter 36, Part VI):

Vagrancy

- | | |
|------------------------------|---|
| Vagrant | 238. Every one is a loose, idle or disorderly person or vagrant who, |
| No visible means of support. | (a) not having any visible means of subsistence, is found wandering abroad or lodging in any barn or outhouse, or in any deserted or unoccupied building or in any cart or wagon, or in any railway carriage or freight car, or in any railway building, and not giving a good account of himself, or who, not having any visible means of maintaining himself, lives without employment; |
| Not maintaining family. | (b) being able to work and thereby or by other means to maintain himself and family willfully refuses or neglects to do so; |
| Indecent exhibitions. | (c) openly exposes or exhibits in any street, road, highway or public place, any indecent exhibition; |
| Begging. | (d) without a certificate signed, within six months, by a priest, clergyman or minister of the Gospel, or two justices, residing in the municipality where the alms are being asked, that he or she is a deserving object of charity, wanders about and begs, or goes about from door to door, or places himself or herself in any street, highway, passage or public place to beg or receive alms; |

- Loitering
on highway. (e) loiters on any street, road, highway or public place, and obstructs passengers by standing across the foot-path, or by using insulting language, or in any other way;
- Disorderly
conduct. (f) causes a disturbance in or near any street, road, highway or public, by screaming, swearing or singing, or by being drunk, or by impeding or incommoding peaceable passengers;
- Wanton
Disturbances. (g) by discharging firearms, or by riotous or disorderly conduct in any street or highway, wantonly disturbs the peace and quiet of the inmates of any dwelling-house near such street or highway;
- Destroying
property. (h) tears down or defaces signs, breaks windows, or doors or door plates, or the walls of houses, roads or gardens, or destroys fences;
- Night
walker. (i) being a common prostitute or night walker, wanders in the fields, public streets or highways, lanes or places of public meeting or gathering of people and does not give a satisfactory account of herself;
- Supported
by prosti-
tution. (j) having no peaceable profession or calling to maintain himself by, for the most part supports himself by gaming or crime, or by the avails of prostitution. R.S., c.146, s.238; 1915, c. 12,s. 7.
- Penalty
for
vagrancy. 239. Every loose, idle or disorderly person or vagrant is liable, on summary conviction, to a fine not exceeding fifty dollars or to imprisonment, with or without hard labour, for any term not exceeding six months, or to both: Provided that no aged or infirm person shall be convicted for any reason within paragraph (a) of the last preceding section, as a loose, idle or disorderly person or vagrant in the country of which he has for the two years immediately preceding been a resident. R.S., c. 146, s. 239.
- Proviso.

Disorderly Houses

- Bawdy house defined. 225. A common bawdy house is a house, room, set of rooms or place of any kind kept for purposes of prostitution or for the practice of acts of indecency, or occupied or resorted to by one or more persons for such purposes. 1917, c. 14, s. 3.
- Person found in disorderly house. 228. Every one who, without lawful excuse, is found in any disorderly house shall be liable on summary conviction to a penalty not exceeding one hundred dollars and costs and in default of payment to two months' imprisonment. 1913, c. 13, ss. 11 and 12.
- Use of premises as disorderly house. 2. Any one who, as landlord, lessor, tenant, occupier, agent or otherwise, has charge or control of any premises and knowingly permits such premises or any part thereof to be let or used for the purposes of a disorderly house shall be liable upon summary conviction to a fine of two hundred dollars and costs, or to imprisonment not exceeding two months, or to both fine and imprisonment. 1913, c. 13, ss. 11 and 12.
- Disorderly house. 229. Every one is guilty of an indictable offence and liable to one year's imprisonment who keeps any disorderly house, that is to say, any common bawdy-house, as hereinbefore defined.
- Keeper of disorderly house. 2. Any one who appears, acts or behaves as master or mistress, or as the person having the care, government or management of any disorderly house, or as assisting in such care, government or management, shall be deemed to be the keeper thereof and shall be liable to be prosecuted and punished as such although in fact he or she is not the real owner or keeper thereof.
- Penalty for being inmate of bawdy house. 3. Every one is guilty of an indictable offence and liable to a penalty not exceeding one hundred dollars and costs and, in default of payment, to imprisonment for a term not exceeding two months or to imprisonment for a term not exceeding twelve months, who is an inmate of any common bawdy house.
- Penalty for third, etc., conviction. 4. Any one who has been convicted three or more times of any of the offences mentioned in subsections one, two and three hereof shall be liable on the third or any subsequent conviction to imprisonment for a term of not less than three months and not exceeding two years.

Liability
of landlord.

5. If the landlord, lessor or agent of premises in respect of which any person has been convicted as the keeper of a common bawdy house fails, after such conviction has been brought to his notice, to exercise any right he may have to determine the tenancy or right of occupation of the person so convicted, and subsequently any such offence is again committed on the said premises, such landlord, lessor or agent shall be deemed to be a keeper of a common bawdy house unless he proves that he has taken all reasonable steps to prevent the recurrence of the offence, 1913, c. 13, s.s 10 and 11; 1915, c. 12, s.s. 5 and 6; 1923, c. 41, s. 2.

Although the content of the laws pertaining to prostitution remained unchanged in the 1927 Revision, sections 228 and 229 were re-arranged. The following table shows the numbers of the corresponding sections before and since 1927.

<u>1927 Section</u>	<u>Previous Section</u>
228 (1)	229 (as enacted 1913, c. 13, s. 12)
228 (2)	229 (1) (enacted 1913, c. 13, s. 11)
229 (1)	228 (1)
229 (2)	228 (2)
229 (3)	229A (enacted 1915, c. 12, s. 5)
229 (4)	1915, c. 12, s. 6
229 (5)	228A (2) (enacted 1913, c. 13, s. 11)

The next major change in those laws attempting to control prostitution occurred in 1947. These changes affected section 229 of the Criminal Code which describes the penalties for those "keepers" and "inmates" of common bawdy houses. Under Chapter 55 of the Statutes (11 Geo. VI), section 229 as it stood was repealed and the following was substituted:

4. Section two hundred and twenty-nine of the said Act is repealed and the following substituted therefor:-

Common gaming-house or common betting-house.

*229. (1) every one who keeps any common gaming-house, or common betting-house is guilty of an indictable offence and liable to one year's imprisonment.

Common bawdy-house.

(2) Every one who keeps a common bawdy-house is guilty of an indictable offence and liable to imprisonment for a term not exceeding three years; and the provisions of section one thousand and thirty-five in so far as it authorizes the imposition of a fine in lieu of any punishment otherwise authorized, and of section one thousand and eighty-one of this Act, shall not apply in the case of a conviction for an offence under this subsection.

Keeper of disorderly house.

(3) Every one who appears, acts or behaves as master or mistress, or as the person having the care, government or management of any disorderly house, or as assisting in such care, government or management, shall be deemed to be the keeper thereof and is liable to be prosecuted and punished as such although in fact he or she is not the real owner or keeper thereof.

Penalty for being inmate of bawdy-house.

(4) Every one who is an inmate of any common bawdy-house is guilty of an indictable offence and liable to a penalty not exceeding one hundred dollars and costs and, in default of payment, to imprisonment for a term not exceeding two months or to imprisonment for a term not exceeding twelve months.

Penalty for third, etc., conviction.

(5) Every one who has been convicted three or more times of any of the offences mentioned in subsections one, two, three and four hereof is liable on the third or any subsequent conviction to imprisonment for a term of not less than three months and not exceeding three years.

Liability of owner landlord, etc.

(6) If the owner, landlord, lessor or agent of premises in respect of which any person has been convicted as the keeper of a common bawdy-house fails, after such conviction has been brought to his notice, to exercise any right he may have to determine the tenancy or right of occupation of the person so convicted; and subsequently any such offence is again committed on the said premises, such owner, landlord, lessor or agent shall be deemed to be a keeper of a common bawdy-house unless he proves he has taken all reasonable steps to prevent the recurrence of the offence.

Notice of conviction to be served upon the owner, etc.

(7) When any person has been convicted as the keeper of a common bawdy-house, the court shall cause a notice of such conviction to be served upon the owner, landlord, lessor or agent of the premises in respect of which such person was convicted and such notice shall contain a statement to the effect that it is being served pursuant to the provisions of subsection seven of section two hundred and twenty-nine of this Act.

Transporting person to bawdy-house, etc.

(8) Every one who knowingly takes or transports or directs or offers to take or transport or direct any other person to any common bawdy-house is guilty of an offence and liable on summary conviction to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment.

Penalty.

Formerly, section 229(1) included keeping a common bawdy-house as an indictable offence with a liability of one year's imprisonment. This provision was removed from section 229(1) and is now provided for in its own subsection under 229(2). The reason for this was that the penalty for being a "keeper" of a common bawdy-house was increased to a possible term of imprisonment of a term not exceeding three years. Former section 229.2 which describes "apparent keepers" was changed to section 229.3. Former section 229.3 has been somewhat reorganized but nothing changed in the new section 229.4. Former section 229.4 has been changed in the term set out for the penalty on third or subsequent convictions. This former clause declared the penalty for this offence as being not less than three months and not exceeding two years. This provision covers third convictions for "keeping", "appearing to keep", "being an inmate of" any disorderly or common bawdy-house. The new amendment extends the possible punishment for third offence convictions to a term not exceeding three years. This again indicates that the public is demanding more severe sanctions for those who deal in prostitution. Former section 229.5 becomes section 229.6

without any change in content. In addition to the rearrangements, of the above subsections, two new clauses were added. Section 229.7 requires that notice of conviction must be served to the owner, landlord, lessor or agent of the premise wherein he personally has been convicted or when someone else who was using, managing, leasing, etc., his building, has been convicted. New section 229.8, "Transporting person to a bawdy-house, etc." refers to those people who publicize and thus procure or solicit customers for those keepers or inmates of a bawdy-house. The amendments to section 229 were agreed to without any debate in the House of Commons in 1947, and in general the revisions to be made in the 1947 Criminal Code were to increase the penalties of those offences which are offending public morals (Hansard, Vol. VI, 1947).

There were no changes made to the sections of the Criminal Code pertaining to prostitution and its control thereof between those just mentioned in 1947 and the total revision of the Criminal Code in 1953-54. These changes to the Criminal Code were a much more difficult and more lengthy procedure since a full revision had not been made since 1892 in the original codification. According to Mr. Garson, member of the House of Commons Debate Committee,

One of the purposes in drafting of the new consolidated code was to condense what over the course of some 60 years had become a pretty voluminous and wordy document. In the terms of reference to the commission the members were specifically instructed to bring the code into as short a compass as possible, consistent with preserving its meaning, and that is what they have endeavoured to do in this section which is now before the committee. If any honourable member wishes to compare the extent of the present (sec. 164) with sections 238 and 239, which it replaces, he will see at least in my judgement, that very much the same ground has been covered with fewer words (Hansard, Feb. 19, 1954, pg. 2271-2).

Previous sections 238 and 239 have been incorporated into the new clause of 1953-54 section 164. This revised section reads as follows:

- No apparent means of support. 164. (1) Every one commits vagrancy who
 (a) not having any apparent means of support is found wandering abroad or trespassing and does not, when required, justify his presence in the place where he is found;
- Begging. (b) begs from door to door in a public place.
- Prostitute or night walker. (c) being a common prostitute or night walker is found in a public place and does not, when required, give a good account of herself;
- Living by gaming or crime. (d) supports himself in whole or in part by gaming or crime and has no lawful profession or calling by which to maintain himself or
- Sexual offenders loitering near schools, etc. (e) having at any time being convicted of an offence under a provision mentioned in paragraph (a) or (b) of subsection (1) of section 662, is found loitering or wandering in or near a school ground, playground, public park or bathing area.
- Punishment. (2) Every one who commits vagrancy is guilty of an offence punishable on summary conviction.
- Aged or infirm persons. (3) No person who is aged or infirm shall be convicted of an offence under paragraph (a) of subsection (1).

As mentioned in sub-section (e) of 164, the section 662 refers to those persons previously convicted of rape, carnal knowledge, indecent assault on female, buggery or bestiality, indecent assault on male, gross indecency, all which constitute criminal sexual psychopaths. Part 2 of section 164 refers to summary conviction as the penalty for committing vagrancy. Under the new provisions of 1953-54, summary conviction applies to a general penalty where "except otherwise expressly provided by law, every one who is convicted of an offence punishable on summary conviction is

liable to a fine of not more than five hundred dollars or to imprisonment for six months or both (Section 694.1). This amendment increases the possible fine only. Prior to the 1953-54 revision, the vagrancy laws contained 10 clauses which constituted vagrancy. In 1953-54 the vagrancy laws were somewhat altered, however, subsection C of section 164, formerly subsection (i) of section 238, was neither repealed or altered but remained the same. The only clause pertaining to prostitution that was repealed, referred to those persons who were vagrants by the fact that they lived by the avails of prostitution or were supported by it. This offence was repealed from section 238 and is now found under section 184 in the provisions for "Procuring". Subsection (j) of section 184 reads "being a male person, lives wholly or in part on the avails of prostitution", and refers mainly to pimps. The major change in this provision is that under the vagrancy statutes it was a summary conviction subject to a fine not exceeding 50 dollars or six months imprisonment or both, and under section 184 it becomes an indictable offence and is liable to imprisonment for ten years. This penalty is much more severe and indicates the public's intolerance of those who benefit from the corruption of young girls. This charge is based on "Evidence that a male lives with or is habitually in the company of prostitutes, or lives in a common bawdy-house or house of assignation is prima facie evidence that he lives on the avails of prostitution.

Returning now to section 184, the only clause which was repealed and dropped when sections 228 and 229 were revised, was subsection (b) of section 238. Subsections (a), (d), (i), and (j) remain unchanged, but

reorganized, and the remaining subsections were reallocated to other sections of the Code. These amendments were as follows:

<u>Prior to 1953-54</u>	<u>New Section 1953-54</u>
Section 238 (a)	164 (a)
(b)	dropped
(c)	160 (b)
(d)	164 (b)
(e)	160 (c)
(f)	repealed 1947
(g)	160 (d)
(h)	372
(i)	164 (c)
(j)	164 (d) and 184 (j)
(k)	added 1951
Section 239	184.2, 184.3

A considerable amount of debate ensued in the House of Commons regarding the amendment and revision of section 238 into section 164. One argument seemed quite relevant in regard to the change. According to Tremear, "Sections 238 and 239 are unusual, in that the offence here dealt with consists not in "doing", but in "being". The doing of one or other of the things specified in section 238 makes the person a vagrant, but is not in itself the offence (Hansard, February 19, 1954, pg. 2271). This is particularly true of the section pertaining to 'being' a prostitute which in itself is not an offence, but when coupled with being in a public place

and not being able to give a good account of herself when asked constitutes vagrancy which is an offence.

Mr. Michener replies to this by saying, "The essence of this provision makes it illegal for the prostitute or night walker to be in a public place about her ordinary activities as a citizen. Supposing she is going to the market to buy groceries. She is then in a public place, and has to justify her presence there in order to not commit an offence". Michener goes on to suggest that there should be required some positive offence or action, something that is disorderly or abnormal in a public place before there is an excuse to arrest. Michener then suggested to the minister that this section might very well read, so as to impart the element of positive action, "being a common prostitute or night walker, solicits in a public place". Instead of putting such a person under the onus of justifying her existence every time she is in a public place, there should be some positive act on her part before she can be charged and brought into court. The rebuttal to this was given by Mr. Garson who replied "If the honourable member says she cannot solicit, then what is the position of a street walker who cannot solicit? Is my honourable friend's proposal that we deprive her of her livelihood? The case law under the existing sections says, and I recommend this to my honourable friend:

The mere fact that a woman is a prostitute, however, does not make her a vagrant; nor does the further fact of her wandering abroad. A woman of one of these classes may wander as long as she likes in such public places as she chooses without simply by reason there of bringing herself within the enactment. It is only when in the course of her wandering she fails to give a satisfactory account of herself that she converts herself into a vagrant (Hansard, February 19, 1954, pg. 2286).

Mr. Garson reveals that the legislation proposed is an attempt to control the prostitute from committing other types of crime not to prevent her from practicing her profession. If the prostitute is suspected of doing something and cannot, when asked, give a good reason for where and why she is, where she is, then she can be arrested as a vagrant. This will be left to the discretion of those officers who are deemed to be competent. Therefore this clause only pertains to those women who cannot justify their whereabouts when under suspicion of another offence and not when soliciting as proposed and thus will remain as the Criminal Code Amendment Committee has declared (Hansard 1953-54, Vol. III, pg. 2298). This discussion had no effect of change in the vagrancy laws pertaining to the provision for prostitutes but would have some effect for the revision of the legislation in 1972.

Another change in the revision of 1953-54 which was simply one of rearrangement or reallocation was observed in the definition of a common bawdy-house. This definition, formerly section 225 prior to this revision, was incorporated into a more concentrated section on Disorderly Houses. This new section, section 168, incorporated old sections 225, 226 and 227 which dealt with the three types of disorderly houses: common bawdy, common gaming and common betting-houses. Former section 225 was worded: A common bawdy-house is a house, room, set of rooms or place of any kind kept for the purposes of prostitution or for the practice of acts of indecency, or occupied or resorted to by one or more persons for such purposes (1917, c. 14, s. 3). Under the new section 168 the definition is as follows:

168 (b) "common bawdy-house" means a place that is

(i) kept or occupied, or

(ii) resorted to by one or more persons for the purposes of prostitution or the practice of acts of indecency;

The change to this definition is the descriptive definition, of the places which constitute a bawdy-house (i.e., house, room, set of rooms or place of any kind, which is kind of redundant considering place of any kind would suffice and include the other words. To simplify the different places which constitute any disorderly house, subsection (i) of section 168 defines the word "place" as it applies to any disorderly house.

168 (i) "place includes any place, whether or not

(i) it is covered or enclosed

(ii) it is used permanently or temporarily, or

(iii) any person has an exclusive right of user with respect to it.

Also included in section 168 is a provision which was formerly contained in section 229, subsection 3. This provision was a definition of who constitutes a "keeper" of a common bawdy-house. The inclusion of this clause into section 168 allows the word "keeper" to be used in reference to all three types of disorderly houses, because as mentioned earlier it was the purpose of this revision of 1953-54 to condense as much as possible those provisions or clauses which repeat themselves or can be generalized to other existing sections. Therefore the word "keeper" as it applies to all disorderly houses is contained in subsection (h) of section 168.

168 (h) "keeper includes a person who

- (i) is an owner or occupier of a place,
- (ii) assists or acts on behalf of an owner or occupier of a place,
- (iii) appears to be, or to assist or act on behalf of an owner or occupier of a place,
- (iv) has the care of management of a place, or
- (v) uses a place permanently or temporarily, with or without the consent of the owner or occupier.

Former section 3 of section 229 has been incorporated into 168 (h) without any change in those included as "keepers", except for the words "master" or "mistress", which are seldom used. There was no discussion in the House of Commons Debates referring to these clauses being re-arranged under the new section 168, other than the general comment as the purpose to condense the existing sections.

In reference to the definition of "keeper" just mentioned in the above paragraphs, the penalties for "keeping a bawdy house", "being an inmate of" or "found in" a bawdy-house have been incorporated into one section. This new section, section 182, combines the former sections 228 and 229 (2), (4), (6), and (7). Subsections 1 of section 229 previously dealt with common gaming and betting houses was repealed from this section and added to the appropriate section dealing with these specific offences (S. 176). Subsection 3 of section 229 was included in section 168 (h) under the definition of "keeper" previously discussed. Subsection 5 of 229 which dealt with the penalties for third convictions of "keeping" or "being an inmate of" a common bawdy-house was dropped because the penalties for these

two offences are no longer similar and that third conviction for an offence implies "habitual" which carries a much more severe penalty and status. In the revised code, being "an inmate" of a common bawdy-house becomes a summary conviction while "keeping" a common bawdy-house remains indictable. The former sections 228 and 229 have been distributed as follows:

<u>Prior to 1953-54 Revision</u>	<u>As Revised, 1953-54</u>
Section 228	182 (b)
228.2	192 (c)
Section 229 (1)	176
(2)	182
(3)	167 (h)
(4)	192 (2)
(5)	dropped
(6)	182 (4)
(7)	182 (3)
(8)	183

This new section which combined section 228 and subsection (2), (4), (6), and (7) of section 229 now comprises section 182.

Keeping common bawdy- house	182. (1) Every one who keeps a common bawdy-house is guilty of an indictable offence and is liable to imprisonment for two years.
Inmate. Person found. Liability of landlord.	(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 charges 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 upon 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. (4) Where a person upon 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 premise, the person upon 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.

Transporting person to bawdy-house. 183. Every one who knowingly takes, transports, directs, or offers to take, transport, or direct any other person to a common bawdy-house is guilty of an offence punishable on summary conviction (Former section 229.8).

The implications of these amendments are that the penalties for those offences cited in this section have changed. Based on the clause which defines summary conviction as carrying a fine of up to \$500.00 and to imprisonment of a term not exceeding six months or to both (section 694.1), this summary conviction provision increases the penalty of former sections 228.1, 228.2, and in the case of the fine which was mostly applied to those "inmates" of a common bawdy-house. The fine is also increased for those who "transport" persons to a common bawdy-house yet the possible term for imprisonment is lessened. The increase in the fine under summary conviction is relevant to those appropriate sections mentioned because this was the means of penalty most often imposed. Two instances in which the penalty was reduced were the offences of "keeping" and "being an inmate of" a common bawdy-house. The offence of "keeping a common bawdy-house" was originally an offence punishable by both summary (Vagrancy section 207, 1892) and

indictable (keeping a disorderly house, section 198, 1892) convictions. In 1892, summary conviction for this offence was a fine not exceeding \$50.00 or imprisonment for any term not exceeding 12 months; indictable conviction meant a liability of one year's imprisonment. The summary conviction provisions under Vagrancy no longer applied when the repeal of this clause (207 (j)) was enacted in 1915. Until 1947 this offence remained an indictable offence with up to one year's imprisonment. In 1947 the penalty was increased to a possible three years imprisonment. This offence has now been reduced to having a penalty not exceeding two years imprisonment but mandatory imprisonment. Thus although reduced, this offence guarantees imprisonment and thus is probably more of a deterrent. Therefore the only clause which allows a lesser penalty is that of "being an inmate" which has been reduced to an offence punishable on summary rather than indictable. Although the fine has increased it is a relatively insignificant amount of money for those active prostitutes who according to the laws before the revision could face a possible twelve months imprisonment and now only face a maximum of six months which is seldom given. All these amendments pertaining to the control of prostitution were agreed to by the House of Commons Debate Committee and the clauses stand as proposed by the Criminal Code Amendment Committee.

The next major revision of the Canadian Criminal Code was enacted by the Criminal Law Amendment Act of 1972. Those provisions dealing with the control of prostitution as amended by the Act of 1972 are contained in Part V of the Code. Former section 168 which defined "Disorderly Houses, Gaming and Betting" and includes the definitions of a "common bawdy-house" and "keeper" of such disorderly houses, has now become section 179.

There were no changes made to this section by the amendment act of 1972 that pertain to those clauses dealing with prostitution, however more recent case law clarified these definitions. Case law pertaining to the definition of a common bawdy-house has illustrated that:

An isolated act of prostitution cannot make a hotel a place "kept or occupied or resorted to" under s. 179 (b). (See R. v. King, 1965, 2 C.C.C. 324 (1965) 1 O.R. 389).

It was held in R. v. Lantay, Witkowsky, and Kovaks, (1965) 3 C.C.C. 170, that s. 168 (b) includes a house to which men resorted for the purposes of being masturbated by the female inmates. An appeal by Lantay was dismissed by the Ontario Court of Appeal, (1966) 3 C.C.C. 270, 47 C.R. 72 (1966) 1 O.R. 503.

