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The Evangelical Fellowship *of* Canada

**Selling Ourselves: Prostitution in Canada  
Where are we Headed?**

**A Comparison of the Swedish and the Dutch Models, and the Correlation  
Between Prostitution and Human Trafficking.**

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## ***Executive Summary***

Facing two constitutional challenges pending in Ontario and British Columbia, Canada should prepare itself to revisit our existing prostitution legislation and its effectiveness. The court challenges aim to strike down relevant provisions in the *Criminal Code* which render all activities surrounding and related to prostitution illegal. The challengers argue that brothels should be legalized to ensure improved safety for street prostitutes. By moving prostitution indoors, this small group argues that prostitutes would benefit from improved work conditions, would be better able to screen their clients, and protect themselves from the violence of the streets.

This report compares and contrasts Canadian laws with the two opposing legislative frameworks adopted by Sweden and the Netherlands in their efforts to address prostitution. This report also explores the effects of each framework on rates of human trafficking into the sex trade.

Sweden chose to deal with prostitution by adopting a policy of gender equality, establishing that prostitution is a form of abuse primarily affecting women and concluding therefore that to legalize prostitution was to explicitly normalize and tolerate violent behaviour and disrespect toward women. Sweden regards gender equality as one of its most fundamental beliefs, and legalized prostitution would run contrary to that belief. In 1999, Sweden enacted the *Law on the Prohibition of Purchase of Sexual Services*, which criminalizes the purchase of sex while exempting prostitutes from any criminal charges. The Swedish government went to great lengths to promote public awareness and to ensure harsh penalties for “johns,” while providing supports for the prostitutes, such as aftercare and rehabilitation programs and tools for exiting the sex trade. This approach maximized the law’s effectiveness and aided in the implementation of Sweden’s zero tolerance approach.

In contrast, the Netherlands chose to legalize brothels nationwide and address prostitution from an employment and labour law standpoint. Their goal was not to eradicate prostitution but rather to normalize the sex trade in order to obtain transparency and to regulate prostitution. The belief was that this approach would protect women from violent clients and eliminate the organized crime component which, in the Netherlands like many other countries, had become associated with prostitution. The Dutch made a distinction between voluntary prostitution and forced prostitution of women and minors (human trafficking). Regulation of the prostitution industry did not achieve the hoped-for objectives. Organized crime and human trafficking have continued to flourish in the Netherlands while prostitutes still report high levels of violence.

Prostitution has been shown to have a direct link with human sex trafficking rates in any given country. In the Netherlands, following the legalization of the prostitution industry, the country witnessed both an explosion in the number of women trafficked in from neighbouring countries and a significant increase in child prostitution. Sweden on the other hand, has experienced a marked decrease in trafficking following enactment of its 1999 law, because traffickers recognize and fear harsh penalties and view Sweden as an unattractive destination.

The Evangelical Fellowship of Canada therefore recommends that the Government of Canada adopt the following measures, which seek to both eradicate the sex trade and reduce rates of human trafficking across and within our borders:

1. Follow in Sweden’s footsteps by adopting a clear abolitionist standpoint focusing on the punishment and prosecution of purchasers of sexual services.
2. Redefine the societal and legal conception of ‘prostitution’ and recognize that it is, at its core, a violent form of abuse towards, and exploitation of, vulnerable women, children and men.
3. Enact legislation which sets out harsh penalties for those who purchase sexual services (thereby curbing demand) while providing opportunity for support and after-care resources for prostitutes who desire to exit the sex trade.
4. Draft clear and unambiguous legislation to accomplish these purposes and provide the financial resources to ensure implementation of legislation and effective enforcement.
5. Understand that departure from the sex trade is a long and challenging process which often entails multiple attempts. Familial, peer and community support systems, support funds for education and aftercare must be accessible to better reintegrate those wanting to leave the trade.

## 1. Introduction

*There is no way to describe how it feels to sell yourself to anybody that wants you. Nobody could have told me that, no matter how many hours a night I stood in the shower crying, I would never be able to wash away the feeling of hands touching me or the sweat of the last drunken date. I even thought that if I could wear my Walkman as I turned a trick, it would help to drown out the sounds of each new man or allow me to forget where I was just for the length of the next song. Ultimately, it was a wire cord wrapped around my neck as blood and what was left of my life slipped away that made me determined to hang on and fight. It was at that moment I became committed to escaping the abuse and building a new life.*

– Allison (participant of “Strolling Away” research study)

Prostitution has long been an issue of discussion and debate in Canada. The country is currently facing two constitutional challenges to the laws governing prostitution; one in Ontario and the other in British Columbia. A small but vocal minority of sex trade workers are seeking to strike down sections of the *Criminal Code* addressing the illegality of prostitution-related activities. The question being asked in these challenges is how we, as a country and signatory of various international treaties and protocols, can protect poor and marginalized individuals and help them escape the violence and discrimination they face working on the streets. Two primary schools of thought weigh in on the matter. Some believe that decriminalizing or legalizing prostitution and bringing the practice off the streets would best protect the vulnerable; while others claim that in order to truly protect vulnerable individuals we must criminalize the acts of the johns and pimps, and seek to dramatically reduce the demand for prostitution. Both constitutional challenges seek the decriminalization of prostitution by legalizing bawdy houses, permitting individuals to live off the avails of prostitution and allowing communication for the purchase of sexual services. If either challenge is successful, prostitution would be fully legalized in Canada by the removal of the relevant sections from the *Criminal Code*.

A central message of the Bible is for God's people to be compassionate, because God has been compassionate to them. In the Old Testament, this is evident in the call to care for the poor, the widow and the orphan. In the New Testament, Jesus calls his followers to love our neighbours as ourselves. It is from this perspective that we engage on an issue that impacts our “neighbours” dispassionately drawn into prostitution and in need of compassionate support to escape.

It has been demonstrated that people who become prostitutes have most often entered into prostitution as a last resort. We do not believe that prostitution can be legitimately considered safe, dignified work. It is a dangerous way to earn money due to the risk of violence at the hands

of customers, pimps and organized crime – these latter two also making it very difficult to leave prostitution once ensnared. And despite often best efforts at trying to maintain safe practices, sex workers remain at highly elevated risk for physical and sexual violence, degradation and long-term detrimental physical effects of sexually transmitted diseases, such as hepatitis and AIDS.

