The Politics of Prostitution Control: A Qualitative Analysis of the Development and Implementation of Bill C-49 in Four Canadian Cities

by

E. Nick Larsen

A thesis
presented to the University of Manitoba
in fulfillment of the
thesis requirement for the degree of
Doctor of Philosophy
in
Law and Social Policy

Winnipeg, Manitoba

ISBN 0-315-76833-9

THE POLITICS OF PROSTITUTION CONTROL: A QUALITATIVE ANALYSIS OF THE DEVELOPMENT AND IMPLEMENTATION OF BILL C-49 IN FOUR CANADIAN CITIES

BY

E. NICK LARSEN

A thesis submitted to the Faculty of Graduate Studies of the University of Manitoba in partial fulfillment of the requirements of the degree of

DOCTOR OF PHILOSOPHY

CONTENTS

ABSTRACT v

ACKNOWLEDGEMENTS vii

INTRODUCTION x

PART I -- THE HISTORICAL AND THEORETICAL CONTEXTS OF PROSTITUTION CONTROL
A Chapter Outline of Part I 2

page

Chapter

1. THEORETICAL APPROACHES TO LAW AND SOCIETY 3

A Rational-Functionalist Theory of Law and Society 4
A Liberal-Conflict Theory of Law and Society 6
Radical-Conflict Theories of Law and Society 9
Development of the Hypothetical Models 11
The Rational-Functionalist Model 11
The Liberal-Conflict Model 12
The Radical-Conflict Model 13

2. A GENERAL HISTORY OF PROSTITUTION IN WESTERN CULTURES 15

Prostitution in Pre-Christian Times 18
Prostitution Prior to the Protestant Reformation 21
Prostitution after the Protestant Reformation 25
Prostitution during the Victorian Age 30
Prostitution During the Contemporary Period 36
Summary 42

3. CANADIAN PROSTITUTION CONTROL 1800 - 1970 47

Canadian Prostitution Control Prior to Confederation 47
Canadian Prostitution Control From 1867 - 1914 51
Canadian Prostitution Control Between 1914 and 1970 60
Prostitution Control During World War I 61
The Development of the Eugenics Movement 66
Prostitution Control During the Great Depression 74
Prostitution Control Between 1939 and 1970 77
Summary and conclusions 86

4. A COMPARATIVE ANALYSIS OF CONTEMPORARY PROSTITUTION LAW REFORM . . 95

The Street Offences Act of 1959 96
The New York Penal Code - 1964 to 1970 102
The 1972 Amendments to the Canadian Criminal Code 105

Summary 112

5. AN APPLICATION OF THE THEORETICAL FRAMEWORKS TO THE HISTORY OF PROSTITUTION 118

An Assessment of the Traditional Theories 118
The Rational-Functional Model 119
The Liberal-Conflict Model 123
The Radical-Conflict Model 127
A Revised Model of Prostitution Control 131

PART II -- AN EMPIRICAL ANALYSIS OF BILL C-49
An Overview of Part II 137

Chapter page

6. THE METHODOLOGY EMPLOYED FOR THIS RESEARCH 139

The Research Strategy 139
Specific Data Collection Steps 140
Initial Methodological Steps 140
The Development of Bill C-49 142
Implementation and Impact 144
Data Analysis 146

7. AN ANALYSIS OF THE LEGAL AND POLITICAL FACTORS WHICH INFLUENCED THE DEVELOPMENT OF BILL C-49 152

The Implementation of Section 195.1 153
The HUTT decision and its Aftermath 161
Legal and Political Events Between 1981 and 1984 175
The Role of the Fraser Committee 186
The Impact of Local Politics on the Development of Bill C-49 . . 203
Local Politics in Vancouver 204
Local Politics in Toronto 216
Local Politics in Winnipeg 221
Local Politics in Edmonton 226
Summary 231
The Drafting and Enactment of Bill C-49 233
summary and conclusions 243

8. THE IMPLEMENTATION OF S. 195.1 260

The Implementation of S. 195.1 in Vancouver 260
S. 195.1 in 1986 262
S. 195.1 in 1987 271
S. 195.1 in 1988 274
S. 195.1 in 1989 280
The Implementation of S. 195.1 in Toronto 285
S. 195.1 in 1986 290
S. 195.1 in 1987 303
S. 195.1 in 1988 311
S. 195.1 in 1989 316
The Implementation of S. 195.1 in Winnipeg 323

S. 195.1 in 1986 324
S. 195.1 in 1987 331
S. 195.1 in 1988 335
S. 195.1 in 1989 338
The Implementation of S. 195.1 in Edmonton 344
S. 195.1 in 1986 346
S. 195.1 in 1987 350
S. 195.1 in 1988 358
S. 195.1 in 1989 362
A Comparative Analysis of the implementation of S. 195.1 368

9. CONCLUSIONS 388

An Assessment of the Theoretical Propositions 388
An Empirical and Theoretical Summary of Prostitution Control . . 402

page

Appendix

A. AN OUTLINE OF BILL C-49 410

B. CITY MAPS 413

C. LIST OF INFORMANTS 419

D. A TYPOLOGICAL MODEL OF PROSTITUTION CONTROL IN FOUR CANADIAN CITIES 424

E. QUESTIONNAIRE 428

REFERENCES 447

ABSTRACT

The Politics of Prostitution Control: A Qualitative Analysis of the Development and Implementation of Bill C-49 in Four Canadian Cities

E. Nick Larsen

This dissertation analyzes prostitution control in western societies within a combination of class and feminist frameworks. The discussion is divided into two parts. Part I consists of a general historical analysis of prostitution control from its inception through to the contemporary period following the Second World War. The major intent of this analysis is to outline the historical context within which prostitution developed and to tentatively assess the adequacy of several standard sociology of law theories for explaining the manner in which prostitution has been controlled in western societies. These theories are revised at the end of Part I and additional theoretical propositions are developed to guide the further research in Part II.

Part II conducts an in-depth policy analysis of the development and implementation of recent changes to Canadian law dealing with the control of street prostitution. The analysis traces the development of a political "crisis" which arose in several large Canadian cities between 1978 and 1986 as a result of a Supreme Court of Canada decision limiting the

applicability of the existing prostitution laws. An attempt is made to identify and analyze the political factors which contributed to the development of Bill C-49, a piece of legislation which is considered one of the strictest prostitution laws currently existing in western societies. This is followed by an analysis of the local political processes which characterized the implementation of the law (as S. 195.1 of Canada's Criminal Code) in Vancouver, Toronto, Winnipeg and Edmonton.

The analysis in this dissertation concludes that prostitution control in western societies has been characterized by a distinct class and chauvinist bias. This was particularly true of much of the early history of prostitution, but also characterized the development and implementation of Bill C-49. In this latter case, the political processes were dominated by middle and upper class groups, while feminist groups were either uninvolved or else joined forces with the anti-prostitution groups. The analysis concludes with a discussion of the degree to which a radical-Marxist type of feminist analysis is useful in explaining prostitution and prostitution control in western societies.

ACKNOWLEDGEMENTS

I would like to thank several people who contributed significantly to the completion of this dissertation. The biggest debt of gratitude is owed to my principal advisor, Dr. P.H. Wichern, who undertook the supervision of an interdisciplinary Ph.D. program with intelligence, tact and understanding. His patient prodding, careful criticism and constant encouragement ensured that this project was kept "moving ahead". Similarly, the other members of my advisory committee, Dr. R. Linden, Prof. B. Sniederman, Dr. R Kueneman, and Dr. M. Debicki, also provided insightful critiques which helped keep the discussion focused and eliminated most of the logical inconsistencies which characterized earlier drafts of this dissertation. Despite the help of these people, however, the responsibility for any errors or omissions rests solely with the author.

In addition to the people named above, I would also like to thank the many people who contributed to this dissertation by acting as informants and/or sharing information with the author. While most of these people are listed in Appendix C, I would like to acknowledge the following persons for providing assistance which exceeded that normally expected of research subjects: Libby Davies (Vancouver Alderman), Supt. John Getty (Toronto Police), Prof. William Magill (Sociology, University of Toronto), Tim Agg (Vancouver Resident), S/Sgt. Jim Shail (Toronto Morality Bureau), Sharon Moyer (Research Consultant, Toronto), Peter Maloney (Defence Lawyer,

Toronto), Prof. John Lowman (Criminology, Simon Fraser University) and Brigit Eider (Defence Lawyer, Vancouver).

Finally, I would like to acknowledge a research grant awarded by the Criminology Research Centre at the University of Manitoba which helped defray some of the expenses associated with the empirical research conducted for this dissertation. I would also like to thank the Faculty of Law for providing me with office space and other services during the 1990-1991 academic year.

DEDICATION

This dissertation is dedicated to J.T.L.

INTRODUCTION

The intent of this dissertation is twofold. First, it is intended to conduct a general historical analysis of legal controls on prostitution in western cultures. This analysis will outline the historical context surrounding the development of prostitution as a social phenomena and provide an initial theoretical analysis of the manner in which prostitution has been dealt with in western cultures. Following this, it is intended to conduct a detailed analysis of contemporary Canadian prostitution control, focusing on the development and implementation of recent changes to the Canadian Criminal Code regarding street prostitution. The major aim of this contemporary analysis will be to identify the political factors surrounding the legislative changes, and to continue the theoretical analysis conducted with respect to the history of prostitution.

In contemporary usage, prostitution is usually defined as a form of commercial sex in which sexual services are provided in return for money payments (Richards, 1982:87). From an analytical point of view, prostitution encompasses numerous social, political and legal issues, and affects many social relationships which are not directly involved in the practice of commercial sex. In this respect, prostitution has always been controversial, and the historical analysis conducted later in this dissertation quickly reveals that prevailing social and legal attitudes towards it have fluctuated widely across time periods and societies. In some societies, prostitution has been tolerated and even institutionalized,

while in others it has been harshly repressed. In almost all cases, however, some degree of distaste for commercial sex has been evident, and the practice of prostitution has been heavily stigmatized in most societies.

In addressing the reasons for the bias against prostitution, two main themes can be identified historically with respect to the debate over commercial sex. First, one of the major factors associated with the different social and legal approaches to prostitution control appears to have been the dominant religious traditions which characterized particular societies and time frames. This is not to suggest that prostitution was always a religious concern, or that religion was the only factor which influenced legal controls on prostitution. However, religion was a major factor and some religious traditions were more concerned with it than others. A secondary concern that prostitution was a major factor in the spread of venereal disease also periodically influenced public attitudes towards prostitution. While these two issues were the major "overt" factors affecting social and legal attitudes toward prostitution during the first several thousand years of its existence, there are several other issues which suggest that a distaste for commercial sex was not the only reason behind the bias against prostitution.

One of the major factors which suggests that commercial sex is not the only issue in the prostitution debate devolves from the way in which the term is applied. For example, while the definition depicted in the beginning of this introduction can obviously apply to both males and females, prostitution has universally been considered a female occupation, despite the fact that male prostitutes have been common throughout history.

Further, in addition to limiting its definition to women, traditional views of prostitution have often omitted the commercial requirement, and have frequently equated it with female promiscuity (Ploscowe, 1962:226). Finally, the term prostitution is rarely used to describe "paramour" relationships in which women provide sexual services to specific males in return for gifts and other financial considerations (Thio, 1988: 219-221)[1]. These three points clearly indicate that the origins of much of the bias against prostitution can be associated with broader social issues than simply the commercialization of sex. In this respect, it will be argued that the history of prostitution has been characterized by a constant undercurrent of male chauvinism which has operated regardless of any other factors which may have been relevant at particular times and in particular places.

As will be outlined later in this dissertation, the undercurrent of male chauvinism can be attributed to the overarching patriarchal structures which have almost always characterized western societies. The combined influence of patriarchy and religion ensured that the arguments were similar and the outcomes predictable throughout most of the different societies and time frames involved in the prostitution debate. Within more recent times, however, the degree and scope of the controversy has increased, as modern societies have attempted to adapt their laws on prostitution to accommodate rapidly changing social conditions. The character of the debate has changed, and coupled with the decline of religion generally, secular concerns have begun to dominate the discussion almost exclusively. This secular shift in the debate has taken two major forms, encompassing both substantive social issues and a

legal-philosophical discussion regarding the ideal role of the law in modern societies.

In western societies, the more important substantive issues involve the influence of the feminist movement on gender relationships, combined with changes to family and economic structures[2]. These issues are closely interrelated since the effects of the feminist movement on gender relationships have also affected many other social relationships. In particular, the feminist philosophy is incompatible with the patriarchical structures which previously characterized family and economic relationships. Thus, these relationships have started to change in response to the demands of the many feminist groups lobbying against the patterned inequality incorporated into patriarchical societies. Such changes are extremely important to any analysis of prostitution, since it will be argued later in this dissertation that both the existence of prostitution and the application of legal controls against it have largely reflected the more general patriarchical patterns which have previously characterized most social relationships. For this reason, the feminist movement can be expected to introduce an entirely new set of factors into the prostitution question, and it is important to examine the degree to which feminists became involved in the contemporary prostitution debate.

With respect to the legal-philosophical debate, the one factor which has begun to play an increasingly important role in the contemporary discussion of prostitution is the rise of a liberal political and legal culture. This culture argues that the protection of individual freedom should be an important criterion in the operation of modern legal systems, and that the use of the criminal law should be limited to issues which involve serious

social harm. This development has contributed to a further decline in the influence of morality as a determinant of the criminal law of most western societies. As a result, many lifestyle choices which had previously been considered deviant and/or subject to criminal sanctions have now achieved limited respectability and tolerance. This in turn has prompted Canada and many other western societies to reassess their prostitution laws to determine their compatibility with the new liberal attitudes.

There is one additional factor which sets an overall context for evaluating the history of prostitution. Despite all of the fluctuations, shifts and changes which have occurred, prostitution has been characterized by an almost constant dilemma between controlling it on the one hand, while ensuring its survival on the other. As will be detailed later in this dissertation, there have been few serious attempts to eliminate prostitution entirely. This factor, combined with the issues identified above, provides a substantial analytical and theoretical framework to guide the research being conducted in this dissertation. Numerous questions need to be kept in mind as the discussion proceeds. For example, can legal controls on prostitution be explained in terms of the actual social harm which it represents or is honestly perceived to represent? Which individuals and groups influenced the development and implementation of the legal controls and how did they obtain their power? Is there any significant relationship between legal controls on prostitution and broader issues related to the position of women in society? Are legal controls on prostitution effective in controlling prostitution and/or do they give rise to undesireable "side effects" as a direct consequence of the prostitution's illegality? And finally, can prostitution be explained by

the same theories which are used to explain other sociology of law issues? These are considered the most important questions which must be answered in any informed analysis of legal controls on prostitution, and will form the basis of this dissertation.

As was noted at the beginning of this introduction, the overall intent of this dissertation is to analyze the manner in which legal controls against prostitution have been applied historically in western cultures, combined with an analysis of contemporary prostitution control in Canada. In order to facilitate these aims, the research and analysis in this dissertation is divided into two parts. In Part I, the discussion is concerned with an historical analysis of prostitution laws in western societies, starting with its emergence in ancient Babylon and encompassing the period until the early 1970's. The discussion becomes more detailed with respect to Canada, and particularly so with respect to the legal changes which occurred in the late 1960's and early 1970's. The major aim of the analysis in Part I is to outline the socio-legal[3] context within which prostitution evolved, and to assess the degree to which the "standard" sociology of law theories are adequate to explain the socio-legal processes which occurred. This part will conclude with a revised set of theoretical propositions which will constitute the "thesis" to be assessed in Part II of this dissertation.

The second part of this dissertation consists of an empirical evaluation of the recent changes to section 195.1 of the Canadian Criminal Code regarding street prostitution. These changes were implemented through the enactment of Bill C-49, and are analytically important because they represent a "retrogressive" step in terms of the liberalizing trends

evident in other western societies[4]. This provides an excellent opportunity to compare the development and implementation of Bill C-49 to the historical analysis presented in the first part of the dissertation. In order to broaden the theoretical analysis, a comparative evaluation will be carried out on the implementation of Bill C-49 in Vancouver, Edmonton, Winnipeg and Toronto. In conducting this comparison, particular attention will be paid to any differences which may exist between the four cities in order to determine if there are preferred strategies for dealing with the "problem" of street prostitution.

NOTES

[1] These relationships typically involve older males supporting younger women in return for sex. In such cases, the male may provide the woman with an expensive apartment and buy her expensive presents. While some sociologists refer to this as "covert" prostitution, it is generally not stigmatized as such by society in general (Thio, 1988).

[2] It should be noted that there is considerable discussion and disagreement regarding the origins and definition of the "feminist" movement. In this dissertation, the term "feminist" will be used to refer to a social philosophy which advocates the enhancement of women's rights and the achievement of sexual equality. While later discussion in this dissertation will distinguish between various types of feminist groups, the term will be applied to any group or organization which espouses such goals.

[3] It should be noted that this term will be used to include political issues unless it is necessary to separate the political and sociological issues for analytical purposes.

[4] A comparison of Bill C-49 and the previous law is contained in Appendix A.