In Lazure v. The Queen, 49 C.R. 301 (1966), Que. Q.B. 986n, it was held that the place was "kept or occupied or resorted to ... for the purposes of prostitution :..." and that mere suspicion is not enough.

According to section 180 (b) "evidence that a peace officer who was authorized to enter a place was wilfully obstructed or delayed in entering is prima facie evidence that the place is a disorderly house; in R. v. Bailey (1938) S.C.R. 427, Duff, C.J.C. and Kerwin, J., who delivered the judgement of the other members of the court, upheld a conviction on a charge of "keeping" where there was no evidence except that of the prima facie case furnished by now 180 (b).

The next section pertaining to the control of prostitution which remained unchanged in the Criminal Code revision of 1972 was that entitled "Bawdy-Houses". This section, formerly section 182 is now found under section 193.

Bawdy-Houses

KEEPING COMMON BAWDY-HOUSE - Landlord, inmate, etc. - Notice of conviction to be served on owner - Duty of landlord on notice.

193. (1) Everyone who keeps a common bawdy-house is guilty of an indictable offence and is liable to imprisonment for two years.

(2) Every one who

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

is guilty of an offence punishable on summary conviction\

(3) Where a person is convicted of an offence under subsection (1), the court shall cause a notice of the conviction to be served upon 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.

(4) Where a person upon 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 upon 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, 1953-54, c. 51, s. 182.

Although no changes to this section were implemented in the 1972 Criminal Code revision, case laws again help clarify the section.

Subsec. (1). As not every "keeper" as defined in s. 193 "keeps" a common bawdy-house, an information charging that the accused "were keepers of a common bawdy-house" does not charge an offence known to law: *R. v. Catalano* (1977), 37 C.C.C. (2d) 255 (Ont. C.A.).

Thus the offence requires proof of provision of accommodation by the accused. A prostitute who on several occasions over a two-week period resorted to the same hotel must be acquitted of this offence where there is no evidence she was given any particular room, or had rented a particular room or even that she had paid the rent on the room: *R. v. McLellan* (1980), 55 C.C.C. (2d) 543 (B.C.C.A.).

Even where the accused uses her own residence by herself for the purposes of prostitution she may be convicted under this section: *R. v. Worthington* (1972), 10 C.C.C. (2d) 311, 22 C.R.N.S. 34 (Ont. C.A.).

Subsec. (2)(b). The offence of being found in a common bawdy-house is not a lesser offence included in the charge of keeping a common bawdy-house; *R. v. Labelle*, (1957) Que. Q.B.81 (C.A.).

Subsec. (2)(c). Where the accused knowingly allowed the premises to be used as a place to which men and women resorted to for the purpose of illicit sexual intercourse then a conviction will be sustained even though there was no evidence that the women were charging money for their services or that the couples resorting to the premises were unmarried: R. v. Turkiewich (1962), 133 C.C.C. 301, 38 C.R. 220 (Man.C.A.).

A charge of being an occupier unlawfully permitting premises to be used as a common bawdy-house was held to be a lesser offence included in the charge of keeping a common bawdy house: R. v. Lafreniere (1965) 1 C.C.C. 31, 44 C.R. 274 (Ont. H.C.J.).

The words "or otherwise having charge or control" qualify the earlier words in the subsection and make it clear that the section is not directed at an owner or landlord, per se, but rather at such persons as being the ones having charge or control of the premises. Even where the landlord has power to acquire the charge or control of the premises by immediate termination of the lease, still, once he leased the premises, it was the tenant who had charge or control. The section is directed at a landlord who has actual charge or control in the sense that he has the right to intervene forthwith and whose failure to do so can be considered the granting of permission: R. v. Wong (1977), 33 C.C.C. (2d) 6, 2 Alta. L.R. 90 (S.C. App. Div.)

Former section 182 becomes section 194 as a result of the reorganization of the Criminal Code in 1972 but remains exactly the same in content and expression.

TRANSPORTING PERSON TO BAWDY-HOUSE.

194. Every one who knowingly takes, transports, directs, or offers to take, transport, or direct any other person to a common bawdy-house is guilty of an offence punishable on summary conviction. 1953-54, c. 51, s. 183.

The major changes to those sections dealing with prostitution in 1972 were the repeal of the clause pertaining to prostitution in the Vagrancy section and the addition of section 195 which makes soliciting an offence. This change was primarily implemented upon the recommendation of the Royal Commission on the Status of Women which was against the prostitution clause in the Vagrancy section. According to Mrs. Grace MacInnis (Vancouver-

Kingsway) who was a member of the House of Commons Debate Committee, "There was discrimination against women under this section (Vagrancy). The Commission did not recommend that there should be penalties in the Code for soliciting, but I am glad to see this offence put on a basis which does not discriminate as between women and men" (Hansard, April 28, 1972, pg. 1721).

The new and widely accepted provision which was to replace and improve the former clause under "Vagrancy" is as follows under section 195.1.

Soliciting

195.1 Every person who solicits any person in a public place for the purpose of prostitution is guilty of an offence punishable on summary conviction, 1972, c. 13, s. 15.

Some discussion on this issue in the House of Commons Debate, 1972 will shed some light on the reasons for this new provision and the repeal of the old. According to Mr. Speaker,

The amendments abolishing vagrancy regarding prostitution are also welcome and in keeping with the recommendations made in the report on the status of women. I am sure that the Minister of Justice and others recall the Wolfenden report in England where this problem was studied in depth and many recommendations were made. At page 370 of the report on the status of women the following appears:

In the words of the Wolfenden report, prostitution "...has persisted in many civilizations through many centuries and the failure of attempts to stamp it out by repressive legislation shows that it cannot be eradicated through the agency of criminal law." The Prevost commission indicated that the public did not favour the punishment of prostitutes even though it considered prostitution morally wrong. Briefs presented to the commission pointed out that prostitution is fundamentally a social, not a criminal, problem.

Therefore, it was recommended that the appropriate section of the code dealing with prostitution under the vagrancy provisions be repealed. I note that in the bill a new offence

is made of soliciting prostitution. I ask the minister to consider the recommendation made in the report on the status of women, that this offence should more properly be dealt with by bringing a charge under the disturbing the peace section.

I have found that it has been unfair in many cases where a prostitute is charged under the act because very often inmates of the bawdy house are not charged. This created an unfair situation between the persons participating, more especially the male participants. It would be far better to lay a charge of disturbing the peace than soliciting for prostitution. I thought the minister was quite right in saying that the vagrancy provisions in the code create a difference between treatment of the rich and the poor (Hansard, April 27, 1982, pg. 1705).

Mrs. Grace MacInnis also comments:

The vagrancy section has been repealed. This was recommended in the section of the commission's report entitled "Women under the Criminal Code". The investigations of the commission showed real sex discrimination in the vagrancy section. When pressed by the public, the authorities have tried to clear the streets of prostitutes. However, many of the so-called prostitutes were not arrested for prostitution at all, but for vagrancy. Men were never picked up for vagrancy and consequently there was discrimination in the code. The commission recommended that section 164 (1)(c) of the Criminal Code be repealed. This has been done, and I think the minister has gone even further by making the section relating to soliciting equally binding on men and women. This is a very welcome change in the code (Hansard, April 27, 1972, pg. 1708).

The final comments on this issue which express a favourable attitude towards the repeal of the provisions dealing with vagrancy and prostitution, show that there are no objections to removing a section which has been with the code for almost 100 years.

The removal of these particular provisions from the Criminal Code is long overdue. Prostitution has been a part of life for a very long time. The criminal law has totally failed to deal with it in any sort of way. As the hon. member for

Vancouver-Kingsway said, our law has been applied in a way that is grossly discriminatory on the basis of sex with regard to this particular offence. We welcome the removal of that from the Criminal Code
(Hansard, April 28, 1972, pg. 1724).

Since the inception of the new soliciting offence in a further attempt to control prostitution, prominent case law has helped clarify what constitutes the offence of soliciting.

To constitute this offence there must not only be a demonstration by the accused of an intention to make herself available for prostitution but conduct which is pressing or persistent: *Hutt v. The Queen* (1978), 38 C.C.C. (2d) 418, 82 D.L.R. (3d) 95 (S.C.C.) (9:0).

On a charge under this section that an accused solicited "a person", the requisite proof of pressing or persistent conduct is not made out simply by evidence that the accused approached a number of men over a period of time for the purpose of prostitution where none of these encounters in and of itself was of a pressing or persistent nature. Each incident must stand on its own feet and acts or conduct showing nothing more than a clear effort to ply the prostitute's trade cannot be transferred to a specific solicitation to give it a quality which it did not itself have. *R. v. Whitter*; *R. v. Galjot* (1980), 54 C.C.C. (2d) 539 (B.C.C.A.); *R. v. Shanks* (1980), 52 C.C.C. (2d) 515 (1980) 2 W.W.R. 164 (Alta. Q.B.) affd without reason April 1980 (Alta. C.A.); *R. v. TYO* (1977), 36 C.C.C. (2d) 479 (Ont. Prov. Ct.).

In the subsequent cases of *R. v. Di Paola*; *R. v. Palatics* (1978) 43 C.C.C. (2d) 199, 4 C.R. (3d) 121, the Ontario Court of Appeal refused to follow *R. v. Dudak*, supra, and held that a male customer may be convicted of this offence on the basis that the words "for the purpose of prostitution"

merely connote the type of solicitation prohibited and where the prospective customer is soliciting another person what he is seeking is that she, in return for money, will offer her body for sexual intercourse or provide services for his sexual gratification, i.e., for prostitution.

The provisions set out in the Criminal Code 1972 in reference to prostitution laws are still in effect today. There have been no changes to these laws.

Given the preceding details on the evolution of those laws which have attempted to control prostitution over the decades, it is possible to see how much and to what extent, if any, these laws have really changed since 1892.

In reference to the offence of keeping a common bawdy-house, the major change which resulted from the amendments since 1892 has been in the direction towards more serious penalization. As already mentioned, (pg. 32) this offence was a dual offence in the original criminal code, however with the repeal of section 207 (j) in 1915, the offence of keeping a common bawdy-house lost its summary conviction status and was made a strictly indictable offence. Thus the change affected the penalty which was previously summary providing a fine not exceeding fifty dollars or imprisonment of a term not exceeding six months or both; whereas indictable conviction inflicted a possible penalty of up to a term of one year's imprisonment automatically. In response to public concern regarding the growing number of bawdy-houses in Montreal, the revision of 1947 increased the penalty for the offence of keeping a common bawdy-house to up to three years imprisonment. In 1953-54 this provision to penalty of 3 years imprisonment was repealed. Three years

imprisonment seemed too severe a penalty for this offence and so the possible penalty was reduced to two years where it stands today. Thus the offence of keeping a common bawdy-house has changed relatively little in description and punishment since it was a dual offence in 1892. One year's difference in penalty from 1892 to 1981 does not constitute a drastic change in penalty or reflect a much greater public concern for the problem.

In reference to the clause pertaining to prostitution in the vagrancy laws of 1892 (section 207 i) the offence was in essence a charge of "being" something not "doing" something. Thus the status of being a common prostitute which was not an offence in itself, became an offence and carried a penalty of a fine not exceeding fifty dollars or a term of imprisonment not exceeding six months. The penalty and description of this offence remained the same until 1953-54, at which time the term "summary conviction" was modified and generalized. The penalty then became a fine not exceeding five hundred dollars or a term of imprisonment not exceeding six months. Thus the possible term for imprisonment did not change and the amount of the fine although increased tenfold reflects only the changing values of money in society, i.e., inflation. Only in 1972 did this offence change in definition and meaning. Based on the fact that one cannot be discriminated against for "being" something, especially when the former clause pertained only to women, this new law changed the essence of the offence to "doing" a specific act, namely soliciting (section 195.1). This new definition provided that the mere being a prostitute is not an offence but that "persistent or badgering solicitation" is an offence (Hutt v. The Queen, 1978). Thus the change in laws shows a greater toleration to

prostitution if it is not forced upon the public. The penalty for this soliciting offence carries a summary conviction status of a fine not exceeding five hundred dollars or to six months imprisonment or both, which is relatively the same as it was in 1892.

One clause of the original vagrancy laws did however change in public acceptance in the direction of more severe penalization. Former section 207 (1) of the 1892 vagrancy laws dealt with those men who lived off the avails of prostitution. This offence which was penalized on summary conviction in 1892 carried a fine of a sum not exceeding fifty dollars or to a term of imprisonment not exceeding six months. This clause was repealed in 1953-54 under the vagrancy section and is now contained under the provisions set out for "Procuring" (section 184). Under this section the offence becomes indictable and carries a maximum term of imprisonment of ten years. This section attempts to control and severely punish those people who benefit from and live off the avails of any prostitute. The primary target of this law are the pimps who tend to exploit and benefit from the prostitutes and their acts without doing the acts themselves.

Another offence which has changed relatively little since its inception into the Criminal Code in 1892 was the offence of "being found in a common bawdy-house". Formerly an offence under the vagrancy laws section 207 (k) the penalty, like the other vagrancy offences was a fine not exceeding fifty dollars or a term of imprisonment not exceeding six months or both. In 1913 the fine was raised to one hundred dollars and imprisonment was only enforced, in default of payment, to a term not exceeding twelve months. In the revision of the Criminal Code in 1953-54, the offence of being "found in"

a common bawdy-house, remained a summary conviction offence and thus had a penalty of a fine not exceeding five hundred dollars or to a term of imprisonment not exceeding six months or both. Therefore, the gravity of the offence did not change with the exception of the increase in fine which is not a significant increase in view of inflation since 1892.

Another offence which has changed relatively little since the original codification of the Criminal Code in 1892 is that offence dealing with being "an inmate" of a common bawdy-house. The original section, section 207 (j) which dealt with being either a "keeper" or an "inmate of" a common bawdy-house was punishable on summary conviction and included a fine not exceeding fifty dollars or to a term not exceeding six months. In 1915 this clause was amended with regard to the penalty. This 1915 version raised the former fifty dollar fine up to one hundred dollars and in default of this payment to a term of imprisonment not exceeding twelve months. This 1915 amendment also made "being an inmate of a common bawdy-house" an indictable offence. This new penalty was not imposed as a result of public intolerance to prostitution but rather as a way of keeping those "inmates" in a reformatory for a long enough period to change their moral characters. Unfortunately, reformation of prostitutes meant that these girls would have to abandon their professions which was an unrealistic expectation.

In 1953-54 the penalty for the offence of being "an inmate" was decreased in accordance to those provisions defining summary conviction. Since an offence punishable on summary conviction held the maximum term of imprisonment to six months, this offence was changed back from twelve months in 1915 to six months in 1953-54. This amendment also raised the

fine from a possible one hundred dollars to one not exceeding five hundred dollars. Again this increase in possible fine appears to be in keeping with inflation and not public concern with the offence.

The definition of a common bawdy-house has changed relatively little since 1893 but the word "any place" has been clarified through case law and those places which constitute any place have been expanded to include many other places other than the "house", "rooms", "set of rooms" or "any place". Thus any place where acts of prostitution or indecency are performed constitute a common bawdy-house even where there are not visible boundaries.

The offence of "transporting" persons to a common bawdy-house was an offence punishable on summary conviction on its inception into the Criminal Code in 1947. The original penalty was a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding twelve months or to both. With the change in the penalty under summary conviction in 1953-54 the fine was increased but the maximum term of imprisonment was decreased to six months. The provisions of summary conviction were meant as a general act to strictly define what summary meant for all offences and none in particular. It was more a matter of convenience in the attempt to bring the Criminal Code up to date.

The offence for appearing to be a "keeper" of a common bawdy-house has followed the same direction as those who were the actual owners or keepers. This includes managers or anyone who is in charge of a common bawdy-house for someone else. Those who are landlords, owners, or lessors of any building who are aware that their building is being used as a common bawdy-house and do

nothing to stop or prevent the existence of this disorderly house are punishable by summary conviction which like the other offences had raised the original penalty, in this case, from two hundred dollars in 1927 to a fine not exceeding five hundred dollars. In this case, however, under the provisions of summary conviction the possible terms of imprisonment was also raised from two months in 1927 to the existing six months.

In conclusion to this summary of the changes of the offences in terms of content, description and punishment, it can be noted that all offences which contained provisions for imposing fines, had the maximum fine raised to five hundred dollars in 1953-54. Only three offences had the penalty for terms of imprisonment raised, one offence which dealt with living off the avails of prostitution was altered significantly from a summary conviction of six months possible imprisonment to ten years as an indictable offence. The other two offences included here (i.e., liability of landlord and "keeping" a common bawdy-house) had the terms of imprisonment raised from one year to two years for "keeping" a common bawdy-house and from two months to six months for "liability of landlord", which are somewhat insignificant in view of the much more severe penalties being imposed on other offences.

The preceding discussion concerning the legislative changes in the Canadian prostitution laws and the reasons cited for these changes lend further support to the conflict theory. While many of the prostitution related offences had the penalty increased to reflect the concerns of the time, then later decreased as the need for more repressive controls was no longer necessary, they were not severe enough changes as to warrant societal

consensus. Two offences which did increase and reflected a consensus were the offences of keeping a common bawdy-house, and living off the avails of prostitution. The penalties were increased and remained the same for such a time as to become consensual on the penalty now imposed and also demonstrated that society has become less tolerant of those offences which allow people to exploit prostitution. On the other hand the law which deals with soliciting demands that persistent and badgering solicitation must occur in order to secure a conviction (Hutt v. The Queen 1978, 38 C.C.C. (2d) 418). Therefore as the laws govern prostitution stand right now, the prostitute can only be convicted if she badgers persistently a patron or is an inmate of a common bawdy-house, whereas anyone who attempts to organize prostitution or exploit prostitutes is not tolerated and thus penalized. It appears that being a pimp is the only offence which receives a severe enough penalty to reflect being a consensus crime, while the other offences do not reflect the same severity and thus must be classified as conflict crimes. Although these other offences have fluctuated in severity based on the input of certain groups their punishment has not significantly increased since 1892, therefore this paper supports the conflictual theories that the changes were made to meet changing social conditions not public consensus per se. Furthermore it should be realized that until a consensus can be reached as to what extent prostitution related activities can and should be controlled, that any attempts to legislate the activity will not be effective. The following chapter will determine whether or not the changes to the prostitution legislation did in fact have any effect on the occurrence of this activity based on a statistical analysis of prostitution related offences.

CHAPTER IV

A STATISTICAL ANALYSIS OF PROSTITUTION

While it is impossible to determine the exact number of practicing prostitutes in Canada at any one time, one can be certain that the numbers greatly exceed those represented by criminal statistics. The purpose of this chapter is not, however, to estimate the number of prostitutes in Canada but instead, to determine if the changes in the legislation in reference to definition and penalty had any significant effect on the practice of law enforcement as evidenced by the number of convictions and dispositions for prostitution-related offences. In the preceding chapter, it was shown that although numerous changes were made to the legislation governing prostitution in response to changing social conditions, relatively little has been accomplished in the aim to control prostitution by changing the definition of the offence over the decades. By examining the conviction and disposition statistics in this chapter, which correspond with the pertinent changes to both the status and penalty of prostitution-related offences, it can be demonstrated that the changes in legislation had relatively little effect on the practice of prostitution and related activities in Canada.

In 1892, the laws which attempted to control prostitution were found under the Vagrancy section and one entitled Common Bawdy House. There were ten conditions under which a person could be convicted of being a vagrant. Four of these were prostitution-related offences. They included:

207. (i) being a common prostitute or night walker, wanders in the fields, public streets ... and does not give a satisfactory account of herself;

- (j) is an inmate or keeper of a disorderly house, bawdy house or house of ill-fame, or house for the resort of prostitutes;
- (k) is in the habit of frequenting such houses and does not give a satisfactory account of himself or herself; or
- (l) ...for the most part supports himself by gaming or crime, or by the avails of prostitution.

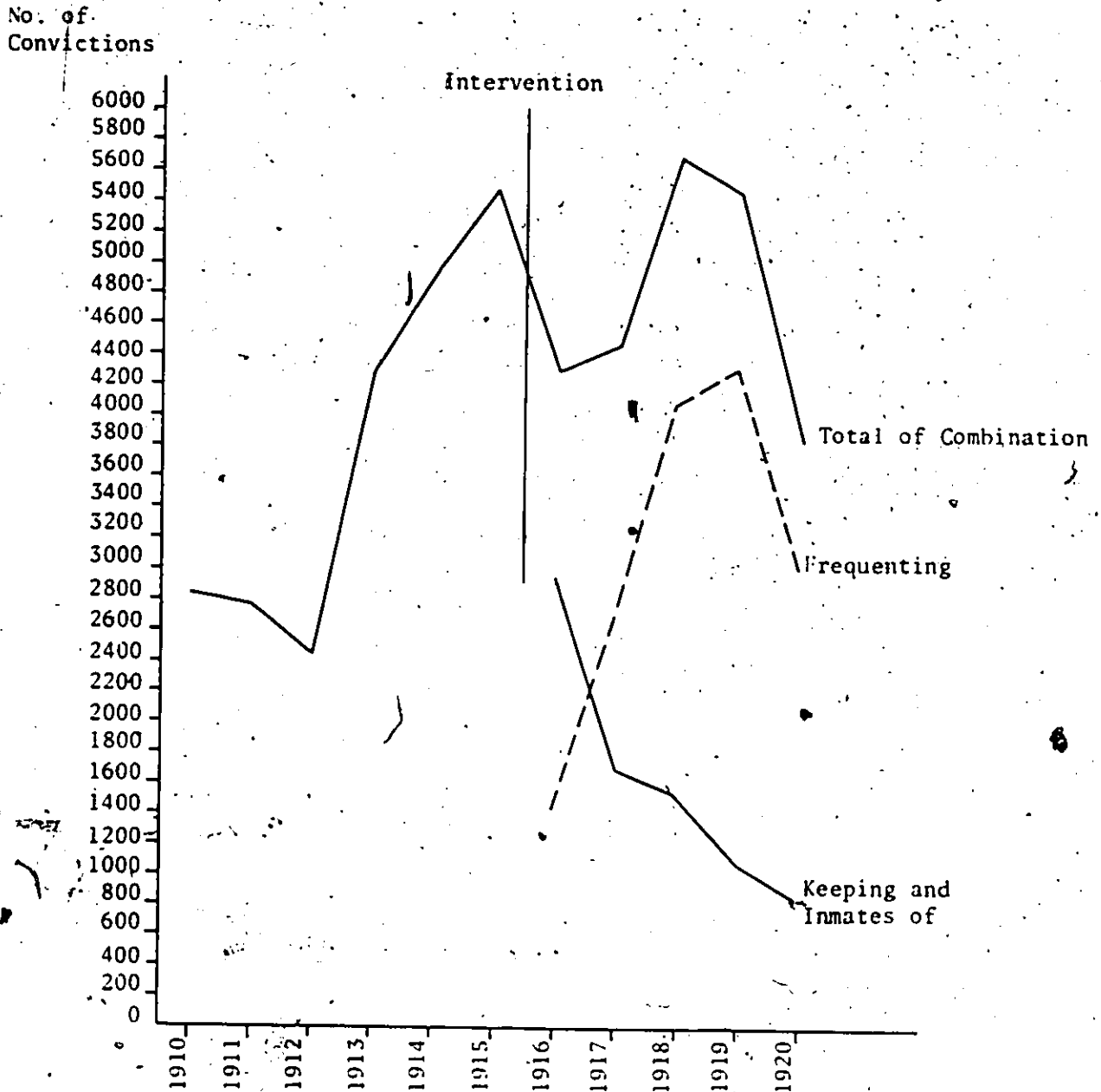
While the offence of keeping a common bawdy house was punishable by both summary and indictable proceedings in 1892, the dual status created a number of problems and for the most part "keepers" were tried summarily. For this reason, the statistics on "keepers" were combined with those of "inmate" and frequenter". "Living off the avails of prostitution" and "being a common prostitute" are also included under the vagrancy statistics. It is unfortunate that the "common prostitute" provision in the vagrancy section, which was the forerunner of the offence of soliciting as we know it now, is not statistically represented separately from the other offences which constitute the offence of vagrancy. The way in which the statistical data is recorded presents numerous difficulties when attempting to analyze the data. This is evident when one examines the first major change in the prostitution legislation.

