

THE LIMITS OF THE LAW: A CRITICAL EXAMINATION OF PROSTITUTION CONTROL IN THREE CANADIAN CITIES

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INTRODUCTION

Prostitution represents one of the more problematic and frustrating socio-legal dilemmas confronting contemporary democratic societies. An important aspect of this dilemma centres on the contradiction between the liberal contention that prostitution is a victimless crime which ought to be tolerated, and the moral disapproval expressed by conservative and religious forces. This linear opposition is complicated by the participation of many feminist groups, who argue that prostitution represents the ultimate expression of patriarchal relations. Although not all feminist groups advocate the same legal approach to prostitution, their involvement cuts across the liberal-conservative debate and helps ensure that clear cut solutions are rarely implemented.¹ Thus, contemporary western societies have frequently adopted compromise positions, whereby selected aspects of prostitution are prohibited by relatively minor criminal laws, but prostitution itself is neither criminal nor fully legal. This unclear status leaves the participants trapped in an uncertain existence, where their activities are

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1. For a more detailed discussion of the dilemma which prostitution presents for feminists, see Jody Freeman, *The Feminist Debate over Prostitution Reform: Prostitutes Rights Groups, Radical Feminists and the [Im]possibility of Consent*, 5 BERKELEY WOMEN'S L.J. 75 (1989) (placing feminist debate within the context of existing U.S. and Canadian prostitution laws); Belinda Cooper, *Prostitution: A Feminist Analysis*, 11 WOMEN'S RTS. L. REP. 99 (1989) (evaluating different philosophical and legal approaches to prostitution).

tolerated much of the time, but they are nevertheless constantly vulnerable to police crackdowns and political manipulation.²

The situation becomes particularly problematic in the case of street prostitution, which frequently involves public order concerns of considerable magnitude. In most large North American cities, street prostitution is concentrated in business and residential areas near the city centre, which makes the trade accessible to visitors. Unfortunately, it also precipitates conflict with the people who live and work in these areas, and it is this conflict which creates the dilemma for police forces. Because most street prostitution activities are legally classified as minor offenses, the police are limited in terms of both the priority which they can assign to prostitution control and their ability to deal effectively with street prostitution.³ In order to obtain enough evidence to support charges, police must resort to time consuming entrapment techniques which are heavily criticized by civil libertarian and feminist groups, albeit for slightly different reasons. Police enforcement efforts rarely satisfy the more concerned residents and business owners because their enforcement strategies are largely ineffective at suppressing, or even managing, the nuisance associated with street prostitution. Thus, police forces frequently become involved in volatile political debates which force them to choose between expending large amounts of resources on what is legally a minor offence, or ignoring the problem and being accused of abdicating their responsibility to protect the public and maintain order.

Although the above scenario could likely apply to numerous large cities in Canada and the United States, recent changes to Canadian laws on prostitution provide an excellent illustration of the furor which

2. For a more detailed discussion of this point, see John Lowman, *You Can Do It But Don't Do it Here*, in *REGULATING SEX: AN ANTHOLOGY OF COMMENTARIES ON THE BADGELY AND FRASER REPORTS 193* (John Lowman et al. eds., 1986) (detailing the socio-legal debate leading up to the implementation of Bill C-49, which only entrenched this dichotomy). See also *Anywhere But Here* (video of the BC Learning Resources Institute, Vancouver, B.C., 1992).

3. For example, the most commonly charged prostitution-related activity in Canada is "communicating for the purposes of prostitution." See R.S.C., Ch. C-46, § 212.1 (1992) (Can.). This is a summary offence which limits police powers in several key respects. See R.S.C., Ch. C-46 §§ 785-840 (1992) (Can.). Similar offenses in many U.S. states are classified as misdemeanors, with similar limitations.

characterizes prostitution control. These changes, popularly referred to as Bill C-49, were enacted in December of 1985, largely as a result of public and police dissatisfaction with the previous law.⁴ Because Bill C-49 represents one of the toughest approaches to prostitution control in North America, its provisions have been extremely controversial and the law has been subjected to several qualitative and quantitative evaluations of its effectiveness. Almost all of these evaluations, including the official one conducted by the Canadian Department of Justice, have concluded that the new law has not been effective at its two primary aims of reducing the overall numbers of prostitutes and controlling the levels of nuisance associated with street prostitution.⁵ Further, the new law has been only marginally successful at its third goal of ensuring equal enforcement against male customers and female prostitutes.⁶

The relative ineffectiveness of Bill C-49 has renewed the prostitution debate in Canada, and many groups are demanding even tougher provisions to deal with street prostitution. Indeed, the Canadian Minister of Justice has recently announced plans for more stringent legislation,⁷ despite arguments from liberal and feminist groups that tougher laws are not the answer to problems associated with prostitution.⁸ In this respect, several researchers have argued that it is possible to control prostitution effectively without resorting to unduly harsh laws.⁹ This article will conduct a comparative analysis of the manner in which Bill C-49 has been implemented in

4. See *infra* note 24 for full text of Bill C-49.

5. J. FLIESCHMAN, *STREET PROSTITUTION: ASSESSING THE IMPACT OF THE LAW: SYNTHESIS REPORT 41* (Can. Dept. of Justice, 1989).

6. *Id.*

7. Mark Hume & Petti Fong, *Police Welcome Plan to Toughen Prostitution Law*, VANCOUVER SUN, Sept. 22, 1994, at A1, A2.

8. Mark Hume, *Prostitution Plan Misses Mark, Expert Says*, VANCOUVER SUN, Sept. 23, 1994, at A1. This decision has been applauded by police and local politicians but criticized by other groups. See E. Nick Larsen, *Time to Legalize Prostitution*, POLICY OPTIONS, Sept. 1992, at 21 [hereinafter Larsen, *Legalization*].

9. See Robert Gemme, *Prostitution: A Legal, Criminological and Sexological Perspective*, 2 CAN. J. HUM. SEXUALITY 227 (1993); John Lowman, *Street Prostitution Control: Some Canadian Reflections on the Finsbury Park Experience*, 32 BRIT. J. CRIMINOLOGY 1 (1992); Larsen, *Legalization*, *supra* note 8.