PART I

THE HISTORICAL AND THEORETICAL CONTEXTS OF PROSTITUTION CONTROL

1. A CHAPTER OUTLINE OF PART I

An outline of the chapters included in Part I of this dissertation is as follows. Chapter 1 provides an outline of the theoretical models commonly used in legal sociology to explain a wide range of socio-legal issues. Because the specific intent is to assess their adequacy for explaining prostitution, these models are posited in terms of their "ideal" types. Chapter 2 consists of a general historical analysis of legal controls on prostitution in western cultures. Chapter 3 analyzes the development and implementation of Canadian prostitution laws between 1800 and 1972. Chapter 4 consists of a comparative analysis of changes to prostitution laws which were enacted in Great Britain, Canada and New York State between 1959 and 1972. Because there is substantially more information available regarding these changes, the analysis will consist of a detailed policy analysis instead of the more general historical analysis used in Chapters 2 and 3. Chapter 5 integrates the information presented in Chapters 2, a III, and IV with the theoretical models presented in Chapter 1 to determine the degree to which any of the standard models apply to prostitution. Since the models are deemed inadequate in many respects, a revised model is postulated, as well as revised theoretical propositions.

Chapter 1

THEORETICAL APPROACHES TO LAW AND SOCIETY

This chapter develops three contemporary theoretical models of law and society which can be applied to the substantive area of prostitution. Because these theories will be used to assess whether prostitution can be explained in terms of the same theories which are used too explain other issues, an attempt will be made to synthesize the many competing theories into three "ideal" types representing the major theoretical divisions within the sociology of law. Accordingly, the discussion in this chapter will adhere to the following three-stage process:

1. Separate discussions of the legal-rational, structural-functional, consensus, pluralist-conflict and radical-conflict approaches will be provided. (It should be noted at this juncture that the academic literature is replete with competing versions of even these theories. Thus, the discussion of these theories will still be an abbreviated synthesis of many different strands within each perspective, and is not intended as a definitive overview of each theory.)
2. The legal-rational and structural-functional approaches will be amalgamated to form the rational-functionalist approach and the consensus and pluralist-conflict approaches will be integrated into the Liberal-Conflict approach.

3. The rational-functionalist and the liberal-conflict approach will be added to the radical-conflict approach, and these three approaches will be developed into models embodying specific hypotheses which can be applied to the implementation of Bill C-49.

1.1 A RATIONAL-FUNCTIONALIST THEORY OF LAW AND SOCIETY

The discussion in this section will integrate the rational-legal and structural-functional theories of legal development into a combined theory. This will be done because of the obvious similarities between the two theoretical orientations.

The rational-legal theory of law and society represents a combination of traditional jurisprudence with certain elements from the Hobbesian approach to the development of the social order. This approach starts with the Hobbesian assertion that societies can only exist if their members agree to abide by certain rules, which are agreed upon as an acceptable compromise by most of the society's members. Thus, the process by which competing groups mutually agree to give up certain freedoms is seen as a "rational" way of ending the "war of all against all" (Vago, 1981, pp. 119-121). Further, the rational-legal theorists argue that enshrining these rules in the law is the only rational means of ensuring compliance with them. Finally, they assert that since the legal structures (i.e. the courts) generally operate according to rational criteria (i.e. are not capricious, corrupt or arbitrary), the entire legal order is generally a fair and effective means of avoiding social chaos.

While the rational-legal theorists stop short of arguing that a society's legal order is equally good for all segments of a society, such an assertion provides the starting point for the structural-functionalist approach. The structural-functional view of law and society not only argues that a society's law and legal structures operate to the benefit of all in a particular society, they also argue that each society develops a legal order which is particularly suited to serve that society's needs. Therefore, all aspects of a legal order are "functional" for all members of the society (including convicted criminals and the losers in lawsuits).

While it may seem contradictory to suggest that a legal order can be functional for those whom it is punishing, the functionalists offer a number of points in this regard. First, they assert that a general consensus of values and norms exists in most societies and is represented in the laws of these societies. Further, they argue that these norms and values are necessary for the society to exist, and that it serves the interests of <u>all</u> members of the society if they are enforced. Thus, the functionalists argue that the operation of the legal system both reflects accepted values and increases social solidarity by reaffirming them for all to see[1]. In this manner, the functionalists argue, the legal order plays a positive role in a society, even for those members who have specific cases decided against them.

Having discussed the legal-rational and structural-functional theories, it is now appropriate to integrate them into a rational-functional theory of law and society. It is felt that such a theory should embody the following points:

1. Agreement regarding certain basic values and norms is necessary for most societies to survive. While this agreement will usually evolve as a compromise between several different "ideals", there will be general consensus regarding the desirability of the end result. Over time, the nature of the compromise will be forgotten and the end result will be accepted on its own merits (Boyd, 1986 p. 3).
2. In order for this compromise to be effective, it is necessary for it to be enforced by the legal order.
3. Because the legal order generally acts rationally in enforcing the values and norms, it increases respect for them among the society's members and also reinforces social solidarity within the society.
4. The operation of the legal order generally produces positive results, and any inequities are considered both inevitable and necessary for the future development of the society.

1.2 A LIBERAL-CONFLICT THEORY OF LAW AND SOCIETY

The discussion in this section will attempt to synthesize the consensus and pluralist-conflict theories into a liberal-conflict theory of legal development. While these theories are usually associated with different paradigms, it can be argued that this approach is logical for two reasons. First, it is argued that the consensus theories have more in common with elements of the pluralist-conflict theories than they do with the functionalist theories (although consensus is an important element of most functionalist theories). Second, the pluralist-conflict theories have greater affinity for certain aspects of the consensus theories than they do for the radical-conflict theories. (This point will be discussed in greater detail in the next section.)

The basic tenets of the consensus theories can be summarized by three points. First, the consensus theorists argue that norms and values exist in all societies and form the basis for successful interaction among the members of each society. Second, it is argued that societies generally develop a "consensus of values" regarding the values which are important to their way of life, and that these important norms and values are enshrined in the laws of the society in question. Finally, while the effect of specific laws may impact negatively on certain individuals and groups, the consensus theorists argue that there is a general consensus regarding the overall desirability of the system of laws in each society. However, unlike the functionalists discussed in the previous section, most consensus theorists do not assert that the laws will be "good" for a society in an empirical sense; but instead limit themselves to asserting that its members "believe" that they are good. This would appear to open the way for consensus theorists to argue that a false consciousness exists regarding this belief, a possibility that would be unacceptable to the rational-functionalists.

The pluralist-conflict theories of the law embody several general points. First, it is generally argued that the primary force involved in creating laws is the need to resolve conflict among competing interest groups. While the pluralist-conflict theorists acknowledge that the power of the various interest groups will be not be equal, they argue that access to power will be based on relatively egalitarian criteria. Further, because of the many competing groups, the pluralist-conflict theorists argue that no one group will be able to dominate the legal order for any length of time. As a result, the law making process will be characterized

by shifting coalitions of interest groups, and the interests of most groups will be represented in the law over the long term[2].

Having outlined the basic tenets of the consensus and pluralist-conflict theories of the law, it is now possible to synthesize them into a combined liberal-conflict theory of law and society. This synthetic theory will contain the following points.

1. The primary input into the development and implementation of legal orders will result from the need to resolve conflicts between competing interest groups in a particular society.
2. General consensus will exist in most societies regarding the values and norms to be used in resolving such conflicts.
3. General consensus will exist regarding the criteria to be used in determining access to power, and the access to power will be relatively egalitarian.
4. Differential access to power will exist in most societies; however, because of the many competing groups no one group will be able to dominate the entire society for long periods of time.
5. The legal order will be legitimated in most societies to the extent that the majority of the population will view it as being reasonably representative of their interests (i.e. consensus of values). However, few would argue that it serves the interests of all equally.

1.3 RADICAL-CONFLICT THEORIES OF LAW AND SOCIETY

The radical-conflict theories of law and society consist of an eclectic group of Marxist and non-Marxist theories. In the past, far greater distinctions could be found between the two types of theories than presently exist. The non-Marxist theories were located philosophically between pluralism and Marxism, and the Marxist theories were much more dogmatic in their distinction between the bourgeoisie and the proletariat than they currently are. However, in recent years the non-Marxist theories have split and the less radical elements have united with pluralism to form the pluralist-conflict theories. The radical non-Marxists, on the other hand, have virtually merged with the Marxists to the extent that the only real difference between them is the degree of emphasis placed on economic structures in a society (Tomasic, 1981, pp. 11-13) [3]. For these reasons, the Marxists and non-Marxists will be treated as a single body of theory and discussed under the heading of "radical-conflict" theories. While this approach may possibly obscure some important residual distinctions between Marxist and non-Marxist theories, it is considered sufficient for the purposes of the this analysis.

The basic tenets of the radical-conflict theory of law and society can be summarized as follows:

1. Laws in modern societies are primarily ideological perspectives advanced by elites and legitimatized by the state. While the elites will not be totally restricted to economic elites, economic relationships will be the dominant force in determining access to power [4].

2. The legal order will operate so as to primarily benefit the interests of the elites. While the elites rarely manipulate the legal institutions directly (instead preferring to maintain the illusion that they are autonomous), they nevertheless retain control over the law and legal institutions by more subtle but equally effective means (Tomasic, 1985, pp. 14-15). In fact many radical-conflict conflict theorists argue that the elites try to maintain a layer of autonomy and democracy in the operation of legal institutions for two reasons. First such a facade is necessary for complete legitimation of the legal order, since a patently unfair system would likely provoke discontent among the masses. Second, the elites are acutely aware that the legal order may be called on to resolve disputes among elites, and thus it is in their interests that it operate fairly. Of course, in disputes between elites and non-elites, the greater resourses of the elites ensure that they will usually be able to win without destroying the egalitarian facade to any great degree[5].
3. The primary focus of the criminal law (as distinct from law generally) is to allow the elites to exercise social control over the lower classes. Thus, by controlling the definition of deviance, while allowing the criminal justice system to operate with relative autonomy, the elites are able to dominate a society even though the criminal justice system appears fair and egalitarian.
4. The final point of the radical-conflict approach to law and society involves the question of whether the law can ever be expected to operate according to egalitarian principles. On this point, the positions range from the extreme Marxists, who argue that a

revolution is necessary to remove all vestiges of the current world capitalist system, to the American legal realists who suggest that the elites will always dominate but that it is possible for the lower classes to achieve input through organization (Vago, 1981, pp. 56-58).

1.4 DEVELOPMENT OF THE HYPOTHETICAL MODELS

In this section, the theories of law and society outlined above will be expanded into specific hypothetical models with respect to prostitution control. These models will be applied to the historical analysis conducted in this part to determine their adequacy for explaining prostitution control in western cultures. Based on this analysis, a revised theoretical model will be developed in Chapter 5, and will be used to inform the analysis in Part II of this dissertation.

1.4.1 The Rational-Functionalist Model

The rational-functionalist theory of law and society would predict the following hypotheses regarding prostitution control:

1. Prostitution control will occur through rational processes in which careful assessments are made of the nature and scope of the problem area(s) and the best method of resolving the problem(s). These assessments will necessarily include a consideration of the degree of social harm posed by prostitution.
2. The approach to prostitution control in a particular society will generally reflect the overall consensus of values in that society regarding prostitution.

3. Prostitution laws will be implemented in a generally fair and open fashion, and without regard for the relative status of any of the affected groups or individuals.
4. The impact of prostitution laws will be in accordance with the consensus of values referred to above, and will generally be positive for all affected groups (including residents, businesses, the criminal justice system and the prostitutes themselves).

1.4.2 The Liberal-Conflict Model

The liberal-conflict theory of law and society would predict the following hypotheses regarding prostitution control:

1. The major thrust of prostitution control will reflect the need to resolve conflicts arising from disagreements among different groups and/or from the perceived inadequacies of the existing laws.
2. Any discussions regarding changes in approaches to prostitution controls will be characterized by a large degree of openness with respect to the ability of different groups to achieve input into the process.
3. While any particular strategy of prostitution control will likely reflect a compromise among the positions of the various groups achieving input into the process, they will better reflect the positions of the dominant groups. However, the relative influence of the various groups may change over the course of the development.
4. Prostitution laws will be implemented in such a fashion that they will better reflect the interests of the dominant groups. However, the relative influence of the various groups may change over the course of the implementation.

1.4.3 The Radical-Conflict Model

The radical-conflict theory of law and society would predict the following hypotheses regarding prostitution control:

1. Prostitution control will reflect the ideological perspective being advocated by the particular combination of governmental and non-governmental elites existing in a particular time and place.
2. Within the general ambit of the first postulate, prostitution laws will primarily reflect the interests of certain economic elites and much less importance will be attached to the interests of other groups. However, the elites will attempt to make it appear that the control process is operating fairly.
3. The enforcement of prostitution laws will be directed primarily at those groups who threaten the interests of the economic elites, while other groups will be relatively ignored by the enforcement apparatus.

Notes

[1] Interestingly enough, the functionalists may have a point in this regard. Studies on convicted felons tend to show that they often strongly support the values and norms which they have been convicted of transgressing.

[2] As will be seen in the next section, this is in stark contrast to the radical-conflict approach.

[3] Indeed, in general sociology it has become difficult and confusing to separate the two types of conflict theorists. For example, there is Castells, who claims to be a neo-Marxist but really is not, and Domhoff, who really is but insists that he is not.

[4] Many slightly different positions are taken regarding this point. For example, Chambliss and Seidman (1971, pp. 60-75) argue that laws are both created and enforced to reflect the political power of the groups involved. Quiney (1974) goes even further and argues that the capitalist classes rely on the legal order to perpetuate their privileged status, and that if the law ever becomes representative of all classes, the capitalist system would disappear.

[5] It should be pointed out that this discussion parallels the distinction between the instrumental Marxists, who argue that the law always serves the immediate interests of the capitalists, and the structural Marxists, who suggest that the elites often forgo immediate self-interest in return for ensuring that the structures of a society serve their long term goals.

Chapter 2

A GENERAL HISTORY OF PROSTITUTION IN WESTERN CULTURES

> We fear the prostitute. We fear her because we fear our own need for her...We also project onto her our own guilty desires; because our accepted values declare us low and beastly when we go to her, we feel that she is herself low and beastly...We punish and blame her with one hand, and pay her handsomely with the other...(Young, 1970:66)

The above quotation exemplifies the dilemma which has surrounded prostitution throughout its long and varied history. While the specific forms of prostitution, along with prevailing societal attitudes towards it, have varied over time and place, the existence of the above paradox has been almost as universal as the existence of prostitution itself. The reason for the paradox lies in the very nature of prostitution as a sociological phenomena. While prostitution has been considered morally repugnant in most societies where it has existed, it has also been considered an extremely desirable service by a significant proportion of the population (Decker, 1979:28-30). The extent of this paradox has been heightened by the fact that these opposing opinions have frequently been held by the same individuals. Thus, as will be noted later in this chapter, many religious and other officials who expressed moral indignation about prostitution also argued that it was necessary.

Prostitution involves commercial sex, in which one partner provides sexual services in return for financial consideration. Two additional factors were identified in the introduction which will be used to set the

context for the discussion in this chapter. First, traditional views of prostitution have frequently ignored the possibility that males could become involved in prostitution. Despite the fact that male prostitutes have always existed, male prostitution has typically aroused less attention and less indignation than female prostitution. This is surprising given the fact that male prostitution almost always involves homosexual relationships. Considering that homosexuality was characterized by intense stigma and social hostility during much of time period under discussion, one would expect that male prostitution would be subjected to greater sanctions than the female variety. Since male and female prostitution are similar in most basic respects, the fact that female prostitution is more heavily stigmatized suggests that other factors were responsible for the bias against female prostitution.

This suggestion is supported by the fact that traditional definitions of prostitution not only limited it to women, but often omitted the commercial requirement as well. For example, as recently as the middle of the twentieth century, a noted social historian described prostitution as "...the indiscriminate offer by a female of her body for the purpose of sexual intercourse or other lewdness." (Ploscowe, 1962: 226). This definition is striking in that it clearly excludes any commercial requirement and appears to include promiscuity as a form of prostitution. The equation of prostitution with female promiscuity, when combined with the previous issue, suggests that the origins of much of the bias against prostitution can be associated with broader issues of female sexuality than simply a distaste for the commercialization of sex[1]. In fact, these two issues have led several feminist writers to assert that the criminalization

of prostitution is not really related to commercial sex itself, and instead is rooted in a fear of sexually autonomous women who are not dependant upon specific men (Richards, 1979; O'Brien, 1981; Rubin, 1981).

Some theorists have extended this assertion even further by arguing that it is impossible to discuss the issue of prostitution separately from broader issues relating to the social position of women, including marriage, the family and the traditional role of women in the reproductive process. Indeed, it has even been asserted that women have traditionally been considered the common property of all men, and that the institutions of marriage and the family simply represent their becoming the private property of individual males (O'Brien, 1981:170). Using this argument, the refusal of prostitutes to become the property of specific men would logically result in their being considered the common property of all men. As such, it can be argued that laws against prostitution are simply attempts to punish female prostitutes for refusing to accept subservient social positions as the "property" of specific males. Such a contention has several social and legal implications for the study of prostitution laws. This chapter will review the history of prostitution in an attempt to identify the various societal responses to prostitution, and to assess the factors which appear to have been at the root of such responses.

