

CIVIC AFFAIRS

Street Prostitution In Our Cities



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I INTRODUCTION

Street prostitution is a problem across Canada. At the municipal level, the issue is not the moral question of whether prostitution should be permitted; it is whether the nuisances caused by street soliciting should be allowed to disrupt residential neighbourhoods.

Citizens who feel their lives are being disrupted are complaining. Municipal politicians under citizen pressure are seeking ways to cope with the problems.

This report identifies the problems and reasons for the increase in complaints. It also reviews actions municipalities can use to alleviate the concerns of citizens.

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II A CANADIAN CITY PROBLEM

Prostitution is not a crime in Canada, but soliciting in a "public place for the purposes of prostitution" is a crime under Section 195.1 of the Criminal Code. In 1978, the Supreme Court of Canada, in Hutt v. The Queen, determined persons must be "pressing and persistent" in their approach to be found guilty of soliciting. A prostitute must approach the same individual several times for example, or grab his arm, before an arrest can be made. Propositioning many individuals once is not enough. This court case has made it extremely difficult to obtain soliciting convictions, forcing police to use other charges, such as loitering, trespassing and causing a nuisance, to control street activities.

Citizen Complaints

This inability to enforce the soliciting charge has contributed to record numbers of prostitutes on the streets. Their visibility and activity in residential areas has caused conflicts between residents on one side and prostitutes and their customers on the other. The complaints cover a wide spectrum:

- traffic problems - with congestion and honking horns;
- harassment of residents by prostitutes and their customers;
- noise throughout the night in previously quiet areas;
- decrease in property values for "known" areas;
- trespassing on private property;
- being insulting and abusive to neighbourhood residents;
- negative impact of activities on youth in the area;
- disorderly conduct;
- decrease in perception of control which police and residents have over the neighbourhood;
- increased crime and violence; and
- negative impact on neighbourhood businesses with some neighbourhood shops being replaced by sex shops, etc.

In the fashionable south end of Halifax, the Downtown Residents Association was formed to combat the threat to their neighbourhood and property values. In Niagara Falls, a "Hooker Patrol" was organized against the Buffalo prostitutes crossing the border and arriving in their city. In Vancouver, the Concerned Residents of the West End (CROWE) last year pressed the Federal government for changes to the Criminal Code charging that male and female prostitutes were turning their residential area into a drive-in brothel.

In Toronto, the Church and Isabella Street area has been the principal neighbourhood from which angry residents' complaints have been raised at City Hall. Harassment of residents by prostitutes and customers is the main complaint. In Calgary, prostitution has tended to concentrate on 3rd Avenue and 4th Avenue, where hotel clientele and heavy automobile traffic have encouraged the market. Regina, Ottawa, Montreal and other cities across Canada are having similar problems.

The extent of these individual problems varies between communities. The overall citizen concerns, however, focus on three general problems:

- numbers and concentration of street prostitutes in residential areas causing feelings of intimidation and loss of control
- nuisance related activities such as noise and traffic; and
- criminal related activities, such as trespassing, increased crime and violence.

Adequate enforcement of existing charges under the Criminal Code, such as causing a disturbance, indecent exhibition, assault, trespassing, will solve criminal related activities. The difficulty in enforcing the soliciting charge has no relation to these other sections of the Criminal Code. These must continue to be enforced.

The real problems then are the concentration and nuisance related activities. Any actions suggested must be aimed at solving these complaints and not at eradicating prostitution per se. Street prostitution is only a small percent of the prostitution which exists in a city. Regardless of an individual's moral view on the subject, it is not a crime and will certainly continue to exist. Solutions must not

punish prostitutes or citizens. They must reduce the problems of concentration and nuisance.

Reasons for Increased Prostitution

Besides the inability to enforce the soliciting charge, other conditions contribute to the increase in numbers and visibility of street prostitutes.

✓ Men and women are turning to prostitution for economic reasons. Potentially high, tax-free incomes represent more money than many could make in other jobs. With few skills, some, particularly the young, are unable to find work in other areas, and have few choices. Prostitutes with convictions on soliciting charges, and thus criminal records, find it extremely difficult to obtain legitimate jobs, even if they were available.

The increase in teenagers leaving home has increased the number of younger prostitutes. Without money, family support or anywhere to go, many turn to prostitution and pimps for money and security.

