

Thirty years of failure

Evidence indicting the law as a cause of violence against prostitutes has been ignored for 30 years – and it still isn't reflected in federal policy.

[Robert Matas](#)

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Prostitution was dominating the headlines in the late 1970s when John Lowman was working on his PhD thesis. Police raids of nightclubs in Vancouver and massage parlours in Toronto had pushed prostitutes onto the streets and Lowman thought he could use the crackdown on prostitution in his thesis on the impact of police behaviour on crime patterns.

Police action to stop break-ins sends burglars into neighbouring communities. A crackdown on drug smugglers leads to more sophisticated methods of smuggling. What happens when police close down indoor prostitution?

Over the decades, as he continued to pursue his work, Lowman (now a Simon Fraser University criminologist) was at the epicentre of a lot of activity related to prostitution — on the streets, as part of government reviews and in the courtroom. He found out what happened to prostitutes on the street and described the dangers they face government reports and academic journals. And he was flabbergasted by the callous indifference among top policy-makers as the number of deaths began to mount: more than 200 sex workers were killed over a 20-year period.

“My jaw dropped lower and lower,” he now says. “No one did a goddam thing.” Lowman is edging into retirement, and is still troubled by the abject failure of public policy to protect street prostitutes.

Policy-makers now have the benefit of more than 30 years of research-based evidence from across the country on violence against prostitutes as well as a Supreme Court of Canada ruling that

focused on the barriers to safety that were created by the law. But the provisions of the Criminal Code still compromise the safety of prostitutes.

“This is not about rationality or science or evidence,” he says. “It is just about ideology.”

The Supreme Court of Canada was explicit in its 2013 ruling on the constitutionality of provisions in the Criminal Code on prostitution: the law endangered prostitutes.

“Restrictions on prostitution put safety and lives of prostitutes at risk by preventing them from implementing certain safety measures, such as hiring security guards or screening potential clients, that could protect them from violence,” the nine-member panel of the Supreme Court stated in a unanimous decision written by Chief Justice Beverley McLachlin. “They [prostitution provisions in the Criminal Code] prevent people engaged in a risky but legal activity from taking steps to protect themselves from the risks.”

The Court acknowledged the obvious — those buying sex perpetrate the violence. But customers’ violence does not diminish the role of the state in making a prostitute more vulnerable.

Gramma’s House epitomized the deadly contradiction in the law. A brothel and a drop-in centre for the most vulnerable and marginalized women involved in the sex trade — those in Vancouver’s notorious Downtown Eastside — Gramma’s House was raided by the police in August 2000. Owner Jamie Lee Hamilton was charged with running a bawdy house, which forced the brothel to close.

What happened to the sex trade workers who used Gramma’s House? They were pushed onto the streets at a time when serial killer Robert Pickton was picking up and brutally murdering women. The women could not work indoors or on the street without the threat of arrest, so they felt they had no choice but to jump into a car, with no more than a quick exchange, in order to escape the eye of a cop.

“A law that prevents street prostitutes from resorting to a safe haven such as Gramma’s House while a suspected serial killer prowls the streets is a law that has lost sight of its purpose,” the Chief Justice wrote.

The Supreme Court of Canada also pinpointed a fatal problem with a law that prohibited a conversation between street prostitutes and their customers. Communication is an essential tool for sex trade workers, one that could reduce risk, the Chief Justice wrote. “If screening could have prevented one woman from jumping into Robert Pickton’s car, the severity of the harmful effects is established.”

The Supreme Court of Canada struck down the law on bawdy houses, living off the avails of prostitution and communicating in public for the purpose of prostitution, having concluded that the law violated section 7 of the Charter of Rights and Freedoms by depriving prostitutes of their security in a manner that was inconsistent with principles of fundamental justice. The Court suspended the effect of its ruling for one year to enable Parliament to decide what to do.

Advocates and activists were thrilled with the ruling. They anticipated the landmark decision would

be the end of a campaign that began three decades earlier. It had been a long trek, and they had little to show for their efforts.



Lowman describes an evolution in the perspective on conditions that led to violence against prostitutes. The role of the law in endangering prostitutes was not evident when he began research on prostitution. The spotlight across Canada in the 1970s was on enforcement of the prostitution law.

