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Constitutionally Challenging Prostitution Policy and Laws in Canada: Options and Considerations for Adopting a New Policy and Legal Framework

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Capstone Executive Summary

In October 2012, the Supreme Court of Canada announced it will hear the case, *Bedford v. Canada*, challenging the constitutionality of the country's main laws controlling prostitution. It remains to be seen whether the courts will uphold Canada's prostitution provisions under the *Criminal Code* or deem them unconstitutional due to violations of *Charter* rights. If the Supreme Court strikes down the provisions, both Canada's policy and legal approach towards the controversial sex industry will be invalidated, leaving a legislative gap regarding prostitution. In response, lawmakers must resolve this policy and legal vacuum by adopting a new framework to address sex work.

This report addresses the potential policy and legal gap regarding prostitution that may develop, presenting and evaluating alternative options available for implementation, and discussing potential issues associated with the implementation of each approach in the Canadian context. The design of the report is aimed at offering a comprehensive and comparable overview of a number of policy and legal models on prostitution enacted in other jurisdictions and to help Canadian legislatures consider options for prostitution policy and law based both on the successes and failures of each approach in other jurisdictions, and relevant considerations specific to the Canadian context, such as issues of jurisdiction and constitutionality.

It is concluded that there is no perfect policy and legal model for adoption in Canada, with each approach suffering from setbacks when implemented in other jurisdictions and requiring a number of considerations for implementation in Canadian jurisdictions. Given the inconclusiveness of what alternate policy and legal model is ideal for Canada, a number of "next-step" recommendations are made to guide and structure the debate over and process for selecting a model to meet Canada's need to address the potential policy and legal gap on prostitution.

Introduction

In October 2012 the Supreme Court of Canada announced it would hear a case challenging the constitutionality of the country's main Criminal Code provisions controlling prostitution (*Calgary Herald*, 2012). Canada's highest court said it will hear a government appeal of a ruling by the Ontario Court of Appeal (OCA) striking down the criminal ban on brothels and a cross appeal of the OCA's decisions to uphold the soliciting ban (*Calgary Herald*, 2012). The case, *Bedford v. Canada*, was originally brought before the Ontario courts as a *Charter* challenge, working its way up to the Supreme Court (Lowman, 2011, 34). It remains to be seen whether the Supreme Court will uphold the Criminal Code provisions or deem them unconstitutional.

Since 1975, prostitution legal reform has been proposed and debated, involving the creation of numerous committees and recommendations. In 2006, a parliamentary review saw all federal parties agree that current prostitution laws are unacceptable, but they were unable to agree on reform. Such legislative inaction despite widespread agreement on the need for reform will come to an end if the *Bedford* challenge succeeds in dismantling the cornerstones of Canada's existing prostitution laws. Legislators will then need to address the resulting policy gap, not least because sex work in an extremely dangerous profession for both those involved and the communities they are based in. Statistics on the levels of violence sex workers face demonstrate

the need to protect sex workers and the impracticality of failing to implement some form of policy to address prostitution if the current framework is struck down. Thus, governments will seek to ensure the safety and security of sex workers who tend primarily to be women from marginalized or low-income groups and First Nations. They will also want to prevent the exploitation of sex workers by clients and pimps, promoting health and ensuring access to legal protection. They are likely also to be concerned with how prostitution negatively impacts communities through associated increases in crime such as illegal drug trafficking and consumption, as well as with the nuisance (including noise and traffic) that tends to be created in communities where prostitution takes place. This report assesses the policy options, as well as the jurisdictional and constitutional issues, that will confront Canadian governments if the *Bedford* challenge to existing laws succeeds.

Outline and Methodology

The report begins by expanding on Canada's traditional suite of prostitution laws and the *Bedford* challenge of those laws. Then, it canvasses the relevant literature on, and international experience with, policy alternatives to the tradition represented by Canada's existing laws. These alternatives emphasize harm reduction for sex workers and utilize legislation and criminal law but do so in different ways. The alternative approaches will be compared against each other for benefits and weaknesses in addressing the objectives to be achieved, including unintended

negative consequences. In a subsequent section entitled "Policy Implications and Considerations for Implementation", each alternative will be evaluated for its applicability in Canada, forecasting possible practical implications, such as jurisdiction, constitutionality, and compatibility with the rulings of the courts, that may be associated with each approach. This section will be structured to provide each level of government practical information on what options may be pursued and the likelihood of success. Thus, considerations unique to Canada's institutional context will be integrated into the previously outlined evaluation of the options. The design of the project is primarily aimed at offering a comprehensive and comparable overview of a number of policy and legal models on prostitution enacted in other jurisdictions and to help Canadian legislatures consider options for prostitution policy and law based both on the successes and failures of each approach in other jurisdictions, and relevant considerations specific to the Canadian context.

Background Information on Current Prostitution Laws and Policy in Canada

Canada's prostitution framework combines federal criminal and provincial laws with municipal solutions (Barnett and Nicol, 2012, 3). While prostitution is legal, acts surrounding prostitution are prohibited (Barnett and Nicol, 2012, 3). At the federal level, prostitution related offenses are contained in the *Criminal Code* (*Criminal Code*). Sections 210-211, banning common bawdy-houses, prohibit places that are kept for the purpose of prostitution or are

controlled by individuals selling sexual services (Barnett and Nicol, 2012, 3). Section 212 contains the offense of procurement, listing various methods of procurement (*Criminal Code*). Section 212(l)(j), concerning living-on-the avails of prostitution, prohibits living with or being in the habitual company of a sex-worker, living in a common bawdy-house, or receiving proceeds from prostitution (Barnett and Nicol, 2012, 5). Section 213 banning public solicitation criminalizes engaging in prostitution in public places, including communicating for that purpose (Barnett and Nicol, 2012, 6). Complementing federal jurisdiction over criminal law, the *Constitution Act* grants provinces the administration of criminal law (*Constitution Act*, 1987, S. 91(27)). In sum, at the federal level, Canada's prostitution legal landscape demonstrates a prohibition/criminalization approach characterized by the legalization of the act of prostitution but the criminalization of all associated activities (Sondhi, 2010, 1). This policy approach to prostitution seeks to eliminate prostitution by criminalizing the sex trade (Barnett and Nicle, 2011, 1). Both criminal law and effective law enforcement are viewed as crucial aspects of the approach to reduce the number of individuals involved in the sex trade as buyers or sellers (Barnett and Nicole, 2011, 1). As a result, it is almost impossible to practice prostitution without violating criminal laws (Sondhi, 2010, 1).

Supplementing federal criminal law is the regulation of activities related to prostitution at the provincial and municipal levels of government. The courts have recognized legitimate overlap between jurisdictions, validating provincial legislation addressing criminal issues,

though, it has been established that provincial legislation creating a prohibition is in conflict with federal jurisdiction (Barnett and Nicol, 2012, 9). Provinces address prostitution through legislation on highways and traffic, community safety, and child protection (Barnett and Nicol, 2012, 9). Municipalities utilize bylaws relying on regulating, licensing, and zoning prostitution-related activities; however they face the same restrictions that apply to provinces regarding overlap with federal jurisdiction (Barnett and Nicol, 2012, 15). Together, federal criminal law and provincial/municipal law and regulations impose many constraints on an activity that is itself legal.