In order to facilitate this analysis, the discussion of the historical evolution of legal controls on prostitution will be sub-divided into separate considerations of the following time periods: 1) the pre-Christian era, 2) the pre-Reformation Christian era, 3) the post-Reformation Christian era, 4) the Victorian era, and 5) the Contemporary period. While every attempt will be made to provide a detailed

account of the major socio-legal and political issues which have influenced societal responses to prostitution, a certain degree of synthesis will occur. Because both the scope of the discussion and the length of time involved is vast, it will be necessary to ignore many of the mundane details which can be found in more detailed discussions of prostitution in specific societies and/or time periods. Instead, the discussion in this chapter will concentrate on the important issues and overall trends with respect to legal controls on prostitution[2]. This information will be used to provide the basis for a broad theoretical analysis of prostitution control, and will also be used to set the context for the more detailed analyses which follow in later chapters of this dissertation.

2.1 PROSTITUTION IN PRE-CHRISTIAN TIMES

The origins of prostitution in terms of its contemporary definition can be traced to the temple prostitutes who played an important role in the religious life of early civilizations. For example, all unmarried Babylonian women, before being allowed to marry, were required to prostitute themselves to the first man who approached them in certain designated religious temples. Inasmuch as this custom was a universal pre-condition of marriage, it appears that the participants were not stigmatized in any way (Decker, 1979:30). While various forms of temple prostitution were common in most ancient civilizations, it quickly evolved into forms of purely secular prostitution in larger commercial centres. Unlike the temple prostitutes, the participants in these new forms of prostitution were frequently stigmatized, often to the point of being ostracized from the mainstream social life of their societies (Richards, 1982:89-90).

The approach to secular or commercial prostitution varied somewhat throughout the ancient world. For example, while the Babylonians sought to repress it through the promulgation of certain laws, in Athens it was tolerated and even encouraged by the state. However, while this encouragement even extended to the establishment of government run brothels, it would be incorrect to assume that this indicated that prostitution was not stigmatized. In point of fact, most prostitutes were actually slaves, and prostitution was generally considered a degrading occupation[3]. Thus, while prostitution was not repressed in ancient Greece, there is little doubt that it was tolerated and encouraged solely because it served a useful function in satisfying perceived male "needs". In fact, some social historians argue that the Greeks believed that it played a positive role in maintaining public order and reinforcing the stability of the marriage institution by allowing men to be sexually promiscuous without jeopardizing the state of chastity imposed on most women (i.e. non-prostitutes)[4].

Prostitution in ancient Rome was comparable in many respects to that practised in Athens. While temple prostitution was strictly prohibited by the tenets of Roman religions, secular prostitution was widely encouraged by the state because it was perceived as an ideal mechanism for providing males with an outlet for sexual experimentation while forcing most women to abide by a state of marital chastity (Decker, 1979:37). Since Roman men were not expected to abide by the state of monogamy required of "respectable" women, the creation and maintenance of a class of "promiscuous" women obviously furthered male interests with respect to the double standard. Inasmuch as prostitutes were considered outside the ambit

of mainstream Roman society, their existence was not considered a violation of the chastity requirement imposed upon Roman women in general.

In terms of organization, the Romans surpassed the Greeks in their ability to regulate and tax the the world's oldest profession. In addition to constructing state run brothels, the Romans also established the first 'register of prostitutes' in 180 BC (Ibid). As well, the state regulated working hours, fee schedules and even the apparel worn by prostitutes. In the true fashion of the Roman bureaucracy, an elaborate enforcement apparatus was put in place to enforce these regulations and to ensure that the state received its share of the earnings derived from prostitution. While this approach was remarkably similar to that taken towards other occupations, it is clear that prostitution was nevertheless regarded as a degrading occupation in Roman society. For example, at least one writer has noted that Roman law did not allow prostitutes to refuse a client (Ibid). This would appear to indicate that prostitutes occupied a subservient social position, and more importantly, were regarded as the "common" property of all men.

As the Roman Empire expanded, this approach to the establishment and regulation of prostitution was imposed upon all parts of the empire. Since this area eventually included much of the civilized world, most of Europe was characterized by a tolerance and state regulation of prostitution which lasted until the onset of Christianity. It is surprising to note that while prostitution was almost universally considered a degrading occupation, it never became a moral issue during the pre-Christian period. This state of affairs can likely be attributed to two factors. First, sex-related taboos were never a feature of the pagan religions to the same extent that they

were embodied in the Judeo-Christian philosophy. This factor likely explains why the Romans were relatively unsuccessful in instituting a tolerance for prostitution among the Jewish peoples within the Roman Empire. In addition, women generally occupied an inferior social position in ancient societies, and thus their involvement in prostitution was likely considered an extension of their already inferior position. This supposition is borne out by the fact that prostitution was unknown among the Germanic tribes and in the Greek city state of Sparta, both of which societies accorded women a status more equal to men (Bullough, 1964).

2.2 PROSTITUTION PRIOR TO THE PROTESTANT REFORMATION

One of the major factors in the evolution of social and legal attitudes towards prostitution was the rapid success of the new Christian religion among the peoples of the Roman Empire. The spread of Christianity throughout Europe was to result in the abandonment of the previous moral neutrality towards prostitution. The new faith, which incorporated many of the tenets of the Judaic religious tradition, included many religious taboos against sex which were unknown in pagan religions. Perhaps the most important influence on the Christian approach to prostitution stemmed from the arguments in the Old Testament that the only proper function for sexual intercourse was procreation within the bounds of marriage. Since prostitution obviously did not fit such a description, it was condemned as immoral (Richards, 1979:89). However, this general moral condemnation was slow to achieve practical results. During the first several centuries of Christianity, prostitution remained common, with many priests, bishops and even popes keeping concubines and patronizing prostitutes (Decker,

1979:40). Indeed, many of the first Christian saints had formerly been prostitutes or courtesans (Henriques, 1963:63-69). While many of these individuals had likely left prostitution and entered the service of the church long before their deaths, their representation among the saints attests to the ambivalence towards prostitution which characterized the Christian Church during its early years.

By the middle of the fourth century, this situation started to change, with theological opinion beginning to solidify around the notion that prostitution was morally repugnant. One of the most important factors in this shift was the work of St. Augustine, an extremely influential and powerful early Christian theologian. St. Augustine argued that the Old Testament prohibitions against non-procreational sex were correct and that prostitution was morally untenable. However, he nevertheless conceded that prostitution was necessary to prevent "capricious lusts" from overthrowing society. Such a contention speaks volumes about the degree to which certain male "interests" were regarded as "needs" which had to be met irrespective of the negative effect that they might exert on the welfare of certain classes of women. In any event, prostitution continued to exist until the fall of the Roman Empire in the closing years of the fifth century (Decker, 1979:40).

With the fall of Rome in 476, the political and cultural centre of the civilized world shifted to Constantinople, the capital of the newly created Byzantine Empire. Within its borders, prostitution continued to flourish for another thousand years. However, in terms of the historical evolution of laws against prostitution, a more important event was the invasion and subsequent control of most of Western Europe by the Germanic tribes.

During this turbulent period, the Christian Church not only survived, but also managed to convert many of the German conquerers (Ibid). This situation led to the merger of German cultural norms in which prostitution was virtually unknown with official church pronouncements against it. The combination of cultural and religious sentiments led to the virtual elimination of prostitution for the first time in the history of the western world.

This virtual elimination of prostitution from Western Europe lasted until the onset of the Middle Ages. While Charlemagne, who founded the Holy Roman Empire during the tenth century, prescribed harsh penalties for apprehended prostitutes, the pressures of widespread poverty and promiscuity led to its resurgence during his reign (Mancini, 1963:23). This resurgence was given impetus by the advent of feudalism as the dominant political system in Europe. While the preponderance of social and religious opinion remained firmly against the toleration of prostitution, the political fragmentation embodied in the feudal order made it more difficult to enforce prohibitions against it. Even in cases where the titular monarch of a country or state enacted laws against prostitution, the rivalry between the monarch and his nobles often made enforcement impossible (Decker, 1979:43) [5]. For example, while Louis IX of France attempted to eradicate prostitution from his country, his efforts were without success. Further, when he led an army off to the crusades, he ensured that an adequate number of prostitutes were allowed to accompany it (Ibid). It is unclear whether he did this under his own initiative or under pressure from his nobles. In either case, such a chain of events demonstrates all too clearly the ease with which prevailing moral precepts

were overruled by expediency where the interests of the male population were concerned.

When Louis' son Phillip ascended to the French throne, he replaced his father's ineffective prohibitions with a system of regulations, and thus precipitated a return to state tolerated and regulated prostitution in Europe (Henriques, 1963:43). The next three hundred years witnessed a relaxation of the political, religious and moral attitudes against commercialized sex. This relaxation became so general that it was not uncommon for ex-prostitutes to become nuns, and for priests and bishops to be involved in operating houses of prostitution (id:44). Indeed, the greatest church leader of the time, Thomas Aquinas, argued that prostitution was a necessary social evil in that "...[p]rostitution in the towns is like the cesspool in the palace: take away the cesspool and the palace will soon be an unclean and evil smelling place." (Ibid). Within this context, it is hardly surprising that the church exhibited so many contradictory positions towards prostitution during the Middle Ages.

Thus, in closing the discussion of prostitution in Europe prior to the Protestant Reformation, it can be argued that the many different attempts to regulate and/or eradicate it met with little success because of the ambivalent social, political and religious attitudes which existed towards it. The role of the prostitute during the first fifteen hundred years of the Christian era has been eloquently summarized by John F. Decker when he argues:

> The Church and state attitudes about and treatment of prostitutes varied from time to time during the medieval period...[F]or the most part, they were...spat upon in public and cherished in private [while serving the needs] of large numbers of individuals starving for sexual affection who had no socially acceptable outlet...[T]his state of affairs must have appeared hypocritical

> [to] the large numbers of harlots moving about in medieval society, often fearing for their very lives, [while] satisfying a need many persons possessed but had little desire to admit, much less suppress." (Decker, 1979:45).

The extent of the hypocrisy depicted in this quotation appears monumental. However, it can be argued that the social, economic and legal positions of prostitutes during this period were completely consistent with the notion that women were considered the property of men, and that those who were not the individual property of specific men were the common property of all men. Within such a framework, the social and economic degradation to which prostitutes were subjected was considered entirely justifiable.

2.3 PROSTITUTION AFTER THE PROTESTANT REFORMATION

The advent of the Protestant Reformation in the sixteenth century instigated a profound philosophical change in prevailing attitudes towards prostitution throughout much of Europe. While pre-Reformation objections to prostitution had centered around the Augustinian notion that all non-procreational sex was morally wrong, the Reformation thinkers based their objections in an emphasis on the stability of the marriage institution. The Protestants advanced the concept of a "companionate marriage" based upon the principle that the sexual and emotional needs of both partners were to be satisfied within the marriage (Richards, 1979:90). Since the patronizing of prostitutes by married men would obviously violate this principle, it was argued that the toleration of prostitution would threaten the institutions of marriage and the family, thus giving rise to social problems involving abandoned children and vagrant women. This change in underlying philosophy is important because the rights and feelings of women were acknowledged as important, albeit indirectly, for the first time.

Despite the fact that the post-Reformation Protestants were even more opposed to prostitution than their Catholic counterparts had been, this shift in attitudes did not immediately achieve practical results for two reasons. First, since the opposition was based on the threat to the marriage institution, the Protestants could hardly object to single men seeking the services of prostitutes. A second and more important reason for the continued existence of prostitution was simply that the Protestant Reformation did little to overcome the poverty and promiscuity which had always been behind the rise of prostitution as a social phenomena. With respect to the former, Europe was characterized by widespread poverty of the most abject sort. Because women were traditionally at the bottom of the economic scale, this poverty affected them to a much greater degree than it did males. As a result, many women who "did not have a man to take care of them" frequently found that prostitution was the only means by which they could avoid starvation. However, because prostitutes were financially independent of specific men, their independence may have been considered threatening by patriarchal societies. In any event, the social, economic, and legal conditions of prostitutes were kept as marginal as possible.

In addition to poverty, Decker (1979:47) argues that Europe, during the Middle Ages, was characterized by widespread promiscuity involving both sexes, and that prostitution was considered a logical means of ensuring that certain classes of men, e.g. the unattractive, were afforded the opportunity to take part in this promiscuity. As was noted earlier in this section, the authorities actually took positive action to create and maintain a class of "marginal" and "promiscuous" women who could be relied

on to serve as prostitutes for those men who desired their services. The fact that male prostitutes serving female clients were non-existent during this time period suggests that the corresponding interests of females were not considered as important as those of males. Thus, despite their apparently greater emphasis on the rights of women, the Protestants viewed prostitution as "necessary evil" for the same reasons as the Augustinian Catholics, namely that it furthered the interests of males.

This attitude towards prostitution prevailed until an epidemic of venereal disease began to sweep across Europe during the late 1500's, and the anti-prostitution forces began to achieve success in their efforts to eradicate commercial sex (Ibid). The extent of the epidemic alarmed much of the populace, and the movement to ban prostitution quickly gathered public and political support (Scott, 1968:75). As a result, most countries and states passed repressive legislation aimed at curtailing the activities of prostitutes. While the desire to contain the spread of venereal disease is understandable, the chauvinist fashion in which these laws were enforced weakened their effectiveness. Because the they were primarily directed against female prostitutes, and the role of male customers in spreading venereal disease was largely ignored, it is extremely doubtful that the laws were effective to any degree. In addition, because many of the prostitutes had no alternate means of support, the crackdown on prostitution rendered their living conditions even more onerous than they had previously been. This provides yet another example of the degree to which prostitution and the subservient social and economic positions occupied by women were mutually intertwined.

Despite the fact that this type of legislation generally remained in effect for over a century, it quickly fell into disuse. While street prostitution was initially suppressed, and many houses of prostitution and other such establishments were closed, the prostitutes quickly found other avenues through which to ply their trade. The authorities soon realized that it would be impossible to completely eradicate commercial sex and abandoned their enforcement campaigns after a few perfunctory crackdowns. The major effects of the legislation were to drive prostitution further underground, and to serve as a source of revenue for police and other officials through fines and bribes[6]. In particular, the areas of Europe still under the influence of the Catholic Church were quick to allow the edicts against prostitution to fall into disuse (Bullough, 1964:131). As a result, public prostitution began to increase and by the middle of the seventeenth century was flourishing every bit as openly as it had before the crackdown. During this time period, many countries and states began to repeal or modify their legislation, thereby opening the way for the reinvolvement of the state in the regulation and direct taxation of prostitution (Sanger, 1937:120-121).

The relaxation of the laws prohibiting prostitution gave rise to a plethora of new laws and regulations aimed at controlling what was perceived as a necessary social evil. While many of these laws and regulations were ostensibly directed at maintaining public order and preventing the spread of disease, their major effect was to strengthen the control of madams, pimps and panderers over prostitutes (Acton, 1968:97-99). Because these individuals usually manipulated and exploited the prostitutes, their already poor working conditions became even more

onerous (Henriques, 1963:165). In many instances, these new "liberalized" laws actually encouraged the involuntary recruitment and sale of women into prostitution. Sometimes referred to as "white slavery", this practice had always existed; however there is ample evidence to suggest that it reached unprecedented proportions during the seventeenth and eighteenth centuries (Terrot, 1960:10-20). In this respect, it can be argued that the characterization of prostitution as a "necessary social evil" created an atmosphere in which the authorities were willing to overlook the activities of pimps, panderers and madams in return for these individuals "administering" prostitution in such a way as to keep it out of public view. Indeed, it is probable that the prevalent tendency to regard women as the property of men also contributed to the toleration of white slavery. Within this context, the idea that pimps and panderers had the right to abduct women and force them into prostitution was entirely consistent with prevailing social attitudes.

While the authorities eventually mobilized against the white slavery aspect of prostitution, they did so only in response to comparisons between it and the also prevalent "black slavery" (O'Callaghan, 1965). While it seems incredible that the welfare of one group in society would only be attended to as a result of comparing its members to other "less valuable" groups, this approach is nevertheless completely consistent with the tendency, already noted in this chapter, for the dominant male classes to subjugate the rights and interests of women to their own needs and interests. Despite the fact that some attempts were made to ameliorate the social conditions associated with prostitution during the early part of the nineteenth century, few changes occurred until the dawn of the Victorian age.

2.4 PROSTITUTION DURING THE VICTORIAN AGE

The Victorian age, spanning the years from 1830 to 1914[7], witnessed a period of upheaval, change and progress which was unprecedented in the history of the world. While often considered a time of sexual repression and conservative attitudes, it was also an age which witnessed enormous technological advances, combined with such social and political innovations as the social purity movement, political liberalism and the socialism of Karl Marx. In terms of the analysis being conducted in this paper, the most important social phenomena of the Victorian age was the birth of the feminist movement in the early nineteenth century (Walkowitz, 1983). As will be outline in this section, the work of the early feminists was to exert a tremendous influence upon the social position of all women, including those involved in prostitution. However, before these events can be discussed, it is necessary to review the developments in legal and public attitudes towards prostitution which occurred during the first part of the nineteenth century.