City actions have increased the number of street prostitutes. For example, in the 1970s, Toronto cleaned up the Yonge Street area of body rub parlours; Vancouver busted the Penthouse area; and Calgary passed massage parlour and dating escort services bylaws. All of these were aimed at public nuisance aspects of prostitution and were effective in closing down these activities. They were also effective in forcing the prostitutes back out into the streets - particularly residential streets. By solving one set of problems, others were created.

Some cite police harassment as a reason for the movement of prostitutes from one street to another and their concentration in certain areas. Although the numbers may remain the same, the prostitutes become more visible if they are forced into a confined two or three street area.

Approach to Solutions

Municipalities must be realistic in assessing their ability to control prostitution. Many politicians want to drastically decrease the supply and demand for services - something which can only be achieved temporarily at best. As was clear by the shutdown of the body rub and massage parlours, prostitution does not disappear, it simply takes a different form.

Legislation will not eliminate it. Since prostitution is not illegal in Canada, the solutions sought must focus on reducing the current problems and alleviating some of the reasons for turning to prostitution. They must also involve more than the enforcement of laws. A balance must be struck between residents' intolerance and the prostitutes' disruptive activities.

A successful solution must deal with:

- solving numbers and concentration issue;
- solving nuisance related activities;
- attacking some economic and social reasons for prostitution;
- acknowledging the rights of residents and prostitutes.

Municipal actions are evaluated on this basis in the next section.

III MUNICIPAL RESPONSE TO STREET PROSTITUTION

Legal Remedy

Mayors and police chiefs across the country are pressuring the Federal Minister of Justice to change the soliciting section of the Criminal Code to make it enforceable.

The Canadian Association of Chiefs of Police have actively lobbied since 1979 for three changes:

1. that it no longer be necessary to prove pressing and persistent behaviour in any soliciting activity;
2. that the Section apply to both males and females; and,
3. that cars be considered a public place for the purposes of soliciting.

The Mayors of Victoria, Vancouver, Calgary, Edmonton, Regina, Winnipeg, Toronto, Montreal, Quebec City, Halifax, and Niagara Falls presented a joint submission to the Justice Committee considering the issue in 1982. They felt their problems with street prostitution would be solved if the power to arrest were restored. The Justice Committee, however, has been unable to agree on whether the soliciting section should be strengthened or in fact removed from the Code.

Real doubt exists as to whether changes to the soliciting section would solve the problem. The soliciting element would become more enforceable but many of the nuisance activities would still not be covered adequately under the Criminal Code. If it became stricter or more lenient, many of the same problems would continue to exist.

Unlike the Mayors, we see little reason from the municipal perspective for retaining soliciting in the Criminal Code. As stated previously, the complaints are based on disruption to neighbourhoods and nuisance problems. Few complaints and charges are laid against prostitutes operating in major hotels, through newspaper ads, in lounges and restaurants. All of these are far more lucrative than street

prostitution. Prostitution is not a crime. Being on the street causes the problem - and this aspect of it has little to do with legality or illegality. These problems are not solved by laying criminal charges against prostitutes. Customers are a greater source of nuisance and they are rarely charged. As well, removing soliciting from the Criminal Code will make prostitutes less reliant on pimps for bail-out assistance, customers and organized crime. A more appropriate strategy allows municipalities to regulate when and where street soliciting takes place - as with any other business.

Bylaws

Montreal, Calgary, Vancouver, Regina, Halifax, Saskatoon and Niagara Falls have passed bylaws to regulate the street activities associated with prostitution. Each takes a slightly different form and has slightly different wording. Each seeks to regulate the same activities. Some excerpts follow.

Calgary: "2.3 No person shall remain in a City Street for the purpose of prostitution.

2.4 No person shall approach another person in a City Street for the purpose of prostitution."

Regina: "1A (a) No person shall use any pavement, sidewalk or public place for the purposes of selling or purchasing sexual services."

Vancouver: "3. No person shall, upon any street, sell or offer to sell to another person or purchase or offer to purchase from another person, sexual services."

Each bylaw provides for fines from \$100 (first offence in Calgary) to a maximum of \$2,000 (Vancouver) for each offense.

The Montreal, Calgary and Vancouver bylaws have all been challenged in court. The Calgary bylaw was struck down in the Supreme Court of Canada (Westendorp v. The Queen) in January 1983 as being ultra vires - beyond the authority - of the municipality since it infringes on criminal law.

