

Carleton University

Questioning the “Nordic Model:”

***A Policy Report on Prostitution and Human Trafficking for the Purposes of Sexual
Exploitation in Canada***

PAPM 4000 Human Rights Capstone

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1. Introduction

In this report, the links between sex work, human trafficking, and gender equality will be explored. These are complex and sensitive topics, and this report constitutes but one attempt to interrogate them in an effort to determine the kinds of prostitution laws Canada should consider if it seeks to promote safety, gender equality, and a reduction in instances of human trafficking for the purposes of sexual exploitation. As such, the report begins with an overview of existing prostitution law in Canada and the effects of these laws on sex workers and society at large. It continues with an overview of the global human trafficking industry, and Canada's relatively poor track record. The report then considers Sweden's approach to sex work and human trafficking, a novel legal regime dubbed the "Nordic Model." Sweden's approach is then contrasted with other global approaches to the issues of gender equality and human trafficking. After taking into account the relative strengths and weaknesses of each model, the report concludes with an innovative policy recommendation that selects the best elements from each, demonstrated through a rigorous analysis of available data and research.

2. Prostitution in Canada

While not all individuals who participate in this occupation consider themselves sex workers, "sex work" the preferred term due to the stigmatized connotations associated with the word "prostitution." Although sex work in Canada is mainly associated with street prostitution, services are primarily offered by out or in-call organized establishments.¹ In conducting 'out-call' services the sex worker meets the client at a selected location (i.e. client's home, business, or hotel room), which allows the worker to

¹ STAR. 2005. "Safety, Security and the Well-Being of Sex Worker," p. 5.

choose or suggest a location that is secure and familiar.² Sex workers who practice ‘in-call’ services provide it either in their home or work space, which allows them to control the space, not the client.³ Finally, the most discussed form of sex work is at the street-level where a worker solicits customers in a public space.⁴ Street-based work accounts for only 5-20% of the industry (the vast majority of whom are women) however due their visibility to both the public and police they are disproportionately targeted by legislation and law enforcement.⁵

The federal government possess jurisdiction over the act of prostitution or sex work, through the delegation of criminal law within the Constitution. Notwithstanding that the act of prostitution has never been illegal in Canada, crucial practices within sex work have been criminalized through federal, provincial and municipal laws and policies.⁶ There are four provisions prohibiting activities surrounding prostitution within the Criminal Code of Canada.

The Criminal Code contains four provisions that deal explicitly with prostitution. The ‘bawdy-house’ law is found in Section 210 and 211 of the Criminal Code. Section 210(1) [formerly s.193] states, “Every one who keeps a common bawdy-house is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years,” and section 211, “Every one who knowingly takes, transports... to a common bawdy-house is guilty of an offence punishable on summary conviction”.⁷ This has the effect of

² *Ibid.*, “Safety, Security and the Well-Being of Sex Worker,” p. 25.

³ *Ibid.*, “Safety, Security and the Well-Being of Sex Worker,” p. 24.

⁴ POWER. 2012. “The Toolbox: What Works for Sex Workers,” p. 17.

⁵ *Ibid.*, p.17.

⁶ *Supra.*, “The Toolbox: What Works for Sex Workers,” p. 8.

⁷ Criminal Code. 1985. Section 211.

outlawing ‘in-call’ services and has prevented sex workers from organizing to promote their collective security.⁸

Section 212 of the Criminal Code criminalizes anyone who “lives wholly or in part on the avails of prostitution of another person is guilty of an indictable offence”.⁹ The impact of this provision has a major effect on the personal and professional relationships of sex workers, who conduct criminal activities through connections to the sex worker.¹⁰ Established to protect prostitutes from ‘violent or exploitative’ situations with pimps, this provision is under-reported and under-prosecuted by police and results in less than 1% of prostitute-related charges.¹¹

However, it is Section 213 that has the most significant consequences for sex workers and resulted in the majority of prostitution-related charges.¹² Section 213 prohibits communicating for the purposes of prostitution.¹³ This law prohibits proper precautions in the initial negotiation process at the risk of legal consequences, and significantly impacts the level of security experienced by all forms of sex work.¹⁴ The application of this law is also highly gendered; for instance in 2003-2004, “68% of women charged were found guilty under Section 213, while 70% of charges were stayed or withdrawn for men charged under the same provision”.¹⁵ These Criminal Code provisions demonstrate how Canada’s legal regime stigmatizes and marginalizes sex workers, with a particular burden on women.

