



The Evangelical Fellowship of Canada
Centre for Faith and Public Life
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THE EVANGELICAL FELLOWSHIP OF CANADA
is the national association of evangelical
Christians, gathered together for influence, impact
and identity in ministry and public witness.

OUT OF BUSINESS: Prostitution in Canada - Putting an End to Demand

DECEMBER 2013



EFC

The Evangelical Fellowship
of Canada

December 9, 2013

Rt. Hon. Stephen Harper
Prime Minister of Canada

Dear Mr. Harper:

Enclosed, please find a copy of The Evangelical Fellowship of Canada's report *Out of Business: Prostitution in Canada – Putting An End To Demand*.

As you know, prostitution has never been illegal in Canada but the acts surrounding it have. The EFC is convinced this has led to the untenable situation where vulnerable Canadians who become ensnared in prostitution face legal risks that inhibit their ability to exit the sex trade and secure alternative means of making a living; and, women and children are vulnerable to the financial power imbalance of buyers, pimps and organized crime. The attempt to regulate what is not illegal sends the indefensible message that the sex trade which commodifies the human person and harms so many is a legitimate enterprise. In an age which has striven for the abolition of slavery and the elimination of human trafficking, the continued countenance of prostitution is untenable and contrary to the affirmation of the dignity of human persons and respect for human life.

The laws concerning communication for the purposes of prostitution, keeping a common bawdy house and living on the avails of prostitution have been challenged in the courts and now await final decision of the Supreme Court of Canada. The EFC submits for consideration this proposal for a change in the law – regardless of the outcome in the *Bedford v. Canada case* – that we believe reflects the principles upon which good law is based and is consistent with the Government of Canada's current strategy as expressed in the *National Action Plan to Combat Human Trafficking*. To pursue the goal of eliminating human trafficking necessarily requires the abolition of the sex trade, for which the vast majority of those trafficked are destined. The criminalization of those who purchase sex and control the sex trade has proven the most effective means of doing so, along with a coordinated effort to offer the necessary social programs for those exiting the sex trade.

We are hopeful that *Out of Business* will contribute to the final legislative drive in an effort that began with the Fraser Committee in the 1980s, continued with the federal, territorial and provincial Working Group on Prostitution in the 1990s and now benefits from the experience of those countries that have taken different approaches to prostitution within their own jurisdictions in the 21st century. *Out of Business* reflects on the models of prostitution law and social programs being applied in several countries and recommends a model that fits with Canadian constitutional provisions and existing initiatives within the borders of our great country.

Yours sincerely,

Bruce J. Clemenger
President

The Evangelical Fellowship of Canada

- c. Hon. Peter MacKay, Minister of Justice
Hon. Thomas Mulcair, Leader of the Official Opposition
Hon. Steven Blaney, Minister of Public Safety
Hon. Justin Trudeau, Leader, Liberal Party of Canada
Joy Smith, Member of Parliament, Kildonan - St Paul

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TABLE OF CONTENTS

Executive Summary	4
1. Introduction	6
2. The Current Canadian Situation	7
Laws Challenged in Court	7
Reform Long Overdue	8
3. Developing a New Model	9
Opposing Perspectives and Policies	9
The Netherlands: legal prostitution	9
Sweden: the innovator	11
From Swedish Model to Nordic Model	13
From Nordic Model to European Model?	14
4. A Canadian Adaptation of the Nordic Model	14
Components of a Canadian Model	14
Challenges in the Canadian Context	17
Federal Jurisdiction	18
Provincial Jurisdiction	19
Private Sector	20
Government Strategies in Canada	20
Manitoba	21
Alberta	21
Other Law Enforcement and Crime Prevention Considerations	22
Canada's Efforts to Combat Human Trafficking	23
5. Conclusion and Recommendations	24
Appendix A. Current Criminal Code Sections on Prostitution	26
Appendix B: Sweden's Penal Code	29

“Prostitution has never been illegal in Canada...Instead of criminalizing prostitution, Canadian law criminalizes certain practices around the act of prostitution.”

Executive Summary

Canadians have known for some time that our laws on prostitution are not working.

From 1983 to 1985, Canada’s prostitution laws were studied by the Special Committee on Pornography and Prostitution (the Fraser Committee), appointed by Canada’s Justice Minister. In 1992, a Working Group on Prostitution was established by the federal, provincial, and territorial Justice Ministers with a mandate to review prostitution legislation and to bring forward recommendations. In 2006, the Subcommittee on Solicitation Laws (a subcommittee of the House of Commons Standing Committee on Justice and Human Rights) released a report entitled “The Challenge of Change: A Study of Canada’s Criminal Prostitution Laws.”

What all three had in common were reports that noted prostitution as a social problem requiring both legal and social reforms to deal with the involvement of youth in prostitution, the harm of street prostitution, and violence against prostitutes. The 2006 report offered this unanimous statement on behalf of its Conservative, Liberal, NDP and Bloc Quebecois members, “*the status quo is unacceptable.*” Our laws remain unchanged.

Prostitution has never been illegal in Canada. Canadian law has not condemned the act of prostitution itself—the exchange of money for sexual gratification—between adults. Instead of criminalizing prostitution, Canadian law criminalizes certain practices around the act of prostitution. Specifically, the *Criminal Code* prohibits the keeping of a “common bawdy house” or brothel, living on the avails of prostitution, and public communication for the purpose of prostitution. These three provisions were challenged by Terri-Jean Bedford, Amy Lebovitch and Valerie Scott in an Ontario case initiated in 2009 that reached the Supreme Court of Canada in 2013.

Bedford, Lebovitch and Scott seek to legalize prostitution in Canada; a practice that has proven to increase rates of prostitution, human trafficking and the involvement of organized crime in countries such as The Netherlands and New Zealand.

Other nations have chosen to criminalize the purchase of sex, the trade in women and children perpetrated by pimps and traffickers, and the influence of organized crime exhibited in the sex trade. Sweden was the innovator. Finland and Norway followed soon after. More than a decade of experience with this *Nordic* model has The Netherlands and New Zealand rethinking their approach, France taking steps to implement a law that targets the buyers, and Germany re-examining the ineffectiveness of liberal prostitution laws on German crime rates associated with an estimated 700,000 prostitutes in their country.

The Evangelical Fellowship of Canada has long expressed concern for the prostituted based on biblical principles that compel care for the vulnerable and inform the duty of care we owe one another as human beings.

Over the last two decades, the EFC has presented a number of papers and submissions to Parliamentary committees on this topic: *Prostitution in Canada: Toward a Christian Response* (1996); a Submission to the Standing Committee on Justice and Legal Affairs on Bill C-27 (1996); a Submission to the Subcommittee on Solicitation Laws of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness (2005); *Selling Ourselves: Prostitution in Canada – Where are we Headed?* (2010). In addition, the EFC has engaged on the intricately entwined issue of human trafficking in: *Human Trafficking: A Report on Modern Day Slavery in Canada* (2009); *Not So Ancient: Human Trafficking and Modern Slavery* (2009); *Seeking Justice*,

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Rescuing the Enslaved: Recommendations for a National Strategy to Combat Human Trafficking (2011); and, a Submission to the Senate Standing Committee on Legal and Constitutional Affairs Bill C-310: *An Act to Amend the Criminal Code (Trafficking in persons)* (2012).

The EFC participated in the consultation process with the Minister of Public Safety in the development of Canada’s *National Action Plan to Combat Human Trafficking*. The *National Action Plan* recognizes that the most common manifestation of human trafficking crimes in Canada is for the purpose of sexual exploitation of women and children. The EFC is convinced that implementation of laws targeting the demand for purchase of sexual services is critical to the fight against sex trafficking and a necessary addition to the *National Action Plan*. The EFC also regards the *National Action Plan* as providing a template for the kind of multi-stakeholder collaboration that will be essential to successful implementation of a Canadian version of a *Nordic*-style model of law and policy on prostitution.

One of The Evangelical Fellowship of Canada’s goals is the elimination of all forms of sexual exploitation in Canada. To that end, in *Out of Business: Prostitution in Canada – Putting An End To Demand* we propose a Canadian adaptation of the Nordic Model of law and policy on prostitution.

We encourage the federal government to consider these recommendations for change in laws and policy for the betterment of prostituted persons and elimination of sexual exploitation in Canada:

- Parliament must be clear and unambiguous in the definition of prostitution as a form of violence, abuse and control of vulnerable children, women, and men;
- Criminalize the purchase and attempted purchase of sex;
- Amend our laws to reflect the non-criminal nature of individuals who are being prostituted;
- Maintain prohibitions against profiting from sexual exploitation; i.e. pimping;
- Support strict crime diversion programs upon sentencing such as john’s schools;
- Engage the provincial governments, territorial governments, municipal governments, nongovernmental organizations and other public and private partners in the development of a comprehensive national plan or strategy with the objective of ending prostitution;
- Invest in exit programs and support for prostituted persons; and,
- Initiate a public awareness campaign to accompany such a change in the law.