The City had defended the bylaw as simply an attempt to control the streets. Supreme Court Chief Justice Bora Laskin, in a unanimous decision, stated:

It is specious to regard s. 6.1 as relating to control of the streets. If that were its purpose, it would have dealt with congregation of persons on the streets or with obstruction, unrelated to what the congregating or obstructing persons say or otherwise do. As the by-law stands and reads, it is activated only by what is said by a person, referable to the offer of sexual services. . .

There is no violation of s. 6.1 by congregation or obstruction per se; the offence arises only by proposing or soliciting another for prostitution. To remain on a street for the purpose of prostitution or to approach another for that purpose is so patently an attempt to control or punish prostitution as to be beyond question

However desirable it may be for the municipality to control or prohibit prostitution, there has been an overreaching in the present case which offends the division of legislative powers.

The Attorneys General in most provinces, despite cities' arguments to the contrary, have stated this decision basically invalidates other cities' prostitution bylaws as well. Even if the bylaw does not contain the word "prostitution", the intent is the same and therefore the sole responsibility of the federal government.

Regardless of their legality, the bylaws, on a short term basis, were effective in reducing the number and concentration of street prostitutes. Calgary, by December 1982, had charged 507 people under the bylaw. The police estimated that the number of street prostitutes was down to about 30. The operation was extremely costly, however, since 14 undercover police were working on the enforcement full time. In Vancouver, similar results were seen. By September 1982, 340 people had been charged.

It is questionable whether bylaws would be effective in the long run. By aiming at eliminating the buying and selling of sex on the street, the degree of enforcement must be high over a long period of time.

This is expensive both administratively and in terms of police manpower. As well, prostitutes were beginning to view bylaws as an expense of doing business. The length of time for a case to come to court and the level of the fine if a conviction is made, are not adequate deterrents to stop the prostitutes. The bylaws reduced numbers but not necessarily nuisance activities.

If bylaws are to be used, it is inappropriate to address soliciting activities as being the only offensive street activity when numerous other activities, such as begging, propositioning to buy articles, and religious promotional actions cause similar street nuisances to those not interested in services being offered.

As Justice Laskin stated, the bylaw is a vehicle to control activity, not specific groups of people. A city must be very careful not to have the enforcement of the bylaws be a way of selectively harassing certain groups - whether prostitutes or others. Thus, bylaws are really appropriate only as vehicles of last resort, and used if other methods fail to control a problem.

Districts

The red light districts of the European cities are often presented as a solution to street prostitution - designate an area and license establishments.

A form of this was tried in Boston. Council passed a zoning bylaw which banned adult uses from all areas of the city except a B-E zone (Business-Entertainment). Existing adult uses outside the zone became legal nonconforming uses and were allowed to operate. The two block long area where the adult uses were permitted already contained a high concentration of sex shops, topless bars, nude services, etc. The intention was to contain all the activity in this one area, not allowing it to spread to residential districts and making it easier to patrol by police.

The experiment did not work, however. The legitimate businesses in the area moved. The activities went from discreet to blatant, changing the

attitudes of most people towards the area. Crime increased and crime enforcement decreased. The area now is rundown and unsafe. Since the experiment is recognized as a failure, plans are being considered to bulldoze the buildings to make room for a new office-commercial and hotel complex.

Establishing one zone in a city leads to a concentration problem again - seen with the current street activities and the body rub and massage parlours of the 1970s. Even if the district is located away from residential areas, complaints and problems will eventually arise due to the numbers and visibility of the activities. High concentrations of adult uses encourages increases in crime and other problems, such as organized crime. As well, setting up an area of adult uses will not necessarily limit their existence to that one area.

Unanimous agreement between all groups from police to women's rights groups indicates that no one sees districts or brothels as a viable alternative. Attitudes in Canada are different than in Europe towards prostitution in particular. For these reasons, the European model of red light districts or licensed brothels is not a suitable alternative in the Canadian context.

Licensing of Street Prostitutes

Municipalities have used the licensing technique as a vehicle to control, or even eliminate, massage parlours, body rub establishments, escort services, and other types of operations. No city has undertaken the licensing of prostitutes on the street. Calgary considered it when passing its street offenses bylaw referred to earlier. The Police Commission and subsequently Council vetoed the idea. The scheme allowed 64 licenses to be issued for 32 specified streets. Council is reconsidering the idea now that the bylaw is invalid.