In 1915 the offences of being an "inmate" and "keeper" of a common bawdy house became indictable offences. Prior to 1915, these offences were combined with that of "frequenting a common bawdy house" in the statistical breakdown. Thus, it is difficult to compare any direct changes as a result of the change in status or of increased penalty. A further problem with the data is that the offences related to prostitution are grouped together, either as summary or indictable regardless of sanctions.

Therefore, in 1915 the penalty for a keeper was one year while the penalty for being an inmate of a common bawdy house was a fine of one hundred dollars or two months in default of payment or a possible twelve months but the number of convictions does not separately identify those statistics for "being a keeper" or "an inmate". In order to demonstrate any type of effect of the change in status from being summary offences to indictable ones, it is necessary to again combine the offences "frequenting", "keeping" and "inmate", in order to see if there was an overall decrease as expected following the 1915 amendments (See Figure #1).

Between 1912 and 1915, the number of convictions for prostitution related offences punishable by summary conviction more than doubled. In 1915 the number of convictions for the combined offences of "frequenting", "keeping" and "inmates of" a common bawdy house reached an all time high of 5,465 persons. Following the 1915 amendments, the number of convictions dropped to 4,374 persons, a decrease of 1,091 persons being charged. From 1916 to 1920, the number of convictions for the indictable offences of "keeping" and "being an inmate of" a common bawdy house decreased significantly, with a low of 823 convictions in 1920. The number of convictions for the offence of "frequenting" rose steadily and thus accounts for the less drastic decrease in number of convictions when both the summary and indictable offence conviction numbers are combined. The decrease in the number of convictions for the indictable offences suggest that the stiffer penalty acted somewhat of a deterrent (See Table 4-1).

FIGURE 4-1 - KEEPING, FREQUENTING, AND INMATES OF COMMON BAWDY-HOUSE 1910-1920 - COMBINATION OF BOTH INDICTABLE AND SUMMARY OFFENCES



Frequenting, Keeping, Inmates of Common Bawdy House - Summary Offences

Frequenting - Summary and Keeping and Inmates of Common Bawdy House - Indictable Offences

1915 - INTERVENTION - causes decrease of 1,091 persons convicted. Both keeping and inmate offences become indictable.

Source: Statistics Canada, Criminal Statistics, #85-201.

TABLE 4-1

KEEPERS, FREQUENTERS, AND INMATES - 1910-1920
NUMBER OF CONVICTIONS

Keeping, Frequenting & Inmates of a Common Bawdy House (Summary)	Keepers & Inmates of a Common Bawdy House (Indictable)	+	Frequenting Summary	=	Total
1910 - 2,814	1916 - 2,971	+	1,403	=	4,374
1911 - 2,743	1917 - 1,743	+	2,700	=	4,443
1912 - 2,439	1918 - 1,551	+	4,069	=	5,620
1913 - 4,357	1919 - 1,229	+	4,328	=	5,557
1914 - 4,935	1920 - 823	+	2,998	=	3,826
1915 - 5,465*					

*Amendment made Keeping and Inmates of, an indictable offence.

Source: Statistics Canada, Criminal Statistics, #95-201.

Prior to 1915, roughly 75 percent of convictions for prostitution-related offences resulted in the penalty of a fine. Less than 10 percent of the remainder spent time in jail and the others received deferred sentences. Following 1915, those convicted of "frequenting" were seldom given terms of imprisonment, whereas those persons convicted of the indictable offences of "keeping" and "being an inmate of" a common bawdy house also maintained a 75 percent option of a fine. Over 90 percent for the remaining sentences for "being an inmate of" and "keeping" a common bawdy house, which resulted in terms of incarceration, were far less than one year and averaged around three months or less. Therefore, although the maximum possible penalty was increased from six months to one year, for

"keeping" and "inmates of" a common bawdy house, the imprisonment rates did not reflect a much more severe attitude on the part of the courts as less than one percent of those convicted received the maximum sentence of one year (as will be shown in Tables 4-6 and 4-7).

The second major change which occurred in 1947, also concerned those "keepers" of a common bawdy house. In 1947, the maximum penalty for this offence was raised from one year, which it had been since 1915, to a possible three year penalty. In 1920 the number of convictions for "keeping" and "being an inmate of" a common bawdy house was less than 1,000 convictions, however, by 1941 this number had risen to roughly 3,200 convictions for these offences. It appears that raising the penalty from 6 months to one year in 1915 for the offences of "keeping and being an inmate of" a common bawdy house did not have a long term deterrent effect on those persons in the prostitution profession. Given the fact that the sentencing judges were opting for fines rather than imprisonment (and even in the case of imprisonment the term was less than 3 months), it is clear that the people felt that the profits gained from continued involvement in prostitution were worth the risk. As shown in Table 4-2 the number of convictions for "keeping" and "being an inmate of" a common bawdy house reached its peak at 3,269 convictions in 1942. Of this total, 3,138 were women and only 131 were male offenders. More than 85 percent of those convicted were employed in domestic service of some sort or another, while most of the remaining 15 percent were unemployed. Prior to the amendment in 1947, however, the number of convictions dropped sharply from 3,276 convictions in 1943 to 562 in 1945, a decrease of 2,714 convictions in less than two years. This high peak and drastic decrease occurred during the Second

World War. Although there was an additional 20 convictions recorded in 1946, the number of convictions decreased steadily into the 1950's. Thus when the penalty for "keeping" was raised to three years, the trend was already on the decrease.

TABLE 4-2

KEEPERS AND INMATES - 1942-1952
INDICTABLE OFFENCES - CONVICTIONS

Year	Number of Convictions
1942	3,269
1943	3,276
1944	1,546
1945	562
1946	588
*1947	396
1948	285
1949	199
1950	226
1951	169
1952	275

*Amendment raises penalty for "keeping" from 1 year up to 3 years possible imprisonment.

Source: Statistics Canada, Criminal Statistics, #85-201.

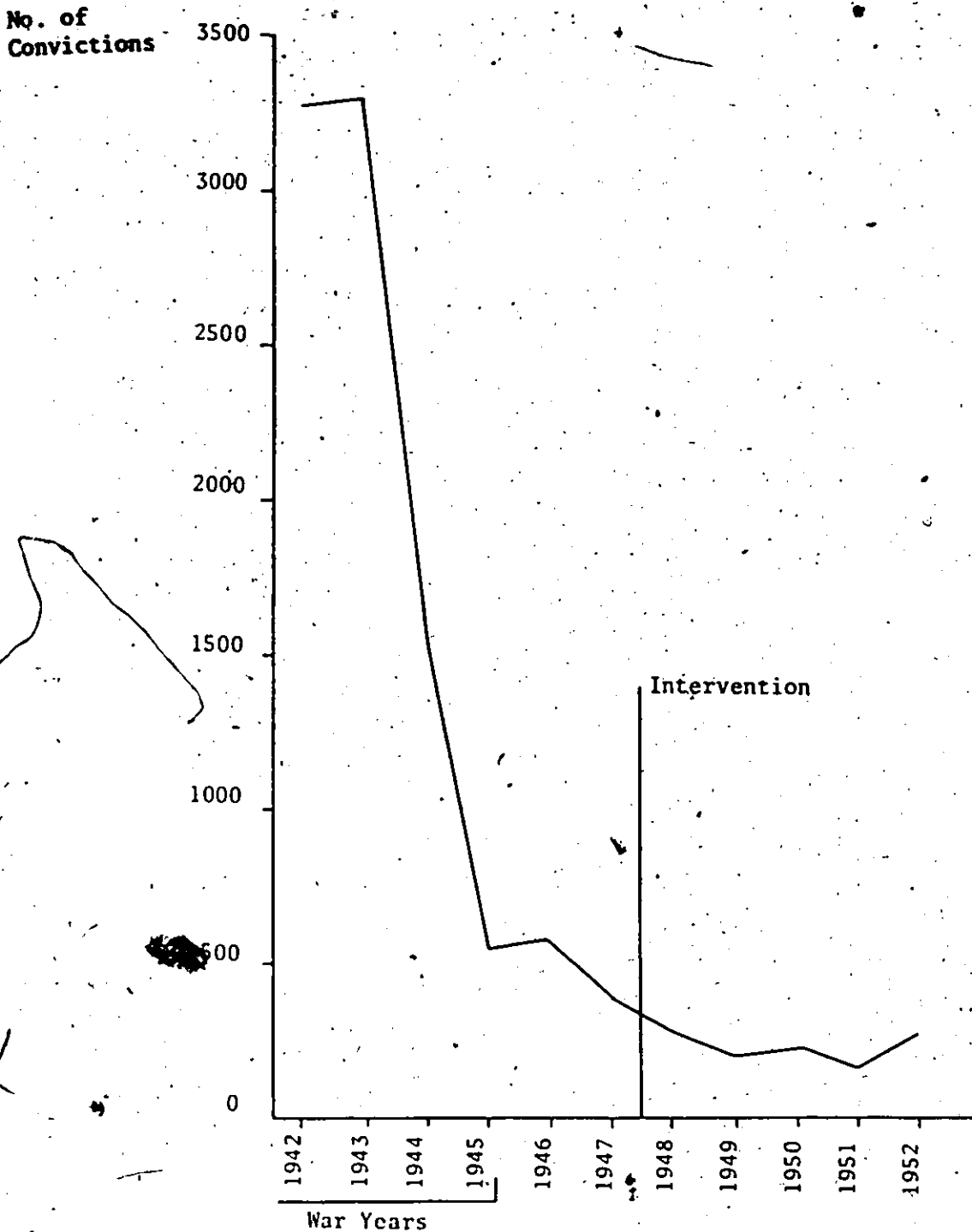
Both prior to and post 1947, the offences of "keeping" and "being an inmate of" were combined together so that it is difficult to tell the extent of the change on the number of convictions. However, the percentage of fines given between 1942 and 1952 was approximately 70 percent while the rest who spent time in a goal or reformatory did less than a year

and again averaged about three months. Only six persons during this period (1942-1952) were sentenced for more than one year of a possible three year sentence (See Table 4-7, Sentences). The post-war years did not see an increase in convictions in any way comparable to the pre-war years. Thus, it appears that the 1947 amendment, which increased the penalty for "keeping" to three years, came at a time when such strict control was no longer necessary (Refer to Table 4-2 and Figure 2).

In 1953-54, the penalty for keeping a common bawdy house was reduced from three years down to two years. Because of the decrease in penalty, the offence of keeping a common bawdy house was thought not to be as serious a problem any longer. This is evident in the downward trend for convictions for "keepers" and "inmates". The high peak between 1949 and 1959 was 275 convictions and the low point, following the 1953-54 amendment, showed only 102 convictions for "keepers" throughout Canada; a significant decrease since 1942. Thus, in ten years the conviction numbers have decreased from the highest ever to one of the lowest, a difference of over 3,000 convictions. It appears that common bawdy houses were losing their appeal and as a result keepers and inmates were less visible.

Another amendment in 1953-54 was to change the status of being an "inmate" back to a summary offence, where it was in 1892. Although the provisions for a summary offence were changed to a fine of up to \$500 this was really not significant. After the 1953-54 amendment, "being an inmate" was again placed in the same statistical category with "frequenters". From 1942 to 1954, there were no females convicted under the offence of "frequenting" and throughout history the offence of frequenting has always

FIGURE 4-2 - KEEPING AND INMATES OF COMMON BAWDY-HOUSE INDICTABLE OFFENCES - 1942-1952



INTERVENTION - In 1947 the penalty for Being a Keeper of a Common Bawdy House was raised to 3 years possible imprisonment.

FROM 1943-45 - Decrease of 2,714 persons convicted mainly due to Quebec Statistics and World War II employment opportunities.

Source: Statistics Canada, Criminal Statistics, #85-201.

been almost all male convictions. Therefore, it is safe to assume that the female convictions under this heading are for convictions of "being an inmate". If, in fact, this is the case, then the reduction of "being an inmate" from indictable to summary in 1953-54 caused an increase in statistics. This may be explained by the fact that police are more likely to arrest a prostitute on a summary offence rather than indictable or else prostitutes no longer feared being caught as an inmate on a summary conviction (Refer to Table 4-3).

TABLE 4-3

KEEPERS AND INMATES OF
COMMON BAWDY HOUSE 1949 - 1959
(CONVICTIONS)

Year	Keepers & Inmates Indictable	Year	Keepers Indictable	Inmates Summary	Total
1949	199	1955	219	+ 143	= 362
1950	226	1956	102	+ 252	= 354
1951	275	1957	110	+ 274	= 384
1952	231	1958	121	+ 151	= 272
*1953	264	1959	134	+ 226	= 360
1954	219				

- *1953-54 Amendments
1. The penalty for keeping a common bawdy house was reduced from 3 years to 2 years.
 2. The offence of being an inmate returned to Summary Status - penalty reduced from 1 year to six months

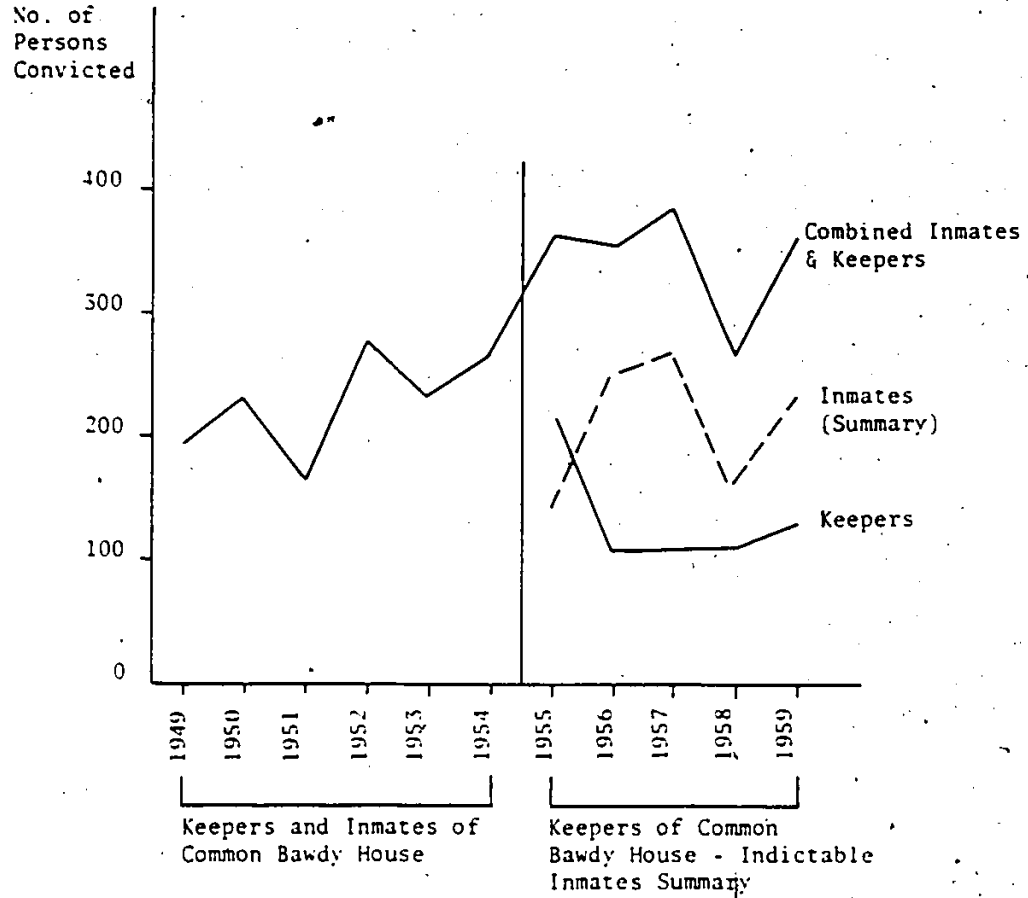
Source: Statistics Canada, Criminal Statistics, #85-201.

The decrease evident in the number of convictions for "keepers" may also be the result of removing the number of "inmate" convictions or simply a declining interest in the bawdy house business (see Figure #3) because one would expect the statistics to increase, if the penalty was all that was stopping "keepers" of bawdy houses.

The fourth and final amendment deals with the transition of the prostitute provision in the vagrancy section from an offence of "being" something, to an offence of "doing" something, namely soliciting. In 1972 the prostitute clause and most of the other offences of vagrancy were repealed on the grounds that they were status offences and sexist. Because prostitution itself is not an offence, many people felt that merely being known as a prostitute should not constitute an offence. Unfortunately, when comparing the number of convictions for those offences of prostitution, one again must assume that the number of female convictions in the vagrancy category represent the convictions for "being a common prostitute" primarily because the other offences are male oriented. Proceeding in this fashion allows comparison to be made of that data with the number of convictions for soliciting (See Table 4-3).

Between 1967 and 1972 the number of convictions for females under the vagrancy section had decreased from 1,717 convictions in 1967 to a low of 282 convictions in 1972. This is not to say that prostitution was declining but instead that the vagrancy provisions for this type of behavior were outdated and being severely criticized by concerned women's groups.

FIGURE 4-3 -- KEEPERS AND INMATES OF COMMON BAWDY-HOUSE
1949-1959



INTERVENTION - The penalty for Keeping a Common Bawdy House was reduced from three years down to two years in 1953-54.

The offence of Being an Inmate was returned to Summary Status.

Source: Statistics Canada, Criminal Statistics, #85-201.

TABLE 4-4

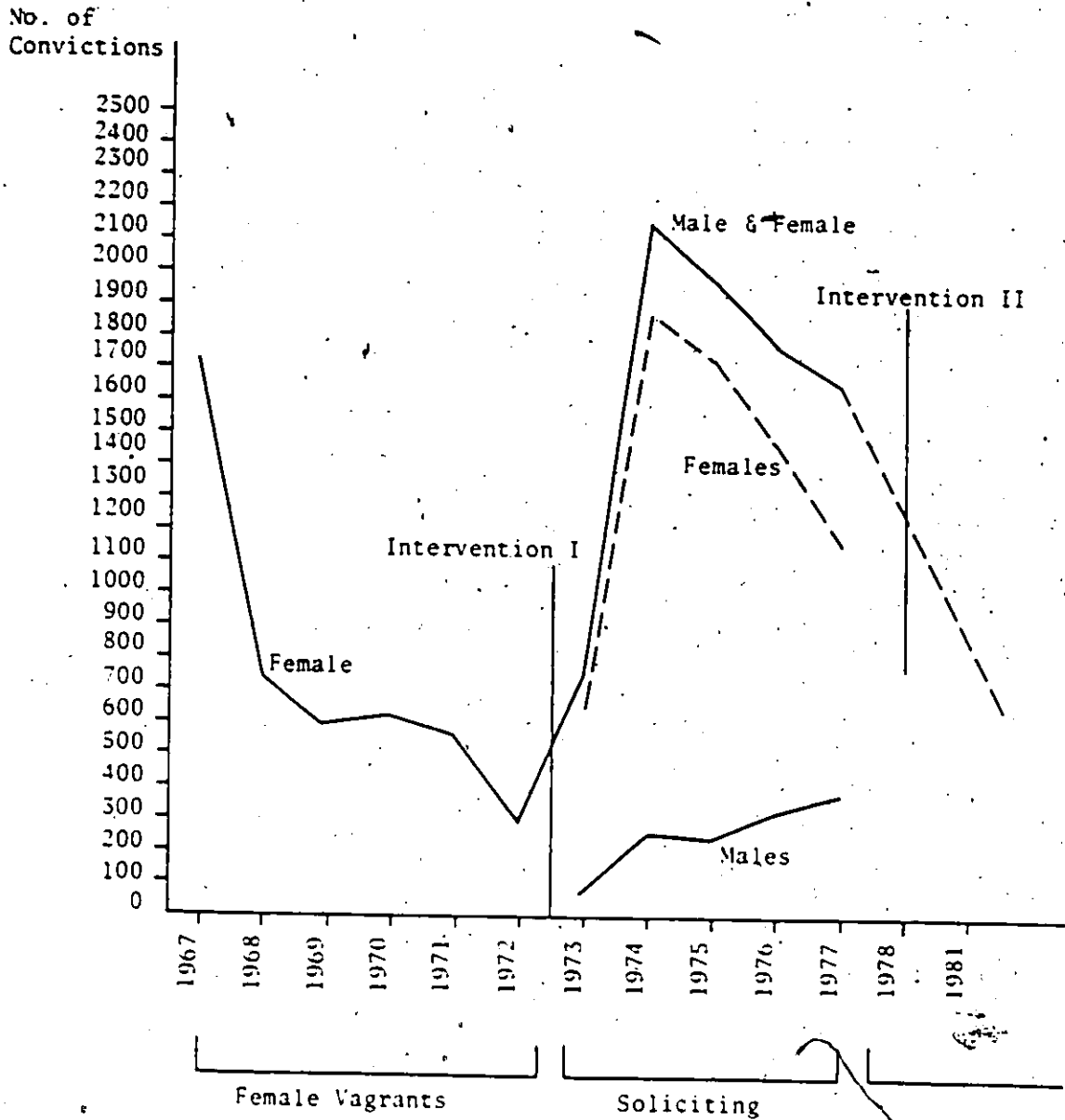
A COMPARISON OF FEMALE VAGRANCY CONVICTIONS
WITH THOSE OF SOLICITING 1967 - 1977

Year	Female Vagrants Summary Convictions	Year	Soliciting		Total Convictions
			Male	Female	
1967	1,717	1973	89	+ 655	= 744
1968	743	1974	269	+ 1,885	= 2,154
1969	598	1975	256	+ 1,719	= 1,975
1970	627	1976	303	+ 1,478	= 1,781
1971	562	1977	380	+ 1,273	= 1,653
1972	282				

Source: Statistics Canada, Criminal Statistics, #85-201.

The 1972 amendment which made "soliciting for the purpose of prostitution" an offence afforded law enforcement agencies greater control over the soliciting street prostitute for now, a simple solicitation on the part of the prostitute was grounds for arrest. Following the 1972 amendment, the number of convictions increased significantly from a low in 1972 of less than 300 convictions to a new high of over 2,100 convictions in 1974 (See Table 4-4). A small portion of the increase is due to the fact that soliciting now applies to both male and female prostitutes. Following this high peak in 1974, the number of convictions for female "solicitors" declined steadily while the number of convictions for males increased gradually (See Figure 4). The great increase in convictions for females following the 1972 amendment, may be attributed to the fact

FIGURE 4-4 - A COMPARISON OF FEMALE VAGRANTS CONVICTION 1967-1972 WITH THOSE OF SOLICITING 1972-1977 (BOTH MALE AND FEMALE)



INTERVENTION I - Repeal of the prostitution offence under the Vagrancy Section - New offence of soliciting introduced in 1972.

INTERVENTION II - Important Case Law Decision - Hutt vs. Queen 1978. Soliciting must be persistent and badgering to constitute the offence of soliciting.

Source: Statistics Canada, Criminal Statistics, #85-201.

that prostitutes could finally be arrested for doing something, namely solicit, not simply for being a known prostitute.

Another result of the 1972 amendment can be seen in the number of convictions for those keepers of a common bawdy house. Prior to the 1972 amendment the number of convictions for keeping was 69, but following the amendment the number of convictions rose to 189 convictions in 1973 and by 1975 there were 1,184 convictions for this offence. It is possible to assume that when the offence of soliciting made the possibility of arresting a prostitute much easier, that many street prostitutes, out of fear of arrest turned to operating out of a bawdy house (See Table 4-5).