Vancouver, Toronto and Montreal.¹⁰ An attempt will be made to assess the strengths and weaknesses of the different enforcement strategies in terms of both reducing the numbers of street prostitutes and reducing conflicts among prostitutes, residents and business owners.¹¹ This analysis is situated within a combined class and feminist framework and the article will conclude with several recommendations regarding the most effective way of controlling prostitution. However, before commencing this analysis, it is necessary to outline the background events which precipitated Bill C-49.

I. BACKGROUND

A. Events Precipitating Bill C-49

Prior to December, 1985, street prostitution in Canada was covered primarily by Section 195.1 of the Canadian Criminal Code which prohibited "soliciting for the purposes of prostitution."¹² Although this law was considered satisfactory by most police officers and politicians, several anomalies were problematic from a feminist perspective. For example, some courts limited the definition of "prostitute" to females only, and thus male prostitutes could not be convicted under the section. Likewise, the law did not apply to male customers, since only prostitutes could "solicit for the purpose of

10. These cities were selected because they are Canada's largest cities and also had proportionately larger prostitution problems than other Canadian cities. In addition, a variety of police strategies were used and the police departments exhibited widely differing organizational characteristics.

11. This study will *not* include the numbers of charges and/or convictions as evaluation criteria for effective prostitution control. Because too many other factors affect police charging practices, they are not a reliable indicator of the two main goals. Thus, charges will only be examined to assess the degree to which the law is applied equally to males and females.

12. Other provisions prohibited "common bawdy houses" and "living off the avails of prostitution". See R.S.C., Ch. C-46 §§ 210, 212(i) (1992) (Can.). These laws remain relatively unchanged today.

prostitution" in the eyes of Canadian courts.¹³ Under increasing pressure from feminist and civil libertarian groups, the courts began to chip away at some of these anomalies and also restrict the definition of soliciting. The major court decision which ultimately made the law almost impossible to enforce occurred in 1978, when the Supreme Court of Canada ruled that soliciting was not an offence unless it was "pressing and persistent."¹⁴

This decision caused an immediate uproar, with the police, some politicians, many residents groups and even some members of the judiciary arguing that the decision gave prostitutes almost unlimited rights to operate wherever they pleased, as long as they didn't physically attack potential customers. This argument was probably exaggerated, but there is little doubt that the *Hutt* decision appeared to correlate with a drastic increase in the numbers of prostitutes on the streets of major Canadian cities. Although there is considerable disagreement over the degree to which the increase in prostitution was attributable to the *Hutt* decision,¹⁵ there is little doubt that the decision exerted a profound effect on police behaviour. The most vocal police reaction occurred in Vancouver; however, most police forces gradually ceased attempting to enforce the law as it became obvious that charges could not succeed. It also became apparent that Canadian police forces had embarked on a concerted political campaign to force the federal government to enact much tougher laws for the control of street prostitution. While the police departments were undoubtedly concerned about the increasing levels of conflict

13. For a fuller explanation, see E. Nick Larsen, *The Politics of Prostitution Control: Interest Group Politics in Four Canadian Cities*, 16 INT'L J. URB. & REGIONAL RES. 169 (1992) [hereinafter Larsen, *Politics*].

14. *Hutt v. R.*, 82 D.L.R. 3d 95 (1978).

15. See John Lowman, *Prostitution in Vancouver: Some Notes on the Genesis of a Social Problem*, 28 CAN. J. CRIMINOLOGY 1 (1986). Lowman argues that the Vancouver problems were more closely related to the closure of two nightclubs which catered to prostitutes and their customers. This action drove large numbers of prostitutes onto the street, where they migrated to business and residential areas. See also Larsen, *Politics*, *supra* note 13, at 187. Larsen links the problem to patterns of gentrification occurring in major cities. This process, which peaked during the late 1970's and early 1980's, saw previously run down houses in prostitution areas bought and renovated by middle class professionals, who then lobbied for the removal of the prostitutes.

over street prostitution,¹⁶ some evidence suggests that the police were also motivated by pragmatic organizational concerns. Inasmuch as the police traditionally relied on prostitutes as informers, the *Hutt* decision effectively deprived them of this source of information by reducing their power to pressure prostitutes into informant roles. On a more positive note, it also reduced the power of pimps, and many prostitutes began turning their pimps over to the police and agreeing to testify against them in court.¹⁷

While it is beyond the scope of this article to engage in a detailed analysis of the police role in the post-*Hutt* political debate, the political conflict continued to escalate across Canada, and the Canadian government established the Special Committee on Pornography and Prostitution, commonly known as the Fraser Committee, to study the problem and make recommendations. This Committee commissioned original research and held public hearings in twenty-two cities and towns across Canada. Various officials, politicians, interest groups and members of the public were invited to express their views on prostitution. The testimony was divided almost equally between groups (including the police, residents and politicians) wanting stricter laws and groups advocating a more decriminalized approach to the problem.¹⁸ The Fraser Committee ultimately tabled a report which identified the nuisance effect as the major problem to be addressed. The Committee further advocated that the laws be amended to accomplish the dual goals of minimizing the nuisance to citizens while also allowing prostitutes to practice their profession. Specifically, the Committee recommended that most prostitution-related activities should be decriminalized, that small numbers of prostitutes should be allowed to operate out of their residences, and that the laws dealing with the exploitation of prostitutes should be strengthened.¹⁹ The

16. In this respect, the police in Vancouver were certainly justified in their concern over the escalating conflict between prostitutes and their pimps on one hand and residents and business owners on the other. There were almost daily accounts of residents carrying out "hooker patrols" armed with baseball bats. See *infra* note 69 and accompanying text.

17. See Larsen, *Legalization*, *supra* note 8, at 21.

18. Flieschman, *supra* note 5, at 4.

19. *Special Committee on Pornography and Prostitution*, 2 PORNOGRAPHY AND PROSTITUTION IN CANADA 531-38 (1985) (explaining findings and proposing Recommendations 55, 56, & 57).