“The status quo is unacceptable.”

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1. Introduction

A central message of the Bible is the call for God’s people to be compassionate, because God has been compassionate to us. We are created in God’s image and have inestimable worth, not by virtue of what we do or contribute, but because of who we are as humans.

Given the dignity and worth of all, we are called to care for those who lack adequate resources to live, those who are vulnerable to abuse and neglect, those who lack protection or legal standing, and those who have no one to stand for them. In the Old Testament, this is expressed by the call to care for those who are poor, those widowed, and those without fathers, the alien or the stranger. The call of the prophet Micah is do justice, to love mercy and to walk humbly with God. In the New Testament these injunctions to care for the marginalized and the vulnerable are repeated in various texts and in the life of Jesus. Yet Jesus goes further and calls his followers to love our neighbours as ourselves.

From these we derive several principles that guide our work as an association of churches. First, we treat everyone with dignity and respect for who they are. Second, we affirm that we are indeed our brother’s, and our sister’s, keeper and we have a responsibility for the well being of others and have a duty of care for one another. Last, we are called to do what is just and be advocates for those who are mistreated or abused. We note that these principles are also reflected in Canadian law and public policy. It is from these principles of the dignity of all, care for the vulnerable and marginalized, and of the pursuit of justice that The Evangelical Fellowship of Canada engages on the issue of prostitution.

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 both men and women, and robbing each of their worth and proper place in society.

Research shows that prostituted persons most often enter into prostitution by force, coercion, or as a result of constrained choice and last resort. Prostitution is inherently dangerous; it is violence against women and a form of systematic exploitation of many of our society’s most vulnerable children, women, and men. Prostitution cannot be considered a safe or legitimate form of work; nor is it a solution to poverty.

One of The Evangelical Fellowship of Canada’s goals is the elimination of all forms of sexual exploitation in Canada. To that end, we propose a Canadian adaptation of the Nordic Model of law and policy on prostitution. The Nordic and other models are more fully explored in our April 2010 paper, *Selling Ourselves: Prostitution in Canada – Where are we Headed?*¹ The Nordic model aims to eliminate the “pull factors” that draw people into prostitution—including demand from sex buyers and the manipulation of pimps. Also, in cooperation with civil society and the charitable sector, the model seeks to provide assistance, such as drug rehabilitation, trauma counselling and job retraining, to help people escape prostitution. For Canada, this means new laws must be established to address the root causes of prostitution and help provided for those who are prostituted to leave the sex trade, thus undermining the viability of the trade itself. Canada’s current laws and policies fall short in reaching these goals.

The preamble to a 1949 UN Convention adopts this position:

...prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the

human person and endanger the welfare of the individual, the family and the community....²

2. The Current Canadian Situation

Prostitution has never been illegal in Canada. Canadian law has not condemned the act of prostitution itself—the exchange of money for sexual gratification—between adults. (The *Criminal Code* does make it an offence to purchase sexual services *from a minor*.³) Instead of criminalizing prostitution, Canadian law criminalizes certain practices around the act of prostitution. Specifically, the *Criminal Code* prohibits the keeping of a “common bawdy house” or brothel,⁴ living on the avails of prostitution,⁵ and public communication for the purpose of prostitution.⁶ Our existing laws make street prostitution, which necessarily involves public solicitation, effectively illegal.

Canada’s current prostitution laws reduce the visibility of prostitution-related transactions, thus reducing its public nuisance aspect, but fail to properly address the fundamentally exploitive nature of prostitution. It takes two or more persons to commit an act of prostitution, yet our law has historically disproportionately punished prostituted persons, not the purchasers. The unfortunate end result has been a perpetuation of injustice against individuals who are most often involved in prostitution because of pre-existing abuse, marginalization, extreme vulnerability or coercion.

Prostituted persons, especially those working in street prostitution, have scant access to legal or supportive social services designed to help them exit the sex trade.⁷ An inadequate legal framework and unbalanced law enforcement practices have combined with a lack of viable exit strategies for prostituted persons to create a revolving door of abuse, marginalization and neglect of this vulnerable population. Meanwhile, this same imbalance leaves the root of the problem and the perpetrators of the exploitation (the sex buyers and the pimps) largely undeterred. In fact, the paucity of arrests of sex buyers and purveyors may serve as a form of tacit approval for these behaviours.⁸

Laws Challenged in Court

Canada’s prostitution laws have been challenged and found flawed by two levels of the Ontario Courts. In September 2010, Ontario Superior Court Justice Susan Himel ruled in *R. v. Bedford* that the *Criminal Code* provisions related to keeping a common bawdy house, living on the avails of prostitution and communicating for the purposes of prostitution were unconstitutional because they force prostituted women to choose between their freedom and their security, as guaranteed under the *Canadian Charter of Rights and Freedoms (Charter)*.⁹ On appeal by the Federal and Ontario governments, in 2012 the Ontario Court of Appeal struck down the law against keeping a common bawdy house,¹⁰ finding that it violated section 7 of the *Charter*. This provision was “overbroad,” the Court determined, because it went beyond prohibiting commercial brothels to making it illegal for a prostitute to sell sex in her¹¹ own home—which the Court stated could improve safety. The Court also found the “living on the avails of prostitution”¹² provision to be overbroad as it prevented prostitutes from paying security personnel to protect them. Rather than invalidate this provision, the Court decided it should only apply to “circumstances of exploitation.”¹³ The public solicitation (communication) prohibition was upheld.¹⁴

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The Supreme Court of Canada granted a stay on the Court of Appeal’s judgment,¹⁵ meaning the *Criminal Code* provisions remain in force, for now. The Supreme Court heard the appeal of the case in June 2013. Its pending judgment will determine the final fate of these laws.

The Evangelical Fellowship of Canada (EFC) intervened in the Supreme Court of Canada hearing in *Bedford*.¹⁶ We urged the Justices to keep in mind the principle of human dignity in forming their judgment, arguing that prostitution is a disgraceful assault on human dignity. We argued that prostitution is rooted in the historical subordination of women and the historical practice of men to buy and exchange women as objects for sexual use. We argued that the limitations on freedom and security arising from the *Criminal Code* provisions in question are reasonable in light of the significant human rights violations that flow from the legalization of prostitution and its direct correlation with human trafficking. Also, because decriminalization¹⁷ in other countries has resulted not only in more prostitution but in increased human trafficking and related involvement of organized crime, the EFC cautioned against striking down Canada’s existing laws; an act which would decriminalize prostitution.¹⁸

Reform Long Overdue

The EFC does not believe our existing laws are adequate or particularly effective in either discouraging prostitution-related activities or protecting prostituted women. But we caution against the invalidation of Canada’s existing laws, with the ultimate goal of abolishing prostitution in mind. It is important that our existing laws be upheld until Parliament – whose rightful role and responsibility it is to legislate on a matter of such great social significance – has time to craft better, more just laws. Preventing the decriminalization of prostitution—more precisely, of the prohibited activities closely related to it—is not enough. Reforming and strengthening the law is necessary. The *Bedford* case has highlighted the problems with our prostitution laws, although those laws have been the subject of debate, both in the public square and Parliament, for decades.

From 1983 to 1985, Canada’s prostitution laws were studied by the Special Committee on Pornography and Prostitution (the Fraser Committee), appointed by Canada’s Justice Minister. In its 1985 report,¹⁹ the Committee described prostitution as a social problem requiring both legal and social reforms. It noted the “contradictory and often self-defeating nature”²⁰ of the *Criminal Code*’s prostitution provisions and the inequality in the enforcement of the solicitation law, with a vastly disproportionate number of prostituted persons being charged compared to customers or sex buyers, who were left untouched by the law. Since that time, the solicitation provision has been amended to make clear that it applies to both prostituted persons and buyers, but gross inequality in enforcement persists.

In 1992, a Working Group on Prostitution was established by the Federal, Provincial, and Territorial Justice Ministers with a mandate to review prostitution legislation and to bring forward recommendations. The Working Group identified the involvement of youth in prostitution, harm to neighbourhoods caused by street prostitution, and violence against prostitutes as primary issues of concern.²¹ In its 1998 report, the Working Group expressed unanimous support for early intervention and education strategies aimed at preventing the entry of youth into prostitution.²² As for street prostitution, some favoured enhancing current legislation and others argued for decriminalization, but all members supported some degree of social intervention including substance abuse help and safe houses.²³ Within the Working Group there was mixed support for additional measures aimed specifically at sex buyers.²⁴

“The Netherlands was the first country in the European Union to fully legalize prostitution.”