In 1978 the offence of soliciting was questioned in the case of Hutt vs. The Queen. This case resulted in the opinion that soliciting must be persistent and badgering to constitute the offence of soliciting. This case law decision set the precedent for the offence as it stands today. Prior to this decision the number of convictions for soliciting in 1977 was 1,783, however following the case law decision which made the requirements for arresting a prostitute for soliciting much more strict the number of convictions for soliciting decreased to 924 convictions in 1980 and down to 744 convictions in 1981.

While these statistics do not accurately reflect the extent of the prostitution problem in Canada they do reflect the impact that the court decision of Hutt vs. The Queen has on the law's ability to control prostitution. This court decision has indicated that it is the nuisance aspect of prostitution which the law should attempt to control and not the act itself. This attitude has prevailed throughout Canadian history.

A STATISTICAL ANALYSIS OF PROSTITUTION

TABLE 4-5

COMBINED PROSTITUTION RELATED OFFENCES
THE TREND IN CANADA FROM 1892-1981
(CONVICTIONS)

PART A

Year	Female Vagrants	Frequenting Bawdy House	Keeping Bawdy House	Inmates of Bawdy House	Soliciting	Total
1892	487	811	83	Included in *Frequenting		1,381
1893	500	600	85			1,185
1894	509	460	100			1,069
1895	560	663	107			1,330
1910	837	2,814	+ included	+ included		3,651
1911	946	2,743				3,689
1912	1,436	2,439				3,875
1913	1,311	4,357				5,668
1914	1,599	4,935				6,534
*1915	1,599	5,404				7,003
1916	1,750	1,403	2,971	+ included		6,124
1917	1,279	2,700	1,743			5,722
1918	1,002	4,069	1,551			6,622
1919	993	4,328	1,229			6,550
1920	1,133	2,898	823			4,954
1941	1,532	1,208	3,693			6,433
1942	1,560	1,192	3,269			6,021
1943	1,697	852	3,276			5,825
1944	1,780	634	1,546			3,960
1945	2,801	802	562			4,165
1946	2,276	591	588			3,455
*1947	2,205	373	396			2,974
1948	1,490	1,111	285			2,886
1949	1,809	586	199			2,594
1950	1,437	480	226			2,143
1951	1,440	273	169			1,882
1952	1,445	434	275			2,154
*1953	1,443	390	231			2,064
1954	1,512	468	264			2,244
1955	1,398	463	219	143		2,223
1956	1,244	313	102	252		1,911
1957	1,763	626	110	274		2,773
1958	1,298	538	121	151		2,108
1959	1,686	301	134	226		2,347
1960	1,682	372	138	227		2,419
1961	1,753	294	176	255		2,478
1962	1,575	312	183	221		2,291
1963	1,566	689	209	459		2,923
1967	1,717	240	133	123		2,213
1968	743	92	78	61		974
1969	598	112	71	56		831
1970	627	89	105	37		858
1971	562	82	78	50		772
*1972	282	60	69	66		472

(cont'd)

TABLE 4-5 (cont'd)

COMBINED PROSTITUTION RELATED OFFENCES
THE TREND IN CANADA FROM 1892-1981

PART B

Year	Bawdy House**	Soliciting**	Total
**1973	189	744	933
1974	796	2,257	3,053
1975	1,184	2,062	3,246
1976	849	1,857	2,706
1977	888	1,783	2,671
***1978			
1980	1,545	924	2,469
1981	699	744	1,443

*Where changes in laws took place - amendments.

**After 1973 all offences relating to prostitution fall under the category bawdy house for indictable and soliciting for summary offences.

***Hutt v. The Queen. Decision caused the number of soliciting offences to decrease sharply.

Source: All statistics were obtained from Statistics Canada, Catalogue #85-201, Criminal Statistics (on microfiche).

If society had wanted to eliminate prostitution, the penalties could have been raised to do this and the sentences given would have reflected society's outcry for such immoral behavior. The fact that the penalties for these prostitution-related offences have changed relatively little since 1892 supports this contention. Further evidence for this case is found in the dispositions given for prostitution-related offences. For the most part, those convicted of prostitution-related offences received fines

in lieu of imprisonment and for those who did serve time they spent roughly three months or less in jail (See Tables 4-6 and 4-7). Thus the changes in the laws and the penalties for prostitution-related offences were designed to meet the changing social conditions and appease the public rather than attempting to eliminate or repress prostitution and the number of convictions and dispositions indicate this position.

Figure 5 indicates the general trends in prostitution and related offences from 1892 to 1981.

TABLE 4-6 (cont'd)
DISPOSITIONS OF SUMMARY CONVICTION OFFENCES

Year	Convictions		Total	Option of a Fine	No Option Goal	Suspended Sentence	Probation	Other Deferred	Fine	Goal	R/100,000
	Male	Female									
1992			809	614	89	-	-	106	76	11	17
1993			600	408	95	-	-	97	68	23	12
1994	182	218	410	338	66	-	-	61	73	14	9
1995	647	103	750	734	5	-	-	11	98	16	13
1910	698	1,916	2,814	2,105	221*	-	-	488	75	7.9	39
1911	930	1,813	2,743	2,073	272	-	-	398	76	10	38
1912	661	1,778	2,349	1,697	501	-	-	241	70	20	34
1913	1,517	2,840	4,357	3,294	401	-	-	662	76	9	60
1914	2,077	2,858	4,935	3,790	290	-	-	855	77	6	68
1915	1,938	3,526	5,464	4,113	360*	-	-	991	75	7	76
1916	1,373	30	1,403	1,147	31	-	-	225	82	2	18
1917	1,604	1,096	2,700	2,496	8	-	-	196	92	3	33
1918	2,154	1,915	4,069	3,676	9	-	-	384	90	2	50
1919	2,227	2,101	4,328	3,929	12	-	-	387	91	3	52
1920	1,709	1,289	2,998	3,862	15	-	-	121	95	5	38
1941	1,205	-	1,208	1,149	28	-	-	31	95	2	11
1942	1,191	1	1,192	1,175	6	-	-	11	99	5	10
1943	847	5	852	835	7	-	-	10	98	8	7
1944	4,201	676	4,883	2,801	87	-	-	1,995**	97	3	5
1945	802	-	802	696	4	-	-	102	87	5	7
1946	591	-	591	539	8	-	-	44	91	1.4	5
1947	373	-	373	357	5	-	-	11	96	1.5	3
1948	1,111	-	1,111	928	5	-	2	176	84	5	9
1949	586	-	586	529	10	-	-	47	90	1.7	4
1950	480	-	480	452	9	18	-	-	94	1.8	4
1951	-	-	-	-	-	-	-	-	-	-	-
1952	434	-	434	410	17	7	-	-	94	4	4

(cont'd)

TABLE 4-6 (cont'd)
DISPOSITIONS OF SUMMARY CONVICTION OFFENCES

Year	Convictions		Total	Option of a Fine	No Option Goal	Suspended Sentence	Probation	Other Deferred	Fine	Goal	R/100,000
	Male	Female									
1953	390	-	390	359	9	22	-	-	92	2.3	3
1954	468	-	468	447	6	-	5	10	96	1.3	3
1955	463	143	606	528	47	27	4	-	87	7.8	3
1956	313	252	565	456	59	15	3	32	80	10.4	2
1957	626	274	900	463	134	148	155	-	51	15	4
1958	538	151	689	386	115	8	180	-	56	16.7	3
1959	301	226	527	439	57	22	9	-	83	10.8	2
1960	372	227	599	496	64	25	14	-	82	10.7	2
1961	294	255	549	426	88	30	5	-	78	16	2
1962	312	221	533	414	89	26	4	-	78	16.7	3
1963	459	130	689	535	44	3	7	-	78	6.3	3
1967	240	123	363	342	4	14	3	-	94	1.1	1
1968	92	61	153	131	5	8	9	-	86	3.3	.5
1969	126	63	189	163	2	11	10	3	86	1.0	.5
1970	89	37	126	112	2	6	6	-	89	1.6	.5
1971	82	50	132	116	7	4	4	1	87	5.3	.5
1972	60	66	126	79	20	15	10	2	62	5.3	.5
1973	59	78	137	108	9	3	2	5	78	6.5	.5

* From 1896-1915 includes Keeping Common Bawdy House and Inmates Of (Indictable).

** Percentages for Fine and Goal Corrected Values excluding Deferred.

NOTE: After 1973 Dispositions of sentences were not given.

Source: Statistics Canada, Criminal Statistics, #85-201.

TABLE 4-7
DISPOSITIONS FOR INDICABLE OFFENCES BOTH KEEPING AND INMATES OF COMMON BANDY HOUSE

Year	Charges	Convictions	Conviction Rates	Fine	Fines	Jails (total)	Sentences			Reformatory			Pen. > 2 yrs	Other - Probation - Sus. Sent.
							< 3 m	3 m - 6 m	> 6 m - 1 yr	< 3 m	3 m - 6 m	> 6 m - 1 yr		
1918	1,665	1,551	93	1,149	74	211	-	-	9	-	-	-	-	-
1919	1,340	1,239	92	912	74	178	-	-	6	-	-	-	-	-
1920	927	823	88	647	79	105	-	-	6	-	-	-	-	-
1943	3,406	3,276	99	3,136	96	106	-	-	3	-	-	3	-	-
1944	1,627	1,546	95	1,316	85	183	-	-	-	-	-	-	-	47
1945	570	563	99	255	45	180	-	-	-	-	-	-	-	127
1946	608	588	97	312	53	202	-	-	4	-	-	-	-	74
1947	432	396	92	212	53	84	-	-	-	-	-	-	-	30
1948	321	285	89	147	52	89	-	-	-	-	-	-	-	49
1949	337	197	58	145	74	47	22	6	4	1	10	-	-	9
1950	229	117	51	157	72	47	29	10	1	1	6	-	-	13
1951	321	274	85	201	73	70	42	16	1	3	9	-	-	6
1952	366	215	59	149	69	59	25	18	1	15	-	-	-	12
1953	287	247	86	63	35	170	78	61	17	10	4	-	-	15
1954	165	232	76	123	60	74	44**	23	3	3	1	-	-	16
1955	145	100	70	55	39	13	7	10	1	4	1	-	-	12
1956	133	104	78	70	67	40	15	9	1	-	-	-	-	5
1957	132	103	78	71	65	28	19	8	1	-	-	-	-	9
1958	139	129	93	88	68	37	22	10	-	-	-	-	-	13
1959	155	133	85	89	67	23	29	-	-	-	-	-	-	15
1960	110	71	65	53	75	18	13	-	-	-	-	-	-	5
1970	59	43	73	30	40	22	9	4	-	-	-	-	-	3
1971	59	48	81	35	40	12	8	2	1	1	-	-	-	8

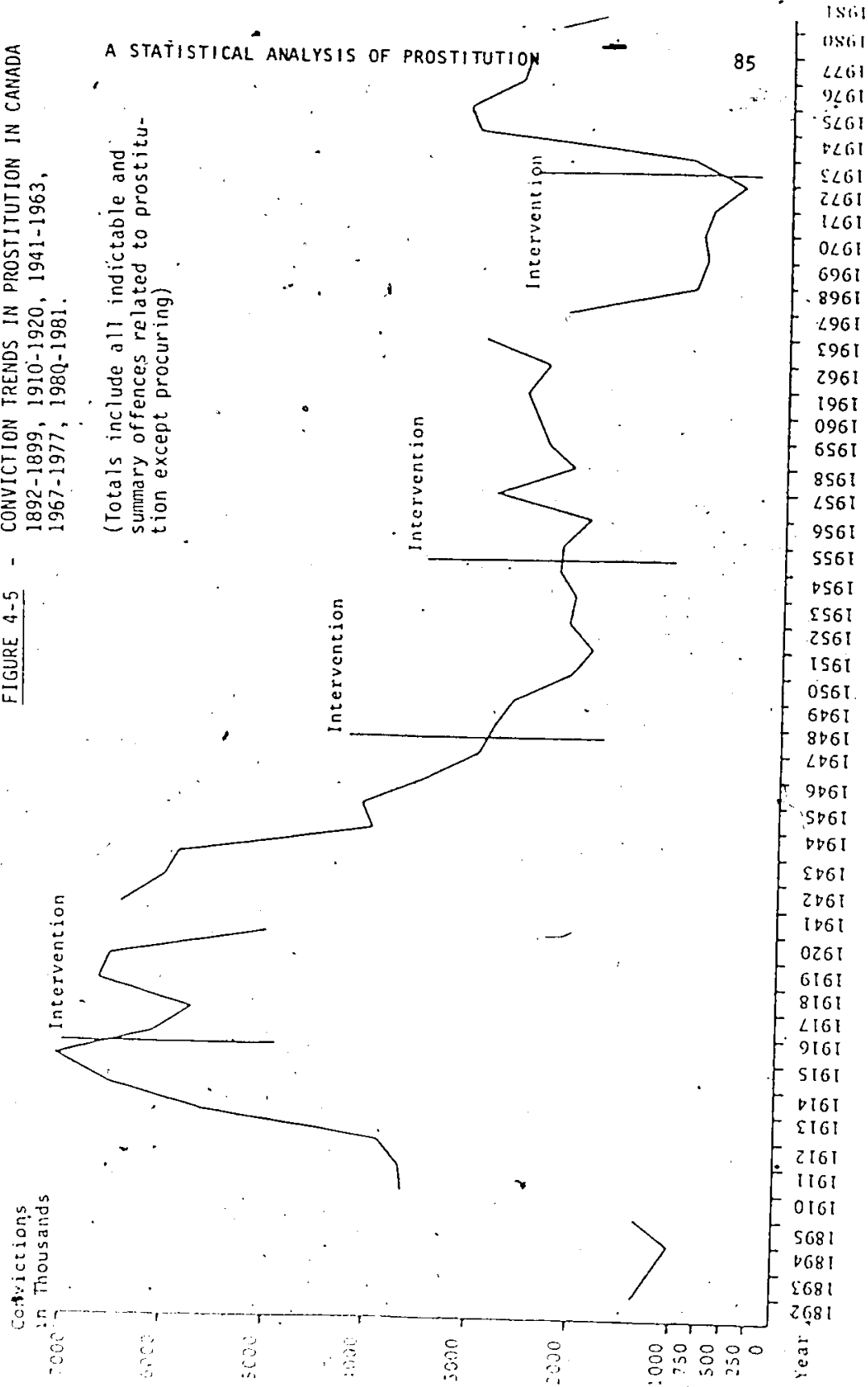
* Between 1918 and 1946 statistics do not differentiate the terms of imprisonment for sentences less than 1 year.

** Includes only keepers from 1955+.

*** After 1971 Dispositions of Sentences were not given.

Source: Statistics Canada, Criminal Statistics, #85-201.

FIGURE 4-5 - CONVICTION TRENDS IN PROSTITUTION IN CANADA
 1892-1899, 1910-1920, 1941-1963,
 1967-1977, 1980-1981.



Source: Statistics Canada, Criminal Statistics, #85-201.

CHAPTER V

PUBLIC RESPONSE TO THE CONTROL OF PROSTITUTION

I. General Attitude

The brief social history of Canadian prostitution laws and the public's attitude towards prostitution in the 1900's has shown that differential enforcement or lack of any enforcement of the prostitution-related laws provided an atmosphere conducive to those seeking and supplying the services of prostitution. While some members of society objected to the open manner in which prostitution was allowed to operate, the majority did not see prostitution as a problem which required more than the routine procedures of token raids and warnings. While many amendments were made to the Criminal Code regarding prostitution-related activities, they were made in response to changing social conditions not to the act itself. By attempting to control prostitution and not eliminate it, Canada adopted a standpoint on prostitution quite similar to that of England. According to the Wolfenden Report of England, the reasons for the continual regulation of prostitution are best expressed in the following paragraph:

If it were the law's intention to punish prostitution per se on the ground that it is immoral conduct, then it would be right that it should provide for the punishment of the man as well as the woman. But that is not the function of the law. It should confine itself to those activities which offend against public order and decency or expose the ordinary citizen to what is offensive or injurious; and the simple

fact is that prostitutes do parade themselves more habitually and openly than their prospective customers, and do by their continual presence affront the sense of decency of the ordinary citizen. In doing so they create a nuisance which in our view, the law is entitled to deal with.¹⁷

Granted, the law should protect the ordinary citizen from what is offensive and injurious, however, the question still remains as to whether the presence of prostitutes on the street is indeed offensive and injurious? While it recognized that a soliciting prostitute may in fact be a nuisance, would not the law be more effective in dealing with this nuisance aspect rather than trying to create new prostitution control laws? It is the purpose of this chapter to discover how the public feels about prostitution, the laws which govern its enforcement, and the possible alternatives to continued legal control. This will be done using two surveys which were conducted in the City of Ottawa during the months of July and August in 1983.

II. The Ottawa Surveys Methodology

The purpose of this section which deals with the Ottawa surveys on prostitution is included to complement the major hypothesis of this paper which is, that until a consensus regarding the issues which surround prostitution, can be reached, the law will continue to be ineffective and unfair in its attempts to control prostitution. The major focus

17

The Wolfenden Report: Report of the Committee on Homosexual Offenses and Prostitution, pp. 143-144 (American ed. 1963).

of the Ottawa surveys is to determine if the residents of Ottawa have reached a majority or consensus regarding certain issues related to prostitution, and also to discover which issues are too controversial to be resolved. The various issues to be examined include: the moral implications of prostitution, the problem of prostitution in Ottawa, prostitution laws and their enforcement, the myths which surround prostitution, and what should be done about prostitution in the future.

There were two separate surveys conducted. The first survey, entitled the General Public Survey, was designed to examine what the general public in Ottawa knows about prostitution and how they feel about certain issues. The second survey, the Merchant Survey, which includes all the store owners on the streets which are known for prostitution, was designed as a comparison to see if those persons who are confronted by prostitution on a daily basis, hold views different from those of the general public. The Merchant Survey also explores the extent of the problems created by prostitution based upon the merchants personal experience and their opinions on the effectiveness of police action when dealing with prostitution in Ottawa.

While the general public may have their own views and perceptions about prostitution and related issues, most or all of what they know about prostitution has come from secondary sources such as the media, which tends to report only the sensational aspects of any such activity. The merchants on the other hand, are more familiar with prostitution in Ottawa, as they are confronted by it daily and have more accurate perceptions of the actual situation. By comparing the responses obtained from the General Public Survey with those from the Merchant Survey a

more precise description of prostitution in Ottawa and the public's attitude towards it can be drawn.

SAMPLE

Subjects - There were two groups of subjects. The first group of respondents was chosen at random from among the general public. It consisted of 122 women from 18 to 71 years of age, and 140 men between the ages of 18 and 65, for a total of 262 subjects. The sample was subdivided into four age categories which ranged from 18-29, 30-39, 40-49, and 50 and over. Both the male and female subjects were further subdivided into their area of residence and income bracket. The four general areas of residence included the Sandy Hill-Market area, the west end of Ottawa, the east end, and Ottawa South. The income bracket categories included: students, housewife or unemployed, part-timers earning \$5,000 to \$10,000, those earning \$10,000-\$20,000, \$20,000-\$30,000, \$30,000-\$40,000, and \$50,000 and above. All subjects were residents of Ottawa.

The subjects for the second survey, the Merchant Survey, included all the shop owners or managers of the businesses located in the area known for high prostitution activity. This area includes Parent, Clarence, Murray and Dalhousie streets. Twenty-four businesses were surveyed. They included 13 ladies fashion stores, 4 restaurant-bars, and 7 other retail stores. Of these respondents, 8 were women and 16 were men.

Procedure - The subjects for the General Public Survey were obtained in a number of different ways. The researcher first approached subjects with whom she was familiar with. These subjects included family, friends,

fellow students, co-workers, and clients. In turn, these subjects were asked to approach their friends and co-workers to secure other volunteers. These potential subjects were then contacted by the researcher. Another group of subjects were secured through door-to-door soliciting in the researchers' neighborhood in the west end of Ottawa. The remaining subjects were obtained in a random fashion in the market area and in outdoor restaurant cafés in the market area.

All subjects were approached in an informal manner. They were told that the purpose of the survey was to determine what the residents of Ottawa know about prostitution in general and more specifically in Ottawa and how they feel about prostitution and the laws which govern its enforcement. The subjects were informed that all answers given would remain confidential and although no names were required, that it would be helpful if sex, age, income bracket, and area of residence were given in the appropriate spaces in order to obtain a representative sample. Furthermore, the subjects were assured that there were no threatening or embarrassing questions in the survey and that if the respondent was not sure or did not know the answer to indicate that in the space provided. All other responses were to be indicated by placing an 'X' in the appropriate space. They were told that the survey would take approximately five minutes to complete and that additional comments would be welcomed.

An operational definition of prostitution was included at the beginning of the survey and the subject were told to keep this in mind when completing the survey. They were also told to read the questionnaire over first to avoid any conflict in answering similar questions. The researcher remained with most of the subjects while they completed the

questionnaire to answer any questions he or she may have had and to ensure completion and return. No one refused to participate.

The target population for the Merchant Survey included all the store owners on the streets known for high prostitution activity. These subjects were approached at their place of business and asked to participate in a survey on prostitution in Ottawa. They were told that the purpose of the survey was to determine if prostitution in this area presented as many problems as the media suggested and to elaborate on any experiences they may have had with prostitutes, their effect on business, and the role of the police. They were also informed that their participation in the survey would be used as a comparison to the views of the general public on prostitution. All of the 24 shop owners or managers agreed to participate in the survey. The merchants were given the same instructions as those subjects who completed the General Public Survey. The researcher remained with the merchant while the questionnaire was being completed. Both surveys were self-administered.

To clarify any misconceptions the subjects may have had, the following definition of prostitution was included at the beginning of both surveys:

Prostitution - the exchange of money for sexual favours between two consenting adults.¹⁸

¹⁸Researcher's own definition.

III. Research Questions

In this study the writer designed the following research questions to determine how Ottawa residents feel about prostitution and the issues surrounding prostitution.

Research Question 1 - Are residents of Ottawa generally and genuinely offended by the idea and existence of prostitution?

Research Question 2 - How do the residents of Ottawa feel about the effects of prostitution on society as a whole?

Research Question 3 - Do the residents of Ottawa favour continued police action to control prostitution-related activities?

Research Question 4 - Are the residents of Ottawa prepared to explore the alternatives to repressive police action in an attempt to control prostitution and related activities?

Research Question 5 - Do the Ottawa surveys support the theory that prostitution is a conflictual crime?

IV. Analysis

Analysis of Results

In deciding whether or not the subjects' responses to the survey questions lend support or non-support to the research question, the

following rating scale, based on the percentage of respondents, was employed by the writer:¹⁹

66% - 100% lends support

35% - 65% questionable support

0% - 35% does not support.

Limitations of Study

There were a number of limitations of the study as it was conducted, involving generalizability and instrumentation.

The subjects in the General Public Survey were chosen primarily on the basis of sex and age in an attempt to get an equal number of male and female subjects for each age group. The characteristics of income and area of residence were obtained only as a result of the age and sex selection and thus this sample is not proportionately representative of the total population of Ottawa. But because the majority of subjects were approached in the Market area which is the core of activity during the summer months, a wide variety of subjects were selected. The Market area supplies a number of services of which many Ottawa residents are patrons and for this reason the fact that other areas in Ottawa were included in the survey, a representative sample would have been obtained. While this sample may be representative of Ottawa residents' views regarding prostitution the results may not be generalized to other populations in Canada which may experience prostitution to a greater or lesser extent.

¹⁹Units of Analysis adopted from Ph.D. Thesis by Dennis M. Lamothe, Female Heterosexual Prostitution and Love Deficit, the University of Alberta, 1979, p. 24.

The second survey aimed at the merchants who own or operate a business on the streets where street prostitutes ply their trade is a total sample as all businesses responded to the survey. Again a limitation exists regarding generalizability to other merchant populations where prostitution may be experienced to a lesser or greater degree. Therefore, to generalize either the General Public or Merchant surveys to Canada as a whole must be done with a great deal of prudence.