⁸ *Supra.*, “Safety, Security and the Well-Being of Sex Worker,” p. 25.

⁹ Criminal Code. 1985. Section 212.

¹⁰ *Supra.*, “The Toolbox: What Works for Sex Workers,” p. 8.

¹¹ Hanger and Malone. 2006. “The Challenge of Change,” p. 57.

¹² *Supra.*, “The Toolbox: What Works for Sex Workers,” p. 9.

¹³ Criminal Code. 1985. Section 213.

¹⁴ *Supra.*, “Safety, Security and the Well-Being of Sex Worker,” p. 17.

¹⁵ *Supra.*, “The Challenge of Change,” p. 52.

Sections 210, 212 and 213 have had their constitutionality challenged by individuals accused of practicing and participating in sex work, particularly *R. v. Jahelka* (1987), *R v Skinner* (1990) and Reference *Re Ss. 193 & 195.1(1)(c)* (1990).¹⁶ The result of these cases determined that these provisions, prohibiting activities surrounding prostitution, are a violation of Section 2 (right to freedom of expression) and Section 7 (right to life, liberty and security) of the *Canadian Charter of Rights and Freedoms*.¹⁷ Despite being found unconstitutional, these laws were “saved” under the Charter’s Section 1 “reasonable limits” clause as they were deemed necessary to control the “nuisance” of prostitution.¹⁸ The most recent constitutional case has been *Bedford v. Canada* (2010), which again challenged S. 210, 212 and 213(1) on the basis that they violated S.2 and S.7 of the Charter.¹⁹ The Ontario Superior Court of Justice ruled in favour of the applicants, concluding that the laws were unconstitutional. However, the ruling was suspended for one year to give the legislature time to respond.²⁰

3. Human Trafficking: Canada and the World

It is estimated that between 400,000 and 2.45 million individuals are trafficked every year, the vast majority (77-83%) of whom are women or girls.^{21 22} Moreover, 13-50% of all trafficking victims are minors and between 43 and 87% of all victims worldwide are trafficked for the purpose of sexual exploitation.²³

¹⁶ Robertson. 2003. “Prostitution.”

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Supra.*, “The Toolbox: What Works for Sex Workers,” p. 13.

²⁰ *Ibid.*, p. 18.

²¹ *Ibid.*, p. 5.

²² International Labour Organization (2009) “Cost of Coercion”. Accessed November 15th, 2012 from: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_106230.pdf, p. 13-4.

²³ Makisaka, Megumi. “Human Trafficking: A Brief Overview,” *Social Development Notes: Conflict, Crime and Violence* 122 (2009), Accessed November 15th, 2012 from:

The economic costs of human trafficking are considerable. Worldwide, human trafficking is a \$32 billion (USD) a year industry, second only to the illegal drug trade.²⁴ In addition, trafficking costs the world wide economy over \$20 billion (USD) in unpaid wages, prosecutions and victims services per year.²⁵ Traffickers can make between \$4,000 and \$70,000 per individual trafficked, making sexual exploitation the most profitable form of trafficking. As such, it is not surprising that traffickers are willing to take considerable risks with their human “cargo.”²⁶ Because trafficking and the sex trade are illegal in many jurisdictions, the profits are rarely shared and are rather absorbed by the black market, mostly in industrialized states.²⁷

Canada is a state party to the two Palermo Protocols of the UN Convention Against Transnational Organized Crime. As such, Canada is obligated to cooperate with other countries to prevent the trafficking of all persons (but with a particular emphasis on women and children), provide assistance to victims of trafficking, and to “promote cooperation among state parties in order to meet these objectives.”²⁸ Canada’s domestic legal framework concerning trafficking is further outlined in S. 279 of the Criminal Code and S. 118 of the *Immigration and Refugee Protection Act*. In spite of its commitment to the Palermo Protocols, Canada remains a destination, transit point, and source country for human trafficking, especially for sexual exploitation.²⁹ Foreign nationals working in the sex trade are more likely to work in off-street, or ‘underground,’ prostitution, usually in

http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1239390842422/6012763-1239905793229/Human_Trafficking.pdf, p. 4-5.