Committee also recommended that the provinces and municipalities be empowered to regulate prostitution like any other business, since prostitution itself was and is legal in Canada.²⁰ The latter recommendation was particularly interesting, since several municipalities, including Calgary, Montreal, Vancouver and Niagara Falls, Ontario had passed bylaws regulating prostitution after the *Hutt* decision. While these laws were reasonably successful, they were ruled unconstitutional by the Supreme Court of Canada.²¹ Unfortunately, the Canadian government failed to act on any recommendations of the Fraser Committee, and instead introduced Bill C-49 which significantly strengthened the laws against prostitution.

B. Methodology For The Present Study

The data for Toronto and Vancouver is based primarily on a qualitative research study carried out during 1989. The major methodological steps included in-depth media searches in all three cities, a series of in-depth unstructured interviews²² with police officials, officials in the Federal Ministry of Justice and the appropriate provincial Ministries of the Attorney General, municipal politicians, local interest group leaders, and the analysis of existing documents such as the minutes of municipal council meetings, position papers published by community groups, research reports, committee reports and *Hansard*.²³ This study was replicated on a much smaller scale in 1992 and a media search was conducted in 1994-95.

The data for Montreal is based entirely on previously published sources, including the official evaluation conducted by the Canadian Department of Justice. Aside from a media search, no primary

20. *Id.*

21. Under the Canadian constitution, only the federal government can pass criminal laws, and that provincial and municipal governments are prohibited from regulating prostitution because some aspects are covered by the Criminal Code of Canada. *See Gemme, supra* note 9, at 228. Thus, the Criminal Code would have to be amended to specifically allow provinces and municipalities to regulate prostitution.

22. For a detailed reporting of these interviews, *see* E. Nick Larsen, *The Politics of Prostitution Control: A Qualitative Analysis of the Development and Implementation of Bill C-49 (1989)* (unpublished Ph.D. dissertation, University of Manitoba) (on file with author).

23. Reports of Parliamentary Debates.

research was conducted in Montreal. For this reason, the comparisons between Montreal and the other cities are hampered by the limitations of the Department of Justice evaluation.

II. THE IMPLEMENTATION OF BILL C-49, THE COMMUNICATING LAW

Bill C-49 was proclaimed into law on December 28, 1985 amidst some of the most bitter controversy ever engendered with respect to Canadian criminal legislation. Referred to as the "communicating law," this legislation effectively criminalized all public communication for the purposes of prostitution.²⁴ Although most Canadian police forces and many residents' and business groups welcomed the new law, many other groups argued that the law was neither necessary nor likely to solve the problems associated with street prostitution. In particular, many civil rights groups expressed fears that the law's draconian provisions would lead to overkill and might result in innocent people being convicted on the basis of a "wink or a nod." Although some police forces attempted to meet these concerns by adopting enforcement policies designed to ensure that overkill did not

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BILL C-49 PROVISIONS:

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

R.S.C., Ch. C-46 § 213 (1992) (Can.)

Bill C-49 was originally codified as § 195.1. The number has since been changed to § 213; thus, the term Bill C-49 will be used throughout to avoid ambiguity or confusion.

occur, considerable variation emerged among the three cities included in this study. In order to facilitate the analytical goals outlined in the introduction, this section will discuss the enforcement policies of the three cities separately before conducting a critical comparison of the relative effectiveness of the different approaches.

A. *The Communicating Law In Vancouver*

The Vancouver police immediately adopted an aggressive approach to the implementation of Bill C-49. During the first few weeks of January, 1986, the Vice Squad conducted several sweeps in all of the prostitution strolls in Vancouver.²⁵ The new law initially appeared to exert the desired effect, as both the number of arrests and the number of visible prostitutes remained low throughout the first month of implementation in all areas.²⁶ Although this situation prompted several politicians and community leaders to proclaim the law a success, this optimism was not borne out by subsequent events. According to one source close to the prostitution community, prostitutes had only been staying off the streets until they had a sense of how the Vancouver police would enforce the new law.²⁷ They quickly returned to the streets and the number of arrests increased as they reappeared in greater numbers. There were also several challenges based on the Canadian Charter of Rights and Freedoms, and a non-binding Provincial Court decision overturning the law increased the numbers of prostitutes returning to the streets.²⁸ The

25. Responsibility for prostitution control was divided between the Vice Squad and uniformed patrol teams. The Vice Squad used a combination of routine undercover work and major sweeps in which entire areas were blanketed for several hours. The uniformed patrol teams were responsible for order maintenance calls and attempting to deter prostitution activity through routine patrols in prostitution areas.

26. Scott McDonald & Chris Rose, *Anti-Prostitution Groups Applaud Police Actions*, VANCOUVER SUN, Jan. 8, 1986, at A3.

27. Interview with Marie Arrington, President of the Vancouver chapter of Prostitutes and Other Women for Equal Rights (POWER), in Vancouver, B.C. (May 1989). Arrington also founded the Alliance for the Safety of Prostitutes (ASP).

28. *See R. v. Tremayne* (B.C. Prov. Ct. 1986). Because Provincial Court rulings are not binding on other courts, the decision did not preclude further charges. However, future prostitution charges were placed on hold pending the outcome of appeals, although the police continued to lay charges.

situation was further exacerbated when the Vancouver mayor directed the Vancouver Police to move against several bawdy houses,²⁹ thus forcing even more prostitutes out on the street. Considering that a primary goal was to keep prostitutes off the street, this action suggests that the Vancouver Police and City Council had failed to develop a coherent strategy for dealing with prostitution.

The above mentioned constitutional challenges were overruled by the British Columbia Supreme Court on May 7, 1986,³⁰ and the police adopted even tougher measures against prostitutes. Prosecutors began routinely asking that area restrictions be made part of probation orders for convicted prostitutes,³¹ even though this tactic simply pushed most prostitutes to the edge of the restricted area. In any event, the prostitutes appeared to have overcome their fear of the new law and continued to remain on the streets in enough numbers to constitute a continuing problem from the perspective of many community groups. Because the area restrictions did not apply to customers, a steady supply of customers was ensured. Many commentators argued that prostitutes would remain on the street as long as there was business. The practice was also criticised by prostitutes' spokespersons and some defence lawyers because it contravened the principle of equal enforcement.³²

The debate over Bill C-49 continued, and by late 1986 it was clear that it was not the definitive solution that many people had expected. Once prostitutes overcame their fear of the law, they quickly developed new strategies to cope with it, including not discussing

29. Keith Baldrey, *City to Seek Action on Complaints*, VANCOUVER SUN, Mar. 27, 1986, at A3.

30. The constitutionality of Bill C-49 was challenged in several provinces until it was ultimately upheld by the Supreme Court of Canada in December 1990. *See* Ref. re §§ 193, 195.1(1)(C) of the Criminal Code, 56 C.C.C.3d 65 (1990) (Can.). The various court decisions will not be discussed unless they are relevant to enforcement practices.