In 2006, the Subcommittee on Solicitation Laws (a subcommittee of the House of Commons Standing Committee on Justice and Human Rights) released a report entitled “The Challenge of Change: A Study of Canada’s Criminal Prostitution Laws.”²⁵ Consisting of members from the Liberal, Conservative, NDP, and Bloc Quebecois parties, the subcommittee was unanimous on this point: “*the status quo is unacceptable*” [emphasis ours].²⁶ Seven years later, our laws remain the same. If the Supreme Court of Canada (SCC) invalidates existing laws in its upcoming *Bedford* judgment, it will place tremendous pressure on the government to act, but whether the existing laws are struck down by the SCC or not, great improvements can and need to be made. The EFC agrees that the status quo of our current laws relating to prostitution is unacceptable.

3. Developing a New Model

Opposing Perspectives and Policies

The delay in legislative reform is regrettable, but it affords Canada the advantage of being able to compare the prostitution reform initiatives implemented in other countries in recent decades. The Subcommittee on Solicitation Laws, in its 2006 report, found that “two broad conflicting perspectives”²⁷ emerged from the submissions of approximately 300 witnesses. One perspective, which underlies what is now known as the Nordic Model of law on prostitution, sees prostitution as inherently exploitive. The other views prostitution among consenting adults as a legitimate form of work.

The Netherlands: legal prostitution

The latter is the mindset of the Netherlands, which was the first country in the European Union to fully legalize prostitution. The Dutch approach to prostitution has been referred to as “pragmatic tolerance” or *gedogen*.²⁸ The Dutch hold the opinion that prostitution, when chosen voluntarily as a profession, is acceptable and those within it should be afforded certain working standards as in any other profession.²⁹ In October of 2000, the Netherlands removed section 250*bis* of the Dutch Penal Code that declared the operation of brothels to be illegal.³⁰

The Dutch Parliament was convinced that legalization would allow them to protect women’s rights, guard against the coercion of foreign and domestic women into prostitution, and increase supervision over the industry as a whole.³¹ In the Netherlands the purpose of legalization is described in six objectives:

1. Protect prostitutes from commercial exploitation;
2. Fight involuntary prostitution and trafficking;
3. Combat the sexual abuse of juveniles;
4. Advance the position of individuals working as prostitutes;
5. Eliminate criminal involvement in the prostitution industry; and
6. Limit the number of non-European Union residents working as prostitutes in The Netherlands.³²

These objectives were set in place with the stated intent of protecting those in the sex industry by providing access to health benefits, safety, hygienic work conditions, and the guarantee of a steady income.³³ The objectives are to be accomplished through government-regulated brothels and safe “zones” where prostitutes are permitted to work legally.³⁴ Legal sex work must be voluntary³⁵ and workers must hold legal residence permits.³⁶



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Despite the Dutch government’s intentions and objectives, illegal prostitution, exploitation of foreign women, high levels of violence and organized criminal activity remain a concern in the Netherlands.

Although there are many opportunities and avenues for legal prostitution, illegal activities have proliferated. Individuals working legally in the sex trade are required to register as prostitutes and to fulfill a set of criteria, including age restrictions, abstaining from the use of illegal substances, and Dutch citizenship.³⁷ Many prostitutes cannot fulfill the requirements and continue to prostitute illegally. Still more do not wish to register because of the loss of anonymity and persistent stigma.³⁸ Some experts have estimated that only 4% of all prostitutes are registered.³⁹

There has also been a sharp increase in trafficking of foreign women into the Netherlands following legalization. Some experts estimate 80-85% of sex workers in the Netherlands are non-Dutch.⁴⁰ While there are no official numbers of illegal immigrants or trafficked persons working in the sex industry in the Netherlands, studies evidence that both legal and illegal brothels are full of predominantly foreign women.

There has also been need for greater police involvement and more police officials patrolling Dutch prostitution zones. In 2004, the police began bi-monthly checks on brothels⁴¹ and in 2006 the Amsterdam city council closed down 37 brothels due to the involvement of organized crime networks in the businesses’ operation.⁴²

Violence toward women in prostitution remains a significant concern. As early as October 2003, the Amsterdam City Council began shutting down the street tolerance zones. Former Mayor Job Cohen stated that prostitution was “a devil’s dilemma” because “it appeared impossible to create a safe and controllable zone for women that was not open to abuse by organised crime.”⁴³ Legalization had not achieved its intended objectives.⁴⁴ The tight regulations surrounding prostitution have simply relocated illegal prostitution activity.⁴⁵ Further, a 2007 government report noted that “pimps are still a very common phenomenon.”⁴⁶

In 2003, New Zealand enacted the *Prostitution Reform Act* (PRA) with the objective of stopping prostitution from going underground by allowing sex work to be openly available.⁴⁷ The PRA did not morally sanction prostitution, but decriminalized it and created a framework intended to support those in prostitution.⁴⁸ On paper, the PRA protects the health and safety of prostituted persons and gives them the ability to refuse any client they wish.⁴⁹ This new policy has created tensions between federal and local governments, as its specifications leave much of the ‘managing’ of prostitution to local governments, many of which hold differing views on how this should be accomplished.⁵⁰ Several cities have limited the permissible locations for prostitution and others have made it nearly impossible for sex workers to operate.⁵¹

Now, a decade after the PRA was passed, formerly prostituted women in New Zealand are calling for legal reform to make the purchase of sex illegal. In a recent presentation to the New Zealand Parliament’s justice and electoral committee, Freedom from Sexual Exploitation director Elizabeth Subritzky argued that the only solution to the damage caused by prostitution and the violence directed at women in prostitution is to reform the country’s prostitution laws to target sex buyers.⁵² According to Subritzky, the PRA “not only encouraged more men to buy sex, but transformed prostitution into an acceptable, even attractive job for young, poor women in New Zealand.”⁵³

“Swedish legislators took the view that prostitution was a form of violence toward and sexual exploitation of vulnerable women...”

The “pragmatic” argument in favour of the legalization and regulation of brothels claims that legalization ensures greater physical protection for prostituted persons and better access to medical services, information on dangerous customers, and the protection of law enforcement. However, the difference in outcomes between countries that have legalized prostitution and those that prohibit the purchase of sex is stark. Though the former is intended to reduce prostitution-related harms, the latter model is far more effective in reducing related social ills, including human trafficking.⁵⁴

“All of the important prostitution reform initiatives that have taken place around the globe can be traced back to one or the other of these competing philosophical views,”⁵⁵ the Parliamentary Subcommittee on Solicitation Laws observed. “Any made-in-Canada solution will necessarily have to choose between these views, and from that, derive a legal and social model tailored to the needs of our society.”⁵⁶ The EFC believes the Nordic Model is superior in principle and in practice.

Sweden: the innovator

In the 1990s, Sweden began to examine prostitution through a lens of gender equality. Swedish legislators took the view that prostitution was a form of violence toward and sexual exploitation of vulnerable women; and, further that it was fundamentally contrary to equality between the sexes. They recognized that the vast majority of persons in prostitution were not there by choice, and chose not to view prostitution as a legitimate form of work. Gunilla Ekberg, a Swedish-Canadian lawyer and former Swedish Minister of Industry, outlines this approach:

In Sweden, it is understood that any society that claims to defend principles of legal, political, economic, and social equality for women and girls must reject the idea that women and children, mostly girls, are commodities that can be bought, sold, and sexually exploited by men. To do otherwise is to allow that a separate class of female human beings, especially women and girls who are economically and racially marginalized, is excluded from these measures, as well as from the universal protection of human dignity enshrined in the body of international human rights instruments developed during the past 50 years.⁵⁷

Given these foundational principles, legislators, civil servants and civil society put in place a new social and legal framework with the objective of abolishing prostitution in Sweden. To end prostitution, they understood a need to focus their efforts – in criminal law, public policy and education – on reducing or eliminating the demand for purchase of sexual services. To that end, in 1999, Sweden enacted the *Law on the Prohibition of Purchase of Sexual Services* (now commonly referred to as the Nordic Model).

The main criminal law provision governing prostitution in Sweden reads:

A person who, otherwise than as previously provided in this Chapter, obtains a casual sexual relation in return for payment, shall be sentenced for purchase of sexual service to a fine or imprisonment for at most six months.