²⁴ United States of America Department of State. 2012. “*Trafficking in Persons Report (2011)*”. Accessed November 14th, 2012 from: <http://www.state.gov/j/tip/rls/tiprpt/2012/index.htm>, p. 5.

²⁵ *Supra.*, “Cost of Coercion”, p. 32.

²⁶ *Supra.* “Trafficking in Persons Report – 2011”, p. 5.

²⁷ *Supra.* “Human Trafficking: A Brief Overview”, p. 5.

²⁸ UNODC (2004). *United Nations Convention Against Transnational Organized Crime and the Protocols Thereto*. NY: 2004.

²⁹ *Supra.*, “Trafficking in Persons Report – 2011”, p. 110.

massage parlours or escort agencies.³⁰ Comparatively, Canadian nationals are more likely to work in street-level sex work, and are more likely to be engaged in ‘survival sex’.³¹ Young aboriginal women, who represent 3-5% of the Canadian populace, represent up to 90% of the visible sex trade in some cities.³² In many respects they highlight the intersection of many risk factors for trafficking victims including age, gender, race, lack of economic opportunity, education and health.³³

Transnational organized crime plays an important role in recruiting, transporting and exploiting foreign nationals to work in the Canadian sex trade, and domestic organized crime is actively involved in prostitution and trafficking of individuals in Canada. The RCMP acknowledges that it does not have reliable data on the number of sex trafficking victims in Canada; best estimates place the number at somewhere between 600 and 800 individuals.³⁴ The US State Department’s Trafficking Report estimates that number to be nearer to 2000, with an additional 2000 individuals being trafficked through Canada per year. Trafficking in Canada is focused in major urban centers and mostly in the provinces of Alberta, Ontario and BC.³⁵ In 2011 law enforcement in Canada initiated trafficking prosecutions on 57 individuals, and identified 158 victims of trafficking.³⁶ Prosecutors also secured the conviction of three individuals on sex trafficking charges. Sex tourism in Canada is illegal and S. 7 (4.11) of the Criminal Code has extraterritorial effect for Canadian citizens engaging in sexual abuse of a child overseas. What is clear is

³⁰ Royal Canadian Mounted Police. 2010. “Human Trafficking in Canada”. Accessed November 15th, 2012 from: http://publications.gc.ca/collections/collection_2011/grc-rcmp/PS64-78-2010-eng.pdf, p. 10.

³¹ *Ibid.*, p. 10.

³² Department of Justice. 2001. “A Review of Research on Criminal Victimization and First Nations, Metis and Inuit Peoples, 1990-2001”, Retrieved: November 12, 2012 from: http://www.justice.gc.ca/eng/pi/rs/rep-rap/2006/rr06_vic1/p6b.html.

³³ *Supra.*, “Trafficking in Persons Report - 2011”, p. 111.

³⁴ *Supra.*, “Human Trafficking in Canada”, p. 1.

³⁵ Gregg Bucken-Knapp, and Johan Karlsson. 2008. “Prostitution Policy Reform and the Causal Role of Ideas: A Comparative Study of Policy-making in the Nordic Countries”. *Statsvetenskaplig tidskrift* 110:1, p.60

³⁶ *Supra.*, “Trafficking in Persons Report – 2011”, p. 111.

that sexual exploitation of both Canadian and foreign nationals is prevalent in Canada and that many of these individuals are trafficked into or throughout Canada for the purpose of sexual exploitation.