The Badgley Committee, established by the federal government in 1980 to study sexual offences against children, reported in 1984 that: "the ingrained pattern of exploitation, disease and violence in the daily lives of juvenile prostitutes is unmistakable..."<sup>1</sup>

Prostitution is dehumanizing. Like pornography, prostitution focuses only on the sexual dimension of human nature to the exclusion of all else, creating a distorted perspective of people, their worth and their proper place in society.

This report will compare and contrast two distinct approaches taken by Sweden and the Netherlands, examining the impact each has had on the country that adopted it, analyze the application of each, and compare the long-term effects on the rates of prostitution and, consequently, human trafficking. As Canada faces the re-evaluation of its legal structure on the issue of prostitution, it is wise to look to the international community in hopes of learning the lessons of other countries' successes and failures.

The aim of this report is to provide Canadians and their elected representatives a clearer understanding of the advantages and disadvantages of both approaches in order to determine which legislative structure might best aid in addressing prostitution and combating the correlating crime of human trafficking in and through Canada.

## **2. Canada's Current Stance on Prostitution**

### *Prostitution and the Criminal Code*

In Canada, prostitution itself is not illegal *per se*, but all related activities are prohibited.<sup>2</sup>

Prostitution is dealt with in three specific sections of the *Criminal Code*; section 210 to section 213.<sup>3</sup> The specific subsections of the provisions being challenged in Canada are: section 210 which prohibits keeping a common bawdy house; section 212 (1) (j) which addresses living off the

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<sup>1</sup> Badgley Committee: Sexual Offences Against Children, Ottawa: Supply and Services Canada, 1984, p. 91.

<sup>2</sup> John Lowman "Prostitution Law Reform in Canada", School of Criminology, Simon Fraser University. Online: <http://www.schoolforjohns.com/lowman.html>.

<sup>3</sup> These sections cover the gamut of prostitution related activities, including: the keeping of bawdy houses, procuring and communicating for the purpose of obtaining sexual services.

avails of prostitution; and section 213 (1) (c) which targets communication in public for the purchase of sexual services.

The section which criminalizes communication for the purposes of prostitution was introduced in 1985 and targets the prohibition of public offers to purchase and provide sexual services. It was established to ensure that those purchasing sexual services would be appropriately penalized, as well as the prostitutes offering such services.<sup>4</sup> However, while the communication prohibition targets both the johns and the prostitutes, it is most often the prostitutes who are charged and who serve jail time for contravening this law.<sup>5</sup> Between 1986 and 1995, while mostly men were charged with communicating offences (47%), women charged were sentenced much more harshly. 39% of women charged with the offence were imprisoned, in comparison to 3% of men.<sup>6</sup> This practice created a two-tiered system which focused on street prostitutes and street prostitution while indoor prostitution, such as that offered in massage parlours, strip clubs and escort agencies operated with few consequences.<sup>7</sup>

#### *Legalization vs. Decriminalization*

The legalization of prostitution refers to a legal regime that would see all criminal sanctions on prostitution and its' related activities removed, and some form of government regulation of the sex trade.<sup>8</sup> This means that the "industry" as a whole would be entirely legal and regulated in a manner similar to other industries.

Decriminalization, on the other hand, refers to removing sections 210, 212 (i) (j) and 213 (1) (c) from the *Criminal Code* so that there would be no law prohibiting communicating, living on the avails of prostitution, or running a common bawdy house. The goal of decriminalization is to remove all criminal sanctions in the hopes of public recognition of prostitution in the same manner as any other occupation.<sup>9</sup>

The principal difference between legalization and decriminalization is that while decriminalization entails the removal of all penal sanctions relating to prostitution, legalization goes a step further, not only removing criminal sanctions, but also imposing an obligation on the government to regulate activities surrounding prostitution in order to normalize and control prostitution.

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<sup>4</sup> Lowman, *supra note 2* at 44.

<sup>5</sup> Shelagh Day, "Prostitution: Violating the Human Rights of Poor Women", Action ontarienne contre la violence faite aux femmes, June 2008. Online: [http://francofemmes.org/aocvf/documents/Prostitution-v.angl\\_FINALE\\_WEB.pdf](http://francofemmes.org/aocvf/documents/Prostitution-v.angl_FINALE_WEB.pdf), p.13.

<sup>6</sup> *Ibid.*, p.37.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*, p. 16

<sup>9</sup> *Ibid.*, p.15

## *Abolition*

An abolitionist standpoint stems from the belief that prostitution is not, and cannot be a safe, legal form of work for women or men. It takes the view that prostitution cannot legitimately be considered simply a sexual act between two consenting adults, but rather that, by definition, it constitutes a form of violence against the personhood, dignity or physical body of the person who is being purchased by another. This approach seeks to decriminalize the actions of the prostitute – the victim – and instead criminalizes the purchasers of sexual services and the purveyors – the pimps, brothel owners and the prostitution industry.<sup>10</sup> This would prohibit any actor in the prostitution industry from profiting from the sale of a person's body.

### *Prostitution in Canada: Where do we stand?*

To better understand the reality of prostitution in Canadian society, a variety of individuals and organizations have undertaken studies in order to both understand the status quo and to develop various potential legislative reforms intended to curtail the social harms of prostitution. In 2000-2001, a retrospective research project entitled *Strolling Away* was conducted in Calgary to examine the entrance into prostitution of 38 individuals as well as their repeated attempts and eventual successful departures from the "lifestyle."

This study revealed that, on average, the age of entrance into prostitution was 12 years old for males and 15 years old for females.<sup>11</sup> Male prostitutes averaged a length of 12 years in the trade, whereas females averaged a significantly shorter period of 6 years.<sup>12</sup> Of those polled, 82% of females and 100% of males had been victims of sexual abuse prior to entering the sex trade.<sup>13</sup> Studies such as *Strolling Away* consistently demonstrate that prostitution exploits poor and marginalized individuals who have perceived or actual limited options, and lack the skills, education or awareness to survive by another means.<sup>14</sup> Key factors identified as driving individuals into prostitution included: sex discrimination, poverty, racism and abandonment.<sup>15</sup>

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<sup>10</sup> *Ibid.*, p.17.