This traditional approach to prostitution in Canada has been strongly criticized as misguided and inadequate for some time, and there is a long history of attempted reform in Canada (Lowman, 2011, 1). Beginning in the mid 1970s, perceived problems with the *Criminal Code* provisions began to surface with concerns over the enforceability of the laws prohibiting street prostitution (Lowman, 2011, 1). To address these concerns, the Liberal government appointed the Special Committee on Pornography and Prostitution to consider options for law and policy reform in 1983 (Young, 2008, 212). However, the sweeping legal changes towards the legal standing of prostitution recommended by the committee were not implemented by the federal government (Young, 2008, 212). Instead, in 1985 the Conservative government opted to rewrite the street prostitution laws (Young, 2008, 212). Despite the slightly modified criminal laws in place to address prostitution, the murder of at least 300 street prostitutes in Canada

renewed calls to further reform prostitution laws and policy (Lowman, 2011, 42). In 2006, a parliamentary review saw all federal parties agree that current laws are unacceptable (Lowman, 2011, 42). Because they could not agree on how to achieve reform, however, the status quo remained (Lowman, 2011, 42). Although widely considered to be urgent, reform has been stalled for years due to clashes over how to reform laws, with some advocating radical feminist approaches based on prohibition/criminalization and others liberal feminist approaches of legalization/regulation (Lowman, 2011, 42).

This stalemate on much needed reform is the context in which the *Bedford* challenge arose (Lowman, 2011, 45). The applicants in *Bedford*, a group of former and current sex workers, turned to the courts for relief from the deadlock over reform and to force an evaluation of the evidence supporting current provisions and prohibition/criminalization (McKay-Panos, 2011, 30).

They argued that the *Criminal Code* provisions relating to prostitution violate several constitutionally guaranteed rights, including the right to "life, liberty, and security of the person" and "security of the person" (*Bedford v. Canada*, 2010). In their view, the bawdy-house, living-on-the-avails, and communicating prohibitions in the *Criminal Code* prevent prostitutes from undertaking legal work in safe and secure environments (*Bedford v. Canada*, 2010). They argued that the bawdy-house provision in particular denies sex-workers a safe place to pursue the act of

prostitution, while the living-on-the-avails provision prevents the hiring of third-party services to create a protective work environment (*Bedford v. Canada*, 2010). Furthermore, the communicating law puts prostitutes at risk by compromising their ability to negotiate transactions in safe environments (*Bedford v. Canada*, 2010). Together these provisions prevent sex-workers from taking crucial steps to prevent themselves from violence in their line of legal work, therefore violating sex-worker's *Charter* Section 7 right to "life, liberty, and the security of the person" (*Bedford v. Canada*, 2010).

When the case was heard by the Ontario Superior Court of Justice, all of the challenged provisions were struck down on the grounds that they made safety-enhancing methods illegal, preventing sex-workers from: getting off the street and working more safely in homes or brothels, taking steps to protect themselves, hiring bodyguards, and screening clients to reduce the risk of violence (*Bedford v. Canada*, 2010). Justice Himel's judgement for the Ontario Superior Court, determined that such violations of the *Charter's* section 7 guarantee of "life, liberty, and security of the person" were not in accordance with the "principles of fundamental justice" but were arbitrary, overly broad and disproportionate, and therefore could not be saved by Section 1 of the *Charter* (*Bedford v. Canada*, 2010).

When the ruling by the Ontario Superior Court was appealed by both the federal and provincial Attorneys General, and heard by the Ontario Court of Appeal in 2012, similar

reasoning was adopted as the court struck down the ban on brothels and living-off-the-avails of prostitution, arguing they prevent sex-workers from accessing means to enhance safety and well-being (*Canada v. Bedford*, 2012). In response, the court amended the *Criminal Code* provisions to clarify that the living-off-the-avails ban applies only to cases involving exploitative circumstances (*Canada v. Bedford*, 2012). However, the appeals court upheld the ban on communicating for the purposes of prostitution, concluding that the solicitation law does not violate the Section 7 *Charter* rights of prostitutes and furthermore is a reasonable limit on the right to freedom of expression (*Canada v. Bedford*, 2012). Currently, the Supreme Court of Canada is hearing an appeal of this ruling and both the judgement and reasoning remain to be seen (The Canadian Press, June 13, 2013).

The decisions by the lower courts demonstrate the adoption of a harm-reduction approach aimed at sex-worker safety, indicating that current laws expose prostituted persons to unjustifiable harm (HIV/AIDS Policy and Law Review, 2011, 6). Both court rulings conceptualize the prostitution provisions as imposing some form of health and safety risk for prostitutes (Kennall, 2012, 234). Increasingly, section 7 scrutiny by the courts has expanded to include *Charter* review based on the social impact of criminal policy and laws (Klein, 2012, 66). *Bedford* exemplifies the increasing trend of using rights-based *Charter* litigation as an instrument of health and social policy reform. Specifically, *Bedford* challenges criminal law on prostitution, identifying that the threat or application of criminal sanction is a barrier to health-seeking

behaviour in the area of sex-work (Klein, 2012, 59). How the courts interpret a constitutional landscape in which health and criminal justice interact affects both health and criminal policy (Klein, 2012, 59). Following the understanding of courts as policy-makers seeking laws with socially beneficial results, judicial review of matters affecting health and safety are increasingly viewed through a harm-reduction lens as a way to evaluate the social impact of criminal policy and laws. *Bedford* represents a trend in the policy-making of courts whereby most successful section 7 applications challenge federal criminal laws that impose arbitrary health or safety risks on individuals (Kennall, 2012, 234).

Overview and Evaluation of Possible Future Laws and Policy Options

As indicated by the historical stalemate on prostitution legal reform in Canada, how best to implement reform if the existing criminal provisions are struck down is a divisive issue amongst policy makers and academics (Brush, 2012, 2). A comparative review of prostitution policy in other jurisdictions reveals three main models for reform. The first is to remove the anomaly of criminalizing various activities associated with an otherwise legal profession by fully criminalizing prostitution itself. An important example of this full criminalization model exists in California. The other two models stem from the conflicting positions of "radical" and "liberal" feminists, who conceptualize prostitution quite differently (Brush, 2012, 2). These feminist models, which are extensively debated in Canada and in the literature, have been implemented

internationally in a number of jurisdictions (Lowman, 2011, 34). Because the radical feminist model has been most prominent in countries like Sweden, it has become known as the "Nordic" model. Like the California model, the Nordic model continues to rely on criminal prohibition, but of the purchasing of sex by "Johns" rather than the selling of sex by prostitutes. The liberal feminist approach, often dubbed the "Dutch" model because of its adoption in the Netherlands, also exists in countries like New Zealand. The Dutch model decriminalizes or legalizes, and then regulates, prostitution. In this section, I review these three reform options, beginning with California's "full prohibition" of prostitution.