4. Sweden's Response: The Nordic Model

In 1999, Sweden passed a law criminalizing the purchase of sex and decriminalizing the prostituted person with the eventual goal of abolishing prostitution. From the beginning, the debate about prostitution in Sweden was underpinned by the belief that prostitution is violence against women and socially undesirable. As such much of the focus of the law is on providing a remedy to the gender equality problem and not necessarily addressing trafficking. Preventing sex workers from earning a living by selling sexual services is a way of pressuring them into abandoning the trade with the hope of limiting trafficking. A third and essential element of Sweden's prostitution legislation provides for ample and comprehensive social services aimed at helping sex workers who wish to leave the industry, and additional funds to educate the public. Before the Act was passed neither the buying or selling of sex from adults nor being prostituted was criminalized, while pimping and procuring sex was still illegal.³⁷

In the same year, Denmark opted for substantial liberalization by ending bans on both prostitution as a full-time livelihood and soliciting. Concurrently, the German parliament passed a law which approved prostitution as a legitimate profession as a means of counteracting the stigmatization of and discrimination against prostitutes. Before the introduction of the legislation, the mindset in Sweden was that prostitution served no positive purpose at all. It is seen as a variant of rape and abuse and many

³⁷ Susanne Dodillet. 2005. "Cultural Clash on Prostitution." In *Genealogies of Identity: Interdisciplinary Readings on Sex and Sexuality*, edited by Margaret Sönser Breen and Fiona Peters, 40. Amsterdam: Rodopi B.V, p. 46.

believed in a close connection between drug abuse and prostitution.³⁸ In the Swedish debate people assume that prostitutes are the victims of the sex industry and as such are seen as being a group in need of help.

The prohibition on buying sex was analyzed by two investigations, from social workers and members of aid organizations which aimed to help prostitutes stop selling their bodies, who submitted three reports to the Swedish parliament: *Prostitution: Description, Analysis, Solutions (1980)*; *Prostitution in Sweden: Background and Solutions (1981)*; *Sex Trade (1995)*. All reports are written from a feminist perspective and come to the conclusion that prostitution does nothing but reduce women to sex objects.³⁹ Women's organizations, including those of the political parties, believed the power relation between the parties involved in the sex trade should be made clear and stressed the powerlessness of the sellers. Feminist organizations were the initiators of the Swedish prostitution debate and succeeded in influencing legislation; therefore, Parliament inherited the arguments of these organizations and established a gender perspective into their analyses.⁴⁰

Problems with the Nordic model of prostitution include the fact that it only targets and bases the impact of its laws on street level prostitution. This tends to drive those who are most in need of aid 'underground' (which not only puts them out of the reach of aid, but also further stigmatizing them. The law against procurement renders it illegal to work indoors, work with others, to profit from the sexual labour of others, and advertise. Due to this law against procurement, sex workers are forced to lie in order to rent premises, or

³⁸ *Ibid.*, p. 46

³⁹ *Ibid.*, p. 46

⁴⁰ *Ibid.*, p. 48

alternatively they have to pay exorbitant rent.⁴¹ They often report having to move when discovered and being treated poorly by landlords and “rent pimps.” The law is also discriminatory due to the fact that they cannot work with others or even hire security so as to make it as safe as possible. Sex workers have also reported an increase in their emotional stress due to the introduction of the new law.⁴² Because sex work is not seen as a legitimate profession by the Swedish government, workers have no access to retirement aid. The women also report greater feelings of powerlessness, resignation and disenfranchisement than before the introduction of the new legislation.⁴³ The entire point of the Swedish model of prostitution was aimed at eradicating gender inequality yet based on their results; all they have really done is continue its presence.

Trafficking in states which have adopted the Nordic model varies and depends more on the geographic location than the efficacy of their anti-trafficking regimes. The Swedish government’s report on the success of their prostitution law held that there has been a decrease in street-level sex work and thus trafficking.⁴⁴ What this does not take into account however is the increase in prostitution and related trafficking in neighbouring jurisdictions, some of which have also legalized prostitution. For example, the Swedish government estimates that only between two and five hundred women are trafficked into Sweden every year, while 17,000 are trafficked in neighbouring Finland.⁴⁵ This same report remarked that since the introduction of Sweden’s new prostitution

⁴¹ Petra Östergren. 2012. “Sexworkers Critique of Swedish Prostitution policy.” http://www.petraostergren.com/pages.aspx?r_id=40716

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ Ekberg, Gunilla. 2004. “The Swedish Law that Prohibits the Purchase of Sexual Services: Best Practices For Prevention of Prostitution and Trafficking in Human Beings”, *Violence Against Women*, 10, (10), pp. 1187-1215.