As was noted in the previous section, the prevailing legal approach towards prostitution in the opening years of the nineteenth century was one of regulation and control. While prostitution was generally considered morally repugnant, it was also perceived as a necessary social evil. As a result, it was tolerated simply because it provided a useful social service in fulfilling the perceived needs of certain segments of the male population. It must be noted that the working conditions and social position of the prostitutes were nothing short of abysmal. They were almost universally abused and exploited by pimps, panderers, madams and even their own customers. White slavery was common, and while the

authorities attempted to control this particular abuse, society was generally unconcerned about the welfare of the prostitutes (Bristow, 1977:55-6). However, despite the universally poor conditions associated with the practice of prostitution, the "profession" continued to attract legions of new recruits willing to offer their services in return for a subsistence existence. Several writers have asserted that this situation was largely due to the generally poor economic conditions associated with the early Victorian Age, combined with the fact that any alternative opportunities available to unattached women were equally oppressive (Hollis, 1979; Rover, 1970).

During the 1830's this attitude slowly began to change. Enlightened reformers began to campaign against the rampant abuses which rendered the lives of the prostitutes almost intolerable. In England, the Guardian Society and the London Society for the Protection of Young Females were particularly instrumental in exposing the abuses and lobbying for change. In 1835, the London Society opened the first asylum in England to provide prostitutes with a refuge from some of the worst exigencies associated with their lifestyles. Following this, the Act to Protect Women under Twenty-One from Fraudulent Practices to Procure their Defilement (1838) was passed by the British Parliament, imposing stiff penalties upon anyone found guilty of inducing women under twenty-one years of age to enter prostitution. While frequently derided as "a homeopathic dose for a great problem", this and other measures contributed to the growing awareness that prostitutes were as much victims as they were transgressors (Walkowitz, 1983). While the exact motivating factors behind these events is unclear, the fact that many of the measures were directed at young women and girls suggests that

they were associated with the more general "children's rights" movement which was active during the same time period. Despite the sometimes limited success of these reform oriented activities, there is little doubt that they paved the way for the next stage in the evolution of legal controls on prostitution, a stage in which the activities of the early feminists were to play a dominant role.

A new movement known as the "social purity" movement appeared on the British social and political scenes during the 1860's. Originating in the work of a woman named Josephine Butler, this movement was associated with the early feminist movement and exerted a profound effect on British social life for the remainder of the century. The impetus for the launching of this movement lay in Ms Butler's opposition to the ways in which the Contagious Diseases Acts discriminated against women, particularly those suspected of being involved in prostitution (id: 115-117). While the aim of these Acts was to prevent the spread of disease among all segments of the population, their provisions regarding venereal disease were used primarily against women. In particular, these provisions were frequently used as an "enforcement tool" to harass prostitutes, while ignoring the threat posed by male customers with respect to the spread of venereal disease. The feminists argued that the legislation amounted to a hypocritical condonment of "vice", as long as military personnel and other "gentlemen" could be assured that the prostitutes were free of disease (Ibid). In any case, even this was unlikely, as later research indicates that the Contagious Diseases Acts were largely ineffective at reducing the spread of venereal disease (Bacchi, 1983). Thus, their only effect was to render the lives of prostitutes even more degrading.

In her early lobbying against the double standard embodied in the legislation, Ms Butler at first met strong opposition from the Church of England on the grounds that the repeal of these Acts would encourage lascivious behavior on the part of the female population. However, because the Church had always been active in the fight to ameliorate the general conditions associated with the existence of commercial sex, Church leaders eventually became aroused by some of the more flagrant abuses resulting from the enforcement of the legislation. This led to their joining the feminists in the fight for the repeal of the Contagious Diseases Acts, and the combined Church and feminist efforts led to their repeal in 1886 (id:77). By this time, however, the social purity movement had began to assume a larger scope than merely lobbying against the inequities imposed on women; and Josephine Butler lost control of the movement which she had founded in her fight against repression (Ibid).

One of the most influential factors in determining the new direction which the social purity movement assumed was the work of Ellice Hopkins. While Ms Hopkins was dedicated to the elimination of the double standard which denied women many rights which men enjoyed as a matter of course, her staunch opposition to any form of sexual promiscuity necessarily led to her taking a different approach to the issue, particularly as it concerned the activities of prostitutes. In contrast to Josephine Butler's interest in bettering the conditions associated with prostitution, Ellice Hopkins was mainly interested in eliminating commercial sex entirely by imposing a single standard of chastity upon both sexes[8]. Her efforts in this regard were instrumental in the establishment of at least two separate "chastity leagues" whose prime purpose was to impose sexual continence upon the

entire population. These leagues were to be the forerunners of similar organizations located in every major city in the British Isles, and even in Europe and America. The ultimate expression of this movement led to the establishment of the National Vigilance Association led by William Coote in the waning years of the nineteenth century. The influence of these organizations was to lead to the development of the conservative moral attitudes towards sex which have traditionally been associated with the Victorian Age.

While the social purity movement led to the further repression of prostitution, the work of Ellice Hopkins was not without value to the overall objectives of the feminist movement. One of the effects of the chastity leagues was the organization and unification of such diverse women's institutions as the YWCA and the Friendless Girls Societies into a loosely organized federation. As a result, they often worked together in lobbying for improvements to the general inequities which characterized the social position of women. While this cooperation sometimes extended to include the groups associated with Josephine Butler, it must be noted that this latter relationship was an uneasy one. There was a fundamental dichotomy in the feminist movement between the objectives of the conservative reformers represented by Ellice Hopkins and the much more radical feminists led by Josephine Butler. The former were primarily concerned with eliminating the double standard and strengthening the family, while the goal of the latter was eliminating female dependence on males entirely. Thus, while they did cooperate on some issues, it was the latter group who can be considered the "true" feminists (Walkowitz, 1983: 411-423). In fact, there is some evidence to suggest that the conservative

feminists also frequently worked together with other conservative groups to ensure that the activities of prostitutes were repressed (McLaren, 1986).

In addition to founding the chastity leagues, Ms Hopkins was also directly involved in the passage of the Criminal Law Amendment Act (1885), which provided increased penalties for such activities as homosexuality, incest and prostitution (id:79). While this legislation was consistent with the repressive attitudes towards sex which were becoming widespread, it was unique in that it provided for the private enforcement of morals. This provision undoubtedly led to numerous "witchhunts" by conservative individuals or organizations. However, it also released women from their previous dependence on a male controlled criminal justice system in their fight against the double standard. This provision was an important one, for when the universally repressive moral attitudes began to moderate in the late Victorian period, the feminists were able to use it to institute campaigns against the males involved in prostitution, whether as pimps, panderers or customers. These activities proved extremely effective at instigating changes in public and legal attitudes towards prostitution during the closing years of the nineteenth century (id:90-107) [9].

In summarizing the discussion of prostitution during the Victorian Age, the role of the social purity movement cannot be overemphasized. Despite the fact that the history of the movement was characterized by a nearly constant rivalry for control between the radical and conservative wings of the feminist movement, no other social or political phenomena exercised as much influence on laws relating to prostitution. Although profound philosophical differences sometimes existed between the two groups, both were dedicated to ending the sexual double standard which existed between

males and females. While the conservatives ultimately exerted the greater influence, thus giving full expression to the particular type of ethical and moral standards which have come to be labelled as "Victorian", the work of the radical feminists was not without effect. The radical feminist belief that the supremacy of conscience was the most appropriate criterion for deciding moral issues appealed to many individuals who were beginning to subscribe to the "new sexuality" being promoted by such pioneering social scientists as Ivan Block and Sigmund Freud. Indeed, it can be argued that the views of the radical feminists set the stage for the contemporary period in the evolution of legal controls on prostitution, a period in which the work of these and other pioneers was to prove extremely influential.

2.5 PROSTITUTION DURING THE CONTEMPORARY PERIOD

The contemporary period of history is commonly held to have commenced with the outbreak of the First World War. In terms of legal controls on prostitution, this dividing line is important for two reasons. First, the time period between 1914 and 1918 marked the advent of modern medicine as it is practiced today, including the development of antibiotics and the almost revolutionary changes which occurred in the outlook towards the diagnosis and treatment of mental illness. While the former mitigated much of the validity which may have existed regarding prostitution's purported role in the spread of venereal disease, the latter led to significant changes in attitudes towards human sexuality and other moral/sociological issues. The second major reason for the importance of this period is that it marked a locational shift in the development of legal controls on

prostitution, with the importance of developments in the United States predominating for the first time over those occurring in Britain and Europe. While the feminist movement had been active in the United States under the leadership of Susan B. Anthony during the late Victorian Age, such events had tended to follow those of the British feminist and social purity movements.

The First World War provides an interesting opportunity to compare the manner in which the French, German, British and American authorities reacted to common problems arising from the enforced segregation of unprecedentedly large numbers of young men. Because this segregation deprived them of any non-commercial sexual outlets which they may have had, it is hardly surprising that the war years were characterized by significant amounts of upheaval regarding such moral/social issues as monogamy, sex roles and prostitution. While the need for sexual outlets is common to both sexes, the chauvinistic attitudes prevalent during this time period perpetuated the double standard which had always characterized male/female sex roles. This double standard was made even more pronounced by the war atmosphere in which the importance of male "macho tendencies" was stressed, together with the notion that women could best contribute to the war effort by "remaining faithful and keeping the home fires burning" while their men were away "defending their country". The combination of these factors created a situation in which prostitution was perceived as an acceptable solution to the dual problem of meeting the "needs" of the troops, while at the same time protecting "respectable" women from harassment by servicemen (Connelly, 1980).

The reaction to this situation varied significantly among the four major nations involved in the war, and certain observations can be made regarding these reactions. For example, in Germany and France the military authorities assumed responsibility for the construction of brothels to ensure that sufficient numbers of prostitutes were available to provide services to their troops (id: 144). In these cases, prostitution had been tolerated and regulated during the years immediately prior to the war, and this approach did not embody any important changes to the prevailing attitudes towards prostitution. By way of contrast, the British military authorities refused to become directly involved in the establishment of brothels; instead preferring to allow free enterprise to accomplish it (id: 145). However, because the vestiges of Victorian attitudes against commercial sex were still strong in Britain, the toleration of brothels near military establishments represented a radical departure from prevailing social and legal attitudes towards prostitution. The fact that such a departure was allowed to occur without any protest by the British feminist movement serves to illustrate the ease with which the feminist gains of the preceding fifty years could be overridden by a patriotic appeal rooted in the implicit notion that certain male "needs" were more important than the rights of women.

In a radical departure from both the British and European approaches to the issue, the American authorities attempted to eliminate prostitution near military establishments (id:146-150). This decision was surprising in light of the traditionally tolerant attitude taken by American society towards prostitution and the military, and the fact that prostitution was generally tolerated in much of the United States prior to the First World

War. One of the major reasons for this sudden shift in attitudes was undoubtedly linked to the high rates of venereal disease being experienced by the American armies at home and the British and European ones on the battlefields of France. It has been estimated that each of the major powers had at least 60,000 men out of action due to venereal disease at any one time during the war. The American military authorities were determined that their own forces would avoid this particular problem, and thus undertook extensive educational and cleanup campaigns in a bid to eliminate the patronization of prostitutes by American soldiers[10].

While these campaigns appear to have been highly successful, it is likely that the educational aspect played a more important role in the eradication of venereal disease than did the elimination of prostitution. In any event, the measures which the American authorities implemented against prostitutes were extremely repressive. During the period from 1914 to 1920, the federal government put pressure on state and local authorities to eradicate prostitution near military bases. As well, in 1918 the US Congress passed the Chamberlain-Kahn Act, which empowered the police and other authorities to detain suspected prostitutes for medical examination, counselling and possible relocation. Very little proof was required under the legislation, and thousands of women were "rehabilitated" in this fashion (id: 148-150). While it is likely that many of these women were actually prostitutes, ample evidence exists to suggest that many were simply hoping to meet servicemen for legitimate social purposes, including the possibility of marriage (Ibid). The rationale used for this unprecedented abuse of women's civil rights was similar to that used by the British to justify the toleration of prostitution near military bases;

namely, that the national interest necessitated changes in traditional attitudes towards prostitution. The fact that these changes in attitude led to almost completely opposite courses of action in Britain and the United States indicates the degree to which prostitution control was manipulated to serve the interests of males.

In the late 1920's, this attitude began to assume a more general character, and a move to completely eradicate prostitution permeated most aspects of American society. In many respects, this shift in attitudes paralleled the more general anti-vice campaigns associated with the rise of fundamentalist evangelical religions (Decker, 1979: 68)[11]. While the anti-vice campaigns were remarkably successful, with their influence even leading to the onset of prohibition, the specific targeting of prostitution can also be attributed to a variety of other factors. Two of the more important of these factors were the lobbying activities carried out by feminist groups against the double standard and the widespread belief that organized crime was heavily involved in the white slave traffic. While the white slavery allegations later proved unfounded, they nevertheless were instrumental in the implementation of the The White Slave Traffic Act. This legislation, popularly referred to as the "Mann Act", heralded a period of repressive attitudes against prostitution which lasted until the middle of the 1950's[12].

Despite the generally repressive character of this particular period, it also marked the first time that concern for the prostitutes themselves was used as a rationale for precipitating changes to prostitution laws in the United States. Unfortunately, however, the practical effect of these new attitudes was to drive prostitution underground, thus making it easier for

the pimps, madams and panderers to control and exploit the prostitutes (Decker, 1979:70). This particular scenario is one which had repeated itself numerous times throughout the history of prostitution, and this contemporary cycle lasted until the 1960's ushered in a new era of liberal attitudes towards moral issues. The most immediate effect of the "swinging sixties" mentality was the falling into disuse of the anti-prostitution laws throughout much of the western world.

The sixties approach to prostitution and other moral issues was one of toleration and utility, with practical considerations being the overriding factor in dealing with socalled "victimless" crimes. This approach was given further impetus by the advent of the "feminist revolution"[13] and the development of the liberal attitudes which characterized the sixties into a full fledged political and legal ideology. In terms of the societies analyzed in the latter part of this chapter, this philosophy exerted a profound effect on the social and legal attitudes towards prostitution. In Britain, the Wolfenden Committee was formed to examine morality and the law in the early 1960's. This Committee recommended that both prostitution and homosexuality should be legalized, since it could not be established that either activity was socially harmful. In the United States, various states began to reexamine their laws regarding prostitution (Decker, 1972). The best documented of these processes is the changes to the New York State Penal Code which occurred between 1967 and 1972. However, both of these sets of events will be discussed in Chapter 4 of this dissertation.

2.6 SUMMARY

The discussion in this chapter has examined the evolution of legal controls on prostitution in an attempt to identify the various approaches which have existed historically in different societies. The discussion has further attempted to identify the factors which appear to have motivated the choice of particular approaches at particular times and places. While the major analysis of these factors will be deferred until after the discussion to be conducted in Chapters 3, and 4, it is considered appropriate to briefly summarize the findings discussed in this chapter. With respect to the identification of the various legal approaches to prostitution, the many different approaches which have existed can be encapsulated within the three general categories of repression, regulation and laissez fairism. Insofar as the specific factors behind these approaches are concerned, four distinct issues can be identified as the official motivating factors. In general terms, these issues can be posited as: a) moral/religious issues; b) public order issues; c) issues involving the welfare and civil rights of the prostitutes; and d) feminist lobbying against the double standard.

In discussing the official motivations behind the enforcement of legal controls against prostitution, it is important to remember that the officially expressed rationales for any particular approach to prostitution control rarely represent the whole story behind the controls. Despite the multiplicity of approaches and motivations which have characterized the history of prostitution, the one factor which remains constant throughout is the patriarchal attitudes which overrode all other issues. From its emergence in ancient Babylon through to the liberal morality of the

Contemporary period, numerous examples have been cited to support this contention. Whether one examines the discriminatory practice of temple prostitution, the tolerance of a "necessary evil" during the early Christian era, the use of the Contagious Diseases Acts during the Victorian age or the different approaches to prostitution during the First World War, it is clear that prostitution control reflected the belief that the position of women was inferior to that of men.

Thus, it can be argued that the legal and political approaches toward prostitution universally embodied a double standard in which the rights of women were considered secondary to male interests, and that the official rationales were simply justifications which suited a particular social and political context. Within this overall framework, the differences between the approaches become relatively meaningless, and the official rationales thinly disguised hypocrisy. The fact that the authorities traditionally ensured that a sufficiently large number of prostitutes were available to satisfy the perceived needs of men, while also controlling their activities in such a way that they never gained control of their working conditions, clearly demonstrates that the law was used to further male interests with respect to the double standard. The most disconcerting and troubling aspect of the entire process is the manner in which women tended to support and identify with the male position in this regard.

The final element to be discussed with respect to the evolution of legal controls on prostitution concerns the narrower issue of how particular groups managed to influence this evolutionary process. In this respect, the overriding factor appears to have been the degree to which various groups were able to exercise political influence. While this question was

inextricably interwoven with religious influence during much of the Christian era, practical considerations such as financial, political and professional alliances took precedence during and after the Victorian age. This is particularly true of the activities of the chastity leagues and the repression which occurred in the United States during the First World War. While the two cases were quite different in terms of the issues and interest groups involved, the the principle remained the same: the ability to influence changes in the law appeared directly related to the political clout of the groups involved in the process. Thus, both cases serve as examples of the economic and political subjugation which women have traditionally faced within male dominated societies, and support the general contention that societal responses to prostitution have almost always been extensions of the more general patterns of male domination which have always existed. This is borne out by the fact that women were only able to influence the the process if they formed alliances with male dominated groups.