Policy Option 1- Full Prohibition: California

Although Canada's current combination of federal, provincial, and municipal laws is collectively considered to represent a prohibitionist approach to sex work, it is possible for the federal government to pursue alternate forms of prohibition if the Supreme Court strikes down some or all of the current prostitution provisions. That prostitutes should be able to pursue their line of work in a safe manner is surely a more compelling argument if prostitution itself is legal. After all, why should the law contribute to making a legal profession unsafe and unhealthy? But what if prostitution itself were deemed to be so unacceptable that it was itself criminally prohibited? That the criminalization of theft makes the "work" of thieves even more unsafe is no argument against criminally prohibiting theft. There is, of course, no guarantee that the full

criminalization of prostitution would survive a constitutional challenge in the way that the criminalization of theft would surely survive, but if it did, the kinds of health and safety concerns raised in the *Bedford* litigation would become less compelling. It seems unlikely that this option would be pursued in Canada, but because it exists elsewhere in the liberal democratic world, it should be reviewed. California provides a useful case study for such a review.

The goal of full prohibition in California is to completely eliminate the sex trade by criminalizing all aspects of prostitution (Barnett and Nicole, 2011, 2). In California the act of prostitution itself is prohibited by the *Penal Code*, which makes it an offence both to agree to engage in and to actually engage in prostitution (Barnett and Nicole, 2011, 17). Additionally, the *Code* prohibits loitering and soliciting for the purpose of prostitution (regardless of whether it is in a private or public space), procuring prostitution, and living off the avails of prostitution (Barnett and Nicole, 2011, 17). In California, state criminal laws are supplemented by local civil measures to deter prostitution in communities (Barnett and Nicole, 2011, 17). Such civil measures include restraining orders that bar individuals selling sex from participating in some activities in certain public spaces, or mandatory attendance at "john school" for individuals found purchasing sex (Barnett and Nicole, 2011, 17). Other measures implemented by cities include the creation of "prostitution free zones" where individuals found participating in the sex trade can face additional charges for being in such a zone (Barnett and Nicole, 2011, 17).

Empirical evidence to support the effectiveness of California's full prohibition laws in meeting its objectives, namely to eliminate the sex trade through criminal sanction, is minimal (Barnett and Nicole, 2011, 17). A primary issue identified by critics of California's approach is the lack of consistency enforcing the prostitution related laws (Barnett and Nicole, 2011, 17). Street sex workers are the most visible members of the prostitution industry and as a result tend to be targeted for arrest and conviction more than other prostitutes (Barnett and Nicole, 2011, 17). As a result, street prostitution has become concentrated in more isolated areas to avoid detection and in communities that are often ignored by police and other authorities (Barnett and Nicole, 2011, 17). The laws, in combination with local civil measures of prostitution free zones, have effectively worked to displace sex workers from one area to the next rather than eliminate the existence of the sex trade altogether (Barnett and Nicole, 2011, 17). While California's full prohibition policy works to target street sex workers, the laws fail to address indoor prostitution and sex work, which continues to proliferate, as sex workers escape contact with the criminal justice system (Barnett and Nicole, 2011, 17).

Victimization of prostitutes is high under California's sex trade policy since sex workers are reluctant to come forward to the authorities out of fear of being identified or charged (Barnett and Nicole, 2011, 17). In the United States, female prostitutes account for one third of all female inmates and many of these women are members of visible minorities or immigrants (Barnett and Nicole, 2011, 17). This suggests that they could be victims of human trafficking and that the

laws, instead of helping these women, further victimize them (Perrin, 2010, 13). Even after conviction, it is unlikely that California's criminal sanctions against prostitutes deter them from selling sexual services (Barnett and Nicole, 2011, 17). Rather, critics argue that such criminal records actually encourage sex workers to stay in the sex trade in order to earn money to pay their fines, especially given the difficulty associated with finding work with a criminal record (Barnett and Nicole, 2011, 17).

Furthermore, the resource commitment and costs associated with California's prostitution provisions are high. To adequately uphold the prostitution provisions, California must account for law enforcement, processing, and incarceration costs (Barnett and Nicole, 2011, 17). Despite increasingly severe and broadening criminal sanctions and civil prohibitions against the sex trade, it would appear that such a full prohibition policy approach has failed to accomplish its goal of eliminating the sex trade entirely.

Policy Option 2- Redirected Criminalization: The Nordic Model

The radical feminist position conceptualizes prostitution as inherently violent and exploitative, victimizing prostituted persons (Brush, 2012, 25). Advocates refuse to describe prostitution as “work”- arguing that force or coercion is always present in prostitution, occurring through factors such as poverty, racism, a history of sexual abuse, or drug addiction (Longworth,

2010, 69). Thus engaging in prostitution is never a matter of truly free choice (Longworth, 2010, 69). The objective of the Nordic model- pioneered especially by Sweden- is the elimination of prostitution as a means to achieve the long-term goal of gender equality (Longworth, 2010, 69). The legal strategy to achieve this continues to rely on criminal prohibition but changes the target of criminalization. The Nordic model aims to eliminate the sex-trade through the criminalization of clients and pimps while decriminalizing sex-workers (Brush, 2012, 30). In this view, rather than being viewed as criminals, prostitutes are considered to be victims exploited by procurers and purchasers and trapped by their economic and social circumstances (Barnett and Nicole, 2011, 13). Radical feminists believe that criminalizing the demand-side of prostitution will deter buyers, decreasing the purchase of services, making markets less lucrative, which will decrease prostitution (Longworth, 2010, 70). In practice, the Nordic model is characterized by its criminalization of the purchase of sex, procuring, and living on the avails of prostitution of another person, while selling sex remains lawful (Lowman, 2011, 42). Additionally, it may also involve government provision of support services that sex workers may require to leave the trade (Barnett and Nicole, 2011, 17). Such services may include access to education, alternative employment, and outreach programs (Barnett and Nicole, 2011, 17). Criminal sanctions applied to prostitutes are considered to be unbeneficial because they serve as barriers to future employment opportunities for convicted sex workers (Barnett and Nicole, 2011, 17).

In Sweden, this model was explicitly adopted to realize the eradication of gender inequality (Waltman, 2011, 450). Sweden adopted demand-side criminalization and decriminalization of prostitutes with the long-term goal of abolishing prostitution as part of an omnibus bill on violence against women in 1999 (Waltman, 2011, 450). The Act Prohibiting the Purchase of Sexual Services criminally target purchasers of sexual services while decriminalizing prostitutes and providing them with the help they need to leave the trade such as education and alternative employment (Hindle and Barnett, 2005, 20). The model has been hailed as ground-breaking and has been promoted elsewhere, including Canada, not only by a radical feminists but by other observers and legislators (Perrin, 2010; Smith 2012).

Empirical evidence on the impact of the adoption of the Nordic model is mixed, however (Berger, 2012, 549). On the one hand, studies conducted after the passage of the law emphasize its success in dramatically reducing the number of women in prostitution in Sweden (Berger, 2012, 549). Estimates by officials in the Social Services Department claim street prostitution in Stockholm decreased by 75% (Hindle and Barnett, 2005, 21). Furthermore, the law is cited as persuading more sex-workers to come forward and seek assistance to leave sex-work and has kept women from entering (Berger, 2012, 549). Additionally, the laws have been reported to counteract organized crime in Sweden and violence against sex workers has not increased since the introduction of the laws (Barnett and Nicole, 2011, 13).