31. Mike Bocking & Anne Fletcher, *Judge Cites Nuisance, Concern*, VANCOUVER SUN, May 9, 1986, at A3. In fact, the area restrictions may have exacerbated the problem by expanding the red light area. Referred to by some as the "creeping red light district" phenomenon, it spread the problem of street prostitution over a larger area and increased the amount of public outcry.

32. Interview with Marie Arrington, *supra* note 27; interview with Tony Serka and Bridget Eider, defence attorneys in Vancouver, B.C. (May 1989).

anything until inside the potential customer's car and waiting for the customer to make the first offer.³³ Although the Vancouver police appeared satisfied with the law, many community groups argued that it was clearly a sham. This was particularly true of the Mount Pleasant area, a working class neighbourhood near the city centre. The Vancouver Police Department had stopped responding to prostitution-related calls from the area, and many residents became convinced that the Vancouver police were using Mount Pleasant as a "dumping ground" for street prostitution because of its lower social and economic status.³⁴

In response to these criticisms, the Mount Pleasant Task Force was established to coordinate police efforts during the summer months of 1986 to 1988. The Task Force experimented with several harassment tactics and organized periodic blitzes against prospective customers. In addition, it increased the frequency of visible uniformed patrols near where prostitutes were working to discourage customers from cruising the area.³⁵ Although the Task Force was reasonably effective, its tactics were not dependent on Bill C-49, and could have been used before the bill was implemented. Further, the activities of the Task Force displaced large numbers of prostitutes into the Downtown Eastside area, including the respectable working class area known as Strathcona.³⁶

33. Interview with Marie Arrington, *supra* note 27.

34. Interview with Timothy Agg, leader of Mount Pleasant Committee on Street Prostitution, in Vancouver, B.C. (May 1989); interview with Phyllis Alfeld, leader of Mount Pleasant Action Group, in Vancouver, B.C. (May 1989). These two community organizations were created by residents to attempt to do something about the prostitution problem in Mount Pleasant. Although these organizations were in fact dominated by professionals moving into the area, there was significant participation from the original working class residents. In any case, the perception that the area was working class still remained in the minds of police and politicians. Interview with Libby Davies, Vancouver Alderperson, Vancouver, B.C. (May 1989).

35. Interview with Staff Sergeant Thompson, Prostitution Liaison Officer for Team 6, in Vancouver, B.C. (May 1989).

36. Strathcona is located along the Vancouver Harbour and near Chinatown. It encompasses skid row, a large area of public housing, some established working class residential districts and the trendy restaurant and shopping area known as Gastown. Although the area had always contained significant amounts of prostitution, the transient nature of the population, combined with its preponderance of seedy bars and other transient-oriented businesses, minimized conflict.

The scenario which developed in Strathcona differed significantly from other areas, largely because both the residents and the police adopted radically different attitudes towards the problem. Instead of adopting confrontational tactics, residents entered into negotiations with the prostitutes in an attempt to reach a solution. The prostitutes responded by agreeing not to work near schools and negotiating a "no go" map outlining areas where prostitutes would not work. This map was distributed to prostitutes working in the area, who were asked to avoid the indicated areas. This approach was reinforced when the police became involved in negotiations between prostitutes and residents, and even suggested that patrol personnel would tolerate some prostitution if the prostitutes stayed away from schools and residential areas. Patrol officers were directed to steer prostitutes back toward commercial streets if they were found in residential areas.³⁷ If a prostitute seemed determined to remain in a "no go" area, the police would harass her and even park a marked police cruiser nearby "until she got the message."³⁸ These tactics have been continued by the uniformed patrol team responsible for the area, and recent research indicates that the police have extended their liaison work with prostitutes to include regular consultations with the affected groups.³⁹

37. Robert Sarti, *Hookers Reach Truce on Strathcona Front*, VANCOUVER SUN, Apr. 20, 1988, at B5.

38. Interview with Sargeant Biddlecomb, Vancouver Police Department, Team 3, in Vancouver, B.C. (May 1989). Although the majority of the evidence supports the cooperation scenario, there was some disagreement about the effectiveness of the initial police response to the Strathcona situation. A group of Strathcona residents who were unhappy with the levels of street prostitution in the area organized the Strathcona Prostitution Action Committee (SPAC) in May of 1988. The group organized a short lobbying campaign aimed at Vancouver Police and City Hall. This quickly resulted in the formation of a Special Police Liaison Committee for Strathcona, which met with the dissatisfied residents and drew up a plan of increased uniformed patrols. Three area prostitutes also attended the meeting and participated in the discussion and negotiations over the problem. See Vancouver City Manager's Report to Council (Aug. 26, 1988). This appeared to resolve the issue, as there was no further indication of trouble in the area.

39. Interview with Constable Griff Simons, Vancouver Police Department, Team 3, in Vancouver, B.C. (Feb. 1992). Constable Simons stated that he and his partner made a point of developing rapport with prostitutes in their area so as to facilitate their cooperation. They also attended monthly liaison meetings with prostitutes, residents and business owners. This approach is apparently working well, and informants from organizations in the area expressed satisfaction with the police activity. Further, one community leader informed this

Thus, although there continues to be significant amounts of prostitution activity in the Strathcona area, there is remarkably little conflict.⁴⁰

In summary, it is clear that the Bill C-49 was not effective in reducing the number of street prostitutes in Vancouver.⁴¹ Although it did give the police force a somewhat greater ability to control the areas in which prostitutes worked, and thus helped quiet public controversy, harassment tactics using traffic codes and other non-criminal laws were far more effective. The most effective solution, however, involved negotiation and other "social work" tactics practiced by the police and residents in Strathcona. While these tactics did not appear to reduce the numbers of prostitutes, they did minimize conflict. Unfortunately, this tactic has been limited to the Strathcona area, as residents and patrol teams in other areas have been unwilling to adopt it. As a result, conflict continues in the Mount Pleasant area, and there is an ongoing media debate regarding the best approach to the problem.