<sup>11</sup> Susan McIntyre, "*Strolling Away*". A Report for the Department of Justice, Canada, 2001, p. 10.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> Melissa Farley, "*Unequal*" Prostitution Research & Education, September 13 2005, online: <http://www.prostitutionresearch.com/Unequal.pdf>.

<sup>15</sup> *Ibid.*

In Canada, laws have been enacted in the belief that “this exploitative practice harms its participants and is detrimental to Canadian society as a whole”.<sup>16</sup> However, enforcement of these laws has proven to be ineffective and unbalanced. More than 90% of all prostitution-related charges are brought against street prostitutes due to their greater visibility, while the pimps and johns, more often than not, go unpunished.<sup>17</sup> The common approach by law enforcement officials, which is to perform sweeps along popular “strolls” in every major city, has the effect of directly penalizing vulnerable individuals in the sex trade, while failing to effectively address the problem – the demand for purchase of sexual services.<sup>18</sup>

*Terri Jean Bedford, Amy Lebovitch, and Valerie Scott v. Her Majesty the Queen*

The first current constitutional challenge to Canada’s prostitution laws has been heard in the Ontario Superior Court, with counsel for the challengers, Alan Young, citing the trial of Willie Pickton, convicted in the murders of over twenty female prostitutes taken from Vancouver’s Lower Eastside, as justification for decriminalization. Young declared the belief that “decriminalization will provide prostituted women with safer environments by allowing them to work indoors, and giving them more control”.<sup>19</sup> The plaintiffs – Bedford, Lebovitch and Scott – argued a harm reduction approach, proposing that the decriminalization of prostitution would effectively provide prostitutes greater protection and better access to condoms, medical services and more time for assessment of potentially dangerous clients.<sup>20</sup> The plaintiffs seek to render sections 210, 212 (1) (j) and 213 (1) (c) of the *Criminal Code* null and void, stating they believe that these provisions violate sections 7 (right to life, liberty and security) and 2(b) (right to freedom of thought, belief, opinion and expression) of the *Charter of Rights and Freedoms*.<sup>21</sup> Young argued that the *Criminal Code* “violates their section 7 right to liberty by exposing them to the risk of imprisonment, and by exposing them to greater physical and psychological harm because they are constrained from working indoors”.<sup>22</sup>

*Downtown East Side Sex Workers United Against Violence Society v. Her Majesty the Queen*

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<sup>16</sup> “*Submission to the Subcommittee on Solicitation Laws of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness*”, The Evangelical Fellowship of Canada, February 2005.

<sup>17</sup> *Ibid.*, p.3.

<sup>18</sup> *Ibid.*

<sup>19</sup> Day, *supra note* 5, p. 44

<sup>20</sup> The Evangelical Fellowship of Canada, *supra note* 16, p.3.

<sup>21</sup> Day, *supra note* 5, p. 44.

<sup>22</sup> *Ibid.*

The plaintiff, in this case, is a non-profit society which claims that current Canadian prostitution laws not only violate sections 7 and 2 (b) of the *Charter*, but section 15 as well.<sup>23</sup> In this particular challenge, the plaintiffs claim that the equality rights of sex workers are being violated within the existing framework of prostitution laws. They argue that the current provisions in the *Criminal Code* treat sex workers differently from those working in trades other than the sex trade, and that this inequality is discriminatory.

The two challenges are forcing the federal government to defend current prostitution laws.

This courtroom and public scrutiny may provide impetus for a review or reconsideration of Canada's current legal regime in regard to prostitution. A careful examination of the implications and consequences of both schools of thought, that of the abolitionist camp and that of those who seek legalization will be essential to any such review. Two of the best studied representatives of these different approaches are the initiatives undertaken in Sweden and the Netherlands. What follows is a comparison between the Swedish policy of abolition and the Dutch model of decriminalization/legalization with a review of the effects of both systems.

### **3. Criminalizing Demand: The Case of Sweden**

*I was very fortunate to be able to walk away, build a new life and not end up a statistic. The time I spent in the "game" ultimately changed my life, the way I view the world, and most importantly - my soul.*

- Allison (participant of "Strolling Away" research study)

#### *The Law on the Prohibition of Purchase of Sexual Services (1999:408)*

##### Rationale and Objectives

In January of 1999, the Swedish government introduced *The Law on the Prohibition of Purchase of Sexual Services*. Under this law, "the person who, for payment, obtains a casual sexual relationship is penalized – unless the action entails punishment in accordance with the *Penal Code* – for the purchase of sexual services with fines or imprisonment for a maximum of six months".<sup>24</sup> This provision essentially renders illegal all attempts at purchasing sexual services,

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<sup>23</sup> *Ibid.*, p. 45.

<sup>24</sup> *Law on Prohibition of the Purchase of Sexual Services*, Swedish Codes of Statutes, promulgated 4 June 1998, entered into force 1 January 1999. Online: [http://www.bayswan.org/swed/swed\\_law.html](http://www.bayswan.org/swed/swed_law.html).

whether on the street, in brothels, in saunas or massage parlours.<sup>25</sup> The rationale behind this legislation is that since gender equality is of utmost priority in Sweden, legislative reform must reflect that and prioritize the protection of women (identified as the predominantly victimized group in regard to prostitution), and policy must be drafted in an attempt to end prostitution, instead of simply managing and legalizing it.<sup>26</sup>

Sweden officially recognizes prostitution as a form of exploitation and violence against women and children.<sup>27</sup> By choosing to solely prosecute the purchasers of sexual services (predominantly men) rather than the prostitutes, Sweden is the first country to criminalize demand while decriminalizing supply. Sweden has taken the view that there is no such thing as voluntary prostitution – prostitution is always an enforced activity, and therefore the prostitute is to be treated as a victim, and not a criminal.<sup>28</sup> They have recognized that prostitution is detrimental to both the prostitute on an individual level, and to society as a whole. They have taken a firm position that prostitution entails oppression of women and is therefore an affront to gender equality, and as long as the prostitution of women and children exists, equality cannot be achieved.<sup>29</sup>