On the other hand, there are studies that call the success of the Nordic model in Sweden into question (McCarthy et al, 2012). These studies report that the prostitution laws cannot be said to have decreased prostitution or deter demand to the extent claimed (Berger, 2012, 550). Instead, these studies claim that Swedish laws have had adverse effects on the health and well-being of sex-workers by isolating sex-workers from each other and making it more difficult for health initiatives to reach them (Berger, 2012, 550). The laws force prostitutes even further underground to conduct their business, making sex-workers more vulnerable. Furthermore, with fewer prostitutes on the streets, those that are still engaged in sex-work are likely to fall victim to buyers who have more power to demand unsafe sex practices and lower prices (McCarthy et al, 2012, 261). Prostitutes are placed at an increased risk of violent encounters due to rushed negotiations in secretive areas, with some reporting a greater reliance on third parties since finding clients is more difficult (McCarthy et al, 2012, 261). Effectively, critics argue the legislation has not reduced the number of prostitutes, but has led to a reorganization of the sex-industry (Hindle and Barnett, 2005, 22). Other critics have also charged that the laws fail to achieve their stated goals, with Swedish police describing the law as "toothless" after experiencing difficulty in laying charges under the act (Barnett and Nicole, 2011, 13). For those who are convicted of prostitution related charges, there have been no prison sentences but only fines (Barnett and Nicole, 2011, 13). The success of the Nordic model and the desirability of its extension to other countries appear to be inconclusive given the lack of definitive evidence from the Swedish case example to properly fuel arguments for either side (Berger, 2012, 550).

Policy Option 3- Regulation: New Zealand and the Dutch Model

The liberal feminist approach centers on harm-reduction principles and conceptualizes sex-workers as choosing to perform legitimate labour even if the decision to do so is made under constrained conditions (Brush, 2012, 17). Sex-work necessitates the same labour and human rights protections that workers in other industries enjoy (Brush, 2012, 17). Liberal feminism's mandate is to reduce the harm sex-workers face on the job (Brush, 2012, 17). The legal strategy advocated is decriminalization, where all prostitution related criminal law is repealed, followed by some form of regulation, which can include the regulation of prostitution through criminal law, labour laws, or some other form of legislation (Hindle and Barnett, 2005, 3). Some Canadian liberal feminists recommend that sex-workers rights be protected under occupational health and safety legislation and subject to controls analogous to other legal enterprises in terms of zoning, licensing, and health requirements (Brush, 2012, 23). Although prostitution is a legal occupation, it seeks to control sex-work through rules governing who can work and under what circumstances (Hindle and Barnett, 2005, 3). Governments adopting this approach typically regulate through work permits, licensing, and tolerance zones (Hindle and Barnett, 2005, 3). The case examples of New Zealand and the Netherlands have been chosen to represent the various forms of regulation that exist. The regulation policy approach can vary in form, breadth, and the extensiveness of the regulations applied to the sex industry. New Zealand represents a weaker form of regulation, in the sense that the regulatory regime around sex work is somewhat limited

in scope as it does not apply to individual sex workers but only to prostitution businesses. In comparison, the Dutch government has implemented an enhanced regulatory regime, with an advanced licensing scheme and regulations involving criminal and civil laws applying to all sex workers, including those in brothels, sex shops, and at the street level (Barnett et al., 2011, 10).

In 2003, New Zealand repealed all of its criminal provisions prohibiting solicitation, operation of a brothel, and living off the avails of prostitution (Barnett et al., 2011, 6). The goal of New Zealand's *Prostitution Reform Act* is not to promote the sex trade in the country but to "enable sex workers to have, and access, the same protections afforded to other workers" in an attempt to prevent the sex trade from moving further underground and create safe, healthy environments for sex workers (*New Zealand Prostitution Reform Act,* 2003).

Legally, the regulations in New Zealand allow street prostitution and independent sex workers to work in an unregulated environment to some degree, though there is also an important regulatory dimension that applies to sexual service businesses (Barnett et al., 2011, 6). That is, up to four sex workers may operate from the same location without a license; however operations with more than four individuals, or individuals working for a third party, are required to have a license and are subject to regulations (Barnett et al., 2011, 6). Under New Zealand's regulatory laws, primary jurisdictional responsibility for regulating brothels falls to local governments, including zoning, licensing, and advertising bylaws (Barnett et al., 2011, 6). The

power of local government law making is limited, however, in the sense that bylaws cannot prohibit prostitution altogether (Barnett et al., 6). Additionally, generic laws applied to regulate businesses generally are applicable to the sex industry (Barnett et al., 2011, 6). Issues specific to the sex trade, such as age limits, constraints on who can sell sexual services, or own, finance, operate, or manage a prostitution operation, are addressed through special provisions (Barnett et al., 2011, 6). Occupational health and safety codes have been revised to include sexual service operations (Barnett et al., 2011, 6). Some local government jurisdictions have adopted regulations to enable them to further regulate the sex trade (Barnett et al., 2011, 6). Such regulations make it difficult to open small brothels in some jurisdictions, relegate brothels to the inner city and industrial areas, and ensure brothels are not located by schools or residential areas (Barnett et al., 2011, 7). Exploitation is addressed by New Zealand through strengthened penalties for clients and operators involved in the commercial exploitation of children, and by denying immigration permits to individuals seeking to work in, invest in, or operate a sexual service operation (Barnett et al., 2011, 6).

In order to empirically evaluate the effectiveness of New Zealand's decriminalization policy, the Minister of Justice established the Prostitution Law Review Committee in 2008, which concluded that decriminalizing prostitution generally had positive effects (Barnett et al., 2011, 8). The committee found that there had been no increase in the number of people involved

in the sex trade since the decriminalization of prostitution and that street prostitution only accounted for about 11% of all prostitution in New Zealand (Barnett et al., 2011, 8).

The committee also evaluated the ability of the new prostitution laws to address exploitation in the sex trade, and found that 60% of prostitutes felt they had more power to refuse clients since decriminalization (Barnett et al., 2011, 8). Under the decriminalization policy and laws, only 4% of sex workers reported being pressured into the sex trade by another person and only 1.3% of sex workers were under 18 years old (Barnett et al., 2011, 8). While prostitutes are increasingly willing to report incidence of violence or exploitation to the police, the committee did not find evidence to demonstrate that working conditions had improved for sex workers since the introduction of decriminalization (Barnett et al., 2011, 8).

The committee's mandate included evaluating the impact of decriminalization on local government and communities (Barnett et al., 2011, 8). According to the committee, most cities had not seen the need for significant regulation since decriminalization (Barnett et al., 2011, 8). Regulations enacted in most jurisdictions were not in response to any tangible issue or problem, but were simply cautionary measures taken by local governments (Barnett et al., 2011, 8). However, some local regulations were identified by the committee as pushing the sex trade underground, creating working conditions for sex workers that contradict the purpose of decriminalization in New Zealand. The committee stated concerns it had over high licensing

fees, zoning laws that severely restricted the locations in which brothels could operate, and restrictive health and safety requirements (Barnett et al., 2011, 8).

Overall, the committee's evaluation of decriminalized prostitution in New Zealand was positive (Barnett et al., 2011, 9). Although setbacks were identified, such as local concerns over street work and bylaws inconsistent with the aim of decriminalization, the committee argued such issues are simply "kinks to be smoothed out" (Barnett et al., 2011, 9). The key indicators demonstrating the effectiveness of decriminalization included sex worker's positivity about low levels of exploitation and that prostitution levels did not rise since decriminalization (Barnett et al., 2011, 9).