Street prostitution became much more visible after police shut down nightclubs and massage parlours. In Vancouver, angry residents organized aggressive “shame-the johns” campaigns to push street prostitution out of their neighbourhoods. Sex-trade workers moved from the city’s middle-class West End neighbourhood to downtown streets abandoned in the evening, and from there to the working class neighbourhood of Mount Pleasant. Eventually they were chased into the dimly lit streets of industrial corners of the Downtown Eastside. No one complained. No one noticed. The police left them alone. “That became the killing fields of Vancouver,” Lowman says.

Lowman did a study that drew attention to police enforcement and its role in creating situations that endangered women. His work led to a \$50,000 contract to do research on prostitution for a federally appointed committee of experts charged with reviewing the laws on pornography and prostitution.

Several cities — Niagara Falls, Montreal, Calgary, Vancouver, Toronto, Regina and Halifax — were grappling with the thorny issue of prostitution in the early 1980s by passing bylaws. They stopped only in January 1983 after the Supreme Court of Canada ruled that municipalities did not have the

authority to restrict prostitution. The Court found that a Calgary bylaw to control street solicitation was unconstitutional on the ground that it dealt with criminal law, a field of exclusive federal jurisdiction.

With controversy over street prostitution continuing, Pierre Trudeau's Liberal government appointed the seven-member Special Committee on Pornography and Prostitution in June 1983. Lawyer Paul Fraser was appointed as chair.

In his research for the committee, Lowman began talking to women involved in prostitution. The public uproar was over the issue of public nuisance. Lowman discovered the primary issue for those involved in the sex trade was violence.

Bodies of teenaged runaways and women involved in prostitution were being discovered along the Green River in neighbouring Washington State. Women in Vancouver were convinced the killer, later identified as Gary Ridgway, was crossing the Canada-US border. Lowman discovered that the Alliance for Safety of Prostitutes had set up safety systems to help the members watch out for each other, including the publication of "bad-trick sheets" that gave descriptions of those who attacked women working as prostitutes.

Working with information from the bad-trick sheets, sex-trade workers, clients, police, social workers and others, Lowman pulled together evidence of a relationship between police enforcement and where street prostitutes worked — the prostitutes were gravitating to areas where they were left alone to conduct their business.

In a field study on prostitution for the committee, Lowman warned about the danger of legislating restrictions on prostitution that compromised safety. "Prostitutes need protection. The issue is what form the protection takes," the field study stated.

The Fraser Committee had its own problems. Pundits dismissed the committee as a ploy to take prostitution off the front pages before a federal election. But the committee members — lawyers, academics, a prominent women's advocate and a parole board member — took their work seriously. They held 22 public hearings and received 575 submissions. In its report, released in 1985, the Fraser Committee stated that the law at that time was failing to achieve its objective of reducing prostitution, or of even controlling it within manageable limits. "Moreover it operates in a way which victimizes and dehumanizes prostitutes." It was the first official government report to make a connection between the country's prostitution laws and violence against prostitutes.

The committee recommended small-scale brothels be considered. They also strongly urged there be more robust social programs, including assistance for women who want to exit the sex industry. "We were dismissed as a bunch of fools," recalled Fraser, now BC's Conflict of Interest Commissioner. Nova Scotia Premier John Buchanan told Fraser that he would file the report on the highest and most dust-prone shelf in the province and never take it down.

The Fraser Committee had been appointed by Pierre Trudeau's Liberal Party, but by the time the final report came out Brian Mulroney and the Progressive Conservative Party were in charge. The

government rejected proposals to decriminalize prostitution and instead reaffirmed its view that prostitution was a form of exploitation.

Following the release of the Fraser Committee report, the government replaced the ambiguous “solicitation” section in the law with a clearly stated prohibition on communicating in public for the purpose of engaging in prostitution. The revision enabled police, for the first time, to arrest customers. The rest of the Fraser Committee report was ignored. Valerie Scott, one of three women who launched the court challenge that led to the Supreme Court of Canada ruling in 2013, warned in 1984 that the proposed legislative changes would produce more violence against street prostitutes.

The government ignored Scott’s and others’ warnings, but it did ask researchers to find out whether its changes would be effective in reducing the prevalence of prostitution. Researchers were also asked to investigate whether the new communicating law had an impact on the incidence of violence.