Establishing licenses for these purposes gives a city potential control over a number of items involving the social impact of the activities including:

- where any activity may or may not take place;
- limiting activity to specific locations and streets;
- hours of operation;
- number engaged in the business;
- conformity to health standards and checks;
- conformity to age requirements, i.e. 18 years;
- methods and standards of conduct of the business;
- restricting license requirements to those operating on the street.

The enforcement is by removal of, or imposing conditions on the license, prosecution, fines and jail terms for operating without a license. By controlling these factors, cities can regulate the concentration of street soliciting and the instance of nuisance activities - the two current problems. Transient prostitutes are controlled (i.e. those coming from other cities or the United States). The administrative costs of the city are decreased. Police work is limited. Prostitutes with licenses rely less on pimps and are harassed less by the police. Health and age concerns are addressed.

The licensing option has problems, however. People will always operate without licenses. If they do the municipality must have an effective way of enforcing the licensing bylaw. The penalties must be high enough to act as a deterrent. As well, appropriate enabling legislation must be available to municipalities so the court and appeal process will not act as a reprieve during which people can continue to operate.

One of the most lucrative markets these days is youth. As the shift in advertising goes toward younger models, so the market is very strong for juvenile prostitutes. By requiring age restrictions (i.e. 18 years) to get a license, younger prostitutes will not be able to obtain one. This may limit the supply and demand a certain amount. Realistically, it will not eliminate it. The activity will simply go underground which makes it more dangerous for the young people and more difficult to control.

The wording of the licensing bylaw may also be difficult. Some have suggested treating it as any other "hawkers" license for services. Others suggest approaching the activities as any business or vendor operating on the street. The legal departments of various cities must assess the adequacy of enabling legislation and recommend changes if required.

The final problem is designating streets. Although people may support the principle, they will always be reluctant to have the "streets" near them. Despite these problems, licensing is the most effective option for cities wishing to regulate street prostitution. The conditions for the licenses should be realistic and cover points such as:

- 1) allowing two prostitutes per street or part of a street, for company, protection, etc., they would be allowed to operate on that street but no others;
- 2) designating specific streets in an area. The streets should be as non-residential as possible, in the inner city area which currently has the activity, and be realistic in terms of access in and out. Really out of the way places will defeat the purpose;
- 3) hours of business from 6:00 p.m. to 1:00 a.m.;
- 4) must be 18 years or over;
- 5) must receive clearance from medical health officer on a periodic basis, i.e. once per month; etc.

If conditions are structured on an unrealistic basis, i.e. extremely high fees, restricting business from 9:00 a.m. to 12:00 noon, etc., then this scheme will not work. The objective is to regulate not eliminate.

Licensed prostitutes should not be harassed simply for being on their designated street. This does not mean that they can break laws or do exactly what they want. It does mean that they will receive the same protection as any other citizens as long as they conform to the laws.

The licensing scheme is appropriate for those areas having severe problems but should not be viewed as essential for all cities.

Existing remedies outlined in a later section can eliminate the need, in some cases, to license prostitutes.

Social Services

The current economic problems are increasing the number of people who feel they have few employment alternatives but prostitution. Young people, in particular, have few skills and a high unemployment rate. People who have been in the profession for a while lack the job skills and "employee references" which they need to find legitimate employment. Retraining programs, educational upgrading and job counselling are needed by those who want to find an alternative. Cities cannot realistically provide all these services specifically for this group. Outreach programmes which assist people on the street in using existing services are realistic, however. The money which is currently spent in areas such as bylaw administration and policing costs could be applied to such programs.

Few social service agencies are able to provide proper treatment and counselling for prostitutes. Few prostitutes request help from them. Prostitutes primarily have contact only with courts and probation officers, receiving help mainly with legal matters. Organizations exist which counsel and aid people on the streets. A self-help group for prostitutes in Toronto called CASH, the Committee Against Street Harassment, offered counselling and aid to prostitutes and ex-prostitutes in Toronto. Women's hostels are also providing some of this support. These and other volunteer groups provide help which alleviates some municipal concerns. These groups should be receiving active financial support from municipalities.

The problem of youth turning to street prostitution is not adequately addressed in most cities. Some programs exist. Vancouver uses a "Kiddie patrol" consisting of policemen and probation officers who monitor the street activity and look for juveniles engaging in activities such as prostitution. They aim at getting kids off the street and in touch with social service agencies. Drop in centres for kids and hostels are developing across the country as well. They give

advice, counselling and support. Municipalities should focus their attention on promoting alternate living quarters away from the active streets and on organizations which can help counsel and provide options for the youth.