*The Law on the Prohibition of the Purchase of Sexual Services* is the legislative tool applied to eradicate prostitution in Sweden. The legislation is based on a “zero vision<sup>30</sup>” policy in hopes of completely eliminating prostitution.<sup>31</sup> In addition to eradicating prostitution, the law was also purposed to bring about a fundamental change in societal attitudes.<sup>32</sup> Children are taught in school at a young age that the purchase of sex is illegal and unacceptable, in hopes that the next generation will grow up considering prostitution a much more heinous offence than it is considered today.<sup>33</sup>

#### *Implementation and Enforcement of the Law*

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<sup>25</sup> Julie Bindel and Liz Kelly, “A Critical Examination of Responses to Prostitution in Four Countries: Victoria, Australia; Ireland; the Netherlands; and Sweden”, Routes Out Partnership Board, Child and Woman Abuse Studies Unit, London Metropolitan University, 2003, p. 25.

<sup>26</sup> *Ibid.*, p. 26.

<sup>27</sup> The Evangelical Fellowship of Canada, *supra note* 16, p. 3.

<sup>28</sup> “*Purchasing Sexual Services in Sweden and the Netherlands, Legal Regulation and Experiences*”, A Report by a Working Group on the Legal Regulation of the Purchase of Sexual Services, The Norwegian Ministry of Justice and the Police, 8 October 2004, p. 45.

<sup>29</sup> *Ibid.*, p. 46.

<sup>30</sup> While referred to in Sweden as « zero vision » the term is synonymous with zero tolerance.

<sup>31</sup> *Ibid.*

<sup>32</sup> “*Prostitution Ban Huge Success in Sweden*” HumanTrafficking.org, 30 January 2008, online: <http://www.humantrafficking.org/updates/838>.

<sup>33</sup> *Ibid.*

Implementation of the law was no easy task. Marianne Eriksson, the lawmaker who first proposed the change in the European Parliament in 1997, was extensively ridiculed for the introduction of such radical legislation.<sup>34</sup> The early stages of implementation hinged on law enforcement personnel: the police needed in-depth training and orientation in viewing and understanding prostitution as a form of male violence against women.<sup>35</sup> The Swedish government ensured extensive funding and training to the country's police officers and prosecutors to convey the clear "zero vision" policy on prostitution.<sup>36</sup> Their approach has proven successful – studies have found that an overwhelming 80% of the Swedish population support their government's approach on prostitution, while a minority of 18% wish the law were abolished.<sup>37</sup>

As indicated, the law solely targets the individual who obtains or attempts to obtain sexual services in exchange for money.<sup>38</sup> At the regulatory level, the law was implemented through a scale of fines determined by the convicted person's financial status.<sup>39</sup> This ensures that the fine has the same effect of punishment for a poor or wealthy offender. The per diem fine is calculated by a fixed formula tailored to the offender's financial capacity.<sup>40</sup>

The greatest difficulty in implementing the law has been due to the strict evidence requirements of the Swedish court system. Proving guilt of the accused requires strong evidence, and the inability to obtain solid evidence has resulted in a 49% success rate for prosecutions.<sup>41</sup> The law has become more difficult to enforce as police officials have struggled to continue to afford the extensive and time-consuming undercover efforts government funding provided for in the first years after the law was enacted.<sup>42</sup> Documentary evidence of sexual purchasing transactions is difficult to obtain and prove in a court of law.<sup>43</sup>

As an important component of the comprehensive execution of the legislation, the law provided for ample rehabilitation and social funding to aid prostitutes who wished to exit the sex trade.<sup>44</sup> Additional funding has also been allocated for public education on matters of prostitution<sup>45</sup> and to

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<sup>34</sup>Karl Ritter, "Sweden Prostitution Law Attracts World Interest", The Associated Press, 16 March 2008, online: [http://www.usatoday.com/news/world/2008-03-16-sweden-prostitution\\_N.htm](http://www.usatoday.com/news/world/2008-03-16-sweden-prostitution_N.htm).

<sup>35</sup>De Santis, "Why Hasn't Anyone Tried This Before?" Women's Justice Center, online: [http://www.ayudaparamujeres.com/cj\\_sweden.html](http://www.ayudaparamujeres.com/cj_sweden.html).

<sup>36</sup>*Ibid.*

<sup>37</sup>*Ibid.*

<sup>38</sup>The Norwegian Ministry of Justice and the Police, *supra note* 28, p. 17.

<sup>39</sup>*Ibid.*

<sup>40</sup>*Ibid.*

<sup>41</sup>*Ibid.*, p. 18

<sup>42</sup>*Ibid.*, p. 53.

<sup>43</sup>*Ibid.*

<sup>44</sup>De Santis, *supra note* 35.

<sup>45</sup>*Ibid.*

NGOs, drug rehabilitation programs, exit strategies, and long term reintegration into society initiatives in order to ensure a successful, effective and permanent departure from the sex trade.<sup>46</sup> The programs have been major contributing factors to a dramatic reduction in prostitution rates in Sweden since the law was introduced, and a corresponding reduction in the rates of human trafficking.<sup>47</sup>

#### *Effects and consequences of the Law*

In 1999, before the law came into effect, there were nearly 2,500 prostitutes in Sweden.<sup>48</sup> This figure was cut by half within a year of the law being enacted.<sup>49</sup> Within the next five years, Sweden succeeded in drastically reducing the numbers further: in Stockholm alone, street prostitution has been reduced by two thirds and the number of johns has gone down 80%.<sup>50</sup>

It is important to note that there have been some undesired effects and consequences of the law since its implementation ten years ago. The heavy targeting of clients on the streets has made street prostitutes more vulnerable to accepting clients without having performed adequate safety assurance.<sup>51</sup> In the past, street prostitutes had time to “assess their clients” for tell-tale signs of violent behaviour or unusual perversity before accepting to transact with them. With clients rushing transactions due to the fear of being arrested, street prostitutes no longer have this opportunity and are forced to make decisions in a very short period of time. Helen Cavers, a midwife who has worked extensively with abused women, believes that sexual violence and sadism towards prostitutes has increased and that the men who are still on the streets, despite the heavy police patrolling, are those with severe sexual perversities and tendencies.<sup>52</sup> While no concrete documented evidence demonstrates this increase in violence, testimonial accounts suggest a tougher market with increased violence.<sup>53</sup> Furthermore, due to the facilitation of the purchase of sex through the internet, street prostitutes have reportedly had to accept lower prices and acquiesce to more risky demands such as unprotected sex.<sup>54</sup>

The ultimate impact of the law has, however, been undisputedly beneficial. Not only have the rates of street prostitution been reduced dramatically, but this has continued to be the case well

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<sup>46</sup> Bindel, Kelly, *supra note 25*, p. 26.