Two further points need to be made about Bill C-49 in Vancouver. The first involves the gender imbalance among the people charged with communicating for the purposes of prostitution. Feminist groups and spokespersons for the prostitute community consistently criticised the Vancouver police for concentrating on female prostitutes to the virtual exclusion of male prostitutes and male customers.⁴² The second point centres on violence against prostitutes. Unfortunately, the law appeared to correlate with increased numbers of assaults against prostitutes and several unsolved

writer that they were very satisfied with the willingness of prostitutes to cooperate. Interview with Muggs Sigurdson, Strathcona resident, in Vancouver, B.C. (Feb. 1992).

40. Since 1988, there has been little mention of the Strathcona area in the media.

41. The official evaluation conducted by the Department of Justice reached similar conclusions. For example, although the average number of visible prostitutes did decline in 1986, it rebounded to even higher levels in 1987. (The figures were: 1985, 44.0; 1986, 23.6; 1987, 54.2.) JOHN LOWMAN, *STREET PROSTITUTION: ASSESSING THE IMPACT OF THE LAW - VANCOUVER 95* (Can. Dept. of Justice, 1989).

42. Interview with Marie Arrington, *supra* note 27; interview with Bridget Eider, *supra* note 32; interview with Libby Davies, *supra* note 34. These assertions are supported by statistics gathered in the Department of Justice evaluation, which indicated a ratio of prostitutes to customers at approximately 3 to 1 for the period from 1986 through 1988. See Flieschman, *supra* note 5, at 41.

murders of prostitutes in Vancouver. Marie Arrington, of POWER, and other prostitutes' spokespersons complained that the new law had increased the amount of violence against prostitutes because it forced them to enter cars without carefully screening the occupants. POWER also complained that the practice of seeking area restrictions further contributed to the problem by forcing prostitutes to work in less safe areas, such as poorly lit back lanes, and to adopt riskier practices such as hitchhiking. These practices were dangerous since prostitutes were unable to screen their customers thoroughly. One spokesperson noted that only one prostitute was murdered between 1978 and 1985, whereas forty had been murdered between 1986 and 1992. Similarly, other defence lawyers reported an increase in the number of "bad tricks" mentioned by their clients.⁴³ Although this evidence is far from conclusive, it suggests that Vancouver prostitutes paid a high price for a less than effective law.

B. The Communicating Law In Toronto

The initial implementation of Bill C-49 in Toronto appeared to involve much more planning and coordination than had been evident in Vancouver. After consultation with the prosecutor's office and other groups, the Toronto Police Department announced several enforcement guidelines intended to reassure civil libertarian groups that it would enforce the new law with discretion.⁴⁴ However, the most important policy directive to emerge from the consultation process involved the decision to concentrate on customers. The Toronto Police Department adopted a stated goal of "dry[ing] up the supply of customers" and announced that it would cooperate with

43. Interview with Bridget Eider and Tony Serka, *supra* note 32. These statements are based on impressionistic evidence provided by prostitutes and other informants. Canadian police do not generally keep statistics on the occupation of victims and thus police data is not available. The Canadian Department of Justice is currently completing a study of violence against prostitutes before and after Bill C-49; however, the results are not yet available.

44. Kirk Makin, *Anti-hooker Laws Working--For Now*, GLOBE & MAIL, Jan. 18, 1986, at A1. For example, it was decided that Bill C-49 would be applied only in cases where there was verbal communication involving an offer of money for a specific sexual act. It was also decided that the names of both prostitutes and customers would *not* be published. *Id.*

social service programs designed to help prostitutes change their lifestyles.⁴⁵ The Police Department quickly demonstrated a pattern of arresting more customers than its counterpart in Vancouver. Although prostitutes initially remained on the streets in large numbers, they quickly left once it became clear that police activity was scaring clients away. In April, 1986, the Toronto Police announced that the number of prostitutes working the streets had dropped to approximately one third of their pre-Bill C-49 levels (from 600-700 to 200-300).⁴⁶ The Police Department claimed that its strategy of targeting customers was effective because middle class customers (often with families) were much more easily deterred than prostitutes, most of whom already had long criminal records.

Police officers and residents were happy with the movement of prostitutes off the streets; however, this development was not the complete success that the Toronto police had predicted. Many of the prostitutes who temporarily vacated the streets moved into escort agencies.⁴⁷ Although the police were initially content to watch the transformation of streetwalkers into callgirls without taking immediate action,⁴⁸ it quickly became obvious that the movement into escort agencies and massage parlours increased the number of pimps and their ability to dominate the prostitution trade.⁴⁹ The police were

45. Ellie Teshler, *Prostitutes Will Go Underground, Critics Believe*, TORONTO STAR, Jan. 26, 1986, at A6.

46. Paula Todd, *Prostitution: Off Street, Into Yellow Pages*, TORONTO STAR, Apr. 27, 1986, at A3.

47. *Id.*

48. The Toronto Police Department explained its inaction on the grounds that escort agencies were much more difficult to investigate and in many cases were not illegal. Interview with Inspector Jim Clark, OIC Toronto Police Morality Division, in Toronto, Ont. (June 1989). Since telephone lines are not public places, it was not an offence to use them for soliciting as long as the prostitutes did their own soliciting and as long as they did not use the same location more than once to service their clients. If the former qualification was breached, the person doing the soliciting on behalf of the prostitutes could be charged with "living on the avails" of prostitution. If the same location was used more than once, common bawdy house charges could be laid.