With regard to the validity of the surveys, the researcher is confident in the accuracy of the subjects' responses for three reasons. The first reason is that there were no personal or threatening questions on the questionnaire which would embarrass or cause the subjects to give false answers. The subjects were told that any questions which could not be answered or they did not want to answer could be indicated in the 'no' answer space provided. There were no identifying characteristics with the exception of general information required which would identify individual subjects and finally, the answers given by the subjects were, for the most part, consistent throughout the survey and consistent with the other subjects' responses.

Instrumental limitations include the fact that neither the General Public or Merchant Survey are standardized and there is no measure of reliability as this is the first survey of its type conducted in Ottawa and possibly in Canada. Furthermore, although the variables of age, sex, economic status and area were controlled, the identifying characteristics of income and area of residence were not included in the analysis as they were not statistically significant as identified by a computer analysis.

CHAPTER VI

SURVEY FINDINGS AND CONCLUSIONS

I. Introduction

The purpose of this chapter is to examine the findings from the two Ottawa surveys on prostitution and to indicate whether or not the research questions selected in the previous chapter are supported by the survey results. As background, the survey questions will be described in the order in which they appeared to the subjects. The questions and results of the General Survey will be presented first. The analysis then focuses on the questions and results obtained from the Merchants' Survey. Finally, the implication of the survey results for the specified research questions are discussed.

II. General Public Survey

This section seeks to offer some general perspective on the prostitution debate and to indicate current differences in viewpoint about the problems involved.

QUESTION 1 Do you believe the act of prostitution in Canada to be illegal?

Purpose: To determine if the general public is aware of the actual legal status of prostitution in Canada.

Evidence:

TABLE 6-1

RESPONDENTS' KNOWLEDGE OF THE LEGAL STATUS OF PROSTITUTION
IN CANADA

Age Group	Total (N)		Yes		No		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	18(50)	22(44)	18(50)	28(56)	-	-
30-39	36	28	14(39)	12(43)	20(56)	14(50)	2	2
40-49	42	24	14(33)	8(33)	28(67)	16(67)	-	-
50+	26	20	10(38)	12(60)	16(62)	8(40)	-	-
TOTALS	140	122	56(40)	54(44)	82(59)	66(54)	2(1)	2(2)

Note: Numbers in parenthesis indicate percentages.

Findings: The survey results indicate that 42% of the subjects believe the act of prostitution to be illegal in Canada while 56% of the respondents are aware that the act itself is not illegal in this country. Of the 140 men surveyed, 40% believe the act to be illegal while 59% believe that it is not. The breakdown for females shows that while 44% think prostitution is illegal, 54% did not believe that it is.

QUESTION 2 Does the idea of prostitution offend your morals or conventional ideas?

Purpose: To determine if the subjects are offended simply by the idea of prostitution on moral grounds.

Evidence:

TABLE 6-2

RESPONDENTS' ATTITUDE TOWARDS THE IDEA OF PROSTITUTION

Age Group	TOTAL (N)		Yes		No		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	8(22)	26(52)	28(78)	24(48)	-	-
30-39	36	28	0	2(7)	36(100)	26(93)	-	-
40-49	42	24	2(5)	8(33)	40(95)	16(67)	-	-
50+	<u>26</u>	<u>20</u>	<u>16(62)</u>	<u>10(50)</u>	<u>10(38)</u>	<u>10(50)</u>	-	-
TOTALS	<u>140</u>	<u>122</u>	<u>26(19)</u>	<u>46(38)</u>	<u>114(81)</u>	<u>76(62)</u>	-	-

Note: Numbers in parenthesis indicate percentages.

Findings: The results indicate that only 19% of the males and 38% of the females found the idea of prostitution morally objectionable while 81% of the men and 62% of the females were not morally offended by the idea of prostitution. In total, 27% of the subjects were morally offended while 73% of the subjects were not offended by the idea of prostitution.

QUESTION 3 Do you think prostitution has a harmful effect on the moral fibre of society (e.g. the family)?

Purpose: To determine if the respondents feel that prostitution has a harmful effect on the morals of society and on family unity.

Evidence:

TABLE 6-3

RESPONDENTS' VIEW OF THE HARMFUL EFFECTS OF
PROSTITUTION ON THE FAMILY.

Age Group	Total (N)		Yes		No		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	9(25)	26(52)	26(72)	24(48)	1	-
30-39	36	28	1(3)	4(14)	34(94)	24(86)	1	-
40-49	42	24	4(10)	10(42)	38(90)	14(58)	-	-
50+	<u>26</u>	<u>20</u>	<u>14(54)</u>	<u>6(30)</u>	<u>12(46)</u>	<u>14(70)</u>	<u>-</u>	<u>-</u>
TOTALS	<u>140</u>	<u>122</u>	<u>28(20)</u>	<u>46(38)</u>	<u>110(79)</u>	<u>76(62)</u>	<u>2(1)</u>	<u>-</u>

Note: Numbers in parenthesis indicate percentages.

Findings: The results show that 79% of the male subjects and 62% of the female subjects did not feel that prostitution had a harmful effect on the moral fibre of society or family unity. Only the females aged 18-29 and the males 50 and over thought prostitution to have a harmful effect on the morals of society. In total, however, only 28% of the subjects thought prostitution has a harmful effect on society while 71% of the subjects did not agree.

QUESTION 4 Do you think the general public is strongly opposed to prostitution?

Purpose: To determine if the subjects feel the rest of society is strongly opposed to prostitution and also to determine their views in relation to others by comparison.

Evidence:

TABLE 6-4

RESPONDENTS' PERCEPTIONS OF SOCIETY'S VIEWS OF PROSTITUTION

Age Group	Total (N)		Yes		No		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	14(39)	36(72)	22(61)	14(28)	-	-
30-39	36	28	16(44)	15(54)	18(50)	13(46)	2	-
40-49	42	24	14(33)	12(50)	28(67)	12(50)	-	-
50+	26	20	14(54)	10(50)	12(46)	9(45)	-	1
TOTAL	140	122	58(41)	73(60)	80(57)	48(39)	2(2)	1(2)

Note: Numbers in parenthesis indicate percentages.

Findings: While 57% of the males felt that the rest of society was not opposed to prostitution, 60% of the females felt that the community was strongly opposed. A split decision in the results indicate that 50% of the subjects feel that society is strongly opposed to prostitution while 49% of the subjects think that the general public is not strongly opposed to prostitution.

QUESTION 5 Do you think prostitution supplies any necessary or beneficial services to the community?

Purpose: To determine if the subjects feel prostitution serves any positive role in society?

Evidence:

TABLE 6-5
RESPONDENTS' OPINION AS TO WHETHER OR NOT PROSTITUTION
IS BENEFICIAL TO SOCIETY

Age Group	Total (N)		Yes		No		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	22(61)	24(48)	14(39)	26(52)	-	-
30-39	36	28	32(89)	16(57)	3(8)	12(43)	1	-
40-49	42	24	31(74)	14(58)	10(24)	10(42)	1	-
50+	26	20	16(62)	8(40)	10(38)	12(60)	-	-
TOTALS	140	122	101(72)	62(51)	37(26)	60(49)	2(2)	-

Note: Numbers in parenthesis indicate percentages.

Findings: The results indicate that male subjects believe that prostitution does supply beneficial services to society while the female opinion is equally divided on the subject. While 72% of the males agreed, only 51% of the females believe that prostitution serves any positive role. In total, 62% of the subjects see prostitution as beneficial and 37% do not see prostitution as supplying any beneficial or necessary service to the community.

QUESTION 6 Do you think there is a serious prostitution problem in Ottawa?

Purpose: To determine if the subjects perceive Ottawa as having a serious prostitution problem.

Evidence:

TABLE 6-6

RESPONDENTS' PERCEPTION OF PROSTITUTION IN OTTAWA

Age Group	Total (N)		Yes		No		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	5(14)	10(20)	30(83)	40(80)	1(3)	-
30-39	36	28	0(0)	5*(18)	30(83)	23(82)	6(17)	-
40-49	42	24	1(2)	2(8)	40(95)	20(83)	1(2)	2(8)
50+	<u>26</u>	<u>20</u>	<u>8(31)</u>	<u>6(30)</u>	<u>18(69)</u>	<u>12(60)</u>	-	<u>2(10)</u>
TOTALS	<u>140</u>	<u>122</u>	<u>14(10)</u>	<u>23(19)</u>	<u>118(84)</u>	<u>95(78)</u>	<u>8(6)</u>	<u>4(3)</u>

Note: Numbers in parenthesis indicate percentages.

Findings: As shown above, the subjects do not believe that there is a serious problem with prostitution in Ottawa. Only 14% of the subjects interviewed think Ottawa has a prostitute problem, while 81% do not perceive Ottawa as having a serious problem.

QUESTION 7 Since 1972, prostitution related activities have been controlled by the offence of soliciting (Sec. 195.1). Since prostitution itself is not illegal but soliciting customers on the street is, only the lower class streetwalker is subject to restraints while the upper class call girl or bar girl is rarely bothered. Do you feel this law against soliciting is discriminatory or do you think the aim at the streetwalker is in the right direction?

Purpose: To inform the subjects of the legal status of prostitution-related laws, namely soliciting and also to determine if the subjects feel the laws against the streetwalker are discriminatory based on how the low-class prostitute must secure her livelihood.

Evidence:

TABLE 6-7

RESPONDENTS' BELIEF IN DISCRIMINATING PROSTITUTION LAWS

Age Group	Total (N)		Discriminatory		On Target		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	25(69)	34(68)	10(28)	14(28)	1(3)	2(4)
30-39	36	28	18(50)	13(46)	18(50)	14(50)	-	1(4)
40-49	42	24	22(52)	20(83)	20(48)	4(17)	-	-
50+	<u>26</u>	<u>20</u>	<u>24(92)</u>	<u>11(55)</u>	<u>2(8)</u>	<u>8(40)</u>	-	<u>1(5)</u>
TOTALS	<u>140</u>	<u>122</u>	<u>89(63)</u>	<u>78(64)</u>	<u>50(36)</u>	<u>40(33)</u>	<u>1(1)</u>	<u>4(3)</u>

Note: Numbers in parenthesis indicate percentages.

Findings: The survey results indicate an almost even split between male and female subjects on this issue. While 36% of the male subjects and 33% of the female subjects believe that streetwalkers should be the target of legal control, 64% of both the male and female subjects feel that the law is discriminatory because its aim is only at the streetwalker even though the act of prostitution itself is not illegal. The overall

Findings:
(cont'd) number of responding subjects reveal that 64% of the total feel the law is discriminatory while 34% feel that it is just; 2% of the subjects did not respond to this question.

QUESTION 8 If the law is attempting to control the nuisance aspect of soliciting rather than the sexual aspect of prostitution, would you rather see a prostitute charged with soliciting or being a nuisance?

Purpose: To determine what the subjects would like to see done with the soliciting streetwalker.

Evidence:

TABLE 6-8

RESPONDENTS' ATTITUDE TOWARDS NUISANCE LAWS

Age Group	Total (N)		Soliciting		Nuisance		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	14(39)	22(44)	22(61)	26(52)	-	2
30-39	36	28	4(11)	6(21)	32(89)	22(79)	-	-
40-49	42	24	10(24)	6(25)	32(76)	14(58)	-	4
50+	<u>26</u>	<u>20</u>	<u>8(31)</u>	<u>8(40)</u>	<u>18(69)</u>	<u>10(50)</u>	-	<u>2</u>
TOTALS	<u>140</u>	<u>122</u>	<u>36(26)</u>	<u>42(34)</u>	<u>104(74)</u>	<u>72(59)</u>	-	<u>8(7)</u>

Note: Numbers in parenthesis indicate percentages.

Findings: The results indicate that 74% of the male subjects and 59% of the female subjects thought that a streetwalker should be charged with being a nuisance while 26% of the male subjects and 34% of

Findings: (cont'd) the female subjects preferred soliciting laws to be used. Overall, 67% of the subjects advocated using nuisance laws and 30% want to maintain soliciting laws; 3% of the subjects were undecided.

QUESTION 9 Do you think of a prostitute as a criminal?

Purpose: To determine if the public views a prostitute as a criminal who should be subject to legal controls and criminal status.

Evidence:

TABLE 6-9

RESPONDENTS' PERCEPTION OF A PROSTITUTE AS A CRIMINAL

Age Group	Total (N)		Yes		No		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	3(22)	12(24)	25(69)	38(76)	1	-
30-39	36	28	4(11)	0(0)	32(89)	28(100)	-	-
40-49	42	24	2(5)	2(8)	40(95)	22(92)	-	-
50+	25	20	2(8)	6(30)	24(92)	14(70)	-	-
TOTALS	140	122	16(11)	20(16)	121(86)	102(84)	1(3)	-

Note: Numbers in parenthesis indicate percentages.

Findings: The results indicate that 85% of the respondents did not consider the prostitute to be a criminal. Only 14% thought of the prostitute as a criminal. Male and female subjects responded similarly with 85% of the males and 84% of the females not considering

Findings:
(cont'd) the prostitute to be a criminal. All of the female subjects in the age group 30-39 did not consider being a prostitute as criminal in character.

QUESTION 10 Do you consider prostitution a "victimless" crime?

Purpose: To determine if the subjects feel that anyone is hurt by the act of prostitution, directly or indirectly.

Evidence:

TABLE 6-10

RESPONDENTS' PERCEPTION OF PROSTITUTION AS A VICTIMLESS CRIME

Age Group	Total (N)		Yes		No		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	17(47)	24(48)	18(50)	24(48)	1(3)	2(4)
30-39	36	28	30(83)	10(36)	6(17)	16(57)	-	-
40-49	42	24	22(52)	8(33)	19(45)	15(63)	1(3)	-
50+	26	20	16(62)	8(40)	10(38)	10(50)	-	-
TOTALS	140	122	85(61)	50(41)	53(38)	65(53)	2(1)	2(6)

Note: Numbers in parenthesis indicate percentages.

Findings: The findings indicate that 52% of subjects thought prostitution was a victimless crime while 45% of the respondents felt there was a victim involved in prostitution. There was no clear cut difference between male and female subjects except that 83% of the 30-39 year old males did not see prostitution as having a victim involved.

- QUESTION 11 a) A court decision ruled that in order to make an arrest the solicitation must be badgering and persistent on the part of the prostitute. Do you agree with this 1978 Hutt vs. The Queen decision?
- b) Do you think it is too lenient?

Purpose: To determine how subjects feel about the status of the soliciting law and to find out if they think it is too lenient or feel it is valid.

Evidence:

TABLE 6-11
RESPONDENTS' OPINION OF THE HUTT VS. THE QUEEN DECISION

Age Group	Total (N)		Agree		Disagree		Too Lenient	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	26(72)	22(44)	10(28)	28(56)	10(28)	22(44)
30-39	36	28	26(72)	26(93)	20(28)	2(7)	6(17)	2(7)
40-49	42	24	30(71)	18(75)	12(29)	6(25)	6(14)	3(12)
50+	26	20	20(77)	12(60)	6(23)	8(40)	6(23)	8(40)
TOTALS	140	122	102(73)	78(64)	38(27)	44(36)	23(20)	35(29)

Note: Numbers in parenthesis indicate percentages.

Findings: The results indicate that 69% of the subjects agree with the court decision which requires a solicitation to be persistent and badgering. The remaining 31% of these subjects did not

Findings:
(cont'd)

agree and, of these, 31% who did not agree, 25% felt the decision was too lenient. the remaining 6% of those who did not agree with the Hutt decision felt there should be no law at all. The male subjects were more inclined to agree with the legal decision. However, 93% of the women in the 30-39 age group also agreed with the Hutt decision. All of the women in the 18-29 age category who disagreed with the Hutt decision felt it was too lenient.

QUESTION 12

Do you feel there is a need to stop the prostitute from soliciting on the street?

Purpose:

To see if the subjects feel that soliciting creates problems which need to be stopped.

Evidence:

TABLE 6-12

RESPONDENTS' VIEW ON THE PROBLEM OF SOLICITING

Age Group	Total (N)		Yes		No		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	18(50)	40(80)	18(80)	10(20)	-	-
30-39	36	28	28(78)	20(71)	8(22)	8(29)	-	-
40-49	42	24	14(33)	22(92)	28(67)	2(8)	-	-
50+	<u>26</u>	<u>20</u>	<u>20(77)</u>	<u>14(70)</u>	<u>6(23)</u>	<u>6(30)</u>	-	-
TOTALS	<u>140</u>	<u>122</u>	<u>80(57)</u>	<u>96(79)</u>	<u>60(43)</u>	<u>26(21)</u>	-	-

Note: Numbers in parenthesis indicate percentages.

Findings: The results indicate that 57% of the male subjects and 79% of the female subjects felt there was a need to stop prostitutes from soliciting on the streets. Overall, 67% of the subjects believed in the need to stop prostitutes while 33% saw no need in stopping soliciting prostitutes. Women in the age group 40-49 felt the strongest about keeping the soliciting prostitutes off the street and men in that same age group showed the least amount of concern.

QUESTION 13 Do you think call girls should also be penalized for their acts?

Purpose: To determine if the subjects feel that other types of prostitutes should also be subject to legal control.

Evidence:

TABLE 6-13

RESPONDENTS' OPINION ON PUNISHMENT OF CALL GIRLS

Age Group	Total (N)		Yes		No		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	10(28)	21(42)	26(72)	28(56)	-	1
30-39	36	28	6(17)	8(29)	30(83)	19(68)	-	1
40-49	42	24	8(19)	6(25)	34(81)	18(75)	-	-
50+	<u>26</u>	<u>20</u>	<u>10(38)</u>	<u>8(40)</u>	<u>16(62)</u>	<u>12(60)</u>	-	-
TOTALS	<u>140</u>	<u>122</u>	<u>34(24)</u>	<u>43(35)</u>	<u>106(76)</u>	<u>77(64)</u>	-	<u>2(1)</u>

Note: Numbers in parenthesis indicate percentages.

Findings: The results indicate that 76% of the male subjects and 64% of the female subjects did not feel call girls should be penalized for prostitution. Overall totals indicate that 70% of the subjects do not feel call girls should be penalized for discreet acts of prostitution while 29% felt other types of prostitutes such as call girls should be punished regardless of their visibility.

QUESTION 14 The police spend thousands of dollars each year in their attempts to control prostitution. The result is a revolving door syndrome. The prostitute is arrested, goes to court, pays a fine or spends a week or two in jail, all at the expense of the taxpayer. Many prostitutes consider the \$250.00 fine a business expense. This action neither deters the prostitutes or financially merits police action. Do you think police action should: continue _____, become more repressive _____, or stop _____.

Purpose: The purpose of this question was to inform the subjects of the effect of costly police action and determine if they would like to see police action continue regardless of the expense, become more repressive in order to control it, or to stop spending money and time for action that does not act as a deterrent in the long run.

Evidence:

TABLE 6-14
RESPONDENTS VIEW ON POLICE ACTION

Age Group	Totals		Continue		More Repressive		Stop		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	12(33)	10(20)	11(31)	24(48)	13(36)	16(32)	-	-
30-39	36	28	14(39)	10(36)	4(11)	4(14)	16(44)	14(50)	2	-
40-49	42	24	12(29)	6(25)	4(10)	4(17)	26(62)	14(58)	-	-
50+	26	20	6(23)	8(40)	6(23)	6(30)	14(54)	6(30)	-	-
TOTALS	140	122	44(31)	34(28)	25(18)	38(31)	69(49)	50(41)	2(2)	-

Note: Numbers in parenthesis indicate percentages.

Findings: This proved to be a controversial question. Overall, 30% of the subjects would like to see police action continue, 24% of the subjects feel police action should become more repressive in order to gain more control over prostitution, and 45% of the subjects agree that police action is a waste of time and money as it does not act as a deterrent and does little to control the activities of prostitution. Both female and male subjects in the 40-49 age group held the strongest view in favour of stopping police action. Otherwise, the results are fairly equally distributed in each direction.

QUESTION 15 Do you think the police should concentrate their efforts on more serious types of crime or do you feel the control of prostitution should continue to be part of their duties?

Purpose: The purpose of this question is to further explore how the subjects feel about police action and prostitution and how they rate the amount of time spent on prostitution compared to more serious types of crime.

Evidence:

TABLE 6-15

RESPONDENTS' VIEW ON THE CONTROL OF PROSTITUTION
VERSUS MORE SERIOUS CRIMES

Age Group	Totals		Concentrate on more Serious Crimes		Continue Control		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	14(39)	24(48)	22(61)	26(52)	-	-
30-39	36	28	22(61)	14(50)	14(39)	14(50)	-	-
40-49	42	24	32(76)	18(75)	9(21)	6(25)	1(3)	-
50+	26	20	14(54)	10(50)	12(46)	10(50)	-	-
TOTALS	140	122	82(59)	66(54)	57(40)	56(46)	1(1)	-

Note: Numbers in parenthesis indicate percentages.

Findings: Once again there is a definite split in the subjects' opinion of police action and prostitution. While 56% of the subjects felt that the police should concentrate their efforts on

Findings:
(cont'd)

more serious types of crime rather than on prostitution, 44% of the subjects felt that police action to reduce prostitution should continue. Both male and female subjects responded similarly; as before the subjects in the 40-49 age groups were the strongest opponents to continue police action.

QUESTION 16

Do you think prostitution (i.e. soliciting) should be decriminalized? (No legal restrictions, no control, like any other job).

Purpose:

To determine if the subjects are willing to see prostitution and related activities removed from the arena of legal control.

Evidence:

TABLE 6-16

RESPONDENTS' VIEW ON DECRIMINALIZATION

Age Group	Totals		Yes		No		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	9(25)	22(44)	26(72)	28(56)	1(3)	-
30-39	36	28	18(50)	8(29)	18(50)	20(71)	-	-
40-49	42	24	24(57)	8(33)	18(43)	15(63)	-	1(1)
50+	<u>26</u>	<u>20</u>	<u>8(31)</u>	<u>14(70)</u>	<u>18(69)</u>	<u>6(30)</u>	-	-
TOTALS	<u>140</u>	<u>122</u>	<u>59(42)</u>	<u>52(43)</u>	<u>80(57)</u>	<u>69(57)</u>	<u>1(1)</u>	<u>1(-1)</u>

Note: Numbers in parenthesis indicate percentages.

Findings: The overall results indicate that only 42% of the subjects are in favour of the decriminalization of prostitution-related activities and 57% of the subjects do not want to allow prostitution to operate without some sort of control. Both male and female subjects responded in the same manner. Only the female subjects in the 50 and over age category favoured decriminalization over legal control.

- QUESTION 17
- (a) Do you think prostitution-related activities should be legalized? (The licensing of prostitutes, stigma of being a registered prostitute, taxation, government control, medical services, bawdy houses).
 - (b) If so, are you familiar with the type of legalized bawdy houses or guest ranches in the Nevada desert towns?

Purpose: The purpose of these questions is firstly to determine if the subjects would like to see prostitution-related activities legalized and controlled but not subject to criminal sanctions and secondly, if this is what the subjects would like, do they know how legalized prostitution is operated elsewhere.

Evidence:

TABLE 6-17(a)

RESPONDENTS' VIEW ON LEGALIZED PROSTITUTION

Age Group	Totals		Yes Legalization		No Legalization		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	30(83)	34(68)	5(14)	16(32)	1	-
30-39	36	28	32(89)	26(93)	4(11)	2(7)	-	-
40-49	42	24	40(95)	17(71)	2(5)	6(25)	-	1
50+	26	20	22(85)	18(90)	4(15)	2(10)	-	-
TOTALS	140	122	124(89)	95(77)	15(11)	26(21)	1(-1)	1(1)

Note: Numbers in parenthesis indicate percentages.

Findings:

The findings indicate that the subjects are definitely in favour of the legalization of prostitution-related activities. Overall, 84% of the subjects responded yes to the idea of legalized prostitution and 16% were not in favour of the legalization. The male subjects predominated with 89% in favour; but the female subjects also favoured the legalization with 77% saying yes. The strongest opposition came from the female subjects in the 18-29 year old group.