<sup>47</sup> The Evangelical Fellowship of Canada, *supra note 16*, p. 3.

<sup>48</sup> The Norwegian Ministry of Justice and the Police, *supra note 28*, p. 9.

<sup>49</sup> *Ibid.*

<sup>50</sup> De Santis, *supra note 35*.

<sup>51</sup> The Norwegian Ministry of Justice and the Police, *supra note 28*, p. 13.

<sup>52</sup> *Ibid.*, p. 13.

<sup>53</sup> *Ibid.*, p. 14.

<sup>54</sup> *Ibid.*, p. 19.

after the year 2000 in which the number of street prostitutes dropped by half.<sup>55</sup> Sweden's law enforcement agencies have expressed that the legislation has benefited enforcement in all types of sex crimes, which has in turn aided in wiping out the organized crime element (i.e. prostitution rings, black market prostitution) which plagues countries that have legalized and/or attempted to regulate prostitution.<sup>56</sup>

#### **4. Legalization: The case of the Netherlands**

##### *Rationale and Objectives*

Prostitution has never been illegal in the Netherlands. What was prohibited, however, was the legal functioning of brothels. The legalization of prostitution in the Netherlands essentially refers to the removal of the penal provisions surrounding brothels which passed on October 1, 2000.<sup>57</sup> The removal of sections 250*bis* of the Dutch *Penal Code* meant that sex clubs and brothels were allowed to operate as legal businesses as long as certain conditions were met.<sup>58</sup> Unlike Sweden, the Netherlands' objective was never to eliminate prostitution entirely, but rather to regulate it in order to control and tolerate the practice.<sup>59</sup> It must be understood that the Dutch view prostitution in an entirely different light than do the Swedes. The laws enacted reflect the Dutch's definition and the objective of the regulation of prostitution. This view may best be understood by how it is defined by the Prostitution Information Centre of Amsterdam:

Prostitution is a fact; it has always existed and will never go away. It doesn't matter how you feel about it. Therefore we believe it is important not to forbid prostitution, but to organize it better, otherwise the problems will only become greater.<sup>60</sup>

The driving force behind the legislation was the fact that previous attempts and efforts at criminalizing prostitution and brothels and reducing the criminal activities relating to prostitution had proven ineffective and unsuccessful.<sup>61</sup> Dutch legislators believed that the legalization of prostitution would destroy the links between the black market and organized crime, while at the same time decreasing the violence against women, as they would legally be able to work in controlled establishments, and thus have better access to the police in case of violent assaults.<sup>62</sup>

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<sup>55</sup> *Ibid.*, p. 52.

<sup>56</sup> De Santis, *supra note* 35.

<sup>57</sup> The Norwegian Ministry of Justice and the Police, *supra note* 28, p. 15.

<sup>58</sup> *Ibid.* p. 26.

<sup>59</sup> *Ibid.*, p. 27.

<sup>60</sup> *Ibid.*, p. 26. Prostitution Information Centre (PIC), online: [www.pic-amsterdam.com](http://www.pic-amsterdam.com).

<sup>61</sup> *Ibid.*, p. 27.

<sup>62</sup> Bindel, Kelly, *supra note* 25, p. 14.

The Dutch sought to create a system that would better allow them to regulate and control the running of brothels; to better combat forced human sex trafficking and better protect minors from sexual abuse.<sup>63</sup> They subscribe to the theory that there are two forms of prostitution: voluntary and forced. Voluntary prostitution is considered a profession, wherein prostitutes choose to sell sexual services of their own free will.<sup>64</sup> Forced prostitution occurs when the prostitute is coerced into selling sexual services. Forced prostitution has been widely denounced and is criminalized via section 250a of the Dutch *Penal Code*.<sup>65</sup>

It is important to note, for comparisons' sake, that the Netherlands has twice as many inhabitants as Sweden.<sup>66</sup> The scale of prostitution in the Netherlands is about ten times larger than Sweden and the underpinning objectives in regard to prostitution and definition of prostitution are markedly different. While Sweden addresses the issue of prostitution as a gender equality issue, the Netherlands views prostitution as a voluntary line of work to be treated and regulated just like any other occupation, distinct of criminal activity.<sup>67</sup>

#### *Implementation and Enforcement of the Law*

Legalization of brothels in the Netherlands was primarily implemented through penal and administrative statutory provisions. In terms of penal provisions, article 250a is applicable against forced prostitution and human trafficking.<sup>68</sup> The maximum sentence for an offence under article 250a is a penalty of 6 years imprisonment.<sup>69</sup>

Article 151a of the *Law on Municipalities* grants local municipal authorities the authority to make regulations regarding the operation of businesses and enterprises which offer sexual services.<sup>70</sup> This power was given to municipalities to enable them to regulate locally, through bylaws, the establishment, installation and management of sexual enterprises.<sup>71</sup>

The key actors in the implementation and enforcement process in the Netherlands are the police, the Municipal & Health services, the municipal building inspectorate, the labour inspectorate, the tax authorities, the Public Prosecution Service, the administration agencies for social security, and the immigration and naturalization department.<sup>72</sup>

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<sup>63</sup> The Norwegian Ministry of Justice and the Police, *supra note* 28, p. 25.

<sup>64</sup> *Ibid.*, p.26.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*, p. 24.

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*, p. 28.

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*, p. 29.

<sup>71</sup> *Ibid.*, p. 30.