NOTES

[1] It should be noted that the equation of promiscuity and prostitution would be rare among social scientists today. However, it would be a mistake to assume that social attitudes in general have changed that much. It is still commonplace in many social circles to refer to a promiscuous female as a "whore", a derogatory characterization which is frequently applied by females as well as males. Promiscuous males, on the other hand, are rarely stigmatized, and often gain status among their peers for their "abilities with the opposite sex".

[2] This more general type of analysis is considered adequate for the theoretical analysis which will be conducted on this time period. In fact, it can be argued that a more detailed discussion would add little to the analysis and might actually obscure some of the important patterns with respect to prostitution control.

[3] Decker (1979) argues that some classes of prostitutes were accorded a high status similar to that accorded to courtesans in more recent cultures. However, it is likely that they were extremely rare exceptions to the general state of affairs.

[4] This issue will reappear repeated throughout this chapter. In many societies, the double standard was maintained by defining prostitutes as a "class of promiscuous women" who were "outside" of society.

[5] It should be noted that most of Europe was under the nominal control of various kings or emperors during the feudal period. However, most of the real power, especially at the local level, rested with the nobles.

[6] As a matter of interest, Decker (1979:47) argues that the French government used this legislation to force prostitutes to emigrate to Quebec as wives for the settlers. This aspect of Canadian history appears to have been omitted from most Canadian history texts about this period.

[7] Queen Victoria was born in 1819, ascended the throne in 1837, and died in 1901. While historians vary in terms of the period they classify as the "Victorian Age", it is generally held to include the period from the 1830's to just before the First World War (Ibid). In terms of the analysis being conducted in this chapter, the years between 1830 and 1914 constitute a contiguous historical period and will be treated as such.

[8] However, despite her opposition to commercial sex, Ellice Hopkins was active in establishing rescue missions to provide places of refuge for prostitutes. However, her main interest was in encouraging prostitutes to leave the profession.

[9] It seems ironic that the Criminal Law Amendment Act, which was originally opposed by Josephine Butler's feminists as being too repressive, should ultimately prove so effective in combating male chauvinism with respect to prostitution.

[10] Most of their efforts were limited to the United States since the

ability of the American authorities to control prostitution near their armies in Europe was limited. In most cases, they could only place the brothels off limits to American troops, as the legal and political authority to regulate prostitution rested with the host country.

[11] While the 1920's are sometimes referred to as the "roaring twenties", conservative groups often exerted a great deal of influence, particularly with respect to prostitution and prohibition.

[12] While this legislation was actually passed in 1910, Connelly (1980) argues that it was rarely used until well after the First World War.

[13] While the feminist movement did start during the Victorian Age (as noted previously), the "Feminist Revolution" is generally held to have commenced during the sixties with the work of Germaine Greer.

Chapter 3

CANADIAN PROSTITUTION CONTROL 1800 - 1970

The intent of this chapter will be to analyze the development and implementation of Canadian prostitution laws between 1800 and 1965. In many respects, the Canadian situation paralleled the American and British developments outlined in the previous chapter. Thus, the discussion in this chapter will concentrate on the highlights of the Canadian law, and will pay particular attention to any ways in which the Canadian situation differed from the British and American approaches. This discussion will commence with a brief outline of the Canadian approach to prostitution control prior to confederation, including the factors which led up to the prostitution laws which were in existence in 1867. This will be followed by more detailed examinations of the late Victorian age and the Contemporary period between 1914 and 1970.

3.1 CANADIAN PROSTITUTION CONTROL PRIOR TO CONFEDERATION

Prior to the middle of the nineteenth century, Canadian moral, social and legal attitudes towards prostitution and prostitutes essentially mirrored the combination of expediency and patriarchy which existed in most of the western world. Basically, prostitution was tolerated as long as it served the interests of males and as long as it did not infringe upon the interests of the more "respectable" classes of Canadian society (Gray, 1973). During this time period, prostitution was regarded as a degrading

occupation practiced by lower class women out of depravity and desperation. The prevailing attitude was one of contempt for the prostitutes, and most middle class males generally felt little or no compunction against abusing and exploiting the lower class prostitutes, many of whom were barely into their teens. It was generally felt that such women were despicable and undeserving of either protection or sympathy.

In light of the attitudes depicted above, it is not surprising that the laws dealing with prostitution were designed to provide the police with the maximum ability to harass prostitutes[1]. For example, unlike the British approach which concentrated on the nuisance aspect of prostitution, Canadian law made it illegal to be a prostitute, and it was not necessary for the police to establish that the prostitute had actually been plying her trade (McLaren, 1986:127; Backhouse, 1984:8). This provision was used selectively, and only when it was felt necessary to curtail prostitution related activities in the interests of "public order". While the question of public order might appear to represent a useful criteria for applying the law, the term was almost always defined in terms of the interests of business and other elite groups. Thus, prostitutes could be prohibited from patronizing businesses or even living in certain areas if the police felt that their presence was contrary to the maintenance of public order. This gave the police enormous power over the day to day activities of prostitutes, power which did not extend to any other type of criminals.

The generally repressive nature of the laws against prostitution itself was compounded by the fact that there were few laws to protect lower class women and girls from procurement into prostitution. In fact, it has been noted by at least one writer that many politicians were actually against

such laws on the grounds that the existence of prostitution protected "decent" women from harassment by males (McLaren, 1986: 127). In contrast to the lack of protection afforded to lower class women, middle and upper class women were protected by a series of very tough laws designed to guard against the abduction and defilement of married women, heiresses and any women who could conceivably be considered the property of specific males[2]. In this respect, it seemed clear that society was only concerned with the welfare of women insofar as they were members of the middle or upper classes, or to the extent that they "belonged" to specific men if they were lower class. This situation clearly indicated that early Canadian laws dealing with prostitution were heavily biased along class and chauvinistic lines.

During the middle part of the nineteenth century, Canadian social and moral attitudes began to undergo a gradual but profound change with respect to prostitutes and prostitution. While prostitution as an activity remained morally repugnant, prevailing social opinion came to view the prostitutes themselves as victims, and attributed their plight to the exploitive conditions resulting from the industrial revolution. This brought about an increased concern for the moral and social welfare of the prostitutes, combined with the growing realization that the plight of the prostitutes was not independent from the general social position of all women (Parker, 1983). This factor was given added impetus by increased concern for the family as an important social unit, and prompted many people to view prostitution as a threat to the family and to the welfare of all women, regardless of social class. Such a shift in attitudes eliminated some of the class bias which had characterized public opinion regarding

prostitution and focused attention on its chauvinistic aspects. The result was that males were cast as villains for the first time, and attention began to focus on how to protect all women from exploitation and defilement at the hands of male procurers and customers.

This change in social and moral attitudes gave impetus to the development of a broad based reform movement aimed at changing the laws dealing with prostitution. This movement was referred to as the social purity movement, and as discussed in the previous chapter, it was also underway in Britain and the United States. However, while it was considered a radical political faction in these two countries, in Canada it was more closely aligned to the mainstream political scene (id: 128-9). This difference was largely due to the fact that evangelical religions exercised significantly more influence in Canada than in the United States or Great Britain. While these religious groups were opposed to any form of liberalized sexuality, they were particularly upset at the failure of Canada's prostitution laws to curtail the activities of males who exploited female prostitutes. Because they exercised widespread influence, they were able to make the reform of Canada's prostitution laws a "respectable" cause much earlier than was possible in Great Britain and the United States. However, it must be noted that their opposition to liberalized sexuality also meant that they wanted prostitution eradicated completely. Thus, the social purity reformers in Canada were responsible for a good deal of repression directed at female prostitutes.

Despite the influence of these religious groups, the reform movement was just gathering steam by 1867, and had exerted little practical effect. As well, the change in attitudes had by no means permeated the entire

population, and there were many groups in Canadian society who still opposed any changes to prostitution control. Thus, at the time of confederation, Canadian law on prostitution consisted of repressive laws against vagrancy (which included common prostitutes by definition) and a few provisions designed to protect females under 21 years of age from forced or fraudulent procurement into prostitution. Unfortunately, the former were used selectively to harass prostitutes, and the latter were applied mainly to middle class females. The repressive nature of the laws was increased further when the United Province of Canada passed An Act for the Prevention of Contagious Diseases at Military and Naval Stations in 1865[3]. This act was modeled on similar British legislation enacted the year before, and was administered in the same chauvinistic fashion[4]. Thus, the practice of regulating prostitution for the benefit of males was continued past confederation, and the major influence of the social purity movement would not occur until well after the birth of Canada as a distinct legal and political entity.

3.2 CANADIAN PROSTITUTION CONTROL FROM 1867 - 1914

The passage of the British North America Act in 1867 brought about two legal "facts" regarding criminal law in Canada. First, British criminal law no longer applied to British North America unless the Canadian authorities decided to apply it. Second, the Federal government assumed responsibility for all criminal law, including that applicable to prostitution[5]. These two points effectively paved the way for the federal government to eliminate discrepancies among the various colonies and to articulate a Canadian approach to prostitution control which differed from that applied

in Great Britain. Unfortunately, this did not immediately come about, and the first few years after Confederation witnessed very few legal reforms with respect to prostitution. Existing British and colonial laws continued to be applied as they always had, and from a practical point of view little was done to change the legal and social conditions under which prostitution flourished and prostitutes worked.

The most striking example of the continued class and chauvinistic bias in Canadian law was the way in which the previously mentioned contagious diseases legislation was administered. Like its British equivalent, the act was directed primarily at female prostitutes and the provisions applicable to male military personnel were rarely enforced[6]. However, in sharp contrast to the fierce debate engendered by the British legislation, little controversy was aroused in Canada (Backhouse, 1984). The small amount of media attention which did result was almost evenly divided between the conservatives who opposed the law because it encouraged vice, and the "progressives" who favored it as a way of regulating a "necessary social evil". At no time did anyone oppose the law because of the chauvinistic fashion in which it discriminated against women. It must be noted, however, that the debate in Britain did exert an effect in Canada. Because the newly formed Canadian government did not wish to become embroiled in the type of controversy which was plaguing British politicians, the new law was quietly allowed to expire at the end of its first five year period.

The first major attempt made by the Dominion of Canada to amend and consolidate its laws relating to prostitution occured when the government passed An Act Respecting Offenses Against the Person and An Act Respecting

Vagrancy in 1869[7]. However, any hope that these laws would reflect the changes which were occurring in social and moral attitudes towards prostitutes were unrealized. The major emphasis of the acts was on the consolidation of existing prostitution law, rather than the introduction of substantive changes. Indeed, the amendments actually reinforced the class bias which had characterized the pre-Confederation approach to prostitution control. This bias is particularly evident in comparing two of the provisions of the new legislation. For example, section 50 of An Act Respecting Offenses Against the Person made it an offence to fraudulently procure a woman or girl under 21 years of age for illicit carnal relations with a man other than the procurer. However, this section was inapplicable if the major goal of the procurement was for marriage. In such cases, the carnal relations were considered licit within the meaning of the section. The prescribed maximum penalty upon conviction was incarceration for two years less one day. On the other hand, section 54 of the same legislation forbade the fraudulent procurement of heiresses and other "women of property" for carnal knowledge. This section applied even if the procurement was for the purposes of marriage and prescribed a maximum penalty of fourteen years incarceration. The disparity between the two sections is obvious at a glance and of monumental proportions.

This approach to prostitution control was to continue for several more years before the social purity movement was able to successfully lobby for stricter controls on prostitution. In 1874, and again in 1881, the federal government amended An Act Respecting Vagrancy to substantially increase the penalties for all types of prostitution related activities[8]. While much of the attention was directed against the prostitutes themselves, the

amendments also drastically increased the penalties for persons living off the avails of prostitution. This latter provision marked a turning point in the evolution of Canadian laws against prostitution. Despite the fact that the changes increased police pressure on common prostitutes, they also seriously targeted the males involved in prostitution for the first time[9]. This action effectively ended the selective toleration and regulation which had allowed prostitution to be "managed" so that it served the interests of males while discriminating heavily against the female prostitutes. As the social purity movement controlled by evangelical church groups gained greater influence, the official government policy swung more and more to one of prohibition[10].

As prevailing public opinion became more concerned with protecting women from the exploitation of males, the federal government responded by enacting a series of laws ostensibly aimed at protecting the interests of women. However, the actual content of these laws suggests that the chauvinistic bias was still present to a large degree. For example, the Canadian Parliament passed An Act for the Protection of Women and Girls in 1886[11]. This legislation was modeled on similar British legislation, and prohibited males from having illicit relations with women and girls between 12 and 16 years of age. While this law might have been used to protect young prostitutes, it applied only in cases where the female was "of previously chaste character" (Parker, 183:221). This eliminated practicing prostitutes by definition, and because lower class women were frequently considered promiscuous, the legislation was largely ineffective at protecting lower class women from procurement into prostitution. This and other pieces of legislation suggest that the government was more concerned

with appeasing public opinion than it was in seriously protecting prostitutes and other lower class women from the exploitive activities of predatory males.

One further factor was involved in the efforts of the social purity reformers to eliminate prostitution. During the 1880's, the evangelical church groups, and in particular D.A. Watt of the Canadian Presbyterian Church, began to rally the public to the prohibition cause by raising the spectre of "white slavery" (Parker, 1983: 217-218; Backhouse, 1985: 394-395). While the actual amount of white slavery was probably exaggerated by the reformers, the public became aroused by the possibility that Canada was a major centre in the forced recruitment and sale of women into prostitution. This concern approached hysteria when the newspapers began insinuating that many poor families were actually selling their own daughters into prostitution[12]. The extent of the public furor alarmed the government, and a flurry of legislation was enacted (Backhouse, 1985)[13]. The result was that penalties against the male ancillary players in prostitution, i.e. the pimps and procurers, were sharply increased. Thus, for a short period of time, the forces of law enforcement concentrated on this aspect of the prostitution trade.

In addition to being concerned about white slavery and the double standard incorporated in Canada's prostitution laws, Watt was also outraged by the harsh sentences being imposed upon prostitutes. For example, girls as young as 13 were being sentenced to 3 to 5 years incarceration for minor breaches of the Vagrancy Act (Parker, 1983). Considering that this was substantially more than many sentences imposed upon adult males for procuring these same girls, his indignation was understandable. He began a

vigorous letter writing campaign, in which he rallied church groups, public officials and the media against the situation. Combined with the furor over white slavery, public opinion swung behind him, and it soon became apparent that radical changes were needed in Canada's approach to prostitution control. However, before such changes could be undertaken, the Federal government decided to embark on a comprehensive review of all criminal laws in Canada with the goal of amalgamating all criminal law into a single statute.

The major impetus behind the decision to review and amalgamate all of Canada's criminal law into a single all encompassing "criminal code" likely originated in the fact that Britain was engaged in a similar undertaking. While Britain later abandoned this course of action, the government of Canada decided to proceed with it. This project attracted wide attention, and Watt saw it as a golden opportunity to influence the proposed legislation. He not only lobbied politicians, but also began drafting sample bills and sending them to the Minister of Justice. On at least one occasion, a bill submitted by Watt was incorporated into the new legislation (Parker, 1983)[14]. By this time, Watt had been joined by numerous church organizations, women's groups and children's aid societies in his bid to reform Canada's laws dealing with prostitution. In particular, the Society for the Protection of Women and Children began lobbying the federal government to increase the protections afforded to lower class girls and young women from procurement into prostitution. At the time, a graduated system of protection was in place, under which upper class girls were still afforded much greater protection than lower class girls[15]. The Society argued that such a class bias was unacceptable, and

advocated that a uniform age be set to protect all classes of women equally.

Despite the best efforts of Watt and the other groups, the Criminal Code enacted in 1892[16] was largely a disappointment. First, from a purely organizational point of view, it was far removed from the systematic, all encompassing "code of laws" that was originally intended. Instead, it consisted of a poorly organized amalgamation of existing laws, many of which were incorporated into the new legislation without any revisions whatsoever. Further, with respect to prostitution, the new legislation failed to address many of the concerns which had been articulated by Watt and other reform groups. For example, while the new Criminal Code did contain many new provisions designed to protect women and girls from abduction, seduction and procurement[17], it nevertheless retained provisions which allowed offenders to escape such charges by subsequently marrying the victim. Such a provision implicitly labelled women as the property of men, and even allowed the label to be applied retroactively. In addition, the legislation also incorporated most of the previous repressive laws aimed at the prostitutes, while omitting the provisions which were necessary to encourage the rehabilitation of prostitutes. In this respect, the efforts of Watt and his collaborators appeared to have been largely in vain. Thus, despite the optimism which had characterized its development, the 1892 Criminal Code continued to reflect the class and chauvinistic bias which had always been applied to prostitution.

In the years immediately following its proclamation, the new Criminal Code appeared to exert little effect on the enforcement of prostitution laws. This conclusion is borne out by the statistics collected in the years

between 1887 and 1897. Despite the many new provisions dealing with procuring, abduction, and running a common bawdy house, the numbers of charges for such offences did not increase significantly. This situation was likely due to the ambivalence towards prostitution which existed at that time, combined with the fact that many powerful individuals still believed that prostitution was a "necessary evil" which needed to be controlled but could not be eliminated. In particular, the frontier cities in Western Canada continued their practice of regulation and selective toleration which they had always followed (Gray, 1971). This policy continued well into the twentieth century, when a renewed furor over white slavery finally forced the federal government to act[18]. As a result, the Criminal Code was amended in 1913, drastically strengthening the provisions against procurement, abduction and other ancillary offences[19]. While these changes finally appeared to address the concerns of Watt and the other reformers, the discussion of their impact will be deferred until the next section.