The Netherlands, obviously, is the leading example of the Dutch model (Daalder, 2007, 11). The policy model that has developed in the Netherlands legalizes and regulates the sex trade through a combination of federal criminal and local civil laws to control violence and exploitation in sex work and nuisances associated with street commerce (Lowman, 2011, 42; Barnett et al., 2011, 10).

In 2000, the Netherlands lifted the ban on brothels and pimping with the relevant sections being removed from the *Dutch Penal Code* and adopted a licensing scheme to regulate the industry (Daalder, 2007, 11). Prostitutes are given the same rights as other workers and the

administrative responsibility for regulating and licensing sex-work has been devolved to local governments (Hindle and Barnett, 2005, 17; Daalder, 2007, 11). To promote consistency across the country, the Ministry of Justice developed a handbook on prostitution designed to help municipalities develop policies for their jurisdictions (Hindle and Barnett, 2005, 17). Examples of regulations include: restricting the number and location of brothels, imposing criminal background checks on prospective brothel managers and owners, implementing stringent health and safety requirements, and limiting whom brothel's can employ (Hindle and Barnett, 2005, 17). Most legal prostitution takes place in sex clubs and red light districts (Barnett et al., 2011, 10). Some local jurisdictions have prohibited street prostitution, however some have designated zones for such prostitution to take place (Barnett et al., 2011, 10). As of 2009, there has been pressure on the Dutch government to further regulate the sex industry, and as a result, proposals have been tabled to establish a national register for sex workers and increase supervision and enforcement (Barnett et al., 2011, 12).

Similar to Sweden's Nordic model, empirical evidence from the Netherlands demonstrates both successes and setbacks, and therefore there is a lack of definitive evidence for or against adoption (Hindle and Barnett, 2005, 18). Some studies report legalization has allowed prostitutes to benefit from rights and services accorded to other workers since brothels must comply with health and safety standards (Hindle and Barnett, 2005, 18). However, studies have also indicated that legalization pushed illegal immigrants and other socially marginalized

individuals in the sex-industry further underground (Hindle and Barnett, 2005, 18). Although legalization has provided some benefit to legal sex-workers, the invisibility of illegal prostitutes creates a marginalized group of sex-workers that are even more vulnerable to violence and exploitative circumstances (Hindle and Barnett, 2005, 19). Additionally, the Netherlands under legal prostitution has witnessed a concentration of prostitution in large brothels, almost creating monopolistic circumstances in the sex-industry, denying prostitutes the opportunity to run their own businesses (Hindle and Barnett, 2005, 19). The costs associated with rent in the red light districts will likely lead to a greater concentration of money and power in the hands of fewer people (Hindle and Barnett, 2005, 19). Empirical evidence from the Netherlands to evaluate the success of the Dutch model appears to be inconclusive, suggesting increased health and safety for some sex-workers, while others face monopolistic brothels and enhanced exploitative circumstances.

Policy Implications and Considerations for Implementation in Canada

Prostitution is a contentious issues for policy makers and the empirical evidence available demonstrates that each approach has negative side effects and no approach can definitively be said to have met all of its objectives. The role of the state in monitoring or controlling prostitution, and how it should do this, is the key issue of contention. Legislative and policy options vary from strengthening criminal provisions relating to prostitution (full

prohibition) to shifting the focus of criminal provisions relating to prostitution (re-directed criminalization) to repealing criminal laws and replacing them with other types of regulating legislation (decriminalization and regulation). Given the potential for the Supreme Court to strike down all of Canada's prostitution laws and effectively force Canada to move away from its current system of prohibition/criminalization, it is important to forecast how current models employed internationally may operate within Canada. Lawmakers looking for policy alternatives for prostitution must contemplate both the potential jurisdictional changes associated with each approach as well as the reasoning adopted in deciding the case.

In the Canadian context, policy options of full prohibition and re-directed criminalization, which both rely heavily on criminal sanctions to deter the expansion of the sex trade with the goal of eliminating it, will put prostitution primarily in the jurisdiction of the federal government. Policy options that move away from the criminalization of prostitution and the sex trade and advocate for addressing sex work without criminal legislation, that is decriminalization and regulation, entails the devolution of jurisdiction over prostitution from the federal government to the provinces and municipalities. For this reason, the report breaks down the policy implications and considerations into those most relevant to the federal government and those most relevant to the provinces and municipalities.

The articulation of policy in the form of constitutional litigation can exclude some policy choices from consideration while promoting others (Manfredi and Maioni, 2009, 142). The litigation of complex policy issues involves multiple stakeholders, changing facts and evidence, and predictive assessments of the impacts of decisions (Manfredi and Maioni, 2009, 142). Thus, not only will the change in jurisdictional-responsibility associated with various approaches possibly affect which policies are favourable for adoption, but other considerations expressed by the court's reasoning will need to be accounted for by prospective approaches (Manfredi and Maioni, 2009, 142).

What can the Federal Government Do?

If Canada chooses to pursue California-style full criminalization or Nordic-style demand-side criminalization, federal law will continue to play a major role in prostitution policy. In Canada's federal system, criminal law falls under the constitutional responsibility of the federal government (*Constitution Act*). Provinces and municipalities will also continue to be involved, however, in part because of the provincial role in administering criminal law. Provincial and municipals jurisdictions will also be important under the Nordic model because of its mandate to protect prostituted persons and not further victimize them. That is, there may be room for provincial legislation and bylaws to help ensure prostituted persons are not put at risk and victimized especially by providing support and services to prostituted persons with the goal of

encouraging their movement out of the sex-industry (Craig, 2012, 206; Waltman, 2011, 463). An efficient and beneficial coordination of the various levels of government and associated jurisdictions would be a key component for this policy option to be implemented effectively in Canada to address both the needs of sex workers and the communities affected. The problem of prostitution varies greatly across the country and it is likely that broad, federal laws will always be viewed as inadequate by the regions (Barnett and Nicol, 2012, 20). Yet, regulations developed by provincial and municipal jurisdictions will focus primarily on issue specific areas or area specific issues (Barnett and Nicol, 2012, 20). Thus, an effective combination of broad federal laws can be complemented by local laws, if creative agreements and solutions can be collectively coordinated between jurisdictional responsibilities.

It may turn out, however, that neither full criminalization nor re-directed demand-side criminalization is compatible with the current reasoning of the courts, making laws based on these models susceptible to legal challenge and review. For example, the *Charter* analysis conducted by the courts thus far limits the possibility of adopting criminal solutions to prostitution, even from the demand side, because harm-reduction, and associated approaches to health and wellbeing, often requires the withdrawal of criminal solutions (Klein, 2012, 72). Simply put, a harm-reduction approach is characterized by an anti-criminal bias (Kennall, 2012, 231). Because criminal sanctions cause deprivations of liberty and raise risks to health and safety, section 7 of the *Charter* creates a disincentive to using criminal power to regulate social

problems (Kennall, 2012, 189). The long standing debate around prostitution in Canada has centered around the role of the *Criminal Code* in addressing sex work and if the courts decide to strike down the provisions as a result of harm reduction, they will arguably have implicitly rejected the role of criminal law in regulating sex work (Barnett, et al, 2011, 1). Additionally, as demonstrated by the case studies, it is not clear that this approach will work to protect sex workers, possibly enhancing the dangers and risks of sex work, thereby further undermining the approach favoured by the courts.