<sup>72</sup> *Ibid.*

The numerous enforcement bodies' lack of harmony and cooperation has been cited as the main reason for the legislation's ineffective implementation and enforcement.<sup>73</sup> Conflicts have arisen due to differences in opinion between the various branches and levels of the governing authorities. Further, the lack of consistency between differing agencies has made it harder for brothels to operate legally as they must comply with various strict and sometimes unreasonable requirements, each stemming from different regulating departments.<sup>74</sup>

Another step in implementing administrative regulations is the requirement for women working in legal brothels to be registered with the police.<sup>75</sup> Many prostitutes are opposed to formally submitting their names to a registry as the loss of anonymity renders them more vulnerable to abuse and the stigma attributed to their trade.<sup>76</sup> Contrary to the theory that legalization would normalize the prostitution industry, many prostitutes continue to fear the stigma and negative connotation associated with their occupation, and would rather remain in the illegal underground sex trade in hopes of avoiding registration in legal brothels and being listed on official records as a prostitute.<sup>77</sup> Lastly, as part of the implementation phase, a designated area determined by the municipalities called the "zone" was created for permitted street prostitution.<sup>78</sup> A municipality must ensure that the area does not cause disruption to the surrounding neighbourhoods and must provide a certain amount of security for the prostitutes working in the "zone".<sup>79</sup> Municipalities are required to regulate and establish their hours of operation and determine when the buying and selling of sexual services are permitted. Furthermore, the "zones" are equipped with drop-in centres to allow prostitutes to rest and receive medical attention.<sup>80</sup>

Street prostitution outside of these "zones" is forbidden and is treated as a criminal offence if the activities disturb the peace of a residential area, if minors are involved or if there is evidence of forced prostitution.<sup>81</sup>

#### *Effects and consequences of the law*

Since the legalization of brothels in 2000, the Netherland's efforts at reducing organized crime within the prostitution industry have been unsuccessful.<sup>82</sup> In fact, multiple reports examining the

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<sup>73</sup> *Ibid.*, p.31

<sup>74</sup> *Ibid.*

<sup>75</sup> Bindel, Kelly, *supra note* 25, p. 16.

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> The Norwegian Ministry of Justice and the Police, *supra note* 28, p. 32.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*, p.33.

situation in the Netherlands and other countries that have taken a similar approach have demonstrated that the legalization of brothels actually strengthens links with organized crime.<sup>83</sup> It was never the Netherlands' targeted objective to reduce prostitution in the country, but it is interesting to note that while the legalization of brothels did not bring about a reduction in the number of prostitutes, fifty percent of brothels had disappeared by 2004.<sup>84</sup> It is not clear, however, what happened to these brothels and whether they are operating elsewhere illegally, or whether they ceased operation altogether.<sup>85</sup>

The objectives of legalization were to regulate and control brothels, and make a distinction between women who chose prostitution as a line of work and those who were forced into the trade. Police accounts show that legalization has aided in creating a dialogue between key actors in the prostitution industry.<sup>86</sup> Post-legalization, transparency has increased in the industry which has in turn helped Dutch police concentrate their investigation efforts on combating human sex trafficking. Law enforcement personnel have been able to establish contacts within the sex industry while maintaining confidence and trust with prostitutes, clients, and brothel owners.<sup>87</sup>

The penal provisions have not been difficult to implement and enforce. The difficulties and challenges in implementation have been experienced largely when trying to enforce administrative regulations on a municipal level. While requirements vary from one municipality to another, disagreements between various authorities have made regulating brothels unsuccessful.<sup>88</sup> Many factors have been identified for the regulatory failure, including: lack of coordination between administrative authorities, administrative confusion and poor overall organization.<sup>89</sup>

As for the tolerance "zones", these too have failed to serve their intended purpose. The failure may be attributed to the fact that Amsterdam lacked a comprehensive strategy for determining the location of the tolerance zone and ended up establishing the zone far outside the city centre of Amsterdam.<sup>90</sup> Given that the majority of street prostitutes were also identified as being drug addicts who needed to transact and obtain drugs in the city, very few prostitutes actually took advantage of the zone and drop-in medical clinics due to its' removed location.<sup>91</sup>

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<sup>82</sup> Bindel, Kelly, *supra note 25*, p. 14.

<sup>83</sup> *Ibid.*

<sup>84</sup> The Norwegian Ministry of Justice and the Police, *supra note 28*, p. 54.

<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*, p. 39.

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*, p. 51.

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*, p. 33.

<sup>91</sup> *Ibid.*

In October 2003, the Amsterdam City Council decided to shut down the municipality's street tolerance zone in hopes of providing prostitutes safer street prostitution options.<sup>92</sup> The Mayor of Amsterdam at the time, Job Cohen, was quoted as saying that the reasoning behind this decision was that prostitution in Amsterdam was a "devil's dilemma," as "it appeared impossible to create a safe and controllable zone for women that was not open to abuse by organized crime".<sup>93</sup> This significant step demonstrated to the international community that legalization was not an effective means of reducing prostitution-related organized crime.<sup>94</sup>

Some supporters of legalization argue that prostitutes would be safer moving indoors rather than being on the streets. Their expressed fundamental concern is for the safety of the prostitutes and allowing them a venue where they can safely carry out sexual transactions. However, it has been proven that women practicing indoor prostitution (such as in saunas and massage parlours) have little control over the services that they will provide. On the street, prostitutes can choose which acts they are willing to perform, and which they will refuse. Within the indoor saunas and massage parlours however, the owners of the establishments obligate "their" workers to perform whatever the client desires. This usually includes oral, vaginal or anal sex, and often without protection.<sup>95</sup>

Esohe Aghatise, founder of IROKO (Associazione IROKO Onlus), a nongovernmental organization which assists female victims of sex trafficking in Italy, is convinced that brothels rob prostitutes of whatever protection they may encounter on the streets, since women behind closed doors have little to no chance of coming into contact with outreach social workers who might be able to help them exit prostitution.<sup>96</sup> Other studies have reached the same conclusion as Aghatise, that women are more vulnerable indoors since they are less able to have a say in their customers and surroundings.<sup>97</sup> Women working inside are actually at greater risk of exploitation, enslavement and physical harm than prostitutes working on the streets.<sup>98</sup>

The Dutch government is of the belief that voluntary prostitution is a legitimate choice on the part of the prostitute. It also believes that this choice must be respected and therefore, legalized and

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<sup>92</sup> Bindel, Kelly, *supra note 25*, p. 14.