In concluding this discussion of prostitution in the Victorian age it is necessary to briefly address the issue of rehabilitation as it relates to prostitution control. The work of the British feminists, Ellice Hopkins and Josephine Butler was detailed in the previous chapter. The strong British influence in Canada would suggest that concern for the prostitutes would become a major factor in Canadian approaches to prostitution control during the late Victorian age. However, while it appeared for a time that Watt and certain women's groups might be able to duplicate the events occurring in England, this simply did not come to pass. There are likely several reasons for this failure, but the most important one involves the

different character of the social purity and feminist movements in Canada compared to their English counterparts[20]. As was noted earlier, the Canadian social purity movement was much closer to mainstream politics than was its English counterpart. While this initially allowed the Canadian reformers to bring about an end to regulation much earlier than occurred in England, it also limited the extent to which the women's groups would sympathize with the plight of the prostitutes. In this regard, the Canadian feminist movement lacked a radical wing comparable to that led by Josephine Butler in England. As a result, the groups were mainly interested in ending the double standard and imposing social purity on the entire population[21]. Thus, it was not surprising that they viewed prostitutes and prostitution as a social evil which had to be eliminated.

The conservative character of the social purity movement in Canada ensured that there was never any large scale attempt to provide houses of refuge or or other such "ameliorative" services for prostitutes. Rehabilitation, when it was practiced at all in Canada, took the form of placing prostitutes in either asylums or special prisons for prostitutes (Backhouse, 1985: 416-419). As a result, the sentences of many prostitutes were artificially lengthened in order to provide time for the prostitutes to be "rehabilitated". This policy did not work, and the prostitutes usually went back to their trade after release, often because they had no other means of supporting themselves. However, this did not deter either the social purists or the authorities. The concept of rehabilitation was eventually extended to include the forcible removal of young girls from their parent's custody if it was felt that they were in a criminogenic environment (Ibid). The fact that this approach constituted a gross abuse

of the legal rights of the individuals concerned did not even appear to be an issue. More importantly, this policy was pursued with the acquiescence and even approval of the various women's groups involved in the social purity movement.

3.3 CANADIAN PROSTITUTION CONTROL BETWEEN 1914 AND 1970

The period between 1914 and 1970 is frequently ignored by social and legal historians studying Canadian approaches to prostitution control. This neglect is unfortunate because the early part of this century is particularly important to any feminist informed analysis of legal issues. During this time-period, women's issues were increasingly at the forefront of the Canadian political scene, and women gained greater influence and greater legal rights than they had ever possessed in the past. Since it is logical to expect that their increased influence would also affect legal approaches to prostitution, this time period is crucial to a feminist analysis. While most legal historians appear to feel that there were few legal events impacting on prostitution during this period, such a contention is not completely accurate. While it is true that there were few substantive changes to the criminal law between 1914 and 1972, an examination of enforcement practices and court decisions reveals several subtle but important patterns. Accordingly, the intent of this section will be to identify and discuss these patterns, and to explore the degree to which prostitution was a feminist issue during this period. In order to facilitate a detailed analysis of this period, the discussion will be subdivided into separate considerations of the following issues and time periods: a) prostitution control during World War I; b) the eugenics debate

during the 1920's; c) the depression and World War II; and d) the post war period between 1945 and 1970.

3.3.1 Prostitution Control During World War I

The logical place to commence this analysis is by examining the effects of the 1913 amendments to the Criminal Code. Such an analysis quickly reveals that prosecutions for the ancillary offences associated with prostitution increased drastically between 1914 and 1918 (McLaren, 1986: 150-53). While this would appear to indicate that men were being prosecuted under the new legislation, and that the women's lobby groups had finally exerted a significant effect on prostitution control, there are several factors which mitigate against such a conclusion. First, while charges for the traditionally male dominated offences of procuring, abduction and seduction did increase substantially during this period, they were vastly outnumbered by charges for keeping, frequenting and being an inmate of a common bawdy house. The latter offences can apply equally to both men and women, and evidence indicates that women were the primary targets in the crackdown on common bawdy houses in Toronto and Vancouver (Ibid). Thus, it would appear that the increase in charges against males was simply part of a larger campaign against prostitution in general.

A second point which must be kept in mind regarding the effects of the 1913 amendments is the fact that the First World War also started in 1914. As was noted in the previous chapter, the exigencies created by the near global conflict exerted a profound effect on prostitution control in Europe and the United States. Since it is probable that it also exerted an effect in Canada, care must be taken in interpreting any figures regarding this

period. While some writers have suggested that there was a genuine "reform" movement underway aimed at curtailing all prostitution related activities (including male ones)[22], it is likely that the desire to protect male servicemen from the dangers of commercial sex also accounted for the increased emphasis on all prostitution related activities. In any event, charges against women continued to outnumber those against men, and provisions against keeping a common bawdy house, the one ancillary offence committed primarily by women, were significantly strengthened in 1915. These factors suggest that the pre-war success of the social purity reformers in forcing tougher provisions against male dominated activities was mitigated by the effects of the war and the perceived need to protect male servicemen.

A final point regarding the enforcement of the 1913 amendments involves the type of males who were targeted by the criminal justice system. McLaren (1986: 151-152) notes that the males charged with ancillary offences were almost always lower class and frequently involved in an ongoing relationship with the female prostitutes. While McLaren argues that this suggests that white slavery, in the sense of a well organized conspiracy to abduct women and girls into prostitution, was never a real threat, it is possible to offer an alternate explanation. Rather than accepting this as evidence that high-level procurers did not exist (as McLaren appears to do), it is possible to hypothesize that they were simply wealthy and powerful enough to avoid prosecution. Both possibilities are equally tenable given the limited evidence available regarding this issue. However, the latter hypothesis is particularly compatible with the general atmosphere of corruption which several writers have associated with the enforcement of laws against prostitution during this period (Gray, 1971).

The next major socio-legal factor to impact on prostitution control during the First World War involved the resurgence of public concern regarding the spread of venereal disease. In some respects, the development of this issue in Canada paralleled the American experience discussed in the previous section. For example, Canadian public opinion regarding the purported link between prostitution and venereal disease was strongly influenced by media reports, lobby group tracts and "scientific" literature emanating from the United States (Bell, 1980; Cassel, 1987: 101-120). In addition, one of the major factors behind the "VD scare" in both countries was the fear that prostitutes would spread the disease to soldiers serving in the armed forces during the First World War. This latter concern was hardly new in the Canadian context, considering that Canada had enacted contagious diseases legislation in 1865 aimed at protecting military personnel from the ravages of venereal disease. However, several important factors distinguish the Canadian reaction in the early 1900's from the administration of the Contagious Diseases Acts in the previous century.

One of the major differences between the two approaches was the intensity with which various interest groups and the Canadian government attacked prostitution in the twentieth century. While the 1865 Contagious Diseases Acts had contained many oppressive provisions, they were not enforced for the most part, and in any case were allowed to lapse after the first five years. This was not the case in the 1900's. While the belief that prostitution and other forms of immoral behavior were instrumental in the spread of syphilis and gonorrhea was an old one, the exigencies created by the First World War provided authorities with both the impetus and the justification for taking action which they might otherwise have been unable

to do. Under the guise of patriotic sentiments, the Canadian government passed an Order in Council in 1917, amending the Defense of Canada Act making it illegal for any women infected with venereal disease to have sexual intercourse with a member of the armed forces, or to attempt to solicit a serviceman for sexual purposes. This law also empowered police and military authorities to compel women suspected of being infected with venereal disease to undergo medical tests. This could be done on the basis of mere accusation, and the women were detained until the tests were completed (Buckley & McGinnis, 1982: 340). In practice, the law was applied mainly to prostitutes and other lower class women who frequented bars near military establishments. The only "crime" that many of these women were guilty of was the desire to meet servicemen for legitimate social purposes[23]. In any case, the women were probably equally as likely to catch venereal disease as the servicemen were in any sexual encounters which took place.

In fairness to the authorities, it must be noted that venereal disease was rampant in the Canadian military, and accounted for a significant proportion of all illnesses treated by the Canadian Army Medical Corps (CAMC) (Id: 338). Despite the extent of the problem, however, there are several points which cast doubt on the legitimacy and sincerity of the Canadian government in implementing such draconian and repressive measures. First, the law applied only to women, and no consideration was given to the fact that male servicemen also played a significant role in the spread of venereal disease. Further, most of the cases of venereal disease occurred in England and France, where the Canadian law was applicable only on Canadian bases. Finally, there is ample evidence to suggest that the law

was ineffective at reducing VD rates near military bases in Canada, even when it was rigidly enforced (Ibid). Thus, the only major effect of the law was to reduce the opportunities for social interaction available to military personnel, without protecting them from disease[24].

One of the most surprising aspects of the entire issue was the apparent acquiescence of Canadian feminist groups regarding this concerted attack on the basic civil rights of certain classes of women. Indeed, the National Council of Women of Canada even went so far as to state that they would support any measures which the government deemed necessary to protect Canada's soldiers from the actions of prostitutes and other immoral women (Women's Century, 1918: 6). This attitude was in stark contrast to Britain, where the British government was prodded into enacting similar legislation in response to pressure from Canada and other Commonwealth authorities[25]. The British law was only enforced near commonwealth bases in England, as Britain had opted to selectively tolerate prostitution near their own bases. Although British feminists had kept quiet regarding the selective toleration, the new law applied to all women, and not just prostitutes. This was apparently too much for the British feminists and they loudly denounced the new law for concentrating on women as the only source of VD infection (Buckley & McGinnis, 1982). However, despite the reluctance of their British counterparts, Canadian authorities were undeterred and pressed ahead with the campaign to eliminate prostitutes and other "loose" women from the environs of military bases.

3.3.2 The Development of the Eugenics Movement

While the Canadian government continued to profess concern for the welfare of Canadian military personnel in their campaign against prostitution, there were other factors which suggest that halting the spread of venereal disease was not the only issue involved in the campaign. As the events unfolded, the scope of the campaign against VD broadened to take on a character reminiscent of the "social purity" movement of earlier decades. The next major step in this scenario saw the introduction of "mental feebleness" into the debate over prostitution and venereal disease. During this time period, many scientific authorities began to argue that mental deficiencies were related to both venereal disease and prostitution. For example, Dr C.K. Clarke, Dean of Medicine at the University of Toronto, argued that most venereal disease was caused by mentally deficient women drifting into prostitution. He further argued that over 90% of all prostitutes treated for venereal disease in Toronto were "feebleminded" (Clarke, 1920: 228). Other scientists in Britain and the United States were making similar but more general claims regarding the relationship between prostitution, mental retardation and venereal disease[26]. These arguments developed into a broadly based social and mental hygiene movement which quickly gathered public support.

While the Canadian government was initially reluctant to become involved in the mental retardation aspect of the debate, the increased public support for the movement eventually forced it to take official action. The first step taken by the Federal government was typical for a government trying to cope with a controversial issue; it decided to study the issue by establishing a Commission of Inquiry into the relationship between mental

retardation, prostitution and venereal disease. In this regard, it was able to follow the lead taken by the British government. In 1916, a British Royal Commission had reported that venereal disease in Britain was rampant among both the military and civilian populations. It further concluded that infected mothers were much more likely to give birth to stillborn or mentally retarded children (Buckley & McGinnis, 1982: 342). The Canadian government was influenced by these findings and established the Conservation Commission which reported similar findings in 1917. The Commission recommended that the Federal government establish a national program of free diagnosis and treatment for all people infected with venereal disease.

At approximately the same time, the Ontario government established a Royal Commission to study the link between venereal disease and "feeblemindedness"[27]. In 1918, this commission reported that it had found strong evidence for such a link. It argued that mothers infected with VD were much more likely to give birth to mentally retarded children, who in turn were more likely to become infected themselves once reaching puberty. In addition, retarded females were also more likely to enter prostitution, if only because they were unable to find respectable jobs. Thus, the Commission argued that venereal disease, mental retardation and prostitution were related in an ever increasing circle of causation, and that intervention was necessary at some point to break the cycle.

Understandably, these reports caused considerable anxiety among the governments and interest groups involved in any of the three issues. This anxiety was heightened by the fact that the reports were released just as the First World War was drawing to a close. It was obvious that

authorities in the war theater had been largely unsuccessful in preventing the spread of VD among the troops stationed overseas, and that many were infected with the disease. The fact that they would soon be returning to Canada increased the general alarm regarding what many people regarded as a potential epidemic of venereal disease. As a result, the Federal and provincial governments began to develop plans to combat the disease by treating those already infected and preventing it from spreading further. There was a certain degree of urgency involved, as the Order in Council amending the wartime Defence of Canada Act would lapse with the end of the hostilities. In a bid to fill the gap, the Federal government established the Department of National Health in 1919, and pressured the provinces to enact public health legislation providing stiff penalties for spreading any form of venereal disease. In addition, the Criminal Code of Canada was amended to make it an offence to knowingly or negligently communicate venereal disease to another person[28].

In discussing the development of the Federal Department of Health, there are several issues which must be outlined briefly. First, because public health was within the jurisdiction of the provinces, it was necessary to articulate an area of jurisdiction for the new department which was legitimately within the federal sphere of responsibility. One area which met this requirement was immigration. Since there had been a long standing concern that many new immigrants were already infected with VD when admitted into Canada, the initial mandate of the new department was ostensibly directed at assessing new immigrants for infectious diseases[29]. This mandate was expanded to include feeblemindedness following the 1920 report of the Ontario Royal Commission on the Care and

Control of the Feebleminded which expanded on the findings of the previous royal commissions (Hodgins, 1920).

Thus, for the first few years of its existance, the Federal Department of Health was officially limited to assessing potential immigrants for both venereal disease and mental retardation. However, during this period many of the provinces enacted public health legislation aimed at controlling the spread of venereal disease. As a result, the federal department began to assume a role as coordinator of the various provincial enforcement efforts. The one positive benefit which resulted from this entire series of events was the decision to provide free VD diagnostic and treatment services across Canada. In order to gain the cooperation of the provinces in passing the necessary public health legislation, the federal government agreed to cost share these programs. Thus, in addition to its other roles, the Department of Health also administered the monies disbursed to the provinces by the federal government to help fund provincial efforts to diagnose and treat venereal disease.

Once again, prostitutes were made the focus of the various lobbying, treatment and enforcement efforts. While various volunteer groups and organizations became involved in attempting to educate the public about the perils of VD, their efforts were primarily directed at women; and in particular, singled out prostitutes and other "loose" women for special attention. For example, the National Council for Combating Venereal Disease provided information pamphlets for both men and women. However, these pamphlets were clearly biased in that they identified the prevention of venereal disease as primarily a women's responsibility (Buckley & McGinnis, 1982: 349-52). They asserted that married women might catch the disease

from their husbands, who were in turn the "innocent" victims of prostitutes and other women of low moral character. In addition, the Council also asserted that any single woman infected with VD was almost certainly a prostitute or of similar low moral character. As far as the National Council for Combating Venereal Disease was concerned, the place to attack the disease was at its lowest level, namely prostitutes and mentally retarded women. Little attention was paid to the male role, whether it be passing VD on to their wives or spreading it among the prostitutes. Such attitudes were common among the organizations involved in the education campaigns, and undoubtedly weakened the effectiveness of their efforts. This was compounded by the tendency of all concerned to treat venereal disease as a social problem instead of a health one. As a result, a moral stigma was attached to the disease which made some people reluctant to seek treatment. Thus, they continued to spread the disease, and this hampered any efforts to control or eradicate it.

There are several distinct issues which need to be discussed with respect to the content of the provincial public health laws and the enforcement practices which became associated with them. First, it must be noted that most of the provincial public health laws were extremely repressive. The Alberta and Ontario legislation can be used as an examples of the types of laws which were enacted in most provinces. Not only did they provide for the compulsory testing of persons reasonably suspected of having VD, they also extended the provision to all people charged with any criminal offence, irrespective of whether reasonable grounds existed or not. This meant that all women charged with the Criminal Code offense of vagrancy could be routinely tested for VD. If the test was positive, they

could be convicted on a VD related offence even if they were acquitted on the vagrancy charge. In such cases, they could even be incarcerated until such time as they were certified free of the disease (McLaren & Lowman, 1988).

The state of the law depicted above leads to a second issue, namely the high degree of collaboration which often existed between the police and the public health officials. There is some evidence to suggest that the police and public health officials cooperated closely, and that it was common practice for the police to arrest suspected prostitutes on trumped up vagrancy charges so that the public health officials could test them for VD. In return, the public health officers would use their sweeping powers under the public health legislation to enter any premises, including dwelling houses, to search for and detain persons who might be infected with VD. Since search warrants were not required under the legislation, the police could raid suspected bawdy houses almost at will, by the simple expedient of having a public health official enter with them on the pretext of searching for suspected VD carriers. There is little doubt that these practices constituted a misuse of the powers of both the police and the public health officers, and that the governments which had enacted the laws had not intended for them to be used in this fashion.

