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[Legalize prostitution in Canada?](#)

Editor's Note: Ronald Weitzer is a professor of sociology at George Washington University in Washington, DC, and an expert on the sex industry. He is the author of [Legalizing Prostitution: From Illicit Vice to Lawful Business](#) and editor of [Sex for Sale: Prostitution, Pornography, and the Sex Industry](#).

By **Ronald Weitzer** – Special to CNN

A [remarkable court decision](#) took place in Canada this week. The Ontario Court of Appeal, hearing an appeal of a lower court's 2010 ruling, affirmed much of the latter's decision invalidating the nation's prostitution laws. If left intact, the appeals court's ruling essentially decriminalizes two prostitution-related activities.

The lower court ruled that Canada's three main prostitution laws were unconstitutional because they, in effect, increased the risks to prostitutes and thus contradicted the Canadian Charter's guarantee of "life, liberty and security of the person." That court threw out the laws against running a brothel, third parties "living off the avails" of prostitution, and the prohibition on solicitation.



The Court of Appeal agreed with the lower court (with all five judges unanimous) on two of these measures. It ruled that living off the avails of prostitution would no longer be

a crime provided that the third party was not involved in "circumstances of exploitation." This means that individuals who benefit economically from the prostitution of others would not be liable to arrest unless exploitation was involved - such as a pimp who took an unfair amount of a prostitute's earnings or where the relationship with a third party included drug dependency.

But other third parties, including boyfriends and husbands and persons who enter into mutually beneficial business relationships with a prostitute, would not be liable for living off the proceeds. The latter would include receptionists, brokers, drivers, and bodyguards hired by the sex worker. In my view, this is exactly how this provision of the law should be construed. It is exploitation, not third-party involvement *per se*, that should be criminalized.

The appeals court also threw out the law against "keeping a bawdy house." This law prohibited both conventional brothels (with several providers present) as well as one-person "brothels" where the provider works out of his or her own residence. The lower court judge found the latter to be the safest way to sell sex, and the appeals court agreed, ruling that the ban on prostitution in bawdy houses was overly broad.

Permitting individuals to sell sex out of their own premises as well as small-scale brothels was recommended by two blue-ribbon commissions, one in the 1985 and the other in the 1998. A majority of Canadians support these proposals. In a 2009 poll, 60% approved of "allowing prostitutes to work indoors in brothels."

Where the two courts differed was on the issue of solicitation. In Canada, it is illegal for a person to "communicate" for the purpose of prostitution, and this is the main way that street prostitution has been handled by police in the past. The lower court ruled the ban on solicitation unconstitutional, but the appeals court voted 3-2 to retain it. The majority of judges seemed to be convinced that there were major differences between indoor and street prostitution - thus adopting a "two-track model."

The two-track model regards street and indoor prostitution as distinct not just because one is visible and the other invisible but also because of the kinds of problems associated with street prostitution (pimping, violence, drug addiction, underage runaways, economic distress) - problems that are generally much less pervasive in indoor prostitution settings, as research shows.

So, what happens now? Nothing in the immediate future. The court gave the government 12 months to appeal the decision allowing bawdy houses, 30 days to rewrite the "living off the avails" law to restrict it to exploitation, and allowed the parties 60 days to appeal the decision to uphold the solicitation/communication law. It is likely that the government will appeal the decision on brothels.

Those who favor a prohibitionist policy and wish to keep all three prostitution laws intact have already begun to mobilize against the court's decision. But both the lower court and the appeals court weighed their arguments thoroughly and both courts rejected many of the common myths about prostitution promulgated by the prohibitionist lobby.

The lower court judge, Susan Himel, discounted the testimony of several of the "experts" testifying for the government, calling their views biased and lacking in evidence, and the appeals court challenged the appellant's claims that decriminalization would increase the demand for prostitution and that it would attract more organized crime.

The court wrote, "The evidence relied upon by the appellants is unpersuasive and does not meet the evidence relied upon by the respondents. The appellants' evidence rests upon the proposition that prostitution can and should be eliminated, an objective that is not supported by the legislative history of the challenged provisions."

Instead, the court was persuaded that decriminalization, at least of indoor prostitution, would be consistent with the goal of harm-reduction. Harm reduction (rather than unattainable abolition) has been the central pillar in other nations that have decided to decriminalize and legalize prostitution. According to [ProCon.org's review of laws in 100 countries](#), 61% have legalized at least some type of prostitution.

In at least some of the places where it is now legal and regulated by the government, benefits of legalization have been documented. My new book - [Legalizing Prostitution: From Illicit Vice to Lawful Business](#) - examines several of these countries. In most of these places, the law changed as a result of legislation. Canada stands out because decriminalization has been championed by the courts.

The views expressed in this article are solely those of Ronald Weitzer.

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1.

Dorlim

Finally, an expert who clarifies the issue and goes beyond the sensationalism of the abolitionists. Bravo!

March 30, 2012 at 3:10 pm | [Reply](#)

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