What can the Provinces and Municipalities Do?

Although the provinces and municipalities will have a role even if the federal government maintains a significant criminal presence in prostitution policy, they will gain primary jurisdiction over the sex work industry and issues surrounding it if Ottawa chooses (or is forced by judicial invalidations) to abandon criminal approaches. Thus, a consideration for the implementation of regulatory models in Canada is that prostitution would no longer fall under direct federal jurisdiction but would devolve to the provinces and municipalities (Craig, 2011, 207). The policy approach available would be some form of regulation. Thus, provincial regulatory power, relating for example to health and safety, which plays a role even when some kind of criminalization (and federal jurisdiction) persists, becomes truly central when prostitution is decriminalized. Any policy approach prohibiting prostitution or related acts,

however, would not be within the powers of the provinces/municipalities as the competencies of the provinces/municipalities are limited to regulatory power over prostitution. Although sex-work will be treated as a legal occupation, the provinces/municipalities have the legislative authority to control prostitution through rules governing who can work in the industry and under what circumstances (Hindle and Barnett, 2005, 3). Such regulation may take the shape of permits, licensing, and zoning, and the regulatory regimes may be limited in applicability such as New Zealand, or extensive and broad such as the Netherlands (Hindle and Barnett, 2005, 3).

There are two clear implications of the regulatory model in Canada that are identified and discussed. First, the devolution of responsibility for the regulation of prostitution related activities to the provinces and municipalities, that is the jurisdictional change, could culminate into fragmented and inconsistent regulatory frameworks across the country (Craig, 2011, 20). Whether this is desirable, however, is contentious. Second, the court's reasoning in deciding the case will provide guidelines for provinces and municipalities, likely meaning that safety interests of sex-workers will have to be placed above the interests to reduce public nuisance and other community interests for legislation and bylaws to be constitutional (Craig, 2011, 222).

The first consideration for the implementation of the regulatory model and subsequent new division-of-powers on prostitution policy is the possible disjointed nature of prostitution laws and regulations, creating a patchwork of varying regulations across Canada that attempt to

balance legalized prostitution with the local community's interest in reducing public nuisance and ensuring the safety of their localities (Craig, 2011, 220). Without uniform regulations across the country, a complex and difficult to decipher regulatory regime may arise (Laing, 2012, 166). A similar situation has arisen in Australia where responsibility for criminal legislation falls on individual states and as a result, across Australia states have taken various approaches to prostitution (Jeffrey, 2009, 61). As mentioned earlier, the Netherlands has attempted to deal with ensuring some form of consistency regarding the regulation of prostitution across the country by creating a handbook for local lawmakers (Hindle and Barnett, 2005, 17).

Currently, the various municipal by-law systems enables the intimate touching of bodies to be legal and licensed in some places while not in others, depending on which municipal jurisdiction the client and the person providing the services happen to be in (Laing, 2012, 166). Additionally, there are specific provincial laws that seek to regulate sexual-services in other ways (Laing, 2012, 166). Municipal and provincial laws regulating sexual-services currently address various types of off-street sex-work including exotic dance venues, escort agencies, and body-rub parlours, utilizing zoning, licensing, and traffic and highway legislation (Laing, 2012, 166).

This current regime is often critiqued by academics and sex-workers for being difficult to navigate, sometimes producing contradictory and stigmatizing manifestations of by-laws, and

under a regulatory model it is reasonable to expect that such provincial/municipal regulatory regimes will expand (Laing, 2012, 181; Craig, 2011, 210). If the prostitution provisions are struck-down and regulation is devolved, current sexual-services regulations will likely extend to brothels, which will be legal off-street sex-work establishments with the repeal of the bawdyhouse laws, as well as street sex-work which will be legal with the repeal of solicitation laws. Depending on the province, city, and location within the city, the already messy legal landscape of by-laws regulating current sexual-services will be further complicated by the addition of brothels and street sex-work (Laing, 2012, 166). The broad range of sexual-services will be variously legal, illegal, or tolerated depending on local context, by-law enforcement, and regulations (Laing, 2012, 166).

Such an expansion may result in negative consequences primarily for sex workers, but also for clients and the community at large who may struggle to decipher an increasingly complex system. Research on the current by-laws and licensing context of sexual-services often recommends that local variations of licensing, accreditation, and standardizing systems should be synthesized and implemented nationally to prevent the development of contradictory and stigmatizing by-laws (Laing, 2012, 181). With the adoption of decriminalization and regulation, however, it is unlikely that any unified national policy will develop. Instead, because of the especially divisive nature of sex-work, the striking-down of the prostitution provisions are likely to be met with more extensive and explicit regulation though this will differ across local

jurisdictions (Craig, 2011, 207). As is often the case with many issues under the regulatory jurisdictions of the provinces/municipalities, the regulation of sex-work in this manner will produce a Canadian legal landscape for prostitution that is complicated, fragmented, and different for every province and city.

It must be emphasized, however, that the adoption of regulation which places primary jurisdictional-responsibility in the hands of local legislators is not necessarily negative (Manfredi and Maioni, 2009, 142). The rearranged division-of-powers and implementation of local regulations avoids problems associated with imposing national solutions on inherently local problems (Manfredi and Maioni, 2009, 142). National policies can ignore differences among provinces and possibly suppress the provincial experimentation necessary to find innovative solutions to policy problems (Manfredi and Maioni, 2009, 142). With the primary legislative and regulatory power placed in the hands of provinces/municipalities, rather than creating a messy legal landscape and fragmented policies that negatively impact sex-work, it is possible that innovative solutions will be discovered to address unique problems associated with the nature of local sex-trade issues in a manner responsive to the communities affected. A uniform regulatory regime may not encompass the level of specificity necessary to respond to the local needs and factors at play in particular municipalities (Craig, 2011, 207). Advantages associated with individual provinces/municipalities having primary jurisdiction to enact independent regulations over sex-work include meaningful collaboration with stakeholders in the community and

consideration of the specificity of the community, allowing for local laws to be developed at the local level that are responsive to local needs (Craig, 2011, 207). Furthermore, full consultation of the sex-workers operating in the community is more attainable (Craig, 2011, 207).

The lesson to take away from this first consideration is that prostitution regulation will not be uniform across the country; there are both arguments that this may be negative or positive for sex-workers and communities. As noted earlier, the presence and extent of prostitution various widely across the regions of the country (Barnett and Nicole, 2011, 20). As a result, national level laws from the federal government can often be perceived by some regions as inadequate and unable to address local issues (Barnett and Nicole, 2011, 20). However, at the same time, laws and solutions from provincial and municipal jurisdictions are unable to address issues of prostitution on larger scale since they are designed to address area specific issues (Barnett and Nicole, 2011, 20).