A third issue centres around the sexist bias evident in the way in which the laws were enforced. An analysis of the charges laid in Alberta and Ontario during this period indicates that law enforcement agencies were quick to use a combination of Federal and provincial laws in their bid to eradicate venereal disease and control prostitution. In many instances, the provincial laws were simply used as a mechanism for harassing prostitutes,

irrespective of whether they had VD. More significantly, the differential manner in which the legislation was applied to men and women indicates that the familiar chauvinistic patterns were alive and well. While the prevailing practice was to force all women charged with vagrancy to undergo VD testing, this procedure was rarely applied to the male customers (Buckley & McGinnis, 1982). In addition, when women were charged with a VD related offence, the police would be more likely to use the more serious Criminal Code provisions. On the other hand, in the rare instances where males were charged, it was usually under the less serious provincial public health legislation. Further, the charges against men were usually dropped if they agreed to enter a treatment program. Considering that women were frequently charged with both vagrancy and VD related charges, the sexist disparity in the enforcement of the laws relating to prostitution and VD approached monumental proportions.

While the practices depicted above were being carried out, two important factors were developing. First, public concern over the relationship between venereal disease, mental retardation and prostitution increased steadily during the 1920's. Further, while concern about the physical, mental and moral "purity" of new immigrants had been a recurring issue since confederation, it also intensified during the later part of the twenties. Under the impetus of these two factors, the different aspects of the campaign to eliminate venereal disease began to solidify into a full fledged "eugenics" movement based on the belief that moral and mental characteristics were largely hereditary. This movement incorporated many women's groups, most fundamentalist churches and much of the emerging social work profession. While professing concern for the moral, physical

and mental well being of both men and women, these groups translated this concern into a concerted campaign against people they labelled as "defectives". This campaign went well beyond the previously discussed concerns regarding the relationship between venereal disease, mental retardation and prostitution, and ultimately rested on racist foundations.

Essentially, the eugenists argued that venereal disease and prostitution were really symptoms of a much larger problem involving racial deterioration in Canada. In this respect, they argued that there had been a steady rise in venereal disease and prostitution since the turn of the century because of the deterioration which had occurred in the "gene pool" during that time. This deterioration was attributed to two main factors. First, it was alleged that the influx of immigrants had consisted mostly of lower class people who were of inferior mental, physical and moral standards. In addition, it was also asserted that many immigrants were either already infected with VD upon entry, or else were much more likely to become infected afterwards. In either case, this made them more likely to give birth to mentally retarded children. Since the birth rate for foreigners was much higher than average, it was feared that this situation was leading to an overall lowering of Canadian mental, moral and physical standards. For this reason, the eugenists concluded that drastic steps were necessary to protect Canada from this menace.

According to many eugenic groups, the solution was to conduct much more stringent examinations of potential immigrants, combined with a concerted attack on venereal disease within Canada. Some groups even went so far as to advocate the confinement and forced sterilization of mentally retarded people (Canadian Child Welfare News, 1927). Inasmuch as the connection

between prostitution, venereal disease and mental retardation had already been "identified", prostitutes inevitably became the primary targets of this new social movement. In this regard, the National Committee for Mental Retardation advocated that mentally retarded prostitutes be permanently incarcerated in special homes where they could engage in productive work[30]. While it must be conceded that not all groups took such extreme positions, the eugenists' arguments exerted a profound influence on public opinion and official policy towards prostitution during the latter part of the 1920's. Because of the previously noted enforcement practices with respect to public health and criminal legislation, the campaign against prostitution had begun to take on an alarmingly racist character by the end of the 1920's. The seriousness of the situation was accentuated by the fact that there was little evidence of a direct link between immigration and prostitution.

3.3.3 Prostitution Control During the Great Depression

The dawning of the 1930's also brought the beginnings of the great depression, and public attention shifted to other more pressing issues. As governments attempted to deal with the social and economic consequences of the depression, they began to slash funding for such "luxury" programs as VD control. Many of the various lobby groups disappeared as a consequence of the reduced funding, and public concern regarding the issue waned[31]. While new immigrants were periodically accused of causing unemployment and other social ills, the eugenics movement appeared to disappear for the most part. This left the control of VD and prostitution in the hands of the "professional" criminal justice system comprised of the police, lawyers and

judges. In addition, the connection between VD and prostitution was given less emphasis than in the past. It is within this context that we must examine prostitution control after 1930.

Any attempt to analyze legal controls on prostitution during the 1930's is hampered by the dearth of hard evidence regarding enforcement practices and/or levels of prostitution during this period. However, it is possible to draw some tentative conclusions by examining the court decisions handed down with respect to prostitution. In this regard, a comparison of the court decisions during the 1930's with those of earlier periods suggests that the courts had finally begun to pay more attention to the males involved in prostitution. For example, during the period between 1910 and 1930 most of the reported cases involved women charged with the offence of vagrancy[32]. During this period, the courts applied the widest possible interpretation to the Criminal Code provisions regarding vagrancy, and in some cases appeared to equate it with promiscuity[33]. On the other hand, the courts frequently appeared reluctant to convict men on charges of procuring and/or frequenting bawdy houses[34]. However, by the 1930's, the trend had swung around and most of the reported cases involved males charged with ancillary offences. Assuming that this change in reported cases represents a corresponding change in the charges proceeding through the courts, it would appear that more men were being charged than in the past[35].

The changes in the treatment accorded to men and women can best be illustrated by examining a series of cases decided between 1930 and 1938. At the beginning of the 1930's, the courts were initially reluctant to convict males for ancillary offences related to prostitution despite the

fact that more males were appearing before them. In several reported cases, the courts interpreted the Criminal Code provisions dealing with living on the avails of prostitution in an extremely narrow fashion which avoided convicting males. In at least two cases, males were able to obtain acquitals on technicalities relating to insufficient evidence. For example, in R. v. Richard ((1935), 63 C.C.C. 366), the New Brunswick Court of Appeal held that a male could not be found guilty of an ancillary offence unless it was proven that his action had been for his own personal gain. This attitude was also evident in R. v. Zelky ((1938), 63 C.C.C. 143), where the Ontario Court of Appeal ruled that a male could not be convicted of "living on the avails" simply because he lived with a prostitute and had no visible means of support[36]. During the same time period, however, the Ontario County Court convicted a female of vagrancy because she lived with an unrelated male and had no visible means of support. In R. v. Davis ((1938), 3 O.W.N. 98), the court appeared perfectly willing to make the further assumption that she was providing sexual services in return for financial considerations (her room and board).

By the end of the 1930's, the courts appeared to reverse this position and began to reject many of the "technical" defences being offered by many males with respect to charges of living on the avails of prostitution. In R. v. James ((1938), 69 C.C.C. 320), the Ontario Court of Appeal dismissed the defendant's appeal against a conviction for living on the avails of prostitution, arguing that the fact that he had been charged under the wrong subsection was insufficient grounds for an acquital. This ruling appeared to set the tone for subsequent decisions, as the courts began to apply much broader interpretations to many ancillary offences. For example,

in R. v. Novasad ((1939), 72 C.C.C. 21), the Saskatchewan Court of Appeal ruled that a male defendant could be convicted of living off the earnings of prostitution even though he did not receive a part of her actual earnings. In this case, the keeper of a cafe/rooming house simply charged male customers an entry fee but did not receive any money from the prostitutes themselves. However, it appeared that nearly all of the male customers were clients of the prostitutes, and the court ruled that since the landlord habitually derived a large part of his income in this way, he was actually in the business of catering to prostitutes and their customers[37]. While this decision appears in stark contrast to the previous decisions discussed in this subsection, it occurred just as the Second World War was beginning and the real effect of this change in attitude can best assessed by examining the effect which this war exerted on the control of prostitution.

3.3.4 Prostitution Control Between 1939 and 1970

The year 1939 marked both the end of the Great Depression and the beginning of the Second World War. These twin events are particularly important to this analysis for several reasons. Because the past analysis has demonstrated that socio-legal attitudes towards prostitution have frequently been correlated with economic conditions, it can be assumed that the end of the depression would also affect the enforcement of prostitution laws. Similarly, the fact that the First World War exerted such a profound effect on prostitution control suggests that practices during the Second World War need to be examined carefully. In this section, the period between 1939 and 1970 will be treated as a contiguous time period for three

reasons. First, the start of the Second World War is widely viewed as the beginning of the late contemporary period, and the beginning of liberalized attitudes towards sexuality. Second, this period also marked a turning point in the socio-economic position of women, inasmuch as women did not leave the work place after the Second World War to the same extent that they did after the First World War. Finally, this period was also characterized by an increased emphasis on civil rights which eventually led to the 1972 repeal of the vagrancy provisions dealing with prostitution.

Perhaps the best way of beginning this discussion is to continue the analysis of court decisions begun in the previous subsection. In this regard, there are at least three cases which indicate that a profound shift in judicial attitudes had occurred. The Alberta Supreme Court decision in R. v. Leroy (1940) is a case in point. This case can be cited as the first instance in which a Canadian court ruled that a female prostitute (a "known nightwalker" in the words of the court) could not be convicted of vagrancy simply because she failed to give an satisfactory account of herself. While the court's reasons for this decision are somewhat confusing, it appears that it was made on two grounds. First the court held that there was no evidence that the defendant had been asked to give a good account of herself. In addition, the information giving the details of the charge omitted the word "vagrancy", and thus was technically defective at law. The fact that the court was willing to overturn a conviction on what amounted to technical mistakes indicates that a fairly significant change was occurring in judicial attitudes toward prostitution.

The significance of the Leroy case is reinforced by two additional decisions which were handed down during the early part of the war. In R. v.

Johnson ((1941), 74 C.C.C. 324), the Ontario Court of Appeal refused to sustain an appeal against a conviction for living off the avails of prostitution. In this instance, the court appeared to apply a rebutable "presumption of guilt" similar to that applied to the charge of vagrancy. It was held that since the male accused had been habitually in the company of prostitutes for at least three weeks, the onus shifted onto him to establish that he was not living on the avails of prostitution. In the related case of R. v. Cavanaugh ((1942), 77 C.C.C. 79), the BC Court of Appeal held that a male can be convicted of living on the avails of prostitution even if the monies had been given to him for a purpose unrelated to his living expenses. In this case, a prostitute had given her boyfriend some of her prostitution earnings for bail money, which he later used for food and lodgings. The court ruled that this was sufficient to constitute "living on the avails" of prostitution as outlined in section 216(1) of the Criminal Code.

The three cases discussed above represent the only three cases reported in Canadian Criminal Cases during the 1939 - 1945 period, and only one of them was for vagrancy. In contrast, there were seven reported cases between 1914 and 1918, of which six were for vagrancy. It should be noted that there were undoubtedly many unreported cases during both periods, and it is almost impossible to determine the ratio of reported to unreported cases. However, there is no reason to suggest that the ratios of reported to unreported cases differed drastically during the two periods. Further, it is a fundamental principle of legal research that cases are reported on the basis of their perceived legal and social significance (Covington et al, 1969). These two points appear to indicate that prostitution was not

considered as significant an issue during the Second World War as it had been during the first. This tentative conclusion is supported by several additional factors. First, there is no evidence that Parliament ever amended the War Measures Act to address the VD issue, as was done in 1917. Further, there are no reported cases dealing with prostitution as a co-factor in cases under either the War Measures Act or the provincial contagious diseases legislation during the war years[38]. Even more significantly, there is no mention of prostitution or VD among military personnel in Hansard for the period 1938-1946, thus suggesting that they were not even considered controversial topics by the government of the day.

While the apparent lack of official interest in prostitution control during the Second World War is somewhat perplexing, it can likely be explained by several factors. First, the fact that penicillin was discovered during the early part of the war removed the basis for much of the panic which had occurred during the First World War. Inasmuch as the drug transformed most types of venereal disease from serious afflictions into minor, easily treated diseases, the role of prostitution in spreading VD became much less important[39]. Second, because Canada was much better prepared during the Second World War than during the First one, Canadian soldiers quickly moved overseas once called up, thus limiting their possible contact with prostitutes in Canada. Finally, Canadian society was much more settled during the Second World War and a much higher percentage of the men entering military service were married compared to the First World War. This would also have reduced the demand for prostitutes in Canada.

Indeed, the latter two factors mentioned above may have been instrumental in reducing the total numbers of prostitutes. In this respect, at least one study has indicated that prostitution was much less frequent during the opening years of the Second World War than it was during the comparable period in the First World War (Langdon, 1988: 293). Obviously, a simple supply and demand relationship would lead to a drop in the numbers of prostitutes based on the reduced demand. However, there are two additional factors which are much more important to a feminist analysis of this period. First, because military personnel were more likely to be married during the Second World War, the government, through the Department of National Defense, was legally obligated to support their wives and families while they were overseas in the war theatre (Hopkins, 1919 & Stacey, 1946)[40]. Even more significantly, Canada was much more industrialized in 1939 than it had been in 1914. As a result, Canadian industries were awarded many defense related contracts, a factor which provided employment for the women left in Canada (Langdon, 1988). This factor was likely a major one, as many women were forced into prostitution during the First World War because the authorities were unable to take care of them (Ibid).

The end of the Second World War resulted in almost a million servicemen being returned to Canada within the time span of two years. This migration led to a great deal of social upheaval, much of which was similar to the end of the First World War. However, there were two major differences which affected the practice of prostitution in the postwar period. The first of these differences involved the "war brides" phenomena. Canadian soldiers who went to war as single men returned home married to a much greater

extent than had occurred after the First World War[41]. While this factor almost certainly reduced the demand for prostitution in the aftermath of the war, an even more important factor centred on the changes which had occurred in male/female relationships during the period between between the wars. Because of the gains of the feminist movement, including the sufferage movement, women were increasingly expected to support themselves and lead independent lifestyles (Advisory Council on Reconstruction, 1943). This led to a serious effort by the Federal government to plan ahead so that women were able to retain a larger measure of self sufficiency after the war, which reduced their dependency on males.

While the above factors provide the broad socio-economic context for analyzing prostitution control during the post-war period, they were complicated by two further developments. The most important of these developments involved the changes to the legal culture which were occuring with regard to individual freedoms. In this respect, the period following the Second World War, and particularly the late fifties and sixties, became noted for an increased emphasis on civil rights. Thus, it could be expected that the courts would become even more demanding that high standards of proof be tendered. In addition, the aftermath of the war precipitated a radical shift in social attitudes which favored a more liberal stance towards personal life styles. This affected prostitution in two ways. First, the general public may have become more accepting of prostitution as a "legitimate" activity. Second, the double standard which enforced chastity on females but not on males was beginning to crumble, and resulted in greater sexual freedom for both sexes. This development probably also contributed to a decline in the demand for the services of prostitutes. All

in all, these points would predict that the aftermath of the war would be characterized by a reduction in the total amount of prostitution, combined with greater social tolerance and less police action.

While the first two possibilities predicted above may well have came to pass, there is little evidence to suggest that the police and/or courts immediately became more lenient towards prostitutes than in the past. While it is difficult to uncover solid evidence regarding actual police practices, an examination of the court decisions handed down during the late forties and early fifties shows that the courts tended to vacillate between interpreting the law broadly, so as to crack down on prostitution, and interpreting it narrowly by insisting that the police adhere to the strict letter of the law[42]. Several court decisions can be used to illustrate this argument. In R v. Thomas ((1949), 96 C.C.C. 129), the British Columbia County Court ruled that a woman could be convicted of vagrancy even though she had not been "found wandering" in a public place. In this case, Thomas was seen entering and leaving a hotel room, and the male occupant admitted that he had called her for commercial sex. In reaching his decision, the Judge argued that while the woman had not been a "nightwalker" as defined in the Criminal Code, she obviously was a "common prostitute". This was the first time that a court had ruled that the two words had different meanings, and appears to indicate that the court was willing to stretch a point in order to render a conviction. In fact, the Judge went on to note that the proliferation of the telephone meant that prostitutes did not have to "wander in public" to ply their trade, and that it was necessary to interpret the law creatively to enable the police to cope with the new "technology".

The logic used in Thomas was radical for its time, and thus did not immediately meet the approval of other courts. For example, in R. v. Dubois ((1953), 106 C.C.C. 150), a Toronto magistrate explicitly rejected the BC court's argument, stating that the vagrancy provisions of the Criminal Code were clearly aimed at controling the nuisance aspect of street prostitution, and were never intended to apply to a prostitute who discreetly visited her client in his private hotel room during the night hours, when few people would be around in any case. In dealing with the specific case before him, the magistrate went even further and argued that when a prostitute is observed in a public place, the police must request that she "give a good account of herself" while she is still in a public place. In this instance, Dubois was observed approaching various men on a public street until she went with one of them into a hotel. The police followed them and asked her to explain what she was doing. She refused and was charged with vagrancy. The court ruled that she was not required to explain herself once she entered the hotel, since it was not a public place. Accordingly, the charges were dismissed[43].

While the decision in Dubois might appear to indicate that a greater emphasis on individual freedom was becoming more common with respect to prostitution, other cases can be cited which mitigate against this conclusion. One such case is the Quebec Superior Court decision in X v. The Queen (1954). The facts of this case involve a juvenile who was observed clearly soliciting men in a restaurant over a period of several hours. Eventually, the police followed her when she left with a customer and asked her to give a "good account of herself". She readily admitted that she was a prostitute but denied that she had been soliciting in a public place. In

this case, the Quebec court rejected the logic in Dubois and instead argued that a person could be considered wandering about any time they left their residence without an express legal purpose in mind. This definition is startling in that it appears to imply that individuals (or at least female prostitutes) are guilty of an offence whenever they leave home for a casual stroll. This decision is also noteworthy insofar as there is no evidence that the male customer was ever charged regarding his sexual liaison with an underage female. If such is the case, it would appear that the criminal justice system was more interested in prosecuting females for vagrancy than in protecting juvenile girls from sexual exploitation by adult males.