Evidence:

TABLE 6-17(b)

RESPONDENTS' FAMILIARITY WITH LEGALIZED PROSTITUTION

Age Group	Totals		Yes		No		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	8(22)	6(12)	28(78)	44(88)	-	-
30-39	36	28	12(33)	2(9)	24(67)	26(93)	-	-
40-49	42	24	14(33)	6(25)	28(67)	17(71)	-	1
50+	26	20	8(31)	1(5)	18(69)	18(90)	-	1
TOTALS	140	122	42(30)	15(12)	98(70)	105(86)	-	2(2)

Note: Numbers in parenthesis indicate percentages.

Findings:

The results indicate that the majority of subjects are not familiar with the type of legalized prostitution practiced in Nevada. Only 30% of the male subjects and 12% of the female subjects knew anything about legalized prostitution. Overall, 22% of the subjects were familiar with legalized prostitution, but to what extent they know is uncertain. In comparison with question 17(a), of the 84% who favoured legalized prostitution only 22% were familiar with the concept while 62% had no conception of the actual practice.

QUESTION 18

Do you think prostitution should be confined to a certain area or areas within a city?

Purpose: To find out if the subjects would prefer prostitution to be confined in a certain known locale, possibly a red-light district.

Evidence:

TABLE 6-18

RESPONDENTS' LOCATION PREFERENCE

Age Group	Totals		Yes		No		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	21(58)	36(72)	14(28)	14(39)	1	-
30-39	36	28	20(56)	22(79)	16(21)	6(44)	-	-
40-49	42	24	20(48)	6(25)	22(75)	18(52)	-	-
50+	26	20	16(62)	16(80)	10(15)	3(38)	-	1
TOTALS	140	122	77(55)	80(66)	62(44)	41(34)	1(1)	(-1)

Note: Numbers in parenthesis indicate percentages.

Findings: The results indicate that 55% of the male subjects and 66% of the female subjects would like to see prostitution confined to a certain area or areas within the city. On the other hand, 44% of the males and 34% of the female subjects do not feel prostitution should be concentrated in a certain area. Overall, 60% of the subjects were for segregated areas and 39% were against such designated places.

QUESTION 19 Would you object to having prostitutes solicit on the streets in your neighborhood?

Purpose: This question was designed to determine if those subjects who appear to have a liberal attitude towards prostitution and related activities would remain liberal minded if their neighborhood was patronized by prostitutes and whether visibility is a major factor in public attitudes.

Evidence:

TABLE 6-19

RESPONDENTS' ATTITUDE TOWARDS THE VISIBILITY OF PROSTITUTION

Age Group	Totals		Yes		No		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	27(75)	48(96)	8(22)	2(4)	1	-
30-39	36	28	28(78)	26(93)	8(22)	2(7)	-	-
40-49	42	24	20(48)	22(92)	22(52)	1(4)	-	1
50+	<u>26</u>	<u>20</u>	<u>24(92)</u>	<u>20(100)</u>	<u>2(8)</u>	<u>-</u>	<u>-</u>	<u>-</u>
TOTALS	<u>140</u>	<u>122</u>	<u>99(71)</u>	<u>116(95)</u>	<u>40(29)</u>	<u>5(4)</u>	<u>1(-1)</u>	<u>1(1)</u>

Note: Numbers in parenthesis indicate percentages.

Findings: As expected the majority of subjects would object to having prostitutes operate in their neighborhood. Only the male subjects in the 40-49 age category managed a majority of 52% in which they would not object to prostitutes soliciting in their neighborhood. The female subjects were not so

Findings:
(cont'd)

liberal, as 95% objected to the idea. Overall, 82% of the subjects would object to having prostitution in their areas and only 17% of the subjects would accept the practice. Of these 17%, some mentioned the entertainment value in watching the prostitute at work.

QUESTION 20

Do you think that both the client and the prostitute should be arrested for soliciting? If no, should only the prostitute ___ only the client ___ or neither party ___ be arrested?

Purpose:

To determine if the subjects want both participants involved in prostitution to be penalized or if they think only the prostitute should be charged or neither parties.

Evidence:

TABLE 6-20

RESPONDENTS' VIEW ON PENALIZATION OF CLIENT

Age Group	Totals		Yes		No		Only Prostitute		Only Client		Neither	
	M	F	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	22(61)	38(72)	14(39)	12(24)	2(14)	2(17)	-	-	12(86)	10(83)
30-39	36	28	10(28)	16(57)	26(72)	12(43)	16(62)	2(17)	-	1	10(38)	9(75)
40-49	42	24	6(14)	16(67)	36(86)	8(33)	3(8)	3(38)	-	-	33(92)	5(62)
50+	<u>26</u>	<u>20</u>	<u>12(46)</u>	<u>10(50)</u>	<u>14(54)</u>	<u>10(50)</u>	<u>1(7)</u>	<u>1(10)</u>	<u>1</u>	<u>-</u>	<u>12(7)</u>	<u>9(90)</u>
TOTALS	<u>140</u>	<u>122</u>	<u>50(36)</u>	<u>80(66)</u>	<u>90(64)</u>	<u>42(34)</u>	<u>22(24)</u>	<u>8(19)</u>	<u>1</u>	<u>1</u>	<u>67(74)</u>	<u>33(79)</u>

Note: Numbers in parenthesis indicate percentages.

Findings

The results of this question indicate that the majority of the female subjects (66%) felt that both the client and the prostitute should be arrested for soliciting. Of the remaining 34% who did not think both should be the target of arrest, 19% thought only the prostitute should be arrested while 79% thought neither the client nor prostitute should be subject to arrest. Only 1% of the female subjects thought that the client should be the only one arrested. The male subjects had a different view; 36% of the male subjects felt that both client and prostitute should be targets for arrest. The majority of male subjects (64%) did not feel that both client and prostitute should be penalized. Of this 64%, 24% of the male subjects felt only the prostitute should be penalized while 74% felt neither should be penalized. Overall, 50% of the subjects felt both client and prostitute should be penalized. Of the remaining 50% who said no to the penalizing of both parties, 23% wanted only the prostitute to be penalized, 1% wanted only the customer or client to be penalized and 76% thought neither the customer nor the prostitute should be arrested for soliciting.

QUESTION 21

Do you think society's more permissive attitudes towards sex will result in a decrease in the demand for the services of prostitutes or will there always be a need for the general as well as unusual outlets for sexual activity?

Purpose: To determine if the subjects feel that prostitution will always be a required service or if more permissive attitudes on the part of society will result in a decrease in the demand for the services of prostitution.

Evidence:

TABLE 6-21

RESPONDENTS' VIEW ON SOCIETY'S PERMISSIVENESS AND THE DEMAND FOR PROSTITUTION

Age Group	Totals		Yes		No		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	10(28)	20(40)	26(72)	30(60)	-	-
30-39	36	28	6(17)	4(14)	30(83)	24(86)	-	-
40-49	42	24	14(33)	8(33)	27(64)	16(67)	1	-
50+	<u>26</u>	<u>20</u>	<u>8(31)</u>	<u>6(30)</u>	<u>17(65)</u>	<u>14(70)</u>	<u>1</u>	<u>-</u>
TOTALS	<u>140</u>	<u>122</u>	<u>38(27)</u>	<u>38(31)</u>	<u>100(71)</u>	<u>84(69)</u>	<u>2(2)</u>	<u>-</u>

Note: Numbers in parenthesis indicate percentages.

Findings: The subjects did not feel that a new permissiveness towards sexual activity will result in a decrease in the demand for the services of prostitution. Both the female subjects (69%) and the male subjects (71%) agreed that prostitution will always be a required service in society. Overall, 70% did not feel that the sexual revolution will affect the prostitute and the demand for his/her services.

QUESTION 22 Do you think prostitutes are a major source of venereal disease?

Purpose: To determine if the subjects believe in the myth surrounding V.D. and prostitution.

Evidence:

TABLE 6-22

RESPONDENTS' VIEW ON PROSTITUTION AND VENEREAL DISEASE

Age Group	Totals		Yes		No		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	16(44)	22(44)	12(33)	28(56)	8(23)	-
30-39	36	28	22(61)	12(43)	14(39)	14(50)	-	2(7)
40-49	42	24	15(36)	4(17)	26(62)	20(83)	1(2)	-
50+	<u>26</u>	<u>20</u>	<u>10(38)</u>	<u>4(20)</u>	<u>16(62)</u>	<u>16(80)</u>	<u>-</u>	<u>-</u>
TOTALS	<u>140</u>	<u>122</u>	<u>63(45)</u>	<u>42(34)</u>	<u>68(49)</u>	<u>78(64)</u>	<u>9(7)</u>	<u>2(2)</u>

Note: Numbers in parenthesis indicate percentages.

Findings: The male subjects were divided in their opinions as to whether or not prostitutes are a major source of venereal disease. The majority of female subjects (64%) did not see the prostitute as being a major source of venereal disease. Overall results indicate that 40% of the subjects feel that prostitutes are a major source in spreading venereal disease, while 56% did not believe this to be the case, and 4% were not sure.

QUESTION 23 Do you feel municipalities should be able to create their own bylaws to deal with the problems of prostitution specific to their own cities?

Purpose: To determine if the subjects believe that municipalities should be given the authority to create bylaws to control prostitution based upon the extent of the problem.

Evidence:

TABLE 6-23

RESPONDENTS' VIEW ON MUNICIPAL BYLAWS AND PROSTITUTION

Age Group	Totals		Yes		No		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	26(72)	32(64)	9(25)	17(34)	1(3)	1(2)
30-39	36	28	26(72)	22(79)	10(28)	6(21)	-	-
40-49	42	24	26(62)	14(58)	16(38)	10(42)	-	-
50+	<u>26</u>	<u>20</u>	<u>16(62)</u>	<u>18(90)</u>	<u>10(38)</u>	<u>2(10)</u>	-	-
TOTALS	<u>140</u>	<u>122</u>	<u>94(67)</u>	<u>86(70)</u>	<u>45(32)</u>	<u>35(29)</u>	<u>1</u>	<u>1</u>

Note: Numbers in parenthesis indicate percentages.

Findings: The results indicate that the majority of subjects feel that municipalities should be able to create bylaws to deal with prostitution and related activities depending upon their specific needs. Overall, 69% of the subjects were in favour of municipal bylaws and 30% of the subjects did not feel municipalities should be given such authority.

- QUESTION 24 (a) Do you think legal action will ever be able to control or eliminate prostitution?
- (b) Should we continue to try?

Purpose: To determine if the subjects feel that legal action will ever be able to control prostitution and whether or not we should continue to try and control prostitution.

Evidence:

TABLE 6-24(a)

RESPONDENTS' VIEW ON THE EFFECT OF LEGAL CONTROL ON PROSTITUTION

Age Group	Totals		Control		Eliminate		Neither	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	16(44)	31(62)	1(3)	1(2)	19(53)	18(36)
30-39	36	28	20(56)	12(43)	-	-	16(44)	16(57)
40-49	42	24	16(38)	10(42)	1(2)	-	25(60)	14(58)
50+	<u>26</u>	<u>20</u>	<u>14(54)</u>	<u>8(40)</u>	<u>-</u>	<u>-</u>	<u>12(46)</u>	<u>12(60)</u>
TOTALS	<u>140</u>	<u>122</u>	<u>66(47)</u>	<u>61(50)</u>	<u>2(2)</u>	<u>1(1)</u>	<u>72(51)</u>	<u>60(49)</u>

Note: Numbers in parenthesis indicate percentages.

Findings: Again, when asked to decide whether or not legal action should continue in an attempt to control prostitution, public opinion was divided. While 47% of the male subjects and 50% of the female subjects believe that legal action will be able to control prostitution, 51% of the male subjects and 49% of the female subjects felt that prostitution could neither

Findings:
(cont'd) be controlled or eliminated. Overall, 50% of the subjects felt that prostitution could neither be controlled or eliminated through legal action; 48% felt legal action could control prostitution and related activities; 1% of the subjects felt prostitution could be eliminated through legal action.

Evidence:

TABLE 6-24(b)

RESPONDENTS' ATTITUDE TOWARDS CONTINUED LEGAL ACTION

Age Group	Totals		Yes		No		No Answer	
	Male	Female	Male	Female	Male	Female	Male	Female
18-29	36	50	24(67)	32(64)	12(33)	18(36)	-	-
30-39	36	28	24(67)	18(64)	12(33)	10(36)	-	-
40-49	42	24	16(38)	14(58)	26(62)	10(42)	-	-
50+	<u>26</u>	<u>20</u>	<u>17(65)</u>	<u>16(80)</u>	<u>9(35)</u>	<u>4(20)</u>		
TOTALS	<u>140</u>	<u>122</u>	<u>81(58)</u>	<u>80(66)</u>	<u>59(42)</u>	<u>42(34)</u>		

Note: Numbers in parentheses indicate percentages.

Findings: The results indicate that the majority of subjects (61%) favour continued legal action to control prostitution, while 39% did not think that such action should be continued. In comparison with question 24(a); it was shown that while 50% of the subjects believe that legal action will neither be able to control nor eliminate prostitution, 39% of these

Findings:
(cont'd)

subjects believe that Canada should not continue to try and 11% feel legal action should continue regardless of the outcome. Thus, the majority of subjects favour some type of legal control, but not necessarily repressive control.

III. The Merchant Survey

This section attempts to provide a specific perspective on the prostitution debate and indicate some of the particular problems created for the merchants concerned.

QUESTION 25 Does the presence of prostitutes on your street offend you personally?

Purpose: To determine if the owners of the businesses on the streets where prostitutes openly ply their trade are personally offended by the presence of prostitutes.

Evidence:

TABLE 6-25

MERCHANTS' ATTITUDE TOWARDS PROSTITUTES

Business	MALE				FEMALE			
	Yes	No	No Answer	Total	Yes	No	No Answer	Total
Ladies Clothing	3(30)	7(70)	-	10	1(33)	2(67)	-	3
Restaurant/Bar	-	3(100)	-	3	-	1(100)	-	1
Other Retail	-	3(100)	-	3	1(25)	3(75)	-	4
TOTAL	3(19)	13(81)	-	16	2(25)	6(75)	-	8

Note: Numbers in parenthesis indicate percentages.

Findings:

The results indicate that only 19% of the male respondents and 25% of the female subjects are personally offended by the presence of prostitutes on their street of business. As shown in Table 25, 81% of the male merchants and 75% of the female merchants are not personally offended by the visibility of the prostitute. Overall, only 11% of the merchants were personally offended by the prostitute's presence.

QUESTION 26

(a) Have you ever been solicited by a prostitute during your working hours?

(b) If so, did it offend you, make you angry, or have no effect on you?

Purpose:

To determine if the merchants know what it is like to be solicited and how they feel about it.

Evidence:

TABLE 6-26

MERCHANTS' EXPERIENCE WITH SOLICITING PROSTITUTES

Business	MALE				FEMALE			
	Yes	No	No Answer	Total	Yes	No	No Answer	Total
Ladies Clothing	4(40)	6(60)	-	10	-	3(100)	-	3
Restaurant/Bar	1(33)	2(67)	-	3	-	1(100)	-	1
Other Retail	-	3(100)	-	3	1(33)	2(67)	-	3
TOTALS	5(31)	11(69)	-	16	1(14)	6(86)	-	7

Note: Numbers in parenthesis indicate percentages.

Findings: Respondents indicate that only 5 males and 1 female have ever been solicited by a prostitute during their working hours. The majority of male respondents (69%) and female respondents (86%) have never been solicited by a prostitute during their working hours. Table 26 shows that only 25% of the merchants have ever been solicited by a prostitute. Of those 5 males (21%) and 1 female (4%) who have been solicited by a prostitute during their working hours, it was found that the 5 males were not affected adversely by the solicitation, but the female respondent was offended by the fact that she had been solicited.

- QUESTION 27
- (a) Have your customers ever been solicited by prostitutes on their way to your establishment? Very often?
 - (b) If so, did they complain, feel embarrassed, think it was funny or just mention it in passing?

Purpose: To determine if customers are frequently solicited on their way to do business and how they respond to being approached.

Results: While it is impossible to determine how many customers had experienced being solicited on the way to their stores, 11 merchants out of 24 reported that at one time or another their customers had been solicited by a prostitute on the way to their establishment. Of these 11 merchants, those in restaurant/bar businesses (4) said that their customers were solicited often. However, for the most part these

Results:
(cont'd)

customers either thought it was funny or just mentioned it in passing. Only rarely was a customer offended or annoyed. The majority of these customers were men. Only one ladies clothing store reported that any of their customers had been solicited by a prostitute, but this was a rare occurrence and had never happened to a female customer. The remaining 6 businesses who indicated that their customers have been solicited were retail stores patronized by both men and women. While they were aware that their customers had been solicited by prostitutes on occasion, they felt this did not happen often and that their customers were not overconcerned, but many have been slightly embarrassed. For the most part, the merchants felt that the prostitutes could identify business patrons and did not attempt to solicit them, with the exception of the male bar patrons. Females were hardly ever solicited by a prostitute.

QUESTION 28

- (a) Have you ever called the police over a prostitution-related incident? How often?
- (b) If so, what did the police do?

Purpose:

To determine if the prostitutes have created any problems which required police action and, if so, what the police did about the problem.

Evidence

TABLE 6-28

MERCHANTS' USE OF POLICE WITH PROSTITUTION

Business	MALE				FEMALE			
	Yes	No	No Answer	Total	Yes	No	No Answer	Total
Ladies Clothing	-	10(100)	-	10	-	3(100)	-	3
Restaurant/Bar	2(67)	1(33)	-	3	-	1(100)	-	1
Other Retail	1(33)	2(67)	-	3	-	4(100)	-	4
TOTALS	3(13)	13(87)	-	16	-	8(100)	-	8

Note: Numbers in parenthesis indicate percentages.

Findings:

Of the three respondents who required police action to deal with prostitution-related activities, only one respondent had called the police more than once. This male in the retail business had called the police to report an assaulted prostitute whom he found beside his store; to complain about prostitutes congregating in front of his store door; to report the activities of the pimps in his immediate vicinity. Police activity was minimal, except in the case of the assaulted prostitute for whom they called an ambulance. The other two respondents were male, restaurant/bar owners who had called the police because prostitutes were being a nuisance to the customers. The police asked the prostitutes to leave the premises and they did. In total, only 13 of the respondents required police action and although

Findings: (cont'd) the police could do nothing legally, the specific situations were resolved.

QUESTION 29 Do you consider prostitutes to be a nuisance?

Purpose: To determine if the merchants perceive the prostitute as a nuisance factor.

Evidence:

TABLE 6-19

MERCHANTS' PERCEPTION OF THE PROSTITUTE AS A NUISANCE

Business	MALE				FEMALE			
	Yes	No	No Answer	Total	Yes	No	No Answer	Total
Ladies Clothing	3(30)	7(10)	-	10	1(33)	2(67)	-	3
Restaurant/Bar	2(67)	1(33)	-	3	1(100)	-	-	1
Other Retail	2(67)	1(35)	-	3	2(50)	2(50)	-	4
TOTALS	7(44)	9(56)	-	16	4(50)	4(50)	-	8

Note: Numbers in parenthesis indicate percentages.

Findings: The response of the female merchants shows an equal split between those who consider the prostitute as a nuisance (50%) and those who do not (50%). The results of the male merchants indicate that 56% feel that the prostitute is not a nuisance while 44% feel that the prostitute is a problem. In the restaurant/bar business, 75% of the merchants feel that prostitutes are a nuisance. Overall, 46% of the merchants see the prostitute as a nuisance.

QUESTION 30 Do you consider prostitutes to be criminals?

Purpose: To determine if the merchants feel that the prostitute is a criminal who should be subject to criminal sanctions.

Evidence:

TABLE 6-30

MERCHANTS' PERCEPTION OF THE PROSTITUTE AS A CRIMINAL

Business	MALE				FEMALE			
	Yes	No	No Answer	Total	Yes	No	No Answer	Total
Ladies Clothing	-	10(100)	-	10	-	3(100)	-	3
Restaurant-Bar	-	2(67)	1(33)	3	-	1(100)	-	1
Other Retail	-	3(100)	-	3	-	4(100)	-	4
TOTALS	-	15(94)	1(6)	16	-	8(100)	-	8

Note: Numbers in parenthesis indicate percentages.

Findings: The female respondents were unanimous in their view that the prostitute is not a criminal. The male respondents all shared the same view, with the exception of one who reacted with 'no' answer response. Overall, 96% of the subjects did not see the prostitute as a criminal who should be subject to criminal sanctions.

QUESTION 31 Would you like to see more police action to control the soliciting by prostitutes on the streets?

Purpose: To determine if the merchants feel that soliciting is a problem serious enough to warrant increased police action.

Evidence:

TABLE 6-31

MERCHANTS' VIEW ON MORE POLICE ACTION

Business	MALE				FEMALE			
	Yes	No	No Answer	Total	Yes	No	No Answer	Total
Ladies Clothing	4(40)	6(60)	-	10	2(67)	1(33)	-	3
Restaurant/Bar	2(67)	1(33)	-	3	-	1(100)	-	1
Other Retail	2(67)	1(33)	-	3	2(50)	2(50)	-	4
TOTALS	8(50)	8(50)	-	16	4(50)	4(50)	-	8

Note: Numbers in parenthesis indicate percentages.

Findings: The results indicate that both male and female respondents share the same view on increased police action. While 50% of the female respondents were in favour of more police action to control soliciting prostitutes, 50% felt there was no need to step up police action. The male merchants agreed with the female respondents, with 50% in favour of increased police action and 50% feeling that it wasn't necessary.

QUESTION 32

(a) Do you think the prostitutes in your area create a serious problem?

(b) If yes, please specify.

Purpose:

To determine whether or not the prostitutes create any problems in the Market area and if so, what these problems are.

Evidence:

TABLE 6-32

MERCHANTS' KNOWLEDGE OF THE PROBLEMS CREATED BY PROSTITUTES

Business	MALE				FEMALE			
	Yes	No	No Answer	Total	Yes	No	No Answer	Total
Ladies Clothing	1(10)	9(90)	-	10	2(67)	1(33)	-	3
Restaurant/Bar	2(67)	1(33)	-	3	-	1(100)	-	1
Other Regail	<u>1(33)</u>	<u>2(67)</u>	<u>-</u>	<u>3</u>	<u>1(25)</u>	<u>3(75)</u>	<u>-</u>	<u>4</u>
TOTALS	<u>4(25)</u>	<u>12(75)</u>	<u>-</u>	<u>16</u>	<u>3(37)</u>	<u>5(63)</u>	<u>-</u>	<u>8</u>

Note: Numbers in parenthesis indicate percentages.

Findings:

The majority of respondents (71%) do not feel that the presence of prostitutes in their area of business creates any serious problems. The remaining subjects (29%) feel that the prostitutes do create a serious problem. The serious problem most often cited by the subjects was that they disturb business (43%). The second most popular response

Findings:
(cont'd)

to the problems created by prostitutes was that they are a nuisance (29%). The remaining 29% of the subjects who felt the prostitutes created a serious problem referred to traffic congestion as the problem.

QUESTION 33

Do you think potential customers avoid your area because it is a known prostitution area?

Purpose:

To determine if potential customers would purposely avoid the areas which are known for prostitution.

Evidence:

TABLE 6-33

MERCHANTS' OPINION OF CUSTOMER AVOIDANCE

Business	MALE				FEMALE			
	Yes	No	No Answer	Total	Yes	No	No Answer	Total
Ladies Clothing	-	9(90)	1(10)	10	1(33)	2(67)	-	3
Restaurant/Bar	-	3(100)	-	3	-	1(100)	-	1
Other Retail	<u>1(33)</u>	<u>1(33)</u>	<u>1(33)</u>	<u>3</u>	<u>1(25)</u>	<u>3(75)</u>	<u>-</u>	<u>4</u>
TOTALS	<u>1(6)</u>	<u>13(81)</u>	<u>2(13)</u>	<u>16</u>	<u>2(25)</u>	<u>6(75)</u>	<u>-</u>	<u>8</u>

Note: Numbers in parenthesis indicate percentages.