⁴⁵ Julie Bindel and Liz Kelly. 2003. “A Critical Examination of Responses to Prostitution in Four Countries: Victoria, Australia; Ireland; the Netherlands; and Sweden”, *Child and Women Abuse Studies Unit*, London Metropolitan University, p. 25.

regime, the number of sex workers and trafficking victims has increased threefold in neighbouring countries.⁴⁶

In Sweden, there have been decades of debate about prostitution coupled with millions of dollars spent on education targeting sex workers and the general public. This has had the effect of changing public perception and educating the public about prostitution and human trafficking. However, prostitution in Sweden has been framed as a gender equality issue, and combating trafficking has been an ancillary goal. As a result, Sweden has spent over \$324 million dollars (CAD) on gender equality programmes with prostitution being the primary focus.⁴⁷ We must consider the effect of this funding on the shaping of public opinion and question whether the law, or the public education campaign has increased gender equality. Sweden claims to have halved the number of street prostitutes, however this has resulted in more sex workers in the ‘underground’ scene. ‘Underground’ sex workers vastly outnumber street-sex workers and are more likely to be trafficked, especially if they are foreign nationals. There is also some anecdotal evidence which suggests an increase in Swedish nationals involved in sex tourism.⁴⁸ In the end there is no evidence to suggest the Nordic model has increased gender equality and reduced human trafficking for sexual exploitation.

5. Comparing the Nordic Model: Key Alternatives

How does the Swedish response to prostitution compare to other European and international legal regimes? In the Netherlands, prostitution is a legal and regulated industry. Brothels are permitted, and communicating for the purposes of prostitution is

⁴⁶ *Supra.*, “The Swedish Law that Prohibits”, p. 35.

⁴⁷ Barrett, Nicole. “An Exploration of Promising Practices in Response to Human Trafficking in Canada”, *International Centre for Criminal Law Reform and Criminal Justice Policy*, Vancouver; British Columbia, p. 26.

⁴⁸ *Supra.*, “Trafficking in Persons Report – 2011”, p. 328-9.

lawful but largely confined to so-called “tolerance zones” like the Du Wallen “red light” district in central Amsterdam.⁴⁹ Proponents of a Netherlands-style liberalized regime argue that there is a clear distinction between voluntary prostitution and forced or survival sex work, and that the law should reflect this. It is argued that by legitimizing voluntary prostitution as a profession, the stigma normally associated with sex work is diminished, and the security of sex workers is increased by making it easier for them to seek out the protection and assistance of law enforcement.

As such, the Dutch approach to sex work approaches gender equality differently than the law in Sweden. Whereas the Nordic model is predicated on the assumption that all prostitution is a “form of male violence against women and girls” that stands as a barrier to the realization of full gender equality,” the Dutch model accepts that there can be such a thing as voluntary sex work.⁵⁰ Rather than conceptualizing all sex workers as victims in need of assistance or protection, the Dutch model merely allows that all women are entitled to control over their own bodies and that they have a right to sell sex if they so freely chose.

How has the Dutch model fared? According to a recent report by the US State Department, 80% of sex workers in the Netherlands are foreigners, with 50% of those coming from countries outside of Europe.⁵¹ The so-called “tolerance zones” where communicating for the purposes of prostitution is permitted are now dominated by foreign women brought to the Netherlands by Eastern European criminal syndicates. Of perhaps even greater concern is the marked increase in the number of children trafficked into the Netherlands for the purpose of sexual exploitation, since the passage of the

⁴⁹ *Supra.*, “A Critical Examination of Responses to Prostitution in Four Countries”, p. 60-61.

⁵⁰ *Supra.*, “The Swedish Law that Prohibits the Purchase of Sexual Services”, p. 1208.

⁵¹ *Supra.*, “Trafficking in Persons Report – 2011”, p. 262-3.