The second consideration regarding regulation, the new division-of-powers and its implications on prostitution policy is the need to ensure regulations enacted by municipalities are constitutional themselves (Craig, 2011, 210). Because municipalities are considered governments under the *Charter*, by-laws are subject to constitutional challenges (McKay-Panos, 2005, 12). Thus, if form of regulation is adopted, provincial/municipal lawmakers should review current and future by-laws in a manner consistent with the reasoning adopted by the court (Craig,

2011, 206). The principles informing the court's judgment will inform the constitutionality of sex-work by-laws in Canadian cities (Craig, 2011, 206). It is likely that municipalities will continue to use licensing and zoning strategies to regulate the sex-industry. However, given the emphasis of harm-reduction and ensuring sex-workers rights and protection, provincial and municipal strategies will not be justified in employing legislation or bylaws that aggravate the dangerous conditions of sex-workers (Craig, 2011, 220). The principles of harm-reduction require the accommodation of the safety interests of sex-workers in their communities, meaning prostitution cannot simply be zoned out to the fringes of the city irrespective of implications for sex-worker safety (Craig, 2011, 222). The principles identified in *Bedford* therefore apply to municipal and provincial laws (Craig, 2011, 207). *Bedford* provides an opportunity to reconsider what constitutes acceptable municipal regulation of sex-work through the application of the court's reasoning to the constitutionality of municipal by-laws (Craig, 2011, 207).

Municipalities enacting by-laws, primarily licensing and zoning, to regulate or eliminate sex-work in their cites, traditionally face legal challenges based on jurisdiction to ensure that by-laws do not infringe on federal criminal power (Craig, 2011, 222). However, if the prostitution provisions are struck-down and the Supreme Court's reasoning remains similar to the lower courts, the nature of legal challenges municipalities face may change (Craig, 2011, 222). Although jurisdictional issues may still remain, municipalities must also consider the impact of municipal sex-work by-laws on the protections guaranteed by the *Charter* as articulated by the

courts (Craig, 2011, 222). Three principles emerge from *Bedford* to inform the constitutionality of municipal sex-work by-laws. First, the constitutionality of a law should be viewed in light of violence faced by sex-workers. Second, given violence, laws placing sex-workers in more danger by preventing them from pursuing safer working conditions violate the *Charter* unless they are consistent with fundamental legal principles. Third, a fundamental principle is that no government may jeopardize the health and safety of sex-workers to reduce public nuisance (Craig, 2011, 222). Taken collectively, these principles imply that municipal by-laws with negative safety implications for sex-workers are susceptible to *Charter* challenges (Craig, 2011, 222). Thus, constitutional municipal by-laws must consider and balance the community's interests in reducing public nuisance associated with the sex-trade and the security of sex-workers (Craig, 2011, 222).

Thus, for example, zoning by-laws relegating sex-work to secluded, low traffic industrial areas, as they often do, create unsafe working conditions that outweigh the community's interest in reducing litter, vehicle traffic, and noise pollution in a more populated area of the city (Craig, 2011, 222). Such zoning laws would be susceptible to challenge (Craig, 2011, 222). Alternatively, if a municipality uses zoning laws to *de facto* prohibit sexual-service businesses by creating a city plan but then not designating an area for them to operate, that may also be subject to *Charter* challenges (Craig, 2011, 222). Municipalities must also be conscientious of the impact on sex-worker safety of licensing regimes (Craig, 2011, 222). Because off-street sex-

work is significantly safer, licensing regimes that serve as obstacles to pursue off-street sex-service businesses, could also be subject to *Charter* challenges (Craig, 2011, 222). As a result, by-laws already enacted in Toronto and Vancouver that make it *de facto* impossible for sex-workers on the street to transition into off-street sex-work by charging expensive licensing fees or restricting the number of licenses, could be susceptible to *Charter* challenges (Craig, 2011, 222).

Conclusion: Next Steps for Canada

In the event that Canada's current prostitution provisions are found to be unconstitutional, lawmakers will be required to adopt a new policy approach towards sex work and enact associated legislation. However, Canada's history of attempted prostitution policy reform indicates that the process of agreeing on an acceptable policy approach to sex work will be a long and difficult one. The empirical evidence in the evaluations for each model indicates that it is difficult to clearly argue for any model since evidence is mostly inconclusive, somewhat conflicting, and have seen some success with significant drawbacks in implementation. Because it is ambiguous which model is the best for adoption given the implication and considerations associated with implementing any model in the Canadian context, legislators may continue to be deadlocked over the way to move forward on reform (Lowman, 2011, 51). In an attempt to help

guide the prostitution debate amongst Canadian legislators and the process of effective reform in Canada following the Supreme Court's ruling, the following six recommendations for next steps are suggested.

The first recommendation requires Canadian legislators to clearly identify the broader goals and objectives of prostitution laws, whether it is primarily to achieve gender equality through the elimination of the sex-trade or the protection of sex-workers by ensuring they face as little harm as possible through regulation. The current prostitution provisions have been critiqued for being vague on the whole (Lowman, 2011, 39). Although the intention and scope of each prostitution statute has been clarified through jurisprudence, not even the justices of the Supreme Court can agree what the legislation as a whole is trying to achieve, either prohibition or regulation, as demonstrated in a 1990 *Reference* case on the issue (Lowman, 2011, 39; *Reference re ss.* 193 *and* 195*of the Criminal Code*). Before adopting a model or any hybrid of the models, Canada must be clear about what its long term goals are for prostitution in the country and allow that to guide decisions about legal reform and future legislation.

The second recommendation encourages Canadian policy makers to focus on searching for rational and pragmatic solutions to concrete problems rather than philosophy (Jeffrey, 2009,

62). In Canada's debate there has been significant focus on the search for a philosophical perspective that will address all the problems and concerns associated with sex-work (Jeffrey, 2009, 63). Legal reform should not be seen as a moral condemnation or approval of the sex-trade, but simply a rational and practical way of addressing problems associated with the trade that concern the community the most, whether it be the violence faced by prostitutes or concerns about the spread of HIV/AIDS (Jeffrey, 2009, 63).

The third recommendation emphasizes the importance of sex-worker inclusion and input in identifying the goals of legislation (Meulen, 2011, 348). All stakeholders should be involved as consultants in the policy development process, and sex-workers, both current and former, can provide insights, becoming a driving force behind meaningful, evidence-based reform (Meulen, 2011, 348).

The fourth recommendation emphasizes the need for legislators to pay particular attention to the vulnerabilities of First Nations women and economically disadvantaged women when assessing reform since these groups of women are overrepresented in the sex-trade (Brush, 2012, 45).

The fifth recommendation looks to utilize urban development agreements (UDAs) or some other form of intergovernmental agreements as an innovative governance approach involving all levels of government to set policy on a variety of issues, such as prostitution, aimed at overcoming the jurisdictional challenges that may arise regardless of which policy option is implemented (Doberstein, 2011, 529). The issue of prostitution involves intersecting governance mandates with several levels of government and intergovernmental agreements such as UDAs could be a method to coordinate all government mandates to ensure that each level of government is achieving both local and national objectives across the country (Doberstein, 2011, 529). Additionally, to address such intergovernmental overlaps the levels of government involved may pursue agreements in which they clearly define the scope of each government jurisdiction in addressing urban social issues such as prostitution (Sanction, 2008, 8). Given the varying powers and capacities associated with each level of government, such an agreement could be utilized to assign the most appropriate level of government the responsibilities of designing legislation tailored to the various aspects of a social issue such as prostitution, while maintaining a coordinated effort to achieve objectives (Sancton, 2008, 9).

