

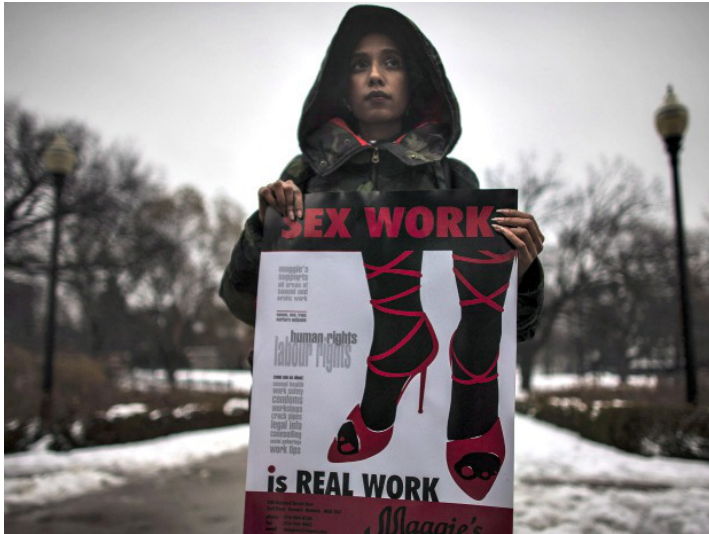
Wayne K. Spear: For smart prostitution laws, ask a prostitute

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Wayne K. Spear More from Wayne K. Spear



Here's how I imagine it working. The Supreme Court of Canada has declared three Criminal Code provisions unconstitutional, giving the government one year to re-draft its prostitution law. The Conservatives think their law is just dandy, and they figure that if they gave a consultation by offering Canadians loaded and leading questions, then on paper Canadians will appear to agree. The Minister of Justice, Peter MacKay, has already put the wheels on this travelling outfit of his: he wants to hear about your values.

Clarity and consistency are values, right? Judges love them, and they've noted that these values have yet to find their way into Canada's bizarre prostitution legislation. Bizarre? The Criminal Code says quite clearly (wink) that it's okay to provide sex as a commercial service: establishing a place in which to do so, communicating to others that such a place exists, and knowingly transporting a person to that place are illegal. That's as clear and consistent as a legal BLT made up of outlawed bacon, lettuce and tomato.

This BLT analogy is good enough to make the simple point that the law is an ass. But our attitudes about sandwiches are not at all like our attitudes toward sex, which like religion occupies a hot-button universe of its own. When the values polling is done, Minister MacKay will have heard from a good many folks with strong opinions and feelings about women who rent out their bodies and the men who do the renting. It's an emotional issue. Most of us have had a BLT, or know someone who has. Will the Justice Minister be flooded with the views of people who count prostitutes among their closest friends? Will first-hand knowledge of the issues drive and inform future legislation? How informed are we, as opposed to how informed do we think we are? Values are an important and necessary starting point for a discussion of public policy, to be sure, but they are only one element of policy. Given that vulnerable lives are going to be affected, the feds are going to need to come up with a solid policy that has something more beneath it than our deeply-held touchy feelies.

To work, legislation requires a comprehensive and deep understanding of the real-world conditions within which the buying and selling of sex takes place.

It's worse even than that. As the Sex Professionals of Canada point out on their web site, ordinary folk harbour many misconceptions and prejudices about sex workers. The pedigree of our attitudes is best suggested by the Dickensian, if not Chaucerian, language we employ. Who uses the word "bawdy" anymore, other than professors of English Restoration theatre and the lawyers who drafted the Criminal Code? According to Sex Professionals of Canada's Valerie Scott, "the thing here is politicians, though they may know us as clients, they do not understand how sex work works." This quotation nicely underscores the hypocrisy that forever attends the topic of prostitution, while reminding us how we got our bizarre laws in the first place.

I would not argue that every opponent of legalized prostitution is a repressed and desiccated prude, or that a laissez-faire approach to the subject is a certain indicator of enlightenment. Any poll is likely to show that most of us are somewhere in the practical, middle road, neither with the libertarians nor the law-and-order traditionalists. Within this broad camp, the object is to craft a credible law, one that balances public order and safety with the established and unyielding fact of commercialized sex. The Criminal Code puts emphasis on predators and exploiters – the parasites who coerce and cajole the young into sexual and economic bondage – and few would dispute that this is a piece of necessity. It's uncontroversial that the sex trade attracts and comprises dirt bags who must be dealt with in the most unsentimental terms.

So, yes, values by all means – beginning with the value of the lives of women. The law should provide terms and tools for prevention of abuses, for safety, and for the dignity of sex workers who undertake an occupation of unique character. As for the larger question of whether prostitution should even be legal, *Canada v. Bedford* (which derives its name from the former dominatrix Terri-Jean Bedford) leaves the question entirely untouched. The legal challenge – issued by Bedford, Amy Lebovitch and Valerie Scott – has yielded a Supreme Court judgement only on the constitutionality of the law. Its moral character is another question entirely, but until this matter is formally arbitrated Canada is going to have murky and untenable legislation of the kind recently struck down.

Is sex work inherently and irredeemably wicked, as the abolitionists would have us conclude? Or is it in fact possible to have a morally defensible prostitution? A compilation of public values alone will not answer these questions, assuming they are even answerable. The much-noted Nordic principles of Swedish legislation do however suggest how one might reconcile values and law, adopting a nuanced and practical middle-way as well as a circumspect approach. The Swedish model attempts to alleviate the social root causes which lead to economic conscription and criminalizes only the undesirable elements of the sex trade. Unlike Canada's laws, Swedish legislation does not tend toward an environment in which sex workers are viewed with contempt and regularly harassed by police, thereby pushed into the dark corners where danger invariably lurks.

I mention Sweden because the Nordic principles do strike me as a clear and cogent expression of values. They attempt to prosecute the things most people find reprehensible, for instance human trafficking and exploitation. They attempt to reduce, as much as possible, the number of

people selling sex on account of economic factors like poverty and desperation. They appear to operate from the presumption that yes, prostitution is wrapped up in a lot of attendant nastiness, and perhaps given thoughtful and proactive measures one can scrub away a measure of this nastiness. To work, however, this pragmatic approach requires a comprehensive and deep understanding of the real-world conditions within which the buying and selling of sex takes place. In practice this means not only taking account of values, but listening to and understanding the needs and perspectives and day-to-day realities of the women who are most affected – and who should therefore lead the way.

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