49. This was because pimps now found it easier to control their "girls" than when they were on the streets. While a prostitute working the streets could "turn tricks" without giving her pimp his share, this would be more difficult in an agency where the pimp could monitor all calls without leaving the office. The police were virtually powerless to intervene since all of the activity was underground, and they lacked an effective way of monitoring the

forced to place increased emphasis on escort agencies, and this precipitated a gradual increase in street prostitution. The prostitutes adopted new tactics to cope with police surveillance, and a Provincial Court decision⁵⁰ overturning Bill C-49 further increased the numbers of prostitutes and customers returning to the streets. At this point, the police changed their tactics and began concentrating on female prostitutes, but the evidence suggests that their efforts simply displaced many prostitutes to other areas.⁵¹ By August of 1986, street prostitution had again become a major problem and the police conducted a prolonged series of sweeps in which female prostitutes were the major targets. Although Toronto police adopted many of the tactics being used in Vancouver,⁵² the increased police activity failed to produce a significant effect on the prostitution trade.⁵³

The controversy and conflict regarding street prostitution intensified in 1987 despite much more aggressive enforcement of Bill C-49. The Toronto police formed the Police-Community Prostitution Committee to facilitate cooperation and information sharing among residents, business owners, the Crown Attorney's Office and local politicians. The Committee was primarily intended as a forum for citizens to express their concerns, and to explore possible solutions to the increasingly obvious failure of Bill C-49. Prostitutes were excluded from the Committee, which may explain why it was less successful than its counterpart in the Strathcona area of Vancouver. Further, although this Committee likely represented a genuine effort

activities of the pimps. See Todd, *supra* note 46, at A3.

50. See *supra* note 28.

51. In fact, this may have at least partially accounted for the earlier "success" with the implementation of the new law. In this respect, J. F. Lockett, Principal of Our Lady of Lourdes Catholic School, complained to Mayor Eggleton that the number of prostitutes working in his area had increased steadily since Bill C-49 was implemented. See Letter from J. F. Lockett, Principal of Our Lady of Lourdes Catholic School, to Art Eggleton, Mayor of Toronto (June 6, 1986).

52. For example, the Toronto Police Department instituted the practice of detaining arrested prostitutes overnight, despite the fact that persons charged with summary offenses are normally released on appearance notices. The Department also asked courts to impose a 9:00 p.m. curfew, combined with area restrictions, as conditions of bail. Yves Lavigne, *25 Prostitutes Charged; Bail Includes a Curfew*, GLOBE & MAIL, Aug. 23, 1986, at A16.

53. Andrew Duffy, *25 Women are Arrested in Prostitution Crackdown*, TORONTO STAR, Aug. 22, 1986, at A1, A4.

to deal effectively with citizens' concerns, it also was clearly an attempt to appease some of the most vocal groups and to subvert local political activity to serve the interests of the police.⁵⁴ In this respect, it was relatively successful at minimizing public criticism of the police, and directing public lobbying efforts against politicians.⁵⁵

Although the police department minimized public conflict, it could not reduce the number of prostitutes. Despite aggressive enforcement of Bill C-49, the number of prostitutes on the streets doubled between January and October of 1987.⁵⁶ The fact that most of this increase occurred after the police shifted their emphasis from customers to prostitutes underscored the futility of tougher laws against prostitution. Although the police ultimately returned to their previous concentration on customers, there is little evidence to suggest that it was effective. Although conviction rates remained high, the number of visible prostitutes also remained high.⁵⁷ Further, public dissatisfaction began to grow and the Police-Community Liaison Committee was no longer able to contain it. In order to appear more effective, the Toronto Police Department instituted a practice of moving prostitutes from area to area, never allowing them to stay in one area for lengthy periods of time.⁵⁸ These practices have been continued to the present time, and although some prostitution activity has even been displaced into Toronto's outer suburbs, this has simply spread the nuisance problem over a larger area. The Toronto media continues to debate the prostitution issue and there are constant reports of conflict between

54. For example, one of the main items of business at the first meeting was to encourage the various residents' groups to lobby their political representatives for an increase to the prostitution control budget of the Toronto Police Department. *Minutes of Community-Police Prostitution Committee* (Jan. 15, 1987).

55. A senior Toronto Police Superintendent informed this writer that he regularly used the committee to "make noise" when he wanted something from City Hall.

56. Kirk Makin, *Ranks of Toronto Prostitutes Increase*, GLOBE & MAIL, Oct. 15, 1987, at A3.

57. This assertion is also supported by the evaluation conducted by the Department of Justice, which found that the numbers of prostitutes and their working hours had not been significantly reduced by the law. See SHARON MOYER & PETER J. CARRINGTON, *STREET PROSTITUTION: ASSESSING THE IMPACT OF THE LAW - TORONTO 146-49* (Can. Dept. of Justice, 1989).

58. Interview with Inspector Jim Clark, *supra* note 48; Superintendent John Getty, Chair of Police-Community Liaison Committee, in Toronto, Ont. (June 1989 & June 1992).

residents and prostitutes. In this respect, it is instructive that local politicians have started calling for legalized "zones of tolerance" and bawdy houses.⁵⁹

In concluding this discussion of Bill C-49 in Toronto, several additional points need to be addressed. In addition to the general ineffectiveness of the law, it is also evident that Bill C-49 has caused confusion and conflict for the operators of escort agencies and bawdy houses, two types of prostitution which had previously caused few problems for the police. In addition to the problem with pimps controlling escort agencies, there were early reports that organized crime was beginning to move into escort agencies and bawdy houses,⁶⁰ and that pimps were invading Eaton Centre in a modern day version of "white slavery" to force runaway girls to work in escort agencies and bawdy houses.⁶¹ These factors underscore the problems which accompany attempts to drive prostitution underground through the use of tough laws.

On the related topic of violence against prostitutes, the evidence is less clear. Although some prostitutes reported that they felt less safe after Bill C-49, others reported that there was no appreciable change.⁶² Recent media reports and interviews with spokespersons from the prostitute community indicate that violence is a continuing problem. Unfortunately, little pre-Bill C-49 evidence is available, so it is difficult to establish whether the violence is due to the law, or simply an occupational hazard associated with prostitution.