Netherlands' new prostitution laws in 2000. Why the dramatic shift? Julie Bindel and Liz Kelly attribute this to the “pull factor” of legalized prostitution.⁵²

The Netherlands has been forced to publicly acknowledge the growing problem of human trafficking within its legalized prostitution industry and has recently taken measures to limit it, such as the creation of the office of the National Rapporteur on Trafficking in Human Beings.⁵³ In addition, the Mayor of Amsterdam has committed to a significant roll-back in the scale of the “tolerance zones” in the Du Wallen district, and proposed the introduction of additional exit services to help in reducing the number of brothels and sex workers. Noting that legalization did not “bring us what we hoped and expected,” the Mayor expressed serious concerns over the growing strength of large criminal organizations and their dominance in Netherland’s sex industry, an anxiety echoed by the UN Office on Drugs and Crime, which lists the Netherlands as a top destination country for human traffickers.⁵⁴

There appears to be a *prima facie* link between the legal regime governing prostitution, and the extent to which a country becomes a destination for human traffickers. The Netherlands example seems to suggest that legalizing prostitution and its associated activities permits demand to flourish, and that this demand is met by large numbers of trafficked women (and children) brought in from other countries, mostly in Eastern Europe or Southeast Asia. However, data from the Australian state of Queensland (where prostitution is also legal) complicates this picture and draws into question the idea

⁵² *Supra.*, “A Critical Examination of Responses to Prostitution in Four Countries”, p. 15.

⁵³ Office of the National Rapporteur on Trafficking in Human Beings, *Trafficking in Human Beings: Ten Years of Independent Monitoring*, 2010, The Hague; Netherlands, p. 23.

⁵⁴ CBC News. 2007. “Mayor unveils plans to clean up Amsterdam’s red-light district.” CBC, December 18, 2007. Accessed November 14, 2012. <http://www.cbc.ca/news/world/story/2007/12/17/amsterdam-district.html>

of a firm causative link between the law and the quantity of human trafficking taking place in a given country.

A recent government evaluation of Queensland's prostitution law found no evidence of trafficked persons in any of the state's legal brothels, or amongst legitimate private sex workers.⁵⁵ Furthermore, almost no trafficked persons were uncovered in the underground industry, which remained largely static in size after prostitution was legalized.⁵⁶ While it can be argued that the report merely indicates the extent to which criminal organizations will go to avoid detection and prosecution, the fact that the government's numbers have been corroborated by a number of NGOs suggests the numbers are most likely an accurate depiction of the industry.⁵⁷ However, the report does note that the underground sex industry in Queensland is largely supported by migrant women from Asian countries, and that this increases the risk of future trafficking.

What conclusions can we draw from the contradictory examples of the Netherlands and Queensland, Australia? Although it is hard to make definitive claims, it seems reasonable to suggest that there is no necessary causative link between the legal status of prostitution and the amount of human trafficking for the purposes of sexual exploitation that a given country experiences. In the Netherlands, the legal regime has largely failed at reducing crime and at creating a legitimate sex work industry comprised only of willing participants. In Australia, it seems like the opposite case might be true. In Sweden, trafficking may well have been reduced domestically, but rather than truly "disappearing" it merely shifted to neighbouring countries. Ultimately, the available

⁵⁵ Queensland Crimes and Misconduct Commission. 2011. "Regulating Prostitution: A follow-up review of the Prostitution Act, 1999", p. 19-22.

⁵⁶ *Ibid.*, p. 23.

⁵⁷ *Ibid.*, p. 24.

evidence suggests that the efficacy of any legal regime in combating human trafficking will be determined largely by other factors, namely: the position of the country relative to other source and destination countries, the laws governing freedom of movement in the surrounding region (e.g. the EU), and the enforcement muscle and public awareness supporting the legal regime.

6. Conclusion and Recommendations

For the reasons outlined above, we propose that Canada reject the Nordic model. In its place, we recommend that Canada proceed to fully legalize prostitution, and associated activities such as the operation of brothels, communication for the purposes of prostitution, and living off the avails of prostitution while retaining a legal prohibition on pimping. We also propose supporting sex workers through the provision of exit services for those desiring to leave the industry, and that the federal and provincial governments solicit advice from the civil society actors regarding the range of physical and mental health, housing, legal, and other support services that can be offered to sex workers who freely consent to remain a part of the profession. While we acknowledge that many of these changes will *de facto* become law in the absence of Parliamentary action to the contrary (per the suspended ruling of the court in *Bedford v. Canada*), we feel that the government's stated objection to prostitution necessitates active persuasion on the part of interested stakeholders to promote a shift in the government's position. It is also worthwhile to consider emulating provisions of Queensland's prostitution regime which permits "private" sex workers (who do not work at a brothel) to hire private security

guards, and to make phone contact with a friend or fellow sex worker before and after meeting a client.⁵⁸