Findings:

The majority of subjects (79%) do not feel that potential customers would avoid their businesses simply because they are located in an area known for prostitution. Another 8% of the subjects did not know for sure the effect of being located in an area known for prostitution on potential

Findings:
(cont'd)

customers, while 13% of the merchants thought that potential customers may avoid the area because it is known for prostitution.

QUESTION 34

Do you let prostitutes into your establishment?

Purpose:

To determine if the merchants maintain a liberal attitude towards prostitution when in direct contact with the prostitutes.

Evidence:

TABLE 6-34

MERCHANTS' ACCEPTANCE OF PROSTITUTES INTO PLACE OF BUSINESS

Business	MALE				FEMALE			
	Yes	No	Unwilling	Total	Yes	No	Unwilling	Total
Ladies Clothing	7(76)	-	3	10	1(33)	-	2	3
Restaurant/Bar	-	1	2	3	-	1	-	1
Other Retail	1	1	1	3	2	-	2	4
TOTALS	8(50)	2(12)	6(38)	16	3(38)	1(12)	4(50)	8

Note: Numbers in parenthesis indicate percentages.

Findings:

While 50% of the male merchants allow prostitutes into their establishments, 50% of the female merchants allow them to come in but do so unwillingly. These merchants who own ladies clothing stores are least likely to object because they see the prostitute as a potential customer. Two of the four

Findings:
(cont'd)

restaurant/bar businessmen refuse to allow prostitutes into their establishments and one enforces a minimum charge so that the prostitutes won't loiter. Overall, 46% of the merchants allow the prostitutes to enter their stores without reservations, 42% allow prostitutes to enter, but unwillingly, and 12% do not allow prostitutes into their establishments under any conditions.

QUESTION 35

Do you think police action acts as a deterrent to street prostitution?

Purpose:

To determine if the merchants feel that police action acts as a deterrent or not.

Evidence:

TABLE 6-35

MERCHANTS' VIEW OF POLICE ACTION AS DETERRENT

Business	MALE				FEMALE			
	Yes	No	No Answer	Total	Yes	No	No Answer	Total
Ladies Clothing	2(20)	8(70)	-	10	-	3(100)	-	3
Restaurant-Bar	-	3(100)	-	3	-	1(100)	-	1
Other Retail	<u>1(33)</u>	<u>2(67)</u>	-	<u>3</u>	-	<u>4(100)</u>	-	<u>4</u>
TOTALS	<u>3(19)</u>	<u>13(81)</u>	-	<u>16</u>	-	<u>8(100)</u>	-	<u>8</u>

Note: Numbers in parenthesis indicate percentages.

Findings: All of the female merchants and 81% of the male merchants feel that police action does not act as a deterrent to street prostitution. The remaining 19% of the male respondents feel that police action does act as a deterrent, simply by their presence in the area. The majority of merchants are aware that the police can do little to control the activity of the street prostitutes.

QUESTION 36 Are you in favour of the decriminalization of prostitution-related activities such as soliciting? (i.e., no legal restrictions, no form of control, like any other job).

Purpose: To determine if the merchants in the market area would like to see prostitution operate in their areas with no controls or restrictions.

Evidence:

TABLE 6-36
MERCHANTS' VIEW ON DECRIMINALIZATION

Business	MALE				FEMALE			
	Yes	No	No Answer	Total	Yes	No	No Answer	Total
Ladies Clothing	4(40)	6(60)	-	10	1(33)	2(67)	-	3
Restaurant/Bar	1(33)	2(67)	-	3	-	1	-	1
Other Retail	1(33)	2(67)	-	3	-	4(100)	-	4
TOTALS	6(37)	10(63)	-	16	1(12)	8(88)	-	8

Note: Numbers in parenthesis indicate percentages.

Findings: As indicated in Table 36, 88% of the female merchants, and 63% of the male merchants do not favour the decriminalization of prostitution-related offences, such as soliciting. Overall, only 29% of the merchants are in favour of the decriminalization of prostitution-related offences and 71% are opposed to the idea.

QUESTION 37 Do you favour the legalization of prostitution? (i.e., licensing of prostitutes, stigma attached to working girls, taxation, government control, medical services, bawdy houses, etc.).

Purpose: To determine if the merchants would like to see prostitution legalized and government controlled as an alternative to decriminalization and the present situation.

Evidence:

TABLE 6-37

MERCHANTS' VIEW ON THE LEGALIZATION OF PROSTITUTION

Business	Yes			No			No Answer		
	Yes	No	No Answer	Total	Yes	No	No Answer	Total	
Ladies Clothing	10(10)	-	-	10	1(33)	2(67)	-	3	
Restaurant/Bar	3(100)	-	-	3	1(100)	-	-	1	
Other Retail	2(67)	1(33)	-	3	3(75)	1(25)	-	4	
TOTALS	15 (94)	1(6)	-	16	5(63)	3(37)	-	8	

Note: Numbers in parenthesis indicate percentages.

Findings: Overall, 85% of the merchants were in favour of the legalization of prostitution, including the licensing of prostitutes, taxation, government control, bawdy houses and mandatory medical services. Ninety-four of the male merchants favoured the legalization of prostitution while 61, or one merchant, was opposed to the idea. The majority of female merchants (63%) were in favour of legislation and 37% were opposed to the idea.

QUESTION 38 Do you think your business would do better if there were no prostitutes on your street or does their presence not have any detrimental effects on businesses?

Purpose: To determine if the merchants feel the presence of prostitutes on their street of business, is detrimental, helpful, or non-effectual to business.

Evidence:

TABLE 6-38

MERCHANTS' VIEW OF THE PROSTITUTES EFFECT ON BUSINESS

Business	MALE				FEMALE			
	Do Better	No Effect	Helpful	Total	Do Better	No Effect	Helpful	Total
Ladies Clothing	1(10)	8(80)	1(10)	10	1(33)	2(67)	-	3
Restaurant/Bar	-	2(67)	1(33)	3	-	1(100)	-	1
Other Retail	1(33)	2(67)	-	3	2(50)	2(50)	-	4
TOTALS	2(13)	12(75)	2(13)	16	3(38)	5(62)	-	8

Note: Numbers in parenthesis indicate percentages.

Findings:- The results show that the majority of merchants (71%) do not find that the prostitutes have any effect on business; that is, they do not promote business nor have any detrimental effect. About 21% of the merchants thought they would do better business if it were not for the street prostitutes and two male merchants, one in the bar business and one in ladies clothing, thought the prostitutes were helpful to business as they attract curiosity seekers. None of the female merchants felt that the presence of prostitutes promoted business.

- QUESTION 39
- (a) Did you know this area was known for prostitution when you opened your business?
 - (b) If no, would you have thought twice?

Purpose: To determine if the merchants were aware that the area was known for prostitution when they opened their businesses and, if they were not aware of it, would they have reconsidered before opening.

Evidence:

TABLE 6-39
MERCHANTS' DECISION TO OPEN BUSINESS IN AREA KNOWN FOR PROSTITUTION

Business	MALE			FEMALE		
	Yes	No	Total	Yes	No	Total
Ladies Clothing	10(100)	-	10	2(67)	1(33)	3
Restaurant/Bar	3(100)	-	3	-	1(100)	1
Other Retail	2(67)	1(33)	3	4(100)	-	4
TOTALS	15(94)	1(6)	16	6(75)	2(25)	8

Note: Numbers in parenthesis indicate percentages.

Findings: The majority of merchants (88%) were aware that their part of the market area was known for prostitution and still went ahead with their plans to open a business. Of the 3 merchants (12%) who were unaware of this area's reputation at the time they considered opening a business, all 3 said if they knew of the reputation at that time it would not have changed their decision to open a business in the area.

IV. Discussion

This section will examine the results obtained from both the General Public and Merchant Surveys and determine whether or not the following research questions are supported by the findings.

Respondents Attitude Towards Prostitution

Research Question 1 - Are residents of Ottawa generally and genuinely offended by the idea and the existence of prostitution?

Findings: The results obtained in Table 6-2 of the General Public Survey indicate that while 27% of the subjects are morally offended by the idea of prostitution, 73% of the subjects do not object to prostitution on a moral basis. When asked if they thought the rest of society was strongly opposed to the idea of prostitution, 50% of the subjects felt that society was opposed to prostitution and 49% of the subjects did not feel that the rest of society was strongly opposed to prostitution (Table 6-4).

The results from the Merchant Survey indicate that 79% of the merchants are not personally offended by the presence of prostitutes and prostitution on their streets, the remaining 11% of the merchants are offended by the presence of prostitutes and prostitution on their streets (refer to Table 6-25).

Research Question 2 - How do the residents of Ottawa feel about the effects of prostitution on society as a whole?

Findings: When asked if prostitution had any harmful effects on the moral fibre of society, i.e., the family, Table 6-3 shows that 71% of the subjects did not feel that prostitution had any harmful effects while 29% felt prostitution had a negative influence on the morals of society. As shown in Table 6-5, 62% of the subjects felt prostitution supplied some beneficial or necessary services while 37% did not feel this way. When compared to Table 6-3, it can be shown that 3% of the subjects felt that although prostitution did not have any harmful effects on society, that it was not beneficial either. Another effect of prostitution on society is said to be the spread of venereal disease. When asked if they thought prostitution was a major source of venereal disease, Table 6-22 shows that 40% of the subjects feel that prostitutes are a major source in spreading venereal disease, 56% did not believe this to be the case, and 4% were not sure.

Conclusions: The findings show that for the most part (73%), the residents of Ottawa are not morally offended by the idea of prostitution and not morally opposed to it. Furthermore, 71% of the subjects do not see prostitution harmful to the moral fibre of society, although only 62% of

the subjects see prostitution as beneficial. Although only 56% of the subjects are aware that prostitutes are not a major source in the spread of venereal disease, this view is supported by a number of different researchers. Therefore, according to the unit of analysis utilized, the research questions on the respondents attitude towards prostitution shows that the residents of Ottawa are not morally opposed to prostitution nor do they think it is harmful to society.

Respondents Attitude Towards the Legal Control of Prostitution

Research Question 3 - Do the residents of Ottawa favour continued police action to control prostitution-related activities?

Findings: While 67% of the subjects feel that there is a need to stop the prostitute from soliciting on the street (see Table 6-2), Table 6-35 indicates that 75% of the merchants do not feel that police action acts as a deterrent to street prostitution. As a result of the ineffectiveness of police action in the attempt to control prostitution-related activities, Table 6-14 shows that 45% of the subjects in the General Public Survey felt that police action should be stopped, 30% would like to see police action continue, and 24% would like to see police action become more repressive. When asked if the subjects thought police action would ever be able to control prostitution, the subjects' opinions were divided. As shown in Table 6-24(a), 50% of the subjects felt police action could neither control nor eliminate prostitution and 50% of the subjects thought that prostitution could be controlled through legal action, but not necessarily through repressive police action. Table 6-24(b) shows that the majority of subjects (61%) do favour continued legal action of some type.

When asked if they thought police efforts should be focused on the control of prostitution, 56% of the subjects felt police action should be concentrated on more serious types of crime (refer to Table 6-15).

Research Question 4 - Are the residents of Ottawa prepared to explore the alternatives to repressive police action in an attempt to control prostitution and relative activities?

Findings: The results indicate that only 42% of the subjects favour the decriminalization of prostitution-related activities. The remaining 57% of the subjects do not want prostitution to operate without some sort of legal control (refer to Table 6-16). When asked if the subjects would like to see prostitution and related activities become legalized and under government control, 84% of the subjects in the General Public Survey and 85% of those in the Merchant Survey were in favour of the legalization of prostitution (refer to Tables 6-17(a) and 6-37 respectively). Only 22% of the subjects, however, were familiar with the type of legalized prostitution which is practiced in Nevada. In reference to a type of red-light district or segregated area in which prostitution could operate openly, Table 6-18 shows that 60% of the subjects agree that prostitution should be confined to certain areas within the city. Table 6-19, on the other hand, shows that 82% of the subjects would object to having prostitution practiced in their own neighborhood.

Conclusions: The findings show that the general public does not believe that police action will ever be able to control or eliminate prostitution. While there is a general consensus that attempts to control prostitution

should continue to be made, the public does not advocate a move to more repressive police action to control prostitution.

As tables 6-17(a) and 6-37 indicate, both the majority of the general public (84%) and the merchants (85%) advocate the legalization of prostitution to control the activity. Although they agree that prostitution should be confined to a certain area or areas within a city, the majority of respondents would not tolerate the practice of prostitution within their neighborhood. Therefore, the visibility factor of prostitution plays a large part in the decision as to where the segregated areas for prostitution should be located when considering the legalization of prostitution or the possibility of so-called "red-light" districts.

Research Question 5 - Do the Ottawa surveys support the theory that prostitution is a conflictual crime?

Findings: Overall it appears that the general public in Ottawa is reaching a consensus about the majority of issues surrounding prostitution. Table 6-9 shows that 85% of the general public surveyed and 96% of the merchants surveyed (refer to Table 6-30) do not think of the prostitute as a criminal but rather as a nuisance which should be dealt with accordingly. While the subjects do not advocate the total decriminalization of prostitution, they do favour the removal of prostitution-related offences from the Criminal Code and would like to see prostitution legally controlled by a government agency which would enforce guidelines and restrictions with the trade. While the subjects do not believe that Ottawa has a serious problem with prostitution, it is apparent that other Canadian cities are experiencing prostitution to a

greater extent. For this reason, and the fact that prostitution is a federal issue, it can be said that although Ottawa is reaching a consensus regarding the issues surrounding prostitution, the continued debate and controversy which arises in other cities gives support to the theory that prostitution in Canada is a conflictual crime, and will remain as such until prostitution becomes legalized.

V. Conclusions

To sum up, the major hypothesis of this paper is, that until a consensus regarding the issues surrounding prostitution can be reached, the law will be ineffective and unfair in its attempts to control prostitution. The Ottawa surveys indicate that the public has now reached a consensus regarding most of the prostitution related issues and is therefore prepared to act in a pragmatic way rather than through a sense of morality.

The results also indicate that Ottawa residents are not morally offended by the idea or the existence of prostitution nor do they feel that prostitution has any harmful effects on the health and welfare of society. While they do believe the soliciting prostitute to be a nuisance, they do not consider the prostitute to be a criminal. While Ottawa residents believe that some action should be taken to control the nuisance aspect of prostitution, they do not advocate the use of repressive police action to accomplish this, since they realize that police action is extremely expensive and does not really act as a deterrent.

The Ottawa surveys suggest that the public is strongly in favour of the legalization of prostitution and related activity and is prepared to accept government control over this activity. Accordingly, the proper legalization scheme would likely satisfy the public, the prostitute and the patrons.

CHAPTER VII

EXAMINING THE ISSUES AND REMEDIES

In 1978, the Supreme Court of Canada, in Hutt v. The Queen, determined that persons must be "badgering and persistent" in their approach to be found guilty of soliciting. A prostitute must approach the same individual several times, for example, or grab his arm, before an arrest can be made. Positioning many individuals, once, is not enough. Because this court decision has made it extremely difficult to obtain soliciting convictions, the street prostitute can solicit openly, provided the solicitation is not persistent and badgering. As a result, the police are forced to use other charges, such as loitering, trespassing, and causing a nuisance, to control street activities.

This inability on the part of the police to enforce the soliciting laws has contributed to record numbers of prostitutes on the streets in many major Canadian cities. With this high number of prostitutes has come a record number of complaints from annoyed citizens, city officials and police departments across Canada. Surprisingly enough, it is not the actual soliciting aspect of prostitution which is the cause for concern, but rather other associated problems. These include:

- . traffic problems - with congestion and honking horns;
- . harassment of residents by prostitutes and their customers;
- . noise throughout the night in previously quiet areas;
- . decrease in property values for "known" areas;
- . trespassing on private property;

- . being insulting and abusive to neighborhood residents;
- . negative impact of activities on youth in the area;
- . disorderly conduct;
- . decrease in perception of control which police and residents have over the neighborhood;
- . negative impact on neighborhood businesses with some neighborhood shops being replaced by sex shops, etc.²⁰

As might be expected, the extent of these particular problems varies between communities. The overall citizen concerns however appear to focus on three general problems:

- . numbers and concentration of street prostitutes in residential areas causing feelings of intimidation and loss of control;
- . nuisance related activities such as noise and traffic; and
- . criminal related activities, such as trespassing, increased crime and violence.²¹

The lesson of experience is that adequate enforcement of existing charges under the Criminal Code, such as causing a disturbance, exhibition, assault and trespassing will likely solve criminal related activities. In

²⁰
Street Prostitution in Our Cities, Bureau of Municipal Research
February 1983, p. 2.

²¹
Street Prostitution in Our Cities, op. cit., p. 3.

addition, the difficulty in enforcing the soliciting charges seems to have no relation to the other sections of the Criminal Code. In practice, then, the real problems are concentration and nuisance related activities. Thus any actions suggested must be aimed at solving these complaints, not at eradicating prostitution per se.

According to the Bureau of Municipal Research in Toronto, a successful solution must deal with:

- . solving numbers and concentration issues;
- . solving nuisance related activities;
- . attacking some economic and social reasons for prostitution;
- . acknowledging the rights of residents and prostitutes.²²

The main question then becomes, what type of action should be used to solve these problems related to prostitution. This is the purpose of the next section in this chapter.

I. Legal Remedy

To begin with, it is widely known that mayors and police chiefs across the country have been pressuring the Federal Minister of Justice to change the soliciting section of the Criminal Code in order to make it more enforceable. Since 1979, the Canadian Association of Chiefs of Police have actively lobbied for three main changes:

1. that it no longer be necessary to prove pressing and persistent behavior in any soliciting activity;

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Ibid, p. 5.

2. that the relevant section apply to both males and females;
and
3. that cars be considered a public place for the purpose of
soliciting.

As it happens, real doubt exists as to whether these changes to the soliciting section would really solve the problem. While the soliciting element would become more enforceable, many of the nuisance activities would still not be covered adequately under the Criminal Code. Because it is the nuisance aspects created by an increasing number of street prostitutes, not the problem of soliciting per se, it is clear that making the soliciting offence more enforceable would not solve the basic problem. Furthermore, it has been shown that when more repressive action is initiated, prostitution and related activities tend to go underground, thereby making enforcement extremely difficult.²³ Montreal is a case in point. Despite the 1954 closure of the brothels in that city and the subsequent introduction of the most repressive prostitution program to be found anywhere in North America, a recent study by two French-Canadian women indicate that clandestine prostitution is thriving in Canada's second largest city.²⁴

Canadian statistics also show that, relative to the deterrent effect of law enforcement on prostitution, the costs of control are extremely high. For example, during 1969, in Montreal, 614 prostitution-related cases

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Gilbert Geis, Not the Law's Business, 1969, p. 221.

²⁴Catherine Texier and Marie-Odile Vezina, Profession: Prostitute (Ottawa: Editions Libre Expression, 1978. Cited in S. Symanski, The Immoral Landscape, p. 31.

required 2,400 stenographers, prosecutors and bailiffs, at a cost of nearly \$85,000.²⁵ Likewise, in Toronto, each arrest costs about \$165, and each court case an additional \$1,000. If convicted, a woman receives either a \$500 fine or a month in jail.²⁶ As everyone knows, it costs the taxpayers a considerable amount of money to keep a prostitute in detention. On the other hand, the prostitutes see the imposed fine as an operating expense, and it is clear that detention does not act as a deterrent. Moreover, one Montreal defense lawyer claims that 75% of the city's police lie to get women convicted of soliciting.²⁷ Finally, it is estimated that the untaxed revenue arising from prostitution and associated enterprises in Montreal alone may exceed \$70 million per year.²⁸

The global costs of attempting to enforce prostitution laws have been succinctly summarized by Professor Sanford Kadish:

... diversion of police resources; encouragement of use of illegal means of police control (which in the case of prostitution, take the form of knowingly unlawful harassment arrests to remove suspected prostitutes from the streets; and various entrapment devices, usually the only means of obtaining convictions); degradation of the image of law enforcement; discriminatory enforcement against the poor; and official corruption.²⁹

²⁵ Robert Gemme, "Aspects Economiques de la Prostitution a Montréal", unpublished ms., 1971, cited in Symanski, Immoral Landscape, p. 17.

²⁶ Symanski, op. cit., p. 16.

²⁷ Debbie Mercier, "Prostitution in Canada: Three Possible Approaches", unpublished ms., 1979, as cited in Symanski, op. cit., p. 9.

²⁸ Texier and Vézina, op. cit., in Symanski, "Immoral Landscape", p. 11.

²⁹ In N. Morris and G. Hawkins, The Honest Politicians' Guide to Crime Control, 1970, p. 22.

According to Morris and Hawkins (The Honest Politician's Guide to Crime Control), the use of law enforcement resources to promote moral virtue, is both wasteful and socially injurious. Insofar as prostitution itself is responsible for social harms like the spread of venereal disease, it would seem that regular compulsory medical inspection would provide better protection than the present enforcement policies. Moreover, all the evidence indicates that it is simple (free) promiscuity that is mainly responsible for the spread of venereal disease.³⁰ There seems to be much evidence supporting this view including an international study by the United Nations which stated that prostitution is not a major factor in the spread of venereal disease in the United States.³¹ Furthermore, a poll of public health advisors on prostitutes and venereal disease shows that almost all believe that most prostitutes are well educated about, and watchful for the signs of venereal disease. In addition, they are aware of precautionary techniques, which include the use of prophylactics, checking customers, and seeking medical care.³² Put another way, a prostitute's reputation is vitally important to her; a reputation as a V.D. carrier would cut down the relatively large volume of repeat business on which most prostitutes depend. Taken at face value, a pimp in Ottawa stated that he required all his girls to use prophylactics during sexual intercourse and oral sex with every client. He also revealed that a

³⁰Norval Morris and Gordon Hawthorne, The Honest Politician's Guide to Crime Control, p. 22.

³¹"Prostitution and Venereal Disease", 13 International Review of Crime, Policy 67, 69 (October 1958) in Marilyn G. Haft, "Hustling for Rights", The Female Offender by Laura Crites, Lexington, 1976, p. 217.

³²Marilyn Haft, op. cit., p. 217.

clever prostitute can actually make a client believe he is having intercourse by the use of lubrication between her legs. This further reduces the risk of venereal disease.

While the involvement of organized crime in prostitution has been cited often as a reason to maintain police control over prostitution-related activities, the U.S. Presidential Commission on Law Enforcement and the Administration of Justice in the United States has stated unequivocally that prostitution plays "a small and declining role in organized crime operations"³³ and three years of prostitution study in a major American city supports those findings.³⁴ Prostitution is no longer an attractive investment for organized crime. For one thing, it is too difficult to control because of the highly individualized customer-prostitute and the pimp-prostitute relationships. For another, organized crime has turned to ventures that are far more profitable and less fraught with risk, such as influence peddling (political corruption), business investment, the stock market, and control of labour unions.

Currently the punishment of those who live on immoral earnings is often justified on the grounds that the pimp may exploit the prostitute. According to Morris and Hawthorne, there is no evidence that such exploitation is in fact a serious problem. In this connection, the Wolfenden Committee states:

³²Reference cited in Laura Crites, p. 217, and Jennifer James, p. 51.

³³Reference cited in both M. Haft, *op cit.*, p. 217 and J. James, p. 51.

³⁴James, *Ibid*, p. 51.