The studies, published in 1989, concluded that changes in the law had a short-term effect in suppressing street prostitution, but after six months things were back to where they were before the changes. The results were similar in Vancouver, Toronto, Calgary, Regina and Winnipeg. The law clearly had failed to achieve its objectives.

As part of the commissioned research, Lowman had a contract to look at the impact of the law in Vancouver. His research team was unable to draw definitive conclusions. However Lowman noted in his report to the government that no matter how the statistics were interpreted, violent crimes against prostitutes were sufficiently numerous to raise important questions about the effect of the prostitution laws on the vulnerability of prostitutes to violence.

The debate over prostitution law moved from the political arena to the courts in 1986, when provincial courts across Canada started to rule on the constitutional validity of the new law. After court challenges in Nova Scotia, Alberta and Manitoba led to conflicting interpretations of the new law, the Manitoba government asked the Supreme Court of Canada to consider whether prohibitions on communicating and operating bawdy houses violated constitutional rights for freedom of expression and the right to life, liberty and security.

Focusing mostly on the nuisance aspect of prostitution, in 1990 the Supreme Court of Canada upheld the constitutionality of the prostitution law, concluding that the communicating law was a justifiable infringement on freedom of expression and eliminating prostitution was a valid social goal.

Reviewing the evolution of law since the 1990 decision, Supreme Court of Canada Chief Justice Beverley McLachlin indicated in 2013 that the legal framework for considering the constitutionality of the prostitution laws had evolved since the Court reviewed the issues in 1990.

The Charter of Rights and Freedoms had been signed into law only eight years before the Court reference. The principles of fundamental justice that were at the centre of the recent constitutional

challenge were developed only in the last 20 years and were not fully articulated by 1990, she stated in the 2013 Supreme Court of Canada ruling. At least as importantly, the Court reached its version shortly before the research on violence against prostitutes was released. Lowman believes the outcome may have been different if that research had been available.

Meanwhile on the streets, women continued to say the law what the research was saying — that the law was compromising their safety. But no one paid attention to them.

Attitudes toward prostitution began to change in the early 1990s.

Chris Atchison, a lecturer at Simon Fraser University, has studied various aspects of sex work for 20 years. He identified several factors that contributed to the change in perceptions: Groups representing “survival” street prostitutes became more vocal; the sex industry became more organized, with several different advocacy groups being formed; and media coverage of women in prostitution increased as reports of violence increased.

At the same time, some of the more radical women’s groups began to promote the view that all women in prostitution were victims and all prostitution was violence against women. “That really sets the stage to what we have now,” Atchison said in an interview.

A change in how statistics were collected also had an impact. Statistics Canada began reporting on the occupation of victims of homicide in 1991. A Department of Justice official noticed that “prostitute” had been listed as the occupation of 22 homicide victims. What’s happening here? a Statistics Canada official asked researchers.

Lowman says a series of questionnaires and interviews conducted to answer the question posed by Statistics Canada pointed to the significance of the laws in exposing prostitutes to violence. The message of his report *Violence Against Persons Who Prostitute: The Experience in British Columbia* was clear: The laws pushed street prostitutes into situations that exposed them to increased danger. “We documented all that, and [we] showed how the number of murders increased after the laws changed (in 1985). We were holding up a red flag about violence against street prostitutes exactly at the time that [Robert] Pickton started murdering people,” says Lowman, referring to the serial killer who claimed to have murdered 49 women.

Jean Chrétien’s Liberals were in government when Lowman’s report was published in 1996. “What did the government do? Nothing,” Lowman says.

It was not until dozens of women involved in prostitution in Vancouver were reported missing that policy-makers started to focus on the prostitution laws and how they endangered sex workers.

Libby Davies, who did not run for re-election this year after 18 years as MP for Vancouver East, grappled with issues related to prostitution throughout her career as a city councillor from 1982 to 1993 and a federal politician from 1997 to 2015.

Since her days as a city councillor, Davies has stood out as one of the few politicians in Canada who was willing to take a stand on prostitution. She says she became aware of the role of the law

in endangering prostitutes mostly through Lowman's work in the 1990s. "I always considered him the foremost expert in Canada on prostitution and sex work," she said.