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.*

<sup>95</sup> Janice G. Raymond, "*Ten Reasons for Not Legalizing Prostitution and a Legal Response to the Demand for Prostitution*" Binghamton: Haworth Press, 2003, p. 6.

<sup>96</sup> *Ibid.*

<sup>97</sup> Monica O'Connor, Grainne Healy, "*The Links Between Prostitution and Sex Trafficking: A Briefing Handbook*", Coalition Against Trafficking in Women (CATW), A Swedish and United States Governmental and Non-Governmental Organisation Partnership, 2006, p. 21.

<sup>98</sup> *Ibid.*

tolerated. Many critics are quick to point out this philosophy's inaccuracies. Numerous studies show that the majority of women in the sex trade did not in fact make a fully consenting, rational choice to enter the trade.<sup>99</sup> Real choices, such as careers in medicine, law, nursing or politics were not available. Rather, faced with harsh realities, their choices were heavily guided by questions of survival, such as how to feed themselves and their children.<sup>100</sup> These "choices" weren't really choices at all, but more so, means and strategies of survival. Women who participated in a study conducted by Raymond *et al.* reflected that the decision to enter the sex industry can only be understood while taking into account the lack of other viable options available, and reported that prostitution was their last choice, necessary to make ends meet.<sup>101</sup> In another study, law enforcement officials reported that in their opinion, 67% of women in the sex trade did not enter into prostitution voluntarily.<sup>102</sup>

### **5. Prostitution and Human Trafficking**

*We, the survivors of prostitution and trafficking gathered at this press conference today, declare that prostitution is violence against women. Women in prostitution do not wake up one day and "choose" to be prostitutes. It is chosen for us by poverty, past sexual abuse, the pimps who take advantage of our vulnerabilities, and the men who buy us for the sex of prostitution"*

- Manifesto, Joint Coalition Against Trafficking in Women and the European Women's Lobby Press Conference, 2005

In Western Europe, the trafficking of women and girls into the sex trade has been one of the most rapidly growing criminal activities of the past two decades.<sup>103</sup> In the Netherlands, revenue generated from the sex industry attained nearly US \$1 billion annually. This astounding figure demonstrates just how lucrative the business of prostitution and trafficking is.<sup>104</sup>

It is known that countries which have legalized or, in part, tolerated prostitution have a greater demand for human trafficking activities. The legalization of prostitution has historically signified an increased number of women and children being trafficked into the commercial sex trade.<sup>105</sup> Legalization necessarily also implies an explosion in the trafficking of women and children by organized crime groups.<sup>106</sup>

<sup>99</sup> Raymond, *supra note* 95, p. 9.

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*, p. 10.

<sup>103</sup> O'Connor and Healy, *supra note* 97, p. 25.

<sup>104</sup> *Ibid.*

<sup>105</sup> *Ibid.*, p. 29.

<sup>106</sup> *Ibid.*, p. 31.

At the time the legal change was made, it was reported that in 1999, 80% of the women in the Dutch brothels were trafficked from other countries. The reduction of trafficking was one of the arguments the Netherlands used to justify legalization of prostitution. Their belief was that the legalization of the sex trade would end the exploitation of immigrant women trafficked into the Netherlands from neighbouring countries. However, this strategy failed spectacularly.<sup>107</sup>

One year after the legalization of brothels came into effect in the Netherlands, eight Dutch victim support organizations reported an influx of the number of trafficking victims.<sup>108</sup> Not only did human trafficking rates increase significantly, but the legalization of brothels also brought with it an increase in child prostitution.<sup>109</sup> ChildRight, an Amsterdam-based organization, estimated that child prostitution rates skyrocketed, nearly quadrupling between 1996 and 2001.<sup>110</sup> In 1996, it was recorded that 4,000 children were in the sex trade, compared to the astounding 15,000 children in 2001.<sup>111</sup> At least 5,000 of these children were estimated to have been trafficked from other countries, the majority coming from Nigeria.<sup>112</sup>

In a sex trafficking study, the majority of trafficked and prostituted women interviewed adamantly expressed that prostitution should not be legalized nor should it be considered legitimate work.<sup>113</sup> They argue that legalization creates more risks and harm than they were already encountering with particular customers and their pimps. One interviewee was quoted as saying: “No way. It’s not a profession. It is humiliating, and violence from the men’s side”.<sup>114</sup> Another stated: “Prostitution stripped me of my life, my health, everything”.<sup>115</sup>

Sweden, on the other hand has witnessed entirely different results. Because of the *Law on the Prohibition of the Purchase of Sexual Services*, Sweden is experiencing few problems in the realm of human trafficking. According to the Swedish police, roughly between 400 and 600 women are trafficked into Sweden per year.<sup>116</sup> This number is impressively minute compared to Finland, which, having prostitution laws similar to the current framework in Canada, and being only half the size of Sweden, registers between 10,000 and 15,000 trafficked women per year.<sup>117</sup> Both supporters and critics of the Swedish law agree that the number of women trafficked into the

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<sup>107</sup> Raymond, *supra note 95*, p. 3.

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*, p. 7.

<sup>110</sup> *Ibid.*

<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*, p. 11.

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*

<sup>116</sup> HumanTrafficking.org, *supra note 32*.

<sup>117</sup> *Ibid.*

country is extremely low due to the fact that Sweden is not viewed as an attractive or lucrative destination country for human traffickers.<sup>118</sup>

## **6. Conclusions and Recommendations**

*One of the things I tell them is if you're waiting for somebody to come and save you, you might die. If you are waiting for someone to come and fix you, you will stay broken.*

- Cherry, participant of Strolling Away Research Study

The aim of this report has been to provide a comparative analysis of the consequences and benefits of two legislative approaches to prostitution, and consequently, human trafficking, that differ from the current Canadian approach.