C. *The Communicating Law In Montreal*

The implementation of Bill C-49 in Montreal involved many of the same tactics as were used in Toronto and Vancouver. Responsibility for enforcing the new law was divided between the

59. Jane Coutts, *'Zones of Tolerance' for Prostitutes Urged*, GLOBE & MAIL, Oct. 26, 1991, at A10 (quoting Counsellor Jack Layton).

60. Yves Lavigne, *Crackdown on Soliciting is Boon for Escort Services*, GLOBE & MAIL, Sept. 28, 1987, at A1, A2.

61. Gary Oakes, *Pimp Jailed After Attempting to Force Runaway Girl to Become a Prostitute*, TORONTO STAR, May 12, 1987, at A23.

62. Moyer & Carrington, *supra* note 57, at 153-55.

Morality Division and specialized morality officers attached to the districts where prostitution was common. The Morality Division utilized a combination of routine enforcement combined with periodic blitzes. The district-based morality officers engaged in routine undercover enforcement, supplemented with harassment activities by uniformed patrol officers. The Montreal police tactics differed from those in other cities in that a significant proportion of charges were based on the surveillance of prostitutes and customers, instead of the reliance on entrapment techniques used elsewhere. The Montreal Police Department also set specific quotas for male customers and often used major blitzes as a means of ensuring that the male/female ratios remained relatively equal. In addition, because male prostitution was concentrated in Parc Fontaine, the police enforced the law against male prostitutes much more than occurred in the other cities.⁶³

The law initially appeared to have a deterrent effect and early media reports indicated that a drastic drop in the number of visible prostitutes had occurred. However, spokespersons for the prostitute community stated that prostitutes were simply waiting for the situation to stabilize.⁶⁴ They returned to the streets in numbers once the initial blitzes ended, and by the summer of 1986 politicians were once again debating the possibility of decriminalization and other options to control street prostitution.⁶⁵ This debate continued throughout the next few years as it became increasingly apparent that Bill C-49 was not working. Although the police continued to express satisfaction with the law, independent research conducted by the federal Department of Justice failed to disclose any clear-cut reduction in the numbers of prostitutes working in Montreal.⁶⁶ While there was a

63. Flieschman, *supra* note 5, at 43.

64. Peggy Curran, *Prostitutes Shun Streets But Still Work*, MONTREAL GAZETTE, Feb. 5, 1986, at A3.

65. Irwin Block, *Dupras Vow: I'll Rid the City of 'Menace' of Prostitution*, MONTREAL GAZETTE, Oct. 9, 1986, at A3 (quoting Claude Dupras, then candidate for Mayor of Montreal).

66. ROBERT GEMME, STREET PROSTITUTION: ASSESSING THE IMPACT OF THE LAW - MONTREAL (Can. Dept. of Justice, 1989). It is difficult to draw any firm conclusions about the overall effect of the law because there are no reliable counts of visible prostitutes prior to Bill C-49. However, this study reported a Montreal police estimate that there were between 300 and 350 regular street prostitutes in 1984. *Id.* at 184. The research conducted

reduction in the numbers operating in the central part of the city, many of these were simply displaced to other areas.⁶⁷ Further, there is evidence that a prolonged series of blitzes in the main prostitution area during June of 1987 did not significantly reduce the numbers of prostitutes over the long term.⁶⁸

An interesting side effect of the implementation of Bill C-49 involves the degree of public controversy and conflict over street prostitution. Generally, all sources agree that there was little public outcry prior to the new law, largely because most of the street prostitution was concentrated in non-residential areas. However, police pressure, combined with court-imposed area restrictions, forced many prostitutes out of their regular locations into residential areas. This instigated a significant increase in the number of complaints from citizens and led to a political debate over the efficacy of police tactics.⁶⁹ Although the police initially responded quickly to these complaints, they only succeeded in driving the prostitutes back to their traditional areas.⁷⁰ This has since developed into a similar situation to that in Vancouver and Toronto, in which prostitutes are routinely displaced back and forth between different areas. The police have stopped responding to public complaints and have instead blamed the problem on authorities in Ottawa. The conflict has escalated, and even led to the creation of vigilante groups in some areas. The police have *not* attempted to stop the vigilante groups from attacking prostitutes; the vigilante groups have even been joined by area politicians.⁷¹

In summarizing this discussion of Bill C-49 in Montreal, it is important to stress that the Montreal police maintains that the new law

after the law came into effect confirmed that at least 530 different female street prostitutes were arrested between 1986 and 1987. *Id.* at 185.

67. *Id.* at 182-83.

68. *Id.* at 185-86.

69. Janet Bagnall, *Residents Want to Get Prostitutes Off Their Streets*, MONTREAL GAZETTE, Apr. 27, 1991, at A1, A8; David Johnston, *Residents Angry at Oldest Profession's New Beat*, MONTREAL GAZETTE, Sept. 9, 1991, at A3.

70. Susan Semenak, *Police Ridding Neighborhood of Prostitutes, Residents Say*, MONTREAL GAZETTE, Oct. 4, 1991, at A4.

71. Andre Picard, *Prostitutes Hunted by Vigilantes and Clients*, GLOBE & MAIL, June 30, 1993, at A5.

is successful. In this respect, it is interesting that Montreal is unique among the three cities in having a workable anti-soliciting bylaw on the books.⁷² Although the police argues that Bill C-49 is superior because it is criminal legislation, the penalties are very similar and the police have almost identical powers of arrest under both laws. Indeed, the arrest statistics for the period 1985 (pre-Bill C-49) to 1987 indicate that the police laid similar numbers of charges under the bylaw in 1985 as they did under Bill C-49 between 1986 and 1987.⁷³ However, the bylaw does not apply to clients, and thus there is no question that more clients are being charged under Bill C-49. In this respect, the Montreal police had a slightly better record of equal enforcement of Bill C-49 against male customers and female prostitutes than the other cities.⁷⁴

The final issue which needs to be addressed regarding the implementation of Bill C-49 involves the question of violence against prostitutes. In this respect, Montreal has not experienced the wave of prostitute murders that have occurred in Vancouver and Toronto. As well, the Montreal police indicated in 1987 that they had not seen an appreciable increase in assaults against prostitutes. However, prostitutes and social workers interviewed for the Department of Justice evaluation contradicted this, arguing that there had been an increase in violence since 1984, but that most prostitutes did not report it to the police.⁷⁵ In addition, many prostitutes also indicated that they felt less safe and had experienced more hostility from customers since the law was implemented. Considering the wave of vigilante violence against prostitutes, and the ongoing political conflict since Bill C-49 was implemented, it seems obvious that the Montreal police are using different criteria for "success" than those posited at the

72. See Gemme, *supra* note 66, at 185. Montreal passed an initial by-law dealing only with soliciting which fell into disuse after the Supreme Court of Canada overturned similar by-laws in other cities. The current by-law prohibits any form of public soliciting (prostitution or otherwise) and has withstood challenges to Quebec Superior Court. Mario Clement v. R. (1984) (cited in Gemme, *supra* note 66, at 42).