She recalls the advice she received when she first arrived in Ottawa: No one here talks about prostitution, she was told. But she represented a riding that included Vancouver's Downtown Eastside, where the city's street prostitutes worked. By 2002 she managed to arrange all-party support to form a parliamentary subcommittee to study the safety of sex workers.

Despite hearing testimony from around 150 people, including several sex workers, the subcommittee could not reach a consensus. In its final report, released in 2006, the majority on the committee — Liberal, NDP and Bloc Québécois party members — stated that consenting adults who engage in sexual activities for money should not be criminalized. Conservative Party members called for tougher criminal sanctions against pimps and those who buy sex.

Jean Chrétien's Liberal government had appointed the parliamentary subcommittee to review the solicitation laws. By the time the subcommittee issued its report in December 2006, Stephen Harper's Conservative Party government had replaced the Liberals in government. The report was shelved. Nothing would be done to respond to an urgent issue that had been well documented at that point for 10 years.

Although the subcommittee's report, *The Challenge of Change: A Study of Canada's Criminal Prostitution Laws*, did not lead to any substantive changes, the high profile debate over prostitution briefly shone a bright light on the sex trade and exposed some common misperceptions, preparing the groundwork for the subsequent court challenge that overturned the law.

Testimony at the subcommittee revealed that the most common image of a prostitute — a drug-addicted, possibly mentally ill woman on a street corner forced into prostitution by a pimp — was wrong. The vast majority of women in the sex trade worked indoors. Less than 20 percent, and in some areas as few as 5 percent, worked on the street. Yet more than 90 percent of the criminal charges were against street prostitutes.

The subcommittee also heard that almost all of the research on prostitution in the previous 20 years focused on street prostitution, and indoor sex work remained largely invisible. Government policies stemmed from skewed research that mistakenly made generalizations about prostitution based on the assumption that the vast majority of sex workers were similar to street prostitutes, controlled by pimps, selling their bodies to survive.

"It's absolutely absurd," says Lowman. It would be like drawing conclusions about the consumption of alcohol by studying alcoholics on the streets.

Once again, the issue bounced from the political arena to the courts. A year after the parliamentary subcommittee fizzled, three women — Terri Jean Bedford, Amy Lebovitch and Valerie Scott — launched a court challenge to the prostitution law in the Ontario Superior Court of Justice.

The court record filled 25,000 pages in 88 volumes. The evidence, amassed over two and a half

years, came from current and former prostitutes, advocates for and against measures to criminalize prostitution, a politician, a journalist, social science experts, police officers, an assistant Crown attorney, a social worker, experts in research methodology, a lawyer and a government researcher.

During the court case, Lowman's work came under vigorous attack by those who questioned whether anyone could say with certainty how many people were involved in the sex trade. How could sweeping generalizations about the sex trade be made when a large representative sample is not available for a controlled study? Without knowing the total population, any sample size cannot be described as statistically representative.

Chris Atchison, whose academic area of specialty is methodology, says Lowman's work is credible. Studies on prostitution will never been statistically representative, he says. But Lowman's research is based on multiple sources of information — interviews with sex workers and police, newspaper articles, and court and police records — collected over several years.

The statistics are based on a preponderance-of-evidence argument, Atchison says. "What we can do is get larger and larger samples, and speak to more people to get an idea how common these things are."

In the Ontario Superior Court of Justice, Madam Justice Susan G. Himel accepted research by Lowman and others that showed the laws endangered prostitutes, while expressing doubts about conflicting research. She ruled that provisions in the Criminal Code contributed to the harm faced by prostitutes by creating legal prohibitions on the conditions required for prostitution to be conducted in safe and secure settings.

Echoing what researchers had been saying for 10 years and sex trade workers had been saying for longer, she concluded that the prostitution law made many safety-enhancing actions illegal. By driving prostitutes into unsafe streets, often leaving them at the mercy of potentially drunken, violent or sexually reckless clients who might spurn condom use, the law violated their constitutional guarantee to "security of the person." The laws were unconstitutional. The Supreme Court of Canada upheld that ruling.