With the current constitutional challenges to Canadian prostitution laws, it appears Canada is being given an opportunity for re-examination of our own approach to the issue of prostitution; the rationale, goals and effectiveness of the current laws both in regard to prostitution and human trafficking.

In the face of the two constitutional challenges which both argue for the legalization of brothels with the aim of moving prostitution indoors in hopes of providing more safety for the women, it is crucial to realize that increased safety through legalization of brothels is a theory that has failed miserably abroad.<sup>119</sup>

The Netherlands elected to treat prostitution as a legitimately chosen line of work, and put in place regulations to enforce equal conditions of work for all and to control – not diminish nor eliminate – the sex trade. In the Netherlands, the objectives sought after and the intended purposes of legalization are distant from reality. The rationale of providing more control and protection to minors and reducing human trafficking has proven unfounded.

The Dutch model of legalization has been proven repeatedly<sup>120</sup> to be unsuccessful and ineffective. A study completed at the University of London revealed that results in countries which legalized prostitution were extremely negative and ultimately led to: dramatic increases in all aspects of the sex industry, an increased involvement of organized crime in the sex industry, an increase in child

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<sup>118</sup> Day, *supra note 5*.

<sup>119</sup> The Evangelical Fellowship of Canada, *supra note 16*, p. 3.

<sup>120</sup> As demonstrated in studies performed in Australia, Ireland and Italy, which adopted a model similar to that of the Netherland's.

prostitution, an increase in violence against women, and lastly, a significant increase in human sex trafficking.<sup>121</sup>

Based on lessons learned from Sweden and the Netherlands, the EFC strongly recommends that the Government of Canada give serious consideration to following the example of Sweden, actively seeking to eradicate prostitution by addressing demand, adjusting the focus of laws and law enforcement to the prosecution of those who purchase sexual services.

To engage in this work, the Canadian government will be required to reformulate and redefine the current understanding of prostitution. And again, we would strongly urge the Government to consider the stance taken by Sweden: that prostitution is only and ever a form of violent exploitation of vulnerable individuals, most often, though certainly not exclusively, women and children. Those involved as the frontline service providers in the sex trade should almost always be recognized as victims and not as criminals.<sup>122</sup>

As discussed above, Sweden chose to adopt an abolitionist stance and enacted legislation in the hope of achieving greater gender equality, which reflected the country's opposition to the sale and abuse of women. They are of the view that where it is acceptable or legal for men to purchase women for sexual purposes, equality cannot exist.

The Swedish model is one of the most coherent and successful prostitution policy models ever developed. The key, many believe, is its unique and unprecedented twin-legislative objectives of criminalizing the purchaser of sexual services and providing support and resources to the prostitute.<sup>123</sup>

It is crucial to remember that initial implementation of new legislation is often difficult and requires adaptation by government, law enforcement and society.<sup>124</sup> To facilitate this process, it is particularly important to draft legislation with clear and unambiguous wording, provide ample financial resources for thorough implementation, and assure effective enforcement of the new legislation.<sup>125</sup>

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<sup>121</sup> De Santis, *supra*, note 35.

<sup>122</sup> *Ibid.*, p. 4.

<sup>123</sup> *Ibid.*

<sup>124</sup> The Norwegian Ministry of Justice and the Police, *supra* note 28, p. 48.

<sup>125</sup> *Ibid.*

It is also vital to understand that efforts at leaving the sex trade are a cumulative personal growth experience, amidst which, many may encounter setbacks.<sup>126</sup> For this reason, support systems are essential and support funds for education and after-care must be provided to families in order to successfully reintegrate former sex-trade workers.<sup>127</sup>

Ultimately, the sex trade is driven by demand, and true eradication will not occur unless the demand side of the transaction is properly addressed.

Change in this area of the law must also explore longer-term considerations, such as designing and establishing resources to inform the Canadian public that prostitution is an issue of gender equality, of sexual exploitation and oppression. There must be no ambiguity in defining prostitution as a form of violence, abuse and control towards vulnerable women, children and men.<sup>128</sup> Numerous current and former sex trade workers testify that they view and consider their experience as a prostitute to be a form of repeated abuse.<sup>129</sup>

A fundamental change in how we, as a society, understand the nature of prostitution will be essential moving forward. Through education, we can hopefully curb and decrease the demand, which will in turn decrease the need for supply and ultimately the availability of such services.<sup>130</sup> The constant flow of purchasers of other human beings for the purpose of sexual services has inhibited successful exits from the sex trade, as there has always been permitted the presence of customers willing to purchase women for their personal use.<sup>131</sup>

Further, any steps taken to legalize prostitution (along the lines of the Dutch model) would be entirely contrary to efforts at combating human trafficking, as required by Canada's ratification of the 2005 United Nation's *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Pornography*. State-sponsored prostitution has been identified as one of the significant causes of sex trafficking – with nations effectively becoming an additional pimp by living off the earnings of women in prostitution.<sup>132</sup>

We strongly urge the Government of Canada to carefully consider the serious consequences of legalizing prostitution and to undertake a thorough comparison between these two radically different legislative and enforcement regimes, and their effects upon Swedish and Dutch societies.

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<sup>126</sup> McIntyre, *supra note* 11, p. 11.

<sup>127</sup> *Ibid.*, p. 12.

<sup>128</sup> *Ibid.*, p. 14.

<sup>129</sup> *Ibid.*, p. 41.

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.*

<sup>132</sup> O'Connor and Healy, *supra note* 97, p. 16.

In so doing, the federal government will, we suspect, conclude that Canada should adopt legislation and policies similar to those of Sweden, followed by a continuing study of the impacts of the change in policy on rates of prostitution, human trafficking and the attitudes of Canadian society.

In short, Canada needs to shift its focus in order to accomplish the Criminal Code's intended goal of preventing prostitution and its associated harms. The focus needs to be turned away from prosecuting those shown to be the victims of this crime and toward the prosecution of those who are the purchasers and purveyors of prostitution and its associated offences. A clear legislative framework will be required, along with sufficient funding, support and education in order to appropriately eliminate the demand for the purchase of women, children and men for sexual purposes.