The provisions of the first paragraph also apply if the payment was promised or given by another person.⁵⁸

The offence is punishable by a maximum prison sentence of up to six months or a fine, though in practice the courts in Sweden use only fines.⁵⁹ Purchase of all forms of

“The number of prostitutes working on the street was reduced by half within a year of the law being enacted.”

sexual services, whether purchased from escort services, in brothels, or on the street, is illegal.⁶⁰ If a third party pays or promises to pay for the sexual services acquired by another, the third party may be punished as an accomplice. All terminology in the legislation is gender-neutral; buyers and sellers can be male or female. It is not a crime to sell sexual services, nor does the seller risk liability under the rules on complicity in a crime.⁶¹

The Swedish government draws attention to the link between prostitution and human trafficking, but acknowledges that prostitution has a variety of underlying causes and is not always associated with human trafficking.⁶² The reasons for entering prostitution vary, but the common element in all prostitution and its sustaining force is *demand*—the fact that people, mostly men, buy sex. Therefore, a critical element of any initiative to end prostitution is criminalizing demand. If there were no demand for sexual services, there would be no sale of sexual services.

However, as Sweden’s Inquiry on the evaluation of the ban on purchase of sexual services insists: “Criminalization can never be anything other than a supplement to other efforts to combat prostitution.”⁶³ It therefore calls for sustained social work to prevent entry into and encourage exit from prostitution, and to continue public awareness initiatives to influence public opinion toward prostitution.⁶⁴ An important component of Sweden’s success in decreasing prostitution is the emphasis on providing exit strategies and supports to those who wish to exit prostitution.⁶⁵ Women seeking to exit prostitution have access to services such as health care, counselling, and protection.⁶⁶

In 1999, before the law came into effect, there were nearly 2,500 prostitutes in Sweden.⁶⁷ The number of prostitutes working on the street was reduced by half within a year of the law being enacted.⁶⁸ Within the next five years, Sweden saw a further dramatic reduction in prostitution: in Stockholm alone, street prostitution has been reduced by two thirds and the number of johns has decreased by 80%.⁶⁹ Prior to the criminalization of the purchase of sexual services, rates of street prostitution were comparable in the capital cities of Norway, Denmark and Sweden. In 2008, the number of people in street prostitution in both Norway and Denmark was estimated to be three times higher than in Sweden.⁷⁰ The Swedish government inquiry analyzing the ban concluded that it was reasonable to assume the reduction seen in Sweden was a direct result of criminalizing the purchase of sex, a finding supported by the immediate and dramatic reduction of street prostitution that occurred in Norway following their introduction of a prohibition on the purchase of sexual services in 2009.⁷¹ It was also found that while the number of foreign women in street prostitution had increased in all Nordic countries between 1999 and 2008, the increase in Sweden was dramatically lower than the considerable increase seen in Denmark and Norway.⁷²

In the initial years of the new law, Sweden faced significant enforcement and implementation challenges. However, with in-depth education of law enforcement officials and prosecutors, the new model has had significant impact. The Swedish government has also continually worked to improve its model.⁷³ In July 2010, Sweden adopted a *National Plan for Combating Prostitution and Human Trafficking for Sexual Purposes* covering five priority areas: greater protection and support for people at risk; more emphasis on preventive work; higher standards and greater efficiency in the justice system; increased national and international cooperation; and, increased knowledge and awareness.⁷⁴

In Sweden, it is the responsibility of the national legislative assembly (the Riksdag), county councils and municipalities working in cooperation to help and protect those at

“Following Sweden’s lead, Finland introduced a partial ban on the purchase of sex in 2006...Norway fully criminalized the purchase of sex in 2008...Iceland implemented a ban on the purchase of sexual services in 2009.”

risk. Sweden’s prohibition on the purchase of sexual services has been complemented every step of the way by an extensive education strategy aimed at both sex buyers and the public, to raise awareness of the harms of prostitution.⁷⁵

One noteworthy finding indicating that men in Sweden have not simply turned to other outlets for prostitution is that there has been no notable increase in the number of Swedish sex tourists (Swedes buying sex abroad). In contrast, the highest numbers of sex tourists per capita come from Australia and the Netherlands, though it is legal and relatively easy to buy sex in both of these countries.⁷⁶ As Gunilla Ekberg explains, “In countries where prostitution is legalized or tolerated, the idea that women are objects for male sexual pleasure and, therefore, can be sold and bought, is normalized. It is then perfectly acceptable that men visit brothels [at home or abroad] to buy and sexually exploit women.”⁷⁷

From Swedish to Nordic Model

Following Sweden’s lead, Finland introduced a partial ban on the purchase of sex in 2006. Finland has not criminalized the purchase of sex on the whole, but has criminalized the purchase of sex from minors and trafficked victims.⁷⁸ Selling sexual services is not illegal in Finland, though prostitution is prohibited in public places (defined broadly to include restaurants and business premises). Also prohibited are procuring for the purpose of prostitution, operation of brothels, and other organized forms of prostitution.⁷⁹ Following suit, Norway fully criminalized the purchase of sex in 2008.⁸⁰ Iceland implemented a ban on the purchase of sexual services in 2009.⁸¹ Pimping and procuring remains illegal in all the Nordic countries and the number of prosecutions has risen dramatically in recent years.⁸²

Sweden has witnessed a noticeable shift since implementation of the ban on the purchase of sexual services. Demand for paid sex has decreased, which has resulted in a corresponding decrease in the number of prostituted persons in Sweden.⁸³ There is no evidence that prostitution has increased within Sweden’s borders since the change in law.⁸⁴ Sweden has also seen a decrease in the number of foreign women in prostitution.⁸⁵ The National Criminal Investigation Department in Sweden has found that the reduced demand has made Sweden an unfavourable destination for pimps or human traffickers.⁸⁶ There has also been a significant change in public attitude toward the law and toward prostitution itself. Polls indicate there is substantial public support for the ban on the purchase of sexual services.⁸⁷

Other countries that have implemented the Nordic Model have not experienced the same shift in public attitude. In Norway, for example, there has been a significant increase in Internet prostitution.⁸⁸ Some believe this is due to the lack of corresponding social service provisions, which have been critical to the success of the Swedish ban. Sweden holds that “[c]riminalisation can never be anything other than a supplement to other efforts to combat prostitution.”⁸⁹

While the sale of sex is legal in all the Nordic countries, it is not legitimized or regularized.⁹⁰ People working in prostitution in Sweden and Norway lack civil entitlements that others enjoy such as pension or parental insurance or sickness allowance, though they are required to pay tax.⁹¹ This avoids incentivizing entry into prostitution or categorizing it as work as other European countries have done.

As noted earlier, there is room for improvement. Max Waltman argues that Sweden’s law has been rendered less effective than it might otherwise be because in 2001 the Supreme Court found that where a man makes use of a prostituted person, if she

“The new French law...
follows the example of
Sweden...”

...There is also
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legislative reform in
Germany.”

“consents” she has no right to civil damages from her buyer, effectively lessening the buyer’s penalty.⁹² Waltman argues that awarding civil damages would serve this end and that because most prostituted women are in a position of desperation, their supposed consent is “overwhelmingly fictional” and should therefore not preclude an award of damages. Moreover, awarding damages “...would offer a stronger incentive for the victim of crime to testify against their exploiters.”⁹³ This question was in dispute leading up to the case, and since the decision there has been a lobbying effort to allow for civil remedies.⁹⁴

From Nordic Model to European Model?

The government of France recently debated Nordic-style legislation, which, if passed, would be one of Europe’s toughest laws against prostitution and sex trafficking.⁹⁵ Bill 1437⁹⁶ was approved in Parliament’s lower house on December 4 (2013) with a vote of 268-138. The bill is expected to pass the Senate in 2014.⁹⁷ Similar to the current situation in Canada, in France prostitution is legal, but brothels, pimping and public solicitation are not. The proposed law would introduce the equivalent of a \$2,000 (CAD) fine for first time sex buyers, a fee that doubles at the second offence. Individuals caught buying sex could also be forced to attend classes educating them about the harms of prostitution.⁹⁸ The new French law, which follows the example of Sweden, would strike a 2003 ban on public solicitation with the aim of decriminalizing the estimated 40,000 prostitutes in France. It would also make it easier for foreign prostitutes to remain legally in France if they enter a process to get out of prostitution.⁹⁹ Maud Olivier, one of the authors of the bill, says that it is about “getting rid of the consequences of unequal and archaic relationships between men and women.”¹⁰⁰

