

# Changes to prostitution law are long overdue

The Supreme Court has been part of the problem, endangering, not protecting sex-trade workers

BY IAN MULGREW, VANCOUVER SUN APRIL 4, 2011

The Supreme Court of Canada will reconsider our archaic prostitution laws a decade after Robert Pickton's murders underscored the vulnerability of street sex workers.

Why is reform taking so long?

Sex assault, stigma, lack of access to police protection, social inequality, torture and murder can all be linked to the criminal prohibitions around prostitution.

In affidavits, in court testimony, in parliamentary hearings, sex-trade workers have described in harrowing detail being beaten, robbed, held hostage and narrowly escaping death.

The violence is epidemic. The inaction of lawmakers and the fact that women had to launch court challenges to bring this issue to the fore is a scandal.

Let's be clear, the Supreme Court has been part of the problem.

Under former chief justice Brian Dickson in 1990, the country's top bench considered the constitutionality of the prostitution provisions.

The justices decided the bawdy-house provisions did not offend the Constitution because there was no economic "right" to pursue a particular occupation.

But they ruled the communicating-for-the-purposes-of-prostitution section violated the right to freedom of expression.

Still, the justices declared the provision reasonable and justifiable under a section of the Charter of Rights and Freedoms and upheld the law.

On Thursday, the high court, now led by a woman, Chief Justice Beverley McLachlin, decided it would hear an appeal involving the case launched in 2007 by a group of Vancouver's Downtown Eastside sex-trade workers seeking to have prostitution laws struck down.

The key issue, though, is whether they even have the right to argue their case.

The B.C. Supreme Court initially dismissed the suit because the woman involved was no longer working in the sex trade. However, the B.C. Court of Appeal reversed that ruling and gave the woman standing, prompting a Crown appeal to the Supreme Court of Canada.

In a separate action, an Ontario Superior Court judge last year struck down the prostitution laws, saying

provisions meant to protect women and neighbourhoods actually endangered sex-trade workers. The ruling was suspended until an appeal is heard in June.

Why can't consenting adults buy and sell sex freely like any other service? The Supreme Court has already said we can go to swingers' clubs and cavort like Caligula.

Street prostitution is one of the scariest behaviours, and the tragic litany of Pickton's victims is an indictment of the status quo.

Police enforcement of the bawdy-house provisions against massage parlours pushes more women onto the corner and exacerbates the situation.

What is the point? We pretend prostitution is legal while maintaining laws that make it illegal to solicit in public, to keep a bawdy house or to live off the avails of prostitution.

We need an overhaul of the Criminal Code, and the government doesn't need to wait.

The discussion around prostitution is mostly cant -people's personal morality bleeding into public policy.

Using the Criminal Code to address a social problem is misguided.

Almost all vice investigation is directed at street prostitution, which researchers say accounts for less than a fifth of the sex trade.

The poorest and most vulnerable are targeted; the high-class hooker and the escort agency profit freely.

It's time for decriminalization and proper regulation of the sex trade -the status quo is unacceptable.

No one should be going to jail because two consenting adults agreed to have sex for cash.

That said, I recognize the vast majority of street prostitutes are charged because they are causing a nuisance.

And at the moment, I think the debate blurs what is sextrade work with subsistence sexexploitation -one may be an occupation, the other is an act of desperation. One is an economic activity that can be regulated, the other a measure of what a human being will do to survive and requires intervention.

To focus on the sex laws as the streetwalker's nemesis when they are mired in poverty, struggling with addiction and crippled by other social woes is naive.

Those who engage in subsistence sex will not be significantly aided by a change to the sex laws, but only by society addressing poverty, inadequate housing, violence, poor health, addiction and bad policing.

Even without the criminal law many, if not most, street prostitutes would be prohibited from a legitimate sex industry because of addiction, disease or mental illness. Yet that should not deter decriminalization.

We still will be faced with international procurement rings, incidents of sex slavery and the continuing exploitation of children, women and men.

But at least the law will task our law enforcement agencies with targeting the perpetrators, not their victims.

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