In 2014, Stephen Harper's government rewrote the law but refused to accept that the law itself endangered women. The government strengthened the provisions that go after johns, pimps and bawdy houses while offering prostitutes immunity from criminal charges. Restrictions on advertising and on prostitution around playgrounds, schools and daycares were also introduced. Former Justice Minister Peter MacKay, who spearheaded the revisions to the law through Parliament, maintained that the new law takes into account all safety concerns identified by the court and allows sex trade workers to take measures to protect themselves. The objective of the revised law is to reduce demand, discourage entry, deter participation and abolish it as much as possible, MacKay told the Senate Legal and Constitutional Affairs Committee in September 2014.

Under the new provisions in the Criminal Code, prostitutes could be involved in procuring, communicating or operating bawdyhouse without fear of prosecution. They could offer sex services from fixed indoor locations, advertise their services and hire bodyguards to protect them. Also, they could negotiate on the street with their clients without fear of arrest.

Donald Piragoff, then senior assistant deputy minister, told the committee that the asymmetrical features of the revised law — where buyers of sex could be arrested but sellers were granted immunity — reflected government policy. "It comes down to a policy decision in the end, so it's not purely a question of the logic of the law," Piragoff told the Senate committee. "The policy decision is that the prostitutes should be treated as victims that will not be prosecuted."

Anecdotal reports indicate enforcement of the new law varies across the country, with some police forces, such as Calgary's, vigorously patrolling the streets where sex is sold and making arrests, while other cities' police, such as Vancouver's, respond only to nuisance calls and rarely charge

anyone. Similar to previous years, uneven enforcement of the law is creating a two-tier system, with indoor workers at massage parlors and escort services subject to municipal bylaws, and occasionally minor fines, while those involved in outdoor prostitution are exposed to criminal sanctions.

Valerie Scott, who warned parliamentarians that revisions to the law in 1985 would lead to deaths and injuries, is no more optimistic after the recent revisions than she was 30 years ago. Prostitutes may not be at risk of arrest but their clients are, so prostitutes must still conduct business hurriedly in the shadows. “[The law] is a huge gift to sexual predators,” she told the Toronto Star.

Frances Shaver, who is currently involved in a \$1.5-million six-year Canadian Institutes of Health Research study of all facets of prostitution, says the new law is just as dangerous as the previous legislation and does not reflect the spirit of the recent Court ruling. “The [Supreme Court of Canada] acknowledged how dangerous the laws were and how they undermine the ability to work safely, without risk. But it seems to be when the government looked at it, they did a whole different thing,” she said in an interview from Montreal, where she is a professor and chair of Concordia University’s department of sociology and anthropology.

Echoing the recommendations of the Fraser Committee report 30 years ago, and the solutions proposed 10 years ago, she says a law specifically outlawing prostitution is unnecessary. Canada already has laws against coercion, violence, human trafficking, child abuse, child prostitution and sexual and physical assault that could apply to abuse within prostitution without any further legislation.

Katrina Pacey, a lawyer with Vancouver-based Pivot Legal Society, says criminal law is being used to manage a complex social issue. “It’s a workplace issue, an employment issue, and [the law] should focus on how to ensure people doing sex work are as safe as possible while they are there,” she says. “The criminal law is not the answer to deal with poverty, addiction and homelessness. Criminal law will not resolve these issues. It makes their lives more dangerous.”

Researchers are now compiling evidence for the next round of court challenges, which could begin possibly before the end of the year. “We are nowhere near out of the woods,” Lowman says, barely hiding his frustration.

Lowman, who turned 65 this summer, is no longer teaching at Simon Fraser University although he continues to supervise some graduate students. He will officially retire by the end of the year. With considerable regret, he is leaving academia without seeing changes in the prostitution laws to make the prostitute’s life safer.

He takes some comfort from the Supreme Court of Canada ruling that recognized the legitimacy of his work, but he remains troubled by the failure of Canada’s top policy makers to formulate policies on prostitution based on 30 years of solid research.

He is particularly upset that the government relied on evidence on prostitution that had been rejected by the courts to justify its new prostitution law. He believes a lot of misinformation has

been thrown around, experts have been misquoted and evidence fabricated.

Lowman is beginning work on a book that will focus on how the truth has been stretched during the prostitution debates. He hopes he will have time to complete it. Shortly after he announced plans for his retirement, he was diagnosed with a life-threatening illness, but with a good chance of survival.

The working title for the book is *Snow Job: Prostitution and Prohibition in Canada*. “That is what this all has been — one great big snow job,” Lowman says.

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