There is also growing pressure for legislative reform in Germany, where prostitution has been legal since 2003. In 2007, a government report concluded that there were “no viable indications” that the law had reduced crime,¹⁰¹ nor that it had “been able to make actual, measurable improvements to prostitutes’ social protection.”¹⁰² In fact, they found that “hardly any measurable, positive impact” had been observed regarding the working conditions of women in prostitution.¹⁰³ Further, prosecutors in Germany have noted that legalizing prostitution has “made their work in prosecuting trafficking in human beings and pimping more difficult.”¹⁰⁴ Now, ten years after the laws were liberalized, Feminist Alice Schwarzer, author of *Prostitution: A German Scandal*, is leading an appeal to the German Chancellor and Parliament to abolish prostitution, saying that legalization has made Germany “a paradise for pimps” who can now easily exploit women, particularly women being trafficked from poorer central European countries like Romania and Bulgaria.¹⁰⁵ Schwarzer calls the liberalization of prostitution “a disaster for the people involved”, and estimates the number of prostitutes working in Germany to be 700,000.¹⁰⁶

4. A Canadian Adaptation of the Nordic Model

Components of a Canadian Model

In considering what a Canadian adaptation of the Nordic model of law on prostitution might look like, it is important to note that the change in laws in Sweden was part of a broader framework, which included: a clear statement of principles; legislative change; a national action plan for exit supports and services; and, a public awareness campaign. Each of these elements has proven critical to the success of the Nordic

“In the recent Speech from the Throne, the government stated its belief that prostitution victimizes women, and that prostitution and the exploitation of women threatens the safety of communities across Canada.”

model, and we suggest that a Canadian version of the Nordic model must include its own variations of each of these.

i. **Criminal Law as a Normative Agent.** Criminal laws are not merely penal, they give expression to the social norms that undergird a society. Criminal laws both express and reinforce the basic commitments that bind a society together. Ekberg says of the Swedish approach, “As with all laws, the Law has a normative function. It is a concrete and tangible expression of the belief that in Sweden women and children are not for sale. It effectively dispels men’s self-assumed right to buy women and children for prostitution purposes and questions the idea that men should be able to express their sexuality in any form and at any time.”¹⁰⁷

Ending prostitution will not happen simply – or quickly - because of a change in law, but a change in law that criminalizes the purchase of sexual service will help reshape attitudes about prostitution, making a stronger statement that in Canada we will not tolerate or condone sexual exploitation. The change in law will create a legacy for generations to come; who will grow up—as children in Sweden do—understanding that human bodies are not commodities to be bought and sold. In order for the change in law to be properly normative, it must be introduced and framed within a clear statement of underlying principles. In the recent Speech from the Throne, the government stated its belief that prostitution victimizes women,¹⁰⁸ and that prostitution and the exploitation of women threatens the safety of communities across Canada.¹⁰⁹

A resolution recently adopted by the Conservative Party of Canada offers further elaboration on what some underlying principles might be:

i) The Conservative Party *rejects the concept of legalizing the purchase of sex;*

ii) The Conservative Party declares that *human beings are not objects to be enslaved, bought or sold;* and

iii) The Conservative Party of Canada shall develop a *Canada specific plan to target the purchasers of sex and human trafficking markets through criminalizing the purchase of sex as well as the acts of any third party attempting to profit from the purchase of sex.*¹¹⁰

[*emphasis added*]

A clear statement of principles is important in effecting change in societal attitudes, but is also important for effective implementation.

ii. **Legislative Change.** The objective of the Nordic model is to abolish prostitution and sexual exploitation by targeting, and seeking to eliminate, the demand for paid sex. In Canada, it is currently not illegal to buy or sell sexual services. A key legislative change in pursuit of a Nordic style model of law, therefore, is the amendment of Canada’s laws to recognize the non-criminal nature of individuals who are being sold, and to ensure our laws focus on the criminal nature of sex buyers and exploiters. Methods include:

“Evidence has demonstrated that many trafficked women are being prostituted in brothels, massage parlours and strip clubs.”

- The addition of a prohibition against the purchase or attempt to purchase sex, whether from escort services, in brothels, or on the street—similar to the Swedish provision cited above. Methods of purchase should include not just exchange of money, but also of shelter, food, protection, drugs or alcohol as means of payment; and payment by a third party should also be addressed.
- A redrafting of the communications provision¹¹¹ so that it focuses on those who purchase, or attempt to purchase, sexual services.
- Maintain (or rewrite, depending on the ruling of the Supreme Court of Canada in *R. v. Bedford*) provisions against operating brothels and other forms of bawdy houses. Evidence has demonstrated that many trafficked women are being prostituted in brothels, massage parlours and strip clubs. Law enforcement must have the means to enter these venues. It is suggested that ss. (2)(a) of the bawdy house provision¹¹² be removed or revised, at least insofar as to reflect the non-criminal nature of those being prostituted in brothels and massage parlours.
- Some have argued there must also be a legislative means of dealing with the persistent few who advocate for the right to prostitute themselves, primarily using indoor venues as call-out escorts. Studies suggest that approximately 5 to 10%¹¹³ of those who are being prostituted fit in this category. The restriction of demand, and accompanying gradual shift in societal attitudes about prostitution, is likely to reduce this number further even without specific legislative targeting. A legislative attempt directed at this 5-10% would inevitably catch or create distrust with those in the 90-95% identified as prostituting because of victimization, control or constrained choice.
- Maintain (or rewrite) provisions related to living on the avails of prostitution, or pimping.
- Pass legislation that would expunge the criminal records of those prostituted who have been convicted for prostitution-related offenses, including a retroactive provision that would clear the records of those convicted for such offenses in the time before the legislation was passed.¹¹⁴

According to Canada’s existing *Criminal Code* provisions, brothels are not legal businesses that can be licensed. However, in reality, such facilities are operating both licensed and unlicensed across the country; and sex acts are purchased in venues such as body rub parlours, spas, exotic dance clubs, as well as through escort agencies and internet advertising. Further, in each of these settings, there are documented cases of pimping, trafficking, sexual assault, forcible confinement, filming without permission, and other exploitive acts. Kathleen Quinn of the Centre to End All Sexual Exploitation (CEASE)¹¹⁵ in Edmonton says, “Without clear definition and direction at the federal level and in the *Criminal Code*, municipalities are left to regulate, inspect, investigate and police venues of commercial sexual exploitation, sex trafficking and ‘adult entertainment’ within the confines of business and zoning bylaws. Municipalities need



EFC

The Evangelical Fellowship
of Canada

“...the coordinated
provision of exit
supports and
services...”

better tools if it is going to be left to them to control the situation, because commercial sexual exploitation is not a ‘business’ like any other business. Currently, there is a patchwork of municipal bylaws across the country as municipalities struggle to respond to license applications and community standards in their cities within the constraints of the limited powers they exercise within Canada’s three levels of government.” With legislative change, clear direction will be needed so law enforcement will have the ability to go into venues such as strip clubs and massage parlours to determine if sex is being bought.

iii. **Exit services and supports.** A few years after the law was changed, Sweden implemented an *Action Plan Against Prostitution and Human Trafficking for Sexual Purposes*. This was in response to a weakness in the coordinated provision of exit supports and services as had been envisioned when the ban was put in place. Given Canada’s different constitutional reality, we suggest that a similar Action Plan would be required here in order to ensure that prostituted persons have access to the supports and services necessary for moving on from prostitution. Canada’s *National Action Plan to Combat Human Trafficking* offers an excellent example of effective partnership between the public and private sectors, and between government departments within and across different levels of government (federal, provincial and municipal). Given the significant overlap between prostitution and human trafficking for sexual purposes, it is possible that Canada’s existing *National Action Plan* could be expanded to address exit services and supports. (Please see the “Existing Canadian Strategies” subsection below for more information on current provincial exit strategies.)

iv. **Public awareness and Education.** Crucial to the Nordic Model’s success has been the effort to change society’s perception of prostitution so that it is recognized as a manifestation of inequality and violence against women. Sweden’s change in law was accompanied by a public awareness campaign, aimed at targeting the idea that it was okay for men to pay for sex. Sweden used ads on billboards and in other public locations including pictures of men and statistics on the number of men who buy sex, along with a clear message that buying sex within the borders of Sweden is illegal.

Public awareness and education campaigns centred on the realities and dangers of prostitution can be appropriately undertaken by both federal and provincial governments. In fact, a unified message from all levels of government is likely the most effective way to get the message to the public that Canada does not tolerate the purchase of sex.

Challenges in the Canadian Context

Implementing Nordic-style prostitution legislation in Canada poses certain unique challenges, given the constitutional division of powers between the federal and provincial and territorial governments. A Canadian adaptation of the Nordic model will require cooperation between the federal and provincial governments in both enforcement and implementation of a prohibition against the purchase of sexual services.

“A Canadian adaptation of the Nordic Model will require cooperation between different levels of government...”