"Such evidence as we have been able to obtain on this matter suggests that the arrangement between the prostitute and the man she lives with is usually brought about at the insistence of the woman and it seems to stem from a need on the part of the prostitute for some element of stability in the background of her life... We have no real doubt that behind the trade of prostitution there lies a variety of commercial interests... The evidence submitted to us, however, has disclosed nothing in the nature of "organized vice" in which the prostitute is an unwilling victim coerced by a "vile exploiter".³⁵

While it appears that the relationship between the prostitute and pimp is voluntary, it is also clear that the prostitute would be less reliant on the pimp for legal assistance such as bail requirements, etc., if the laws relating to soliciting were removed from the Criminal Code.

As far as ancillary crime associated with prostitution-related activities is concerned, it is recognized that robbery, assault, drugs, etc., are connected to some extent with prostitution. If, however, the laws controlling prostitution and related activity were removed from the Criminal Code, it is possible that victims might be more willing to report such incidents to the police. In turn, these incidents would be less likely to occur if the "criminal atmosphere" associated with prostitution were removed.

In summary, it has been argued that maintaining prostitution-related laws in the Criminal Code will not solve the current problems related to prostitution activity, such as the associated nuisance activity, concentration issues, and the economic and social reasons for prostitution. Resorting to Criminal Code laws to control activity is extremely expensive and time

³⁵Morris and Hawthorne, op. cit., p. 23.

consuming, may lead to perjury and corruption, and does not act as a deterrent to street prostitution. Moreover, more repressive laws will likely drive such activity underground, creating a new set of problems and making enforcement difficult. The evidence available suggests that the spread of venereal disease, organized crime and incidental crime, and protection of the players (i.e., the prostitute and client from pimp or each other) should no longer be considered motives for control. Furthermore, Criminal Code control does not prevent evasion of income tax. What it does do however, is, gives purpose to the pimp, wastes taxpayers money, congests the courts, and maintains a criminal atmosphere surrounding prostitution which allows a number of other criminal activities to flourish. For these reasons, it is fair to say that maintaining Criminal Code laws to control prostitution-related activity does not appear to be the answer.

II. Municipal Intervention

In response to the increasing number of prostitutes on the streets in Canadian cities and the problems created by these increases, many cities have resorted to the use of municipal by-laws to control prostitution activity. In 1982-83, Montreal, Calgary, Vancouver, Regina, Halifax, Saskatoon, and Niagara Falls passed by-laws to regulate the street activities associated with prostitution. Each by-law takes a slightly different wording but seeks to regulate the same activities. Some specific examples will illustrate this.³⁶

³⁶Excerpts taken from Municipal Bureau of Research, "Street Prostitution in Our Cities", p. 7.

- Calgary: "2.3 No person shall remain in a City Street for the purpose of prostitution.
- "2.4 No person shall approach another person in a City Street for the purpose of prostitution."
- Regina: "1.A (a) No person shall use any pavement, sidewalk, or public place for the purposes of selling or purchasing sexual services."
- Vancouver "3. No person shall, upon any street, sell or offer to sell, to another person or purchase or offer to purchase from another person, sexual services."

Each by-law provides for fines from \$100 (first offense in Calgary) to a maximum of \$2,000 (Vancouver) for each offence.

The Montreal, Calgary, and Vancouver by-laws have all been challenged in court. In the event, the Calgary by-law was struck down in the Supreme Court of Canada (Westendorp v. The Queen) in January 1983 as being *ultra vires* (i.e., beyond the authority - of the municipality since it infringes on criminal law). The Attorneys General, in most provinces, despite cities' arguments to the contrary, have stated that this decision (Westendorp) basically invalidates other cities' prostitution by-laws as well. Even if the by-laws do not contain the word "prostitution" they contend that the intent is the same and therefore violates the sole responsibility of the federal government.

Regardless of their legality, the by-laws, on a short term basis, were effective in reducing the number and concentration of street prostitutes. It is questionable, however, whether these by-laws would be effective in the long run. By aiming at eliminating the buying or selling of sex on the street, the degree of enforcement must be high over a long period of

time. Thus, other types of municipal action may be more feasible for individual cities and less threatening to the rights of the prostitute.

The conclusions and recommendations of the Municipal Bureau of Research to control street prostitution in Canadian cities can be summarized as follows:³⁷

1. Remove the soliciting law from the Criminal Code. The Criminal Code has a limited, if any, useful role to play in solving the current problems. Keeping soliciting as a federal statute may impede the development of more effective strategies at the municipal level.
2. The use of by-laws is really appropriate only as vehicles of last resort, and used if other methods fail to control a problem.
3. The licensing option is appropriate to those having severe problems but should not be viewed as essential for all cities. The conditions for the licenses should be realistic and cover points such as:
 - 1) allowing two prostitutes per street or part of a street, for company, protection, etc., they would be allowed to operate on that street but no others;
 - 2) designating specific streets in an area. The streets should be as non-residential as possible, in the inner city area which currently has the activity, and be realistic in terms of access in and out. Really out of the way places will defeat the purpose;
 - 3) hours of business from 6:00 p.m. to 1:00 a.m.;
 - 4) must be 18 years or over;
 - 5) must receive clearance from medical health officer on a periodic basis, i.e., once per month, etc.
4. Municipally supported outreach programs aimed at rehabilitation should be established which assist people on the street in using existing vocational training, educational upgrade and job counselling services. As well, municipalities should financially support the services performed by many volunteer groups in counselling and establishing drop-in centres and hostels for prostitutes and youth.

³⁷Municipal Bureau of Research, *op. cit.*, pp. 16-17.

5. The use of foot patrols, the stricter enforcement of existing Criminal Code offences (causing a disturbance, indecent acts, etc.) and noise and traffic by-laws could solve the problems in some municipalities without the need for measures such as by-laws and licensing. Strategies such as changing street patterns and spot checks are effective.

In essence, while the Municipal Bureau of Research advocates the use of municipal action to control prostitution, it does not think by-laws are the answer, and only favours licensing in those cities which are having severe problems with prostitution and related activities. The report, however, does not mention what should be done in cities where the problem of prostitution is less severe apart from saying that rehabilitation and help centres should be made available to prostitutes and that foot patrols, spot checks and changing street patterns can be effective. Unfortunately, a review of the literature has shown that most attempts to rehabilitate prostitutes are failures. The failure of diversion programs seems to be due to an inability to provide women with interesting employment that pays as well as prostitution.³⁸ It should be added that the report of the Municipal Board of Research recommends that the soliciting law should be removed from the Criminal Code because it is ineffective as it now stands and may be an impediment to the possibility of municipal action. The report does not however offer an alternative means to control prostitution in smaller cities. Hence, it appears that the Municipal Bureau of Research believes that decriminalization of prostitution related activities is the answer to prostitution problems in smaller cities for they do not think the European model of red-light districts of licensed brothels is a suitable

³⁸Jennifer James, Deviants: Voluntary Actors in a Hostile World 1973, p. 373.

alternative in the Canadian context. Their opinion is clearly based on the failure of a red-light district in Boston. Oddly enough, their report fails to mention the success of the legalized bawdy-houses in Nevada. Furthermore, the report's model of licensing prostitutes, confining working hours, and designating specified streets and number of prostitutes per street would appear to be an impossible task in cities which report having in excess of 200 prostitutes.

By using municipal action to control the concentration and nuisance aspects of prostitution, the models would be different in each city, thereby causing courtroom confusion and problems of enforcement for violation of licensing conditions. While this report is extremely informative about the ineffectiveness of the criminal law in controlling prostitution and related problems, it also implies that the removal of the prostitution-related laws from the Criminal Code could result in much more severe action if the municipalities had a free reign over prostitution in their cities. It follows, therefore, that municipal action could be used to deal with prostitution problems based upon the extent of these activities in a given city. But whether or not individual cities would be fair in their treatment of these issues is another question. In any event, neither maintaining criminal code laws nor allowing municipalities to control prostitution and related activities appear to be the answer in themselves.

III. Federal Intervention

Two of the most popular alternatives to the repressive control of prostitution are decriminalization and legalization. Both approaches contemplate the notion of the "acceptable prostitute", that is, the prostitute

who is not only tolerated, if not recognized, by our legal system but also viewed as an element our societal structure simply can't seem to live without. In this sense the prostitute could be viewed somewhat like other components in the nation's fibre: an unwanted, but necessary, variable.³⁹ A major premise of the "acceptable prostitute" thesis is the realization that, foreseeable anyway, there will continue to be a substantial demand for prostitutes, and that such demands will not be successfully abated by legal attempts aimed at eliminating prostitutes and prostitution. This tenet recognizes that prostitution repression is wasteful as well as socially injurious and merely accomplishes dispersal of prostitutes, resulting in the mere alteration of their operating methods. This thesis notes that even the elimination of today's dire economic disadvantages suffered by women will not abrogate the existence of all commercial sex. The "acceptable prostitute" thesis however, can only exist in tandem with decriminalization or legalization or a combination of both.

"Legalization" of prostitution envisions lifting the strictures against prostitution per se and allowing it to exist subject to various regulatory schemes, such as the licensing of prostitutes and/or brothels, mandatory medical checks of prostitutes for venereal disease, and taxation. "Decriminalization" on the other hand, involves elimination of all laws against prostitution without imposition of regulatory measures, thereby allowing prostitutes to ply their trade subject only to those non-prostitution laws, such as assault or theft, which are applied to the general populace.

³⁹John Decker, Prostitution: Regulation and Control, 1979, p.450.

There are certain arguments which can be advanced which suggest that legalization is preferable to decriminalization. While there are others which tend to support a contrary conclusion.⁴⁰ Legalization seems advantageous in that it involves regulatory measures which would allow authorities to maximize their control over prostitution operations. Registration of prostitutes might allow the authorities to supervise more effectively the day-to-day activities of prostitutes. Registration would permit appropriate taxation of those profiting from prostitution and thereby secure what is now lost revenue. Registered prostitutes would be required to subject themselves to regular mandatory medical examinations as a measure to control the spread of venereal disease. Furthermore, as Decker points out, health officials could, through blood tests, determine which of these prostitutes are using or addicted to, illicit narcotics and in turn offer professional assistance and counselling. Social workers too, would be in a better position to look after the psychological and physical needs of prostitutes and their dependents.

Under such an approach prostitution could be confined to certain areas so that the nuisance activities associated with prostitution would not disrupt residential areas; visibility would no longer be a factor either. Legalizing prostitution would help prevent incidental crime which occurs as a result of the illegal atmosphere associated with prostitution. If such incidences did occur, they would be likely reported to officials without fear of harrassment. The problem of juvenile prostitutes and patrons would become more manageable.

⁴⁰G. Geis, Not the Law's Business, pp. 220-21.

On the other hand, there are serious problems associated with legalization⁴¹ which suggest, in turn, that decriminalization - a government hands-off policy - be adopted. Government regulation may be construed by some as a subtle government approval of the "oldest profession". Formal approval, it is argued, could encourage persons to become sex salespersons or to engage in some aspect of promoting this trade. It should be added, however, these arguments are based on mere speculation and are propositions which have no empirical support.⁴²

Another related problem, given the fact that gaining adherence to registration may be difficult to enforce, is the possibility of police payoffs.⁴³ Moreover, contemporary licensing of prostitutes might raise the same stigma as does arrest records for such transactions, and accordingly, would undermine prostitutes' opportunities to move out of the profession and into another occupation.

Finally, the idea of confining prostitution to a specific area is usually associated with red-light districts, centres of disease and crime. But, this does not have to be the case, as will be discussed later.

Decriminalization on the other hand, does not require any regulatory schemes. It simply means lifting all laws related to prostitution and allowing those involved in the profession to operate freely. The arguments in support of decriminalization are numerous and tend to counter the

⁴¹ Acton, pp. 138-70.

⁴² Decker, p. 461.

⁴³ Decker, p. 462.

problems suggested by other alternatives. First, by making prostitution neither illegal or legal it does not reflect approval of such activities by the government but merely disassociation. By decriminalizing prostitution, scarce public resources could be better utilized and police corruption and illegal tactics used for arrest would no longer be possible. With decriminalization, prostitutes and clients would be more likely to report thievery, fraud, and maltreatment to the police. The present system keeps some women in prostitution when they would prefer to leave it because they have arrest records, a problem that makes it difficult to get jobs in the "straight" world. Decriminalization requires no kept records. While a pimp would no longer be required to provide bail money or arrange for lawyers, the choice would be entirely up to the prostitute. She would, however, have an easier time of reporting maltreatment by her pimp to the authorities.

The most interesting argument for the decriminalization of prostitution-related activities has been put forward by Richard Symanski. He contends that:

Fears that decriminalization invites a rash of new problems have little basis, at least when compared with the recent history of other activities that have been decriminalized. By the early 1970's Hawaii had decriminalized public drunkenness, homosexuality, abortion and all sexual acts between consenting adults except prostitution. In the years that followed there was no upsurge in the rates of abortion or public drunkenness, and drunks no longer got dried out at public expense. Homosexuality was more open than previously, but the police had no reason to believe that its prevalence in the islands had increased.

Unlike abortion, homosexuality and public drunkenness, prostitution is a business and the Canadian experience has shown that when there are no unforceable laws controlling prostitution, the situation, in many cases, gets out of hand. In Canada it is the nuisance aspect and concentration of prostitutes which are creating the practical problems, and simple decriminalization will do nothing to remedy these concerns. While Symanski suggests that the prostitutes operate through "advertisements and perhaps occasionally on the streets", there would be no way to control the numbers and the nuisances with simple decriminalization, a concern which is well warranted. A successful solution must deal with getting the prostitutes off the streets.

One Vancouver lawyer, Terry Bland, recently proposed that prostitutes should be allowed to operate out of bars and restaurants.⁴⁴ But this is not a viable alternative. While red-light districts would remove the prostitutes from city streets, such districts require considerable policing and invite a new rash of problems, as already identified by previous experience. On the other hand, the isolation of prostitution in an already established area where there would be no opportunity for other shady businesses to move in might prevent the problems associated with a developing red-light district or in an area too desolate to attract other interests. This idea has been considered in the United States, most notably in the desert brothels in Nevada. In the San Francisco Bay area, there have been suggestions in recent years to permit prostitutes to use

⁴⁴ "Let Prostitutes Sell Sex in Bars City Lawyer Urges", The Toronto Star, Thursday, January 12, 1984.

Alcatraz Island, a plan reminiscent of one made over a half-century ago by a Minneapolis vice commission which proposed that prostitutes be confined to Nicollet Island.⁴⁵ When, in the 1970's, the Rotterdam City Council received complaints that prostitution was spreading into the residential areas it approved a plan to concentrate prostitutes in a 400-bed shop alongside an old abandoned area of the harbour.⁴⁶ The women were opposed to the idea because the cost of their rooms would be very high, and equally because it would give them too much prominence. In Canada, however, the street-walkers do not appear to be concerned about prominence as their concentration on the city streets gives them much more visibility than segregation in a shipyard, an island or a hotel especially designed for the purpose of prostitution. As far as the cost is concerned, prostitutes could raise their client fees to replace the cost of a hotel room, live on the premises which would be the same as renting an apartment, and finally they could save a considerable amount of money if they chose to operate without a pimp.

IV. Recommendations

The concept of bawdy-houses on a small scale or "hooker hotels" on a larger scale seems to be an acceptable solution to the Canadian problem with prostitution. Under these schemes, both decriminalization and legalization could operate systematically. As indicated by the results of

⁴⁵ Lane 1975, Part III; "Sent them to Alcatraz", 1975, in Symanski *op. cit.*, p. 223.

⁴⁶ "Hookers Battle Plan" 1978, in Symanski, p. 223.

the Ottawa Surveys, 84% of the subjects favoured the legalization of prostitution. While only 42% of the subjects favoured the decriminalization of prostitution-related activities, it is also clear that, while some aspects of decriminalization appeal to the public, they believe that some control should be exercised over prostitution, like any other business.

Surveys conducted in the United States tend to support this Canadian view. Of the 279 people surveyed by Barbara Milman under the auspices of the Harvard Centre for Criminal Justice, 68% favoured legalized brothels to the current system. Thirty-four percent of those polled were members of the business community and another 31% were classified as "residents of neighborhoods".⁴⁷ This survey also included a number of policemen from across the country. Milman did not specify exactly what was meant by a legal brothel or how much control would be exercised by the state. However, since knowledge of Nevada's oppressive rules is not widely known, especially in Canada, it can be assumed that people do not think of regulations in these terms.⁴⁸ Another poll done in the mid-1970's in the U.S.A. showed that 81% of Anchorage's citizens thought that prostitution should be confined to brothels.⁴⁹ Cross-cultural comparisons did not

⁴⁷ Symanski, op. cit., p. 235.

⁴⁸ For a complete and detailed description of the oppressive regulations imposed upon the inmates of the Nevada Brothels, see John Decker, Appendix D, pp. 497-510.

⁴⁹ Symanski, op. cit., p. 43.

seem to change this picture, but are too numerous to go into detail. It appears, however, that the prevailing attitude in the United States is in favour of legalized brothels.

John Decker has proposed a ten-point model to control U.S. prostitution.⁵⁰ This model could be adopted in a Canadian context.

First, any transactions between consenting adults would be viewed as private matters, of no concern to the government, so long as they do not occur in public.

Second, solicitations aimed at securing prostitution contacts would be disallowed in all public areas of the community, except that (1) solicitation in certain areas would be tolerated, and (2) non-obscene solicitations would be allowed to be published in those periodicals willing to advertise them. These anti-solicitation laws would cover those who solicit the purchase as well as the sale of sex, i.e., both patrons and prostitutes. An important aspect of this change in solicitation laws would be that such strictures be invoked only upon the specific complaint of a normal citizen, who has been solicited, thereby removing police from detection activities which require emulation of the very elements they are purportedly attempting to repress.

Third, brothels would no longer be prohibited unless they might be found to be actual nuisances. Establishing brothels in residential areas as well as within a certain distance from churches, schools, parks

⁵⁰ John Decker, p. cit., pp. 462-466, related literature, recommendations and support for Decker's proposal is given in designated footnotes.

and other establishments where there would be inherent problems from a public interest standpoint, would be absolutely outlawed. Insofar as such entities might be set up in business related areas, the nuisance laws would apply so long as the complainant could point to actual economic loss or the like. In other words, while establishment of houses of prostitution in commercial areas, where aesthetic considerations are important - as would be true in shopping areas, - would be considered at odds with the nuisance laws, those enterprises situated in warehouse districts and the like would be considered acceptable.

Fourth, juvenile involvement in prostitution, whether as buyers or sellers of sexual service, would be prohibited. Severe sanctions aimed at adults who engage in prostitution acts with juveniles would be appropriate, given the public interest in protecting minors. It is uncertain whether or not actually believing that the juvenile prostitute was of legal age would constitute a defence for this offence.

Fifth, living off the avails of an adult prostitute would not be designated as illegal any longer. Hence, prostitutes would be allowed, like any other citizen, to share their earnings with a spouse, friend or member of their family. On the other hand, enjoying the fruits of a juvenile prostitute's earnings would continue to be the subject of criminal strictures. In any event, the economic dependence of prostitutes would dissipate, given the reduced need for "protection" and bond money.

Sixth, anti-pandering and anti-promotion statutes would be modified to encompass only coercing individuals as well as transportation of a person who has been, or will be coerced into prostitution. All other proscriptions

against establishing, keeping and managing a brothel or profiting from prostitution would be lifted. In other words, organized prostitution would be freed from the grips of organized crime.

Decker's seventh point deals with patronizing a prostitute which is not illegal in Canada and thus does not require consideration here.

Eighth, prostitutes themselves would not be subject to registration requirements or mandatory health inspection regulations, at least for the time being. Given past difficulties with securing prostitute compliance with registration schemes, and present low levels of venereal infections which are traceable to prostitutes, there does not appear to be a public necessity for such an approach. Nevertheless, if future experience with non-registered prostitutes produces dire public health and public safety consequences, such regulations could be imposed and tested. In any event, regulatory measures in this area should be limited to civil measures as opposed to criminal ones. Moreover, any registration or licensing would be essentially anonymous; only licensing agencies and their license enforcement personnel would have access to the licensing records.

Ninth, prostitutes and prostitution promoters would be expected to pay income taxes. Gaining compliance with the tax regulations could be relatively assured by requiring brothel operators to undergo regular audits by internal revenue agents. Prostitutes who work in brothels or segregated districts would be more reachable by these government agents than in the past. Prostitutes who work alone could be compelled to pay taxes in the same way our revenue agents presently extract taxes from other business persons who work on a cash basis. The notion that the government should

not be evolved in "profiteering" through imposition of tax laws on "sin" on the grounds that such is "distasteful", has already been dismissed. The practice of tax gambling is becoming a popular method to meet the needs of the government treasury and ought to be viewed as precedent. So should taxes on alcoholic beverages.

Tenth, after institution of these reforms, a commission should be established in those jurisdictions which have adopted them to determine how effectively they have dealt with the various motives behind the present controls. Accordingly adjustments could be made to meet societal needs in these areas. Of course, if the legislators as well as the judiciary feel it is necessary to institute a comprehensive study of prostitution prior to taking some positive action, this would be an appropriate starting point.

In Canada, A Royal Commission to study pornography and prostitution is currently underway. Although they have discovered that there is a definite need to get the prostitute off city streets, no specific recommendations, as yet, have been made. Still, this Commission is a useful starting point to a long overdue revision of prostitution control in Canada.

On the basis on the broad range of evidence surveyed in the thesis, it would appear that a prostitution control model similar to the one proposed by John Decker is the proper approach for Canada. The use of brothels may be appropriate in cities where the number of practicing prostitutes is less than 200. In cities where the numbers exceed 200, brothels may become too numerous and thus constitute a nuisance. To combat this problem, the concept of "hooker hotels" seems appropriate.

Under this scheme, the government could purchase or lease an existing hotel or even, in the harbour areas, a large ship, and rent the space to prostitutes. Each prostitute could have his/her own room and the choice to live in or out would be their own. These "hooker hotels" could operate 24 hours a day and could be staffed with security guards, perhaps two or three per shift. These so called "hotels" could operate like any other hotel with the exception that they would be open only for business of prostitution. There could be a front desk clerk to check in the prostitutes and arrange specified rent agreements, with no percentage of sales going to the house from sexual acts themselves. There could be a reservation and information desk which would aid both clients and prostitutes. The front desks would be able to regulate the flow of customers, prohibit juvenile involvement of any kind, and keep records of transactions for taxing purposes. An accountant could be employed. The hotel itself could be equipped with a pharmacy, resident doctor and perhaps a counsellor.

Advertising for the "hotel" and individuals interested in supplying and obtaining such services could be done through newspapers, etc., but soliciting in front of the hotel or any other areas not so designated would not be permitted. The information and reservation desk could provide all necessary details and make arrangements. In such a hotel, there could be ample parking space which would avoid congestion on the streets.

Depending upon the occupancy rate of the given "hotel", vacant rooms could be rented on a daily basis to interested clients and non-resident prostitutes. Those who wished to be residents could do so for as long as they wished but would not be bound to any long term agreements, just as a regular hotel operates.

Furthermore, some or most rooms could be equipped with kitchenettes so residence would be possible. Perhaps a grocery store, bank, gift shop, restaurant could be located in the main lobby to make access easy. Room service, laundry facilities could also be provided for residents at their own expense.

In this kind of environment the prostitutes would have all the freedom to come and go as they liked, unlike the strict Nevada brothels, and thus have much more control over their own lives. But the government would also have some control over these activities. For all these reasons, it seems likely to this writer that this "hooker-hotel" concept would appeal to the street-walking prostitute since it would give her more freedom, comfort and protection than she currently may have. But until the notion of a "hooker-hotel" or "legalized brothel" can be accepted, it is clear that the problem of street prostitution in Canada will persist, perhaps creating ever greater difficulties for both the prostitutes and the law enforcement agencies. Given the huge wastage of resources in physical and human terms involved here, one might reasonably argue, as did Decker and others, that society may be squandering an unprecedented opportunity to improve the human condition by its apparent reluctance to accept new and imaginative ideas in this troublesome area.

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