73. *Id.* at 107.

74. *Id.* at 108. The actual percentages were as follows: female prostitutes, 47.5%; male prostitutes, 17.5%; male clients, 35.0%. Thus, in total, more males than females were charged under Bill C-49 between 1986 and 1987.

75. *Id.* at 183.

beginning of this article.

D. Summary And Conclusions About the Effect of Bill C-49

In concluding this discussion of Bill C-49 in Vancouver, Toronto and Montreal, several important similarities can be identified. The most obvious similarity is that none of the three cities adopted a consistent policy regarding the implementation of the law. While initial crackdowns were instituted in all cities immediately after the law was proclaimed, they were short in duration and universally failed to reduce prostitution over the long term. Although these crackdowns displaced prostitutes from their traditional areas, they did not resolve the conflict among prostitutes, residents and business owners, and even created conflict in Montreal where none had existed prior to the law. Further, once it became obvious that the law was not reducing the numbers of prostitutes, the police in all three cities adopted short-term crisis management tactics, in which they attempted to minimize public complaints by constantly displacing the prostitutes from area to area so that they were never allowed to remain in any particular area for a prolonged length of time. Although this approach did reduce some conflict, it largely relied on traffic checks and other harassment techniques, and did not entail the enforcement of Bill C-49 itself. In any event, these harassment tactics were much less successful than the negotiated approach used by the Vancouver police in Strathcona, which was the only time that police were able to effectively manage the conflict over street prostitution.

In addition to the general ineffectiveness of Bill C-49 at reducing either the numbers of prostitutes or the amount of political conflict, it was also only marginally effective at reducing the gender-based disparity which has traditionally characterized the control of prostitution. Although the intent was to implement the law in a gender-neutral fashion, gender-based disparities appeared in all three cities. The most pronounced disparity, however, was in Vancouver, and it is perhaps significant that Vancouver was also characterized by much higher rates of violence against prostitutes than occurred in either Toronto or Montreal. This violent trend was also evident in the other cities, as prostitutes reported being forced to adopt riskier operating styles and feeling less safe than prior to the law.

III. PROPOSAL FOR LIMITED DECRIMINALIZATION

In the final analysis, the implementation of Bill C-49 in Vancouver, Toronto and Montreal failed to achieve any of its major objectives, and the only instances of successful prostitution control were achieved through tactics which were not dependent on the law. The remainder of this article will be concerned with outlining a decriminalized approach to prostitution control which appears mandated by the overwhelming failure of one of the toughest *criminal* approaches to prostitution control in contemporary western societies. In this respect, the basic tenet of the approach is that most prostitution-related offenses should be decriminalized and regulated through statutes similar to those used to regulate other businesses. The relative success of the bylaws used in Montreal, Vancouver and Calgary suggest that such an approach would work as long as prostitutes are legally allowed to work somewhere.⁷⁶

Another crucial aspect of a decriminalized approach to prostitution control involves the ability of prostitutes to work legally in fixed locations as long as they did not contravene other laws which might apply to the area. This was recommended by the Fraser Committee but rejected by the Ministry of Justice on the grounds that prostitutes would probably use their apartments to service clients picked up on the street.⁷⁷ It was argued that this would not reduce street prostitution and might cause additional problems in apartment buildings. It was also argued that bawdy houses are currently uncommon even though they are rarely prosecuted, and that this indicates that most prostitutes prefer to work on the street. Both of these arguments are considered

76. It should be noted that the author is intentionally distinguishing between "decriminalization" and "legalization." The former implies repealing criminal laws against prostitution and using general civil laws, e.g., zoning and noise by-laws, to control any instances of conflict. Legalization, as it is practiced in some European countries, involves establishing government run houses of prostitution, maintaining prostitution registers and licencing prostitutes. It must be emphasized that the author is not in favour of "legalization," as it simply places the state in the role of the "pimp" and is more oppressive for the individual prostitutes. Most Canadian prostitutes have argued that they favor the current "criminalization" model over the legalization model. Telephone interview with Valerie Scott, President of the Canadian Organization of Prostitutes (CORP) (June 1989); Marie Arrington, *supra* note 27.

77. See Larsen, *Legalization*, *supra* note 8, at 22.

invalid because they fail to consider the fact that prostitutes are not currently allowed to advertise the locations of bawdy houses to attract clients. Legalized bawdy houses would likely become much more common and thereby reduce the nuisance associated with street prostitution. They would also increase the safety of prostitutes, who would be able to operate in small groups for mutual protection.

Finally, it is also recommended that local governments be empowered to establish legal prostitution areas through the same zoning laws as are used to regulate other forms of land use. Although there is some legitimate concern that this approach would create areas of concentrated vice, this approach has been successful in Europe. Research indicates that prostitutes would be willing to adhere to zoning restrictions as long as there is a designated area where they can operate legally. In any case, it is further recommended that areas which permit legal prostitution be required to establish prostitution committees comprised of residents, business owners, prostitutes, politicians and police representatives. The function of these committees would be to monitor the prostitution trade and liaise among the various groups to identify and resolve problems before they become serious. In this respect, it is essential that any discussions regarding the control of prostitution include the prostitutes themselves. It is only by encouraging a dialogue between them and other affected groups that the conflict which so frequently characterizes the issue can be eliminated.