Federal Jurisdiction

Enacting criminal law falls under federal jurisdiction, according to section 91(27) of the *Constitution Act, 1867*.¹¹⁶ However, for the most part, Canada’s *Criminal Code* is enforced by the provinces. Decisions to investigate, charge and prosecute offences are matters of provincial jurisdiction and are framed in response to local conditions.¹¹⁷ The administration of justice, including the creation and maintenance of courts and provincial police forces, is a power delegated to the provinces by section 92(14) of the *Constitution Act, 1867*.¹¹⁸

As we have emphasized, Sweden’s approach involves far more than the criminalization of the purchase of sex. While tackling demand, the Nordic Model aims to assist women, particularly “survival sex workers,”¹¹⁹ to exit prostitution permanently. In Canada, this will also require the involvement of provincial and territorial governments alongside the federal government, along with numerous governmental and non-governmental stakeholders. Both federal and provincial involvement would likely necessitate cross-departmental cooperation at certain junctures.

In addition to responsibility for additions to or amendments of the *Criminal Code*, the federal government is responsible for employment insurance and immigration. The provincial government holds power in administration of justice, health care systems, property and civil rights, and education. It is important for both the provincial and federal governments to work together in terms of exit support and services for prostituted persons which criss-cross these constitutional boundaries. There will also need to be special provision in these areas to assist those who would not have the usual means of verifying employment, residency requirements for health care or pre-requisite education program requirements. Prostituted persons may also require legal and social service assistance to navigate the process of exit.

The federal government’s criminal law jurisdiction would allow it to reform both the law and the judiciary system. The federal government can thus also take steps to facilitate formerly prostituted persons bringing cases against their exploiters or recover damages. Providing recourse for an award of civil damages following a conviction for purchasing sex would serve the double purpose of deterring buyers and providing temporary financial support to prostituted persons and/or funding for exit programs. The Canadian government’s criminal law power was held by the Supreme Court of Canada in *R v. Zelensky* (1978)¹²⁰ to allow for an order to be made to an accused to pay compensation to the victim of his crime. Important in that case was that the order for compensation was a discretionary part of the sentencing process in criminal proceedings, not a separate civil cause of action.

Even without recourse to civil damages against a buyer or trafficker, individual prostituted persons could at least have legal recourse for violent assaults and what are euphemistically called “bad dates.” Criminalizing the buying of sex without criminalizing the sale would encourage prostituted persons to access compensation mechanisms made available through the courts. It would also encourage reporting to police, as prostitutes could approach police without fearing prosecution, and help to de-marginalize street prostitutes and build trust between prostituted persons and law enforcement.

A Canadian adaptation of the Nordic Model will require cooperation between different levels of government in enforcing the prohibition against the sale of sex, eliminating the push and pull factors that draw people into prostitution and supporting prostituted persons in exiting the sex trade.

“A challenge for prostituted persons is to be able to access such services in a timely manner; and, utilize such services either without losing their main (only) source of income or within a short timeframe after deciding to exit prostitution.”

An individual exiting prostitution may require health care, addictions recovery, financial support (at least temporarily), job training and education, life skills training, counselling and social support.

Provincial Jurisdiction

Section 92(13) of the *Constitution Act, 1867*, assigns power over property and civil rights to provincial governments, including health insurance and the regulation of the health care professions.¹²¹ Section 92(7) allocates authority over “the establishment, maintenance, and management of hospitals, asylums, charities, and eleemosynary [charitable] institutions” to the provinces.¹²² As such, the creation and regulation of shelters, rehabilitation centres, and other institutions necessary for helping prostituted persons would fall to the provinces.

Provincial health care systems already offer services for those with alcohol or drug addictions. A challenge for prostituted persons is to be able to access such services in a timely manner; and, utilize such services either without losing their main (only) source of income or within a short timeframe after deciding to exit prostitution.

Safe houses and support recovery houses provide a safe and supportive place for former prostitutes or victims of trafficking to live and to obtain the helps and supports needed to move into a healthier life situation. There are few such safe houses in Canada, and some have had to shut down due to lack of funding, leaving prostituted persons with few options for successful, supported exit.

Funding for these programs falls within provincial jurisdiction, however federal funding could be allocated toward encouraging recovery houses and emergency counselling and addiction treatment, as required, for prostituted women as part of a coordinated national strategy.

Social assistance programs delivering money or services directly to individuals have mainly been enacted by the provinces, and federal intervention has largely taken the form of grants to the provinces to help them fund their programs. It took two constitutional amendments in 1940¹²³ and 1951¹²⁴ for the federal government to create Employment Insurance (EI) and Old Age Security, respectively. However, under its spending power, the federal government can and does make grants to provinces conditional on the provinces using the funds in certain ways. So, while provinces may design programs to help prostituted persons, the federal government can encourage all provinces to create such programs through funding incentives, or perhaps by setting specific standards in regard to Employment Insurance benefits qualification for those exiting prostitution so they can access minimal EI, education and retraining opportunities. This is another way the provinces and federal government can work together to facilitate the exit of prostituted persons from the trade.

Within the jurisdiction over property and civil rights, provinces have the power to create new civil causes of action. An example is a relatively new law in Manitoba¹²⁵ that provides for human trafficking victims to sue their traffickers for damages. Manitoba’s law allows an action to be brought forward for human trafficking without requiring the victim to prove that they were harmed by being trafficked. The law does not allow as a defence the fact that the person suing their trafficker consented to any of the conduct in question. In other words, the law is based on the premise that human trafficking is wrong per se and harmful and therefore never justifiable. This view is consistent with the Nordic Model.

“Private sector engagement, public sector initiatives and private/public partnerships...will be vital to the success of a Canadian adaptation of the Nordic Model.”

Private sector

The other stakeholder group important to the successful execution of a Nordic-style model of law on prostitution is the non-governmental and private sector. These are the groups most likely to be currently providing exit supports and services to women in prostitution, and to be providing safe houses and recovery homes. A National Action Plan or Strategy would do well to include non-governmental and non-profit stakeholders in both development and implementation, because they do and will play a vital role in providing services to prostituted and trafficked persons. Faith communities are to be encouraged to engage on a larger scale.

The EFC, in conjunction with Defend Dignity¹²⁶ (a justice initiative of the Christian and Missionary Alliance Church) are conducting seminars across the country to encourage Christians to engage with the vulnerable who are prostituted and seeking to leave prostitution. Defend Dignity encourages awareness of the harms of sexual exploitation, develops resources to encourage grassroots action, and lobbies for legal and social measures that will end the demand for and sale of sex. Defend Dignity often works in conjunction with EVE, formerly Exploited Voices now Educating¹²⁷, an NGO that advocates for the abolition of prostitution by focusing on ending the demand for paid sex. EVE is one of many NGO’s working to educate Canadians on the need for prostitution reform in Canada.

The Salvation Army has provided social services in Canada for over 130 years. Currently, among other initiatives, The Salvation Army operates Deborah’s Gate,¹²⁸ a Vancouver-based care home that serves women who have been trafficked for purposes of sexual exploitation. The home provides a place of healing and safety as well as social/community support for women seeking escape from abusive situations.

A Winnipeg NGO working to provide resources for those exiting the sex trade is known as TERF (Transition, Education & Resources for Females). TERF helps individuals transition into stable living situations, providing support and mentorship, and is funded by Manitoba Family Services, Manitoba Justice, and the Manitoba Métis Federation.¹²⁹

Similarly, in Quebec, La Maison de Marthe operates a day centre for women looking to exit prostitution.¹³⁰ La Maison de Marthe intervenes on three levels: first, on an individual level through detoxification treatment, therapy, and mentorship/relationship building; second, through the provision of a support group for prostituted persons (modelled on a 12-step program); and third, through raising public awareness and mobilizing people to engage on the issue, in addition to political activism for the abolition of prostitution.

Private sector engagement, public sector initiatives and private/public partnerships have proven critical to existing Canadian strategies, the continuation and expansion of which will be vital to the success of a Canadian adaptation of the Nordic Model.

Government Strategies in Canada

As in Sweden, education programs for sex buyers are gaining global popularity. Education initiatives focus on sex buyers as a means of preventing further harm to prostituted persons. Similar programs have been successful in deterring sex buyers from further interaction with prostitutes and should be encouraged as an initiative against demand.¹³¹ Given the ties to the legislative initiative and to local needs, funding might be a combined project of federal, provincial and municipal resources.

“...programs...
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drug trade/gang
recruitment.”