The sixth recommendation is to encourage public-health initiatives targeting sex-workers in the interim as the debate over what policy approach should be adopted continues. Regardless of which option is preferred, providing non-coercive health services to prostituted persons are

undeniably beneficial, ensuring sex-worker health and safety needs are met while providing optional resources to leave the industry (Berger, 2012, 568).

References

Barnett, L.and Nicol, J. (2012). *Prostitution in Canada: International Obligations, Federal Law, and Provincial and Municipal Jurisdiction (Background Paper)*. Legal and Legislative Affairs Division: Parliamentary Information and Research Service: Ottawa, Library of Parliament.

Barnett, L., Casavant, L, and Nicole, J. (2011). *Prostitution: A Review of Legislation in Selected Countries (Background Paper)*, Legal and Legislative Affairs Division: Parliamentary Information and Research Service: Ottawa, Library of Parliament.

Berger, S.M. (2012). "No End in Sight: Why the "End Demand" Movement is the Wrong Focus for Efforts to Eliminate Human Trafficking". *Harvard Journal of Law and Gender*. 35: 523- 570.

Brush, S.C. 2012. "Finding Middle Ground: Sex Radicalism, Radical Feminism and Prostitution Law Reform in Canada". Master's Thesis. Department of Sociology, Queen's University, Kingston, Ontario.

Canadian HIV/AIDS Legal Network. (2011). "*Bedford v. Canada*: A Paradigmatic Case Toward Ensuring the Human and Health Rights of Sex Workers". *HIV/AIDS Policy and Law Review.* 15(3): 1-14.

Constitution Act, 1867. Accessed from:
http://laws-lois.justice.gc.ca/eng/Const/index.html

Craig, E. (2011). "Sex Work by Law: *Bedford's* Impact on Municipal Approaches to Regulating the Sex Trade". *Review of Constitutional Studies*. 16(1): 205-225.

Criminal Code, (R.S.C. 1985 c. C-46). Accessed from:
http://laws-lois.justice.gc.ca/eng/acts/C-46/

Daalder, A.L. (2007). "Prostitution in the Netherlands since the lifting of the Brothel Ban". *WODC (Research and Documentation Center, Dutch Ministry of Security and Justice)*.

Doberstein, C. (2011). "Institutional Creation and Death: Urban Development Agreements in Canada". *Journal of Urban Affairs*. 33(5): 529-547.

Hindle, K. and Barnett, L. (2005). *Prostitution: A Review of Legislation in Selected Countries*. Parliamentary Information and Research Services" Ottawa, Library of Parliament.

Jeffrey, L.A. (2009). "Canadian Sex Work for the 21st Century: Enhancing Rights and Safety, Lessons from Australia". *Canadian Political Science Review*. 3(1): 57-76.

Kennall, D. (2012). "Safety First: The Section 7 Harm-Avoidance Principle". *National Journal of Constitutional Law*. 30(2): 189-235.

Klein, A. (2012). "Section 7 of the Charter and the Principled Assignment of Legislative Jurisdiction". *Supreme Court Law Review*. 57: 59-72.

Laing, M. "Regulating Adult Work in Canada: The Role of Criminal and Municipal Code" in *Policing Sex* eds. Paul Johnson and Derek Dalton. Routledge: 2012.

Longworth, C.E. (2010). "Male Violence Against Women in Prostitution: Weighing Feminist Legislative Responses to a Troubling Canadian Phenomenon". *Appeal: Review of Current Law and Law Reform*. 15: 58-85.

Lowman, J. (2011). "Deadly Inertia: A History of Constitutional Challenges to Canada's *Criminal Code* Sections on Prostitution". *Beijing Law Review*. 2: 33-54.

Manfredi, C. and Maioni, A. "Judicializing Health Policy: Unexpected Lessons and an Inconvenient Truth" in *Contested Constitutionalism* eds. James B. Kelly and Christopher P. Manfredi. UBC Press: Canada, 2009.

McCarthy, B., Benoit, C., Jansson, M., and Kolar, K. (2012). "Regulating Sex Work: Heterogeneity in Legal Strategies". *Annual Review of Law, Society, and Science*. 8: 255-271.

Meulen, E. (2011). "Sex Work and Canadian Policy: Recommendations for Labour Legitimacy and Social Change". *Sexual Research and Social Policy*. 8: 348-358.

McKay-Panos, L. (2005). "Municipalities and the Charter". *Law Now*. 30(1): 12-13

McKay-Panos, L. (2011). "Prostitution and the *Constitution*: Special Report on Constitutional Challenges to Law". *Law Now*. March/April: 27-36.

New Zealand, *Prostitution Reform Act 2003*, Public Act 2003, No. 28. Accessed from: http://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197815.html?search=ts_act_prostitution+reform+act_resel&p=1&sr=1

Ontario Court of Appeal. *Canada (Attorney General) v. Bedford*, (2012) 186.

Ontario Superior Court of Justice. *Bedford v. Canada*, (2010) 4264.

Perrin, B. *Invisible Chains: Canada's Underground World of Human Trafficking*. Toronto: Penguin Group Canada. 2010. Print.

Sancton, A. (2008). Drawing Lines: Defining the Roles of Municipal, Provincial, and Federal Governments in Addressing Urban Social Issues in Canada. *Canada West Foundation.* A Core Challenges Initiative Discussion Paper.

Smith, J. "Connecting the Dots: A Proposal for a National Action Plan to Combat Human Trafficking". Accessed from: http://www.joysmith.ca/main.asp?fxoid=FXMenu,8&cat_ID=27&sub_ID=104

Sondhi, S. 2010. "Are we Chasing Rainbows?: Achieving the Decriminalization of Prostitution in Canada". Master's Thesis. Faculty of Law, University of Toronto, Toronto, Ontario.

Supreme Court of Canada. *Reference re ss.* 193 *and* 195.1(1)(c) *of Criminal Code (Canada) (The Prostitution Reference),* (1990) 1.S.C.R.

The Canadian Press. (2012, October 25). Supreme Court to hear Prostitution Law Appeal; Brothel Ban stays for now. *Calgary Herald*. Accessed from: http://www.calgaryherald.com/news/Supreme+Court+announce+today+will+hear+prostitution+appeal/7445864/story.html

The Canadian Press. (2013, June 13). Brothels' Legal Status Pondered by Supreme Court. *The CBC*. Accessed from: http://www.cbc.ca/news/canada/story/2013/06/13/scoc-prostitution-law.html

Taylor, G. (2010). "The Prostitution Debates in Canada: Competing Perspectives Presented to the Subcommittee on Solicitation Laws". Master's of Laws Thesis. Faculty of Law, University of Victoria, Victoria, British Columbia.

Waltman, M. (2011). "Sweden's Prohibition of Purchase of Sex: The Law's Reasons, Impact, and Potential". *Women's Studies International Forum*. 34: 449-474.

Young, A. (2008). "The State is Still in the Bedrooms of the Nation: The Control and Regulation of Sexuality in Canadian Criminal Law". *The Canadian Journal of Human Sexuality*. 17(4): 203-220.