Existing Remedies

In the late 1970s the Police Foundation in Washington, D.C. published an evaluation of a foot patrol project in New Jersey. Although foot patrols had not reduced the crime rate, residents in those areas felt more secure and believed the crime rate had been reduced. According to James Wilson and George Kelling, two experts in the crime prevention field, the presence of police foot patrols relieved the fear citizens had of being bothered by disorderly people. They ensured public order - not by harassing people - but by reinforcing informal rules of conduct.

Increasing foot patrols is an effective technique in solving many of the current complaints. It increases a sense of control in the neighbourhood and discourages a heavy influx of customers.

Strict enforcement of other Criminal Code offenses such as Section 171 (causing a disturbance, indecent exhibition), Section 169 (indecent acts) and Section 831 (intimidation) must be pursued against anyone violating them. The focus here is not to use them against prostitutes, but anyone who is committing an offense. Many times, the most serious problems are caused by customers or others who have nothing to do with prostitution.

Most cities have noise and traffic bylaws which regulate acceptable levels of activity. Adequate enforcement would serve to reduce the nuisance problems in many cases.

The City of Toronto used spot checks of cars in areas of concentrated activity to effectively disperse activity last summer. Other strategies aimed at making it difficult to cruise areas in cars are also effective. Changing street patterns and one way streets could

help to break up the flow of traffic around a "track" area.

All of these strategies reduce the two problem areas identified - concentration and nuisance. They appear to be short term but are sufficient in many locales to solve the immediate problems. Long term concerns are solved by monitoring the situation and ensuring that activities stay within an acceptable level. It also means, however, the role and attitude of the police changes from one of dealing with crimes to crime prevention and helping to maintain order. A police presence does not mean harassment. A more cooperative approach must be developed with the community. Many of the areas which have problems with street prostitution are inner city areas with relatively high crime rates anyway. Increasing foot patrols will help in these efforts as well.

IV CONCLUSIONS AND RECOMMENDATIONS

1. We believe many of the current activities associated with street prostitution are seriously disrupting some neighbourhoods. The problems are related to the high concentrations of street soliciting in residential areas and the resulting nuisance activities.
2. Municipalities must be realistic in assessing their ability to control prostitution.
3. A successful strategy must deal with:
 - solving numbers and concentration issue;
 - solving nuisance related activities;
 - attacking some economic and social reasons for prostitution;
 - acknowledging the rights of both residents and prostitutes.
 Municipal actions must be evaluated on this basis.
4. We believe soliciting should be removed from the Criminal Code. The Criminal Code has a limited, if any, useful role to play in solving the current problems. Keeping soliciting as a federal crime may impede the development of more effective strategies at the municipal level.
5. If bylaws are to be used, it is inappropriate to address soliciting as being the only offensive street activity when numerous other activities, such as begging, propositioning to buy articles, religious promotional actions and other services, cause similar street nuisances to those not interested in services being offered. Furthermore, bylaws are really appropriate only as vehicles of last resort, and used if other methods fail to control a problem.
6. The European model of red light districts or licensed brothels is not a suitable alternative in the Canadian context.
7. The licensing option is appropriate for those having severe problems but should not be viewed as essential for all cities. The conditions for the licenses should be realistic and cover points such as:

- 1) allowing two prostitutes per street or part of a street, for company, protection, etc., they would be allowed to operate on that street but no others;
 - 2) designating specific streets in an area. The streets should be as non-residential as possible, in the inner city area which currently has the activity, and be realistic in terms of access in and out. Really out of the way places will defeat the purpose;
 - 3) hours of business from 6:00 p.m. to 1:00 a.m.;
 - 4) must be 18 years or over;
 - 5) must receive clearance from medical health officer on a periodic basis, i.e. once per month; etc.
8. Municipally supported outreach programs aimed at rehabilitation should be established which assist people on the street in using existing vocational training, educational upgrading and job counselling services. As well, municipalities should financially support the services performed by many volunteer groups in counselling and establishing drop in centres and hostels for prostitutes and youth.
 9. The use of foot patrols, the stricter enforcement of existing criminal code offenses (causing a disturbance, indecent acts, etc.) and noise and traffic bylaws could solve the problems in some municipalities without the need for measures such as bylaws and licensing. Strategies such as changing street patterns and spot checks are effective.

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