Editorial

PROSTITUTION

It is no longer fashionable to talk of prostitution as a victimless crime based on consensual transactions and an activity that should be decriminalized. Real concerns have been raised about the effects of street prostitution on communities, the lives of young prostitutes and the crime and health risks associated with prostitution. At the same time, however, there should not be complacency about our current reliance on the criminal sanction.

It is easy to forget that in the early 1980s, the Supreme Court dismantled street prostitution laws by requiring in *R. v. Hutt* (1978) 38 C.C.C. (2d) 418, [1978] 2 S.C.R. 476, that solicitation be pressing and persistent; by indicating in *R. v. Whitter* (1981), 64 C.C.C. (2d) 1, [1981] 2 S.C.R. 606, that automobiles were not public places and by holding in *R. v. Westendorp* (1983), 2 C.C.C. (3d) 330, [1983] 1 S.C.R. 43, that municipalities could not prohibit street prostitution. These decisions were quite technical, but it is difficult to believe that the court which made them was not sceptical about using the criminal sanction to control street prostitution. As a result of these decisions and other factors, the number of soliciting charges declined to less than 300 a year. The world did not fall apart, but community groups, municipalities and the police expressed concerns that the court had prevented them from controlling street prostitution.

In 1985, Parliament enacted a new law prohibiting solicitation in a public place. Since that time, 5,000 to 6,000 people are charged each year with soliciting, but even the police admit that this has not reduced street prostitution. The fact that the Supreme Court upheld the new soliciting law as a justified restriction on freedom of expression and association may inhibit legislative reform even though Justice Wilson in her dissent made a strong argument about the unfairness of criminalizing solicitation while prostitution itself remains perfectly legal: *Reference re ss. 193 and 195.1(c) of the Criminal Code (Man.)* (1990), 56 C.C.C. (3d) 65, [1990] 1 S.C.R. 1123. As so often happens, the question of whether a criminal law was "Charter proof" replaced the question of whether it was wise or humane.

Parliament has also expressed concerns about child prostitutes by creat-
ing separate offences for procuring those who are under or represent themselves to be under 18 years old and allowing the prosecution in limited circumstances of those who engage in child sex tourism outside Canada. Child prostitution cannot be condoned, but the problem requires much more than the band-aids of new offences and presumptions. Getting those under 18 years old off the streets will require more costly and less symbolic interventions. We must provide alternatives to lives in abusive families and on the streets. Child prostitution outside of Canada can be more directly addressed through international development than symbolic offences and preambles.

Solicitation offences do not seem to deter those who want to engage in street prostitution. They only catch those incapable of recognizing a police officer posing as a customer or as a prostitute. The police will generally admit that their expensive enforcement efforts have not curbed street prostitution. Municipalities that might want to take a more creative zoning approach are deterred by concerns that they might transgress the criminal law and offend sensibilities.

Little is known about whether being charged deters prostitutes and their customers. More male customers are being charged, but they are still punished less severely than prostitutes. Most receive a fine, but some are diverted to “john schools” that are conducted in several Canadian cities.

John schools are an interesting development that involve a day of education about the criminal justice and health risks of street prostitution. The ignorance of the men about sexually transmitted diseases is shocking. They also feature lectures by ex-prostitutes, Johns and community members that have been affected by street prostitution. The lesson of the day is that prostitution is not a victimless crime and that it is a risky activity. John schools may well work better than fines as a form of specific deterrence. They are generally a harsher punishment because the students often have to pay a fine or a donation, plus attend school for a day. They do not shame or ostracize as much as less controlled measures like publicizing the names or informing the families of those arrested for soliciting or seen in strolls. John schools may be the wave of the future, but they beg the questions of whether such extensive intervention is warranted and the fairness of how prostitutes as opposed to Johns are punished.

A recent well-publicized report by the Canadian Centre for Criminal Justice Statistics emphasized the risks of prostitution. Between 1991 and 1995, 63 known prostitutes were murdered and known prostitutes were implicated in 16 deaths including the killing of 10 customers. These are high figures, but they do not justify the soliciting offence. There is little reason to figure that increased enforcement would have prevented these tragic deaths. Prostitution is a dangerous and unseemly business, but what are needed are alternatives, not fines, John schools or short prison sentences, for those who take to the streets for money and sex.

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