Concerns have been raised in the literature about unrestricted public solicitation.⁵⁹ Instead of endorsing a blanket rule regarding public communications (e.g. all advertising should be permitted, whether in person, online, or in print), we propose that affected governments, particularly at the municipal level, engage in a consultative process with relevant civil society actors, sex workers themselves, and the public at large. This will help society strike a reasonable balance that accounts for both the safety concerns of sex workers and the desire of the public to restrict obvious public displays of sexual solicitation near areas like schools or day care centres.

We also propose that the federal government enact a statute creating a new, National Rapporteur on Human Trafficking. As an independent officer of Parliament, the National Rapporteur is modelled after a similar body in the Netherlands which, despite a modest staff and budget, has managed to generate substantial amounts of valuable research and policy advice to the Dutch government, which will hopefully inform future efforts to reduce human trafficking in that country.

The National Rapporteur's role will be to act as a national convenor and coordinator amongst the myriad public and civil sector agencies across the country that, like PACT, monitor Canada's record in human trafficking, conduct research, and propose policy responses. In its role as coordinator, the National Rapporteur will coordinate research initiatives, conduct independent investigations, and work to establish and disseminate best practices regarding research, advocacy, and public relations. In addition

⁵⁸ *Supra.*, "Regulating Prostitution: A follow-up review of the Prostitution Act, 1999", p. 19-22.

⁵⁹ *Supra.*, "A Critical Examination of Responses to Prostitution in Four Countries", p. 36.

to acting as a coordinating agent amongst domestic players, the National Rapporteur will, like its Dutch counterpart, engage in international partnerships and maintain contacts at similar bodies in countries around the world.

The National Rapporteur will be required by virtue of its governing statute to report annually to Parliament the status of human trafficking in Canada, the relative efficacy of existing action plans and policy frameworks, and will suggest corrections, modifications, or new approaches where appropriate. To aid it in this function, the National Rapporteur will be able to leverage the resources of police forces at all levels across the country (although it will retain no adjudicatory body or prosecutorial powers of its own, as this would merely duplicate the role of existing and established bodies).

We feel that the combination of legalization with support and exit services, and the creation of a dedicated, independent, National Rapporteur is a relatively cost-effective and politically palatable mechanism through which the rights of sex workers can be upheld and the rights of all persons not to be trafficked can be protected. The required legislative changes will incur minimal cost, and in many ways, we anticipate enforcement costs will be reduced significantly as law enforcement resources are directed away from targeting street-level sex workers and re-focused on other matters, like combating trafficking. While exit and support services will involve some cost, we feel that there is a convincing case to be made that the fiscal commitment behind these services will yield significant savings in the long run as health care, policing, corrections, and other costs are avoided. In addition, the template provided by the Dutch National Rapporteur on Human Trafficking suggests we can establish a similar office in Canada, scaled to fit our needs and population, for a relatively modest cost – likely in the range of \$1-1.5 million per

fiscal year.⁶⁰ By ensuring that costs are minimal, and that our proposed legal regime fits the constitutional parameters established in *Bedford v. Canada*, we hope to minimize government criticism and facilitate swift adoption.

In conclusion, Canada can draw useful lessons from the experiences of other states who have similarly sought to tackle the important issues of human trafficking for the purposes of sexual exploitation, and gender equality. We feel that our policy recommendations incorporate best practices, including an independent oversight mechanism and the provision of safe work environment for sex workers, while dispensing with superficial solutions such as targeted criminalization which merely shifts the problem elsewhere. While we should commend Sweden's creativity, the evidence reflects that country's model's significant shortcomings, which undermine its credibility as a template for Canadian policy-makers. For these reasons, we believe Canada should not adopt the Nordic model.

⁶⁰ Dutch National Rapporteur on Trafficking in Human Beings. 2002. "*Trafficking Human Beings: First Report of the Dutch National Rapporteur*", p. 38.

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