Manitoba

Manitoba has implemented a successful strategy to combat childhood sexual exploitation, known as the *Manitoba Strategy Responding to Children and Youth at Risk of, or Survivors of, Sexual Exploitation* (2002).¹³² The Strategy was designed to protect those under the age of 18 from all forms of sexual exploitation. Implementation of the *Strategy* is overseen by the Department of Family Services and Labour,¹³³ which is active in “prevention, intervention, legislation, coordination, research, and evaluation.”¹³⁴ The second phase of the *Strategy* was effected in December, 2008, and is known as *Tracia’s Trust*. This program is designed to supplement the *Strategy* by increasing public awareness, requiring greater accountability for offenders, providing more robust victim services, and improving prevention efforts.¹³⁵ *Tracia’s Trust* has effected change in the following areas:¹³⁶

- *The Child and Family Services Amendment Act* – Passed in 2005, this legislation increased penalties for child protection-related offences, including sexual exploitation and tampering with a child in care. The maximum penalty for such offences prior to this law was \$500/3 months in prison, and is now \$50,000/2 years in prison.
- *The Child Sexual Exploitation and Human Trafficking Act* – Passed in 2012, this legislation increases victim protection by restricting exploiters’ access to victims (in the form of a “protection order”). It also created a tort for human trafficking, which allows trafficking victims to sue their trafficker(s). Victims are entitled to damages and retribution of any profits the traffickers incurred during the time in which they exploited the victims.
- *Mandatory Reporting of Child Pornography* – in 2009, the province amended *The Child and Family Services Act* to require all citizens to report any prospective child pornography to Cybertip.ca. It also amended the definition of child abuse to include child pornography.
- *Prostitution Programs* – The Prostitution Diversion Program is a program for prostituted persons who have been charged with communicating for the purpose of prostitution.¹³⁷ It provides educational and social support through a three-day workshop in rural Manitoba. The program is coordinated by the Salvation Army, Manitoba Justice, and the Winnipeg Police Service. The Prostitution Offender Program is overseen by the same organizations and is offered to those accused of the same offense, but as the purchasers of sexual services.
- *StreetReach Programs*¹³⁸ – These programs are based on successful U.S. programs designed to train law enforcement and community workers to identify and assist youth who run the highest risk of sexual exploitation and drug trade/gang recruitment. Police and social workers are encouraged to assist individual youth each time there is an issue, ensuring that a relationship of trust is built and enabling service providers handle each case efficiently.

Alberta

The Centre to End All Sexual Exploitation (CEASE) is an Edmonton-based program birthed out of the city’s first “john school,” the Prostitution Offender Program (1996).¹³⁹ CEASE is an umbrella organization composed of groups and individuals

“Eliminating prostitution means not only prosecuting those who pay for sex, which acts as a deterrent, but finding other ways to prevent this crime from occurring.”

partnering to reduce prostitution and its harms. It oversees and administrates the Prostitution Offender Program as well as other projects aiding vulnerable populations, especially women at high risk of sexual exploitation. The Prostitution Offender Program is a program designed to rehabilitate johns, and its success is evident in its low re-offender rate for sexual crimes.¹⁴⁰ CEASE was launched by the Edmonton City Police, in coordination with the Alberta Ministry of Justice. The impetus for this program can be traced back to grassroots organizations and citizens who,

...became aware that the people they saw on the corners and the needles and condoms they picked up were part of a bigger picture. Lurking in the shadows were drug dealers, pimps and johns – the players whose appetites create and maintain sexual exploitation.¹⁴¹

The City of Edmonton’s Sexual Exploitation Working Group (SEWG) is a leadership group comprised of representatives from a variety of community agencies, including CEASE, ACT Alberta, the City of Edmonton and the Edmonton Police Service. The working group links into many community and faith networks within Edmonton to create awareness of sexual exploitation and the conditions that contribute to it.¹⁴² Recently, SEWG launched *Dirty Little Secret: Speak out Against Sexual Exploitation Edmonton*,¹⁴³ a film and campaign designed to encourage civic engagement through a social media campaign, sharing the short video and messages about sexual exploitation and sex trafficking in the city of Edmonton.¹⁴⁴

Other Law Enforcement and Crime Prevention Considerations

Where provincial laws have blurred the line between being valid provincial law with an ancillary penalty and being “in pith and substance”¹⁴⁵ criminal law, the dominant tendency has been for the courts to uphold provincial penal laws.¹⁴⁶ In a case related to prostitution, *Bedard v. Dawson* (1923),¹⁴⁷ the Supreme Court of Canada upheld a provincial law authorizing the closing of disorderly houses.¹⁴⁸ As Peter Hogg explains, “[T]he Court upheld the law as in relation to the use of property, and at most as aimed at suppressing the conditions likely to cause crime rather than at the punishment of crime.”¹⁴⁹ This does not open the door for provinces to enact criminal laws, but does suggest a role for provinces to play should the current laws be struck down and the federal government not amend the *Criminal Code* to deal particularly with matters under provincial constitutional jurisdiction, such as property.

Bedard v. Dawson suggests that provinces may have significant latitude to pass laws restraining prostitution. However, in *R v. Westendorp* (1983),¹⁵⁰ the Supreme Court of Canada struck down a by-law in Calgary¹⁵¹ that prohibited remaining in the street for the purposes of prostitution. The city claimed that the law was concerned with control of the streets. However, because the law was activated not by obstruction or the congregating of people in the streets but by the nature of the conversation that a person was having in the street (soliciting for prostitution), the Supreme Court found that in substance the law was aimed at combating the “evil of prostitution,”¹⁵² which fell outside the boundaries of the province’s—and thus the municipality’s—jurisdiction. Municipal by-laws have a role to play, but must not stray outside the constitutional jurisdiction of the province. In Canada municipalities are creatures of the province and must operate within jurisdictional boundaries assigned to them by the province.

Eliminating prostitution means not only prosecuting those who pay for sex, which acts as a deterrent, but finding other ways to prevent this crime from occurring. Provincial governments have jurisdiction over the administration of justice, including policing, and all provinces have crime prevention policies in place.

“Sentencing could also include access to diversion programs such as john schools or addictions counselling services or support groups.”

Ontario’s *Crime Prevention Framework*, for example, uses crime diversion programs in sentencing, but also targets societal conditions that contribute to crime.¹⁵³ The Ontario government considers law enforcement, charities and other numerous government ministries—including Community Safety and Correctional Services, Children and Youth Services, Health and Long Term Care, Municipal Affairs and Housing, Community and Social Services, Education, Aboriginal Affairs, and Ministry of the Attorney General—to be partners in Crime Prevention. Given that the prostituted in Canada include people from minors to seniors, all of these ministries may potentially be involved in both prevention and exit.

The federal government has also enacted laws and established programs for crime prevention under its criminal law power, laws, and programs relating primarily to sentencing for convicted persons. For example, the *Criminal Code* includes a special regime to deal with accused persons who suffer from mental disorders, and the federal *Youth Criminal Justice Act*¹⁵⁴ deals uniquely with juveniles who commit offences. Federal crime prevention measures have been repeatedly challenged for intruding on provincial jurisdiction. In 2003, the government of Quebec challenged certain provisions of the *Youth Criminal Justice Act* that authorize the creation of community sentencing programs, allow police to divert youths to community-based programs, and enable judges to make referrals to child welfare agencies. The Quebec Court of Appeal upheld these provisions as valid federal law.¹⁵⁵

The ministries of the government of Ontario mentioned above, and parallel ministries in other provinces, together with law enforcement, charities, and others, would have important roles to play in the implementation of the Nordic Model in Canada. Discussion on a National Action Plan or Strategy might necessarily engage provincial and federal conversation to establish common, agreed upon minimum standards as well as coordination with nongovernmental organizations and the private sector.

Sentencing must occur for those that are found guilty for the purchase of sex or a sexual act. There is no law currently stating a punishment for this act. The current *Criminal Code* has provisions on sentencing for jail time, probation,¹⁵⁶ fines and forfeiture,¹⁵⁷ and “alternative measures.”¹⁵⁸ As previously stated, Swedish laws define the punishment for buyers as a jail sentence for up to six months or a fine, which is used most often. This type of sentencing measure would likely be effective within the Canadian system as well, working as a means of crime prevention for buyers and aiding in the efforts of eliminating prostitution entirely. Sentencing could also include access to diversion programs such as john schools or addictions counselling services or support groups. In various locations, the program fees from john schools (paid by the johns) are used to help fund exit programs.¹⁵⁹ We propose implementing a similar funding structure in the Canadian ban on purchasing sexual services. We also propose that funds from fines incurred by sex buyers be directed toward social supports and exit services. This may require cross-jurisdiction agreement.

Canada’s Efforts to Combat Human Trafficking

Canada has shown great leadership in its efforts at combating human trafficking, highlighted by the introduction of the *National Action Plan to Combat Human Trafficking* in 2012, which calls for the cooperation of provincial and territorial governments, law enforcement agencies, and civil society.¹⁶⁰ The *National Action Plan* seeks to consolidate initiatives already underway and create strategies to better support organizations providing assistance to trafficking victims.¹⁶¹ “Canada’s *National Action Plan*, with participation from 18 federal departments,” the government announced in 2012, “is a comprehensive blueprint to guide the Government of

“The National Action Plan to Combat Human Trafficking provides a template for the kind of multi-stakeholder collaboration that will be essential to successful implementation of a Canadian version of the Nordic-style model of law and policy on prostitution.”

Canada’s fight against the serious crime of human trafficking.”¹⁶²

The Plan provides a model for effective coordination and cooperation between the federal government – across numerous departments – and law enforcement, victim service providers and other stakeholders. It also recognizes that the most common manifestation of human trafficking crimes in Canada is for the purpose of sexual exploitation of women and children¹⁶³ We believe that implementation of laws targeting the demand for purchase of sexual services is critical to the fight against sex trafficking and to the success of the *National Action Plan*. At the same time, the *National Action Plan* provides a template for the kind of multi-stakeholder collaboration that will be essential to successful implementation of a Canadian version of the Nordic-style model of law and policy on prostitution.

5. Conclusion and Recommendations

As we await the ruling from the Supreme Court of Canada in *R v. Bedford*, Canada’s prostitution laws have been brought to the forefront of both law and politics. It is vital that the Government of Canada be prepared to respond, regardless of how the Court rules.

In 1999, Sweden pioneered a new understanding of prostitution, and a new vision for a society in which the purchase of sex would no longer be accepted or normalized. As the Model proved effective, other countries took notice and implemented various forms of the successful Model in their own contexts. These proven successes have paved the way for Canada to implement a similar, but uniquely Canadian, structure.

Eliminating prostitution in Canada will require the cooperation of federal and provincial/territorial governments, as well as key nongovernmental organizations (NGO’s) and other private sector partners. Prevention initiatives are important on both a federal and provincial level in order to eradicate supply. Prohibition on the purchase and marketing of sexual services is required to eliminate demand. A more holistic approach to facilitating exit from the sex trade will require providing social and financial support for prostituted persons, lending focus to those victimized through human trafficking.

We encourage the federal government to consider these recommendations for changes within current laws and policy for the betterment of prostituted persons and total elimination of sexual exploitation in Canada:

- Parliament must be clear and unambiguous in the definition of prostitution as a form of violence, abuse and control of vulnerable children, women, and men.
- Criminalize the purchase and attempted purchase of sex.
- Amend our laws to reflect the current non-criminal nature of individuals who are being prostituted. For example, removing the prohibition on communicating for the purposes of prostitution [section 213(c) of the *Criminal Code*] or restrict its application to the intended purchaser.¹⁶⁴
- Maintain prohibitions against profiting from sexual exploitation; i.e. pimping.
- Support strict crime diversion programs upon sentencing such as john’s schools.

- Engage the provincial governments, territorial governments, municipal governments, nongovernmental organizations and other public and private partners in the development of a comprehensive national plan or strategy with the objective of ending prostitution.
- Invest strongly in exit programs and support for prostituted persons; this includes federal funding towards provincial governments for this purpose.
- Initiate a public awareness campaign to accompany such a change in the law, educating the public that paying for sex is both illegal and unacceptable; that it is violence against women and contrary to equality between the sexes.

Appendix A. Current Criminal Code Sections on Prostitution

Marginal note: Keeping common-bawdy house

210. (1) Every one who keeps a common bawdy-house is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

Marginal note: Landlord, inmate, etc.

(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.

Marginal note: 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 on 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.

Marginal note: Duty of landlord on notice

(4) Where a person on 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 on 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.

211. 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.

212. (1) Every one who

(a) procures, attempts to procure or solicits a person to have illicit sexual intercourse with another person, whether in or out of Canada,

(b) inveigles or entices a person who is not a prostitute to a common bawdy-house for the purpose of illicit sexual intercourse or prostitution,

(c) knowingly conceals a person in a common bawdy-house,

(d) procures or attempts to procure a person to become, whether in or out of Canada, a prostitute,

(e) procures or attempts to procure a person to leave the usual place of abode of that person in Canada, if that place is not a common bawdy-house, with intent that the person may become an inmate or frequenter of a common bawdy-house, whether in or out of Canada,

(f) on the arrival of a person in Canada, directs or causes that person to be directed or takes or causes that person to be taken, to a common bawdy-house,

(g) procures a person to enter or leave Canada, for the purpose of prostitution,

(h) for the purposes of gain, exercises control, direction or influence over the movements of a person in such manner as to show that he is aiding, abetting or compelling that person to engage in or carry on prostitution with any person or generally,

(i) applies or administers to a person or causes that person to take any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower that person in order thereby to enable any person to have illicit sexual intercourse with that person, or

(j) lives wholly or in part on the avails of prostitution of another person,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

Marginal note: Living on the avails of prostitution of person under eighteen

(2) Despite paragraph (1)(j), every person who lives wholly or in part on the avails of prostitution of another person who is under the age of eighteen years is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years and to a minimum punishment of imprisonment for a term of two years.

Marginal note: Aggravated offence in relation to living on the avails of prostitution of a person under the age of eighteen years

(2.1) Notwithstanding paragraph (1) (j) and subsection (2), every person who lives wholly or in part on the avails of prostitution of another person under the age of eighteen years, and who

(a) for the purposes of profit, aids, abets, counsels or compels the person under that age to engage in or carry on prostitution with any person or generally, and

(b) uses, threatens to use or attempts to use violence, intimidation or coercion in relation to the person under that age,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years but not less than five years.

Marginal note: Presumption

(3) Evidence that a person lives with or is habitually in the company of a prostitute or lives in a common bawdy-house is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution, for the purposes of paragraph (1)(j) and subsections (2) and (2.1).

Marginal note: Offence — prostitution of person under eighteen

(4) Every person who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person who is under the age of eighteen years is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years and to a minimum punishment of imprisonment for a term of six months.

213. (1) Every person who in a public place or in any place open to public view

(a) stops or attempts to stop any motor vehicle,

(b) impedes the free flow of pedestrian or vehicular traffic or ingress to or egress from premises adjacent to that place, or

(c) stops or attempts to stop any person or in any manner communicates or attempts to communicate with any person

for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute is guilty of an offence punishable on summary conviction.

Marginal note: Definition of “public place”

(2) In this section, “public place” includes any place to which the public have access as of right or by invitation, express or implied, and any motor vehicle located in a public place or in any place open to public view.

Appendix B: Sweden's Penal Code

Chapter 6:

Section 2

A person who, otherwise than as provided in Section 1 first paragraph, induces another person by unlawful coercion to undertake or endure a sexual act, shall be sentenced for sexual coercion to imprisonment for at most two years.

This shall also apply to a person who carries out a sexual act other than provided for in Section 1 second paragraph with a person, under the conditions otherwise specified in that paragraph.

If a crime provided for in the first or second paragraph is considered gross, a sentence to imprisonment for at least six months and at most six years shall be imposed for gross sexual coercion. In assessing whether the crime is gross, special consideration shall be given to whether more than one person assaulted the victim or in any other way took part in the assault or whether the perpetrator otherwise exhibited particular ruthlessness or brutality.

Section 9

A person who, otherwise than as previously provided in this Chapter, induces a child under eighteen years of age to undertake or endure a sexual act in return for payment, shall be sentenced for purchase of a sexual act from a child to a fine or imprisonment for at most two years

The provision of the first paragraph also apply if the payment was promised or given by another person.

Section 11

A person who, otherwise than as previously provided in this Chapter, obtains a casual sexual relation in return for payment, shall be sentenced for purchase of sexual service to a fine or imprisonment for at most six months.¹⁶⁵

The provision of the first paragraph also apply if the payment was promised or given by another person.¹⁶⁶

Section 12

A person who promotes or improperly financially exploits a person's engagement in casual sexual relations in return for payment shall be sentenced for procuring to imprisonment for at most four years.

If a person who, holding the right to the use of premises, has granted the right to use them to another, subsequently learns that the premises are wholly or to a substantial extent used for casual sexual relations in return for payment and omits to do what can reasonably be requested to terminate the granted right, he or she shall, if the activity

continues or is resumed at the premises, be considered to have promoted the activity and shall be held criminally responsible in accordance with the first paragraph.

If a crime provided for in the first or second paragraph is considered gross, imprisonment for at least two and at most eight years shall be imposed for gross procuring. In assessing whether the crime is gross, special consideration shall be given to whether the crime has concerned a large-scale activity, brought significant financial gain or involved ruthless exploitation of another person.

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- 146 Peter W. Hogg, *Constitutional Law in Canada*, c. 18.13.
- 147 *Bedard v. Dawson* [1923] S.C.R. 681.

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