Several other cases can be referred to in the period between 1950 and 1970 which further illustrate the frequently ambivalent attitude exhibited by Canadian courts towards prostitution. While it would be needlessly repetitive to discuss each case in detail, it is important to note that by the end of the sixties the ambivalency had been resolved, and the courts had generally adopted the view that a woman could be convicted of vagrancy as long as she was observed by the police soliciting in a public place, and that it was not necessary to actually apprehend her in public[44]. In assessing the overall series of cases dealing with this issue, it appears that much of the problem stemmed from the inherent weakness of the Dubois decision, combined with the tendency for later courts to become preoccupied with the issue of where the prostitute was asked to account for herself. In this respect, even the most ardent supporter of more liberal prostitution laws must concede that the logic used in Dubois essentially made a mockery of the vagrancy laws by enabling prostitutes soliciting in public to evade prosecution simply by stepping into private places as soon

as they were approached by the police. In such circumstances, it is not surprising that the courts eventually overturned it[45].

Thus, as the sixties decade drew to a close, and it appeared that Canadian prostitution control had not evolved very far from the pre-confederation provisions outlined at the beginning of this chapter. In this respect, it might appear that the sexual revolution of the sixties had not influenced judicial attitudes to any great degree. What is most surprising about the whole process is the fact that the vagrancy laws were never explicitly challenged on civil rights grounds relating to the common law principle of "equality before the law" and the provisions of the Canadian Bill of Rights (after 1960). While several such cases were attempted in the early seventies, the reform process leading to the repeal of the vagrancy provisions was already well underway. Accordingly, these cases will be discussed in the next chapter when this process is analyzed. At this point, it suffices to note that the major impetus for the reform came from the male dominated legal profession, and that with a few notable exceptions, most recognized feminist groups were conspicuous by their absence.

3.4 SUMMARY AND CONCLUSIONS

In this chapter, we have traced the evolution of Canadian prostitution control from 1800 through to the end of the 1960's. While the major theoretical analysis of prostitution control in western societies will be carried out in Chapter 7, it is appropriate to offer a brief critical summary of the Canadian situation as distinct from the more general analysis carried out in the previous chapter. In this respect, it must be

noted that because British laws also applied to the Canadian colonies during the pre-confederation period, the Canadian approach to prostitution control exhibited the same class and chauvinistic biases that were discussed in the previous chapter. It should be further noted that while Canada was granted the sovereignty to enact its own criminal laws in 1867, this did little to change the situation, as most of Canadian society remained unconcerned about the oppressive and exploitive manner in which prostitution was handled.

The situation detailed above continued unabated until the 1880's, when the social purity movement began to lobby for changes to Canadian laws dealing with prostitution. While this movement was much closer to mainstream politics in Canada than it was in Britain, it was also much more conservative. This led to an approach in which the social purity "reformers" attempted to eliminate prostitution entirely, and were largely unconcerned with the welfare of the prostitutes themselves. While later reformers, such as D. A. Watt, were more concerned with ameliorating the oppressive conditions associated with the practice of prostitution, they proved largely ineffectual. Although the Criminal Code passed in 1892 did contain more provisions for prosecuting male pimps and procurers, they were rarely used until after the start of the First World War, when more attention finally began to be paid to curtailing the activities of males who played ancillary roles in prostitution.

The attention placed on males was short lived, and the discovery of an epidemic of venereal disease among military personnel quickly refocused attention back onto the female prostitutes as the major culprits. By the end of the war, this attention had broadened to include concern over the

possibility that the immigrants entering Canada after 1918 were also a potential source of infection. In response to these concerns, a new Federal Department of Health was created to address this area. The further issue of mental retardation was added to the debate in the 1920's, giving rise to a racist motivated eugenics movement which advocated the exclusion of new immigrants and the forced sterilization of mentally retarded females as a means of protecting the Canadian gene pool. These events were paralleled by the implementation of a series of extremely repressive federal and provincial laws ostensibly dealing with venereal disease, but which were mainly used against prostitutes and lower class women.

The hysteria and paranoia regarding prostitutes and VD largely disappeared during the 1930's, as concern regarding the effects of the depression took precedence over most other issues. In fact, while there is little evidence to indicate whether levels of prostitution fell during this time, the courts exhibited a trend towards clamping down on males "living on the avails" of prostitution, while showing a more lenient attitude towards female prostitutes. This attitude persisted throughout the Second World War, but appeared to regress during the fifties and sixties. During these decades, the courts began to clamp down on females charged with vagrancy, and this trend continued until the Federal government decided to replace the vagrancy provisions in the Criminal Code at the end of the sixties.

In concluding this summary of the trends and events which guided and influenced the manner in which Canada attempted to control prostitution during its first hundred years of existence, there are several important issues which can be identified to set the context for the analysis to be

carried out in the next chapter. First, the sixties decade has often been credited with ending sexual repression and sowing the seeds of a liberal mentality based on respect for individual rights and the tolerance of diversity. The fact that socio-legal attitudes towards prostitution appeared immune to these events suggests that powerful countervailing social forces were still active with respect to the basic issues involved in prostitution. Second, during all of the events discussed in this chapter, feminist groups were either uninvolved or else took positions that supported the repression of female prostitutes. Finally, it is very important to note that prostitution, as an activity, has never been illegal in Canada, and that such a course of action was never even suggested by any of the participants involved in the discussion. In speculating on the possible reasons for this oversight, one is forced to wonder if the fact that such a solution would render male customers and female prostitutes equally guilty of the same offence might have had anything to do with it.

NOTES

[1] It should be noted that prior to confederation, the British laws regarding prostitution also applied to all of British North America. In addition, most of the colonies enacted their own laws on the subject. Parker (1983: 212-218) provides a detailed discussion of the many different approaches. The intent of this discussion will be to identify the general features of the law prior to confederation, and the differences between the colonies will only mentioned when they are important to the overall discussion.

[2] The issue of marriage appeared to provide the only case in which lower class women were accorded protection similar to that provided to the middle and upper classes. However, even in this case the latter were afforded greater protection insofar as it was an offence to abduct middle and upper class women even for the purposes of marriage (McLaren, 1986: 128).

[3] 29 Victoria (1865) c.8 (Province of Canada)

[4] Because the primary impact of the contagious diseases legislation occurred after confederation, further discussion of the act will be deferred until the next subsection.

[5] However, Parker (1983) notes that other types of legislation (i.e non-criminal) continued to be applied to prostitution. Since these laws were provincial, the province retained a strong measure of influence regarding how prostitutes were dealt with by the authorities in each province.

[6] For example, female prostitutes were subject to mandatory disease testing and could be incarcerated in special hospitals if they were infected. While, Backhouse (1985) notes that no such hospitals were ever build, the testing provision was widely used as a harassment tool.

[7] 1869, S.C. 52 & 53 Vict., c. 20. and 1869, S.C. 52 & 53 Vict., c. 28.

[8] R.S.C. (1874), 37 Vict., c.43 & R.S.C. (1881), 44 Vict., c.31.

[9] While pimping and procuring, the two main male activities involved in living off the avails of prostitution, had been illegal since 1869, the penalties were not severe enough to seriously deter the activities.

[10] However, while the government may have capitulated to the demands of the social purity movement, this does not necessarily mean that the authorities were committed to actually eliminating prostitution. There is some evidence to suggest that regulation remained the covert goal of the law enforcement agencies. This will be discussed in greater detail later in this chapter.

[11] (1886), R.S.C. 49 Vict., c.52.

[12] This hysteria was likely given impetus by the infamous "Stead Case" which occurred in Britain during the same time period. This case, discussed more fully in the previous chapter, arose when W.T. Stead

"purchased" young Eliza Armstrong from her parents on an extremely slim pretext and then spirited her to France. The resulting investigation highlighted how easy it was in Britain to obtain young female virgins for the purposes of prostitution.

[13] This flurry of legislation started in late 1886. Among the most important pieces of legislation was An Act Respecting Offences Against Public Morals and Public Convenience (R.S.C. 1886, c.157.).

[14] Actually, it was incorporated into An Act Respecting Offences Againsts Public Morality and Public Convenience. However, this law was later incorporated into the 1892 Criminal Code.

[15] Parker (1983: 223) notes that heiresses and other upper class women were protected from fraudulent carnal knowledge until 21 years of age. On the other hand, lower class girls who had a guardian were only protected until 16 years and lower class girls without guardians were only protected until the age of 14 years.

[16] S.C. (1892), 55 & 56 Vict., c.29.

[17] See McLaren (1986: 136-137) for a detailed discussion of these provisions.

[18] It should be noted that opinions vary as to extent of the white slavery threat. While Parker (1983) appears to think that it was genuine, McLaren (1986) argues that it was largely a myth. He suggests that it was "created" by the reformers and gained momentum because of racist biases against foreigners who constituted many of procurers charged by the police.

[19] Criminal Code Amendment Act (1913), 3 & 4 Geo V., c. 13. For example, whipping was added as a penalty for procuring and the limitation of 21 years was dropped from the protections afforded to women. In addition, the provisions relating to bawdy houses were strengthened and a new offence of "living off the avails of prostitution" was added.

[20] It is difficult to define the precise relationship between the social purity and feminist movements. However, they developed together and often worked to achieve the same goals. Further, there was considerable overlap in the groups and individuals involved in the two movements in both countries.

[21] Indeed, the focus of social purity movement in Canada was much broader than it was in England and included activities such as drug and alcohol abuse and other vices. Among the groups involved in the movement, the Women's Christian Temperance Union, the National Council of Women, and the YWCA played prominent roles. One of the most unpleasant aspects of this historical period was the racist sentiments which were surfacing in Canadian society towards non-Anglo and in particular towards non-European groups. The social purity movement in Canada frequently exploited these sentiments in order to raise public support for their cause (McLaren, 1986).

[22] For example, Gray (1971) and McLaren (1986) both note that many

Canadian cities were electing "reform" mayors and/or hiring police chiefs dedicated to wiping out prostitution.

[23] A direct parallel can be drawn between the Canadian approach and the implementation of the Chamberlain-Khan Act discussed in the previous chapter with respect to the United States.

[24] Ironically, this action may have precipitated other types of behavior which which also increased the spread of VD. For example, other writers have noted that denying soldiers access to prostitutes increased the amount of situational homosexual activity among the soldiers serving in the trenches. Further, because homosexuality was subject to severe penalties during the First World War, soldiers infected in this fashion were probably less likely to seek treatment than those infected by prostitutes. Thus, the net effect might well have been an increase in the incidence of VD.

[25] Cassel (1983: 135-39) argues that the British authorities were extremely reluctant to take action against prostitution in Britain. For example, he notes that the governments of Canada, New Zealand and Australia had been pressuring Britain to deal with the problem of prostitution since 1915 but that the British parliament had refused to pass the necessary legislation. Finally, British military authorities placed brothels off limits to all of "His Majesty's servicemen" in March of 1918, and added an additional regulation to the Defence of the Realm Act, which prohibited any woman infected with VD to engage in sex with a serviceman. While the British Cabinet was able to take this action without the consent of Parliament, the resulting furor forced it to repeal the regulation seven monthes later.

[26] One of the ancillary factors during this time period involved the tendency of certain religious groups to seize upon the statements emanating from the academic and scientific establishments as a justification for their own anti-vice campaigns. However, while a "scientific" bias was starting to predominate in government decision making, it is unclear whether the religious groups were able to exert much influence.

[27] In fact, there were at least three such royal commissions. Chaired by Mr Justice Hodgins of the Ontario Supreme Court, they are collectively referred to as the "Hodgins Inquiry".

[28] Criminal Code Amendment Act, S.C. 1919, c. 46, s.8.

[29] It should be noted that Buckley and McGinnis (1982: 344-45) argue that its first concern was infant mortality. However, they concede that venereal disease was identified as the likely cause behind the high rates of infant mortality. Thus, it is difficult to establish with any certainty which issue was more important to the new department.

[30] In fact, several provinces, including Nova Scotia actually experimented with the establishment of such "homes". However, the programs were never implemented on a large scale (Buckley & McGinnis, 1982).

[31] It should be noted that this interpretation is not support by all writers analyzing this period. For example, Cassel (1987) argues that all nine provinces opposed the cuts in Federal financing, and that most attempted to carry on with reduced (provincially funded) programs.

[32] These conclusions are based on a survey of the cases reported in Canadian Criminal Cases between 1914 and 1972. This survey was conducted by the writer and consisted of an exhaustive survey of all relevant cases reported for the period. (See footnote 34 for a discussion of the limitations of this research strategy.)

[33] For example, in Bedard v. the King (1918), the Quebec Court of King's Bench argued that a women who successively became the mistress of several different men could be convicted of vagrancy by virtue of "having no visible means of support".

[34] In R. v. Quinn ((1918), 30 C.C.C. 372), the Supreme Court of Ontario (Appeal Division) argued that a cab driver who introduced customers to prostitutes in return for a fee was not guilty of living off the avails or procuring since his main function was simply that of providing transportation services which were available to any other citizen. Inasmuch as the driver obtained an additional fee (from the prostitute) on top of the regular "cab fare", the logic of the court is hard to fathom.

[35] The writer is well aware of the limitations of relying on reported cases for this type of comparison. Obviously, it can be argued that reported cases are only a small proportion of the total cases. However, other sources of data are not available at the present time. In addition, it can be argued that the selection criteria for reporting cases will be such that a partly representative sample of the total cases dealt with by the courts will be reported.

[36] This is a legal term which is applied to non-prostitutes who live on the income of a prostitute.

[37] It should be noted that there were two separate sections dealing with living off of prostitution monies. Section 216(1) of the Criminal Code prohibited living off the "avails" of prostitution while section 238(j) dealt with living off the "earnings" of prostitution. While it was well established that a male had to receive a part of the prostitute's actual earnings to sustain a charge under section 216(1), section 238(j) had been previously undefined in this regard. With this ruling, the court appeared be creating two distinct offences, each requiring separate burdens of proof.

[38] This assertion is based on a comprehensive review of both the Canadian Criminal Cases and the provincial reports for Ontario, British Columbia and Alberta.

[39] Cassel argues that penicillin, which was first used by the CAMC in 1943, was originally seen as a magic cure for VD. For this reason, military authorities considered the issue solved. While it was later determined that penicillin was less effective than was initially

thought, by this time other drugs had been developed. As a result, prostitution and VD never became an issue during the war (Cassel, 1987: 11).

[40] It should be noted that this conclusion is based on comparing separate information contained in the two references, and that neither author makes the argument contained herein.

[41] The major reason for this appeared to be the lengthy periods they were bivouacked in Britain during the Second World War, where they were afforded the opportunity to meet and socialize with the local population. During the First World War, by way of contrast, they frequently were sent straight to the trenches and were only given short "R & R" leaves (usually 2 weeks). This practise obviously detracted from their ability to form stable relationships with civilians.

[42] This judicial "schizophrenia is actually not unusual. It was apparently also prevalent in the US, and Connelly (1980) argues that the post war period was characterized by a form of moral anomie which influenced not only judges but the entire criminal justice system.

[43] While the first part of the court's logic in this case appears sound, the latter assertion probably stretched the intent of the legislation in another direction. This point will be dealt with in more detail later in this subsection.

[44] While these cases will not be discussed in detail, the following cases can be used as examples: R. v. Purcell (1958), 122 C.C.C. 59); R. v. Simpson ((1959), 124 C.C.C. 317); R. v. Shrimpton ((1961), 132 C.C.C. 158); R. v. King ([1968], 4 C.C.C 128).

[45] In some respects, the effect of this decision was similar to that of Hutt v. The Queen (1978). The major difference, of course, was that the Dubois case was never appealed to a higher court. One can only wonder about its effect if it had originated in a higher level of court.

Chapter 4

A COMPARATIVE ANALYSIS OF CONTEMPORARY PROSTITUTION LAW REFORM

The intent of this chapter is to conduct a comparative analysis of changes which were enacted to prostitution laws in Great Britain, Canada and New York State between 1959 and 1972[1]. An analysis of these legislative changes is considered important to the goals of this thesis for three reasons. First, because they occurred within the time frame immediately preceding the development of Bill C-49, an analysis of these changes will help provide continuity between the previous historical analysis and the contemporary policy analysis which is conducted in Part II of this dissertation. Second, because the legal systems of Britain, Canada and the United States are similar, a comparison of the three amendment processes will provide insights into the socio-political factors (as opposed to the purely legal ones) which may be relevant to the development and implementation of Bill C-49. Finally, an in depth analysis of the Canadian amendments will set the context for the analysis of Bill C-49, and will also provide an empirical introduction to the factors which led to the ultimate demise of the anti-soliciting provisions inserted into the Canadian Criminal Code with these amendments[2].

The discussion in this chapter will focus on three issues with respect to the legislative changes in each society: 1) the factors which influenced the development of the legislative changes; 2) the manner in which the legislative changes were implemented; and 3) the impact and

effectiveness of the legislation. This analysis will provide more detailed information regarding contemporary prostitution control in western societies, and thus will extend and supplement the historical analysis conducted in the preceding chapters. As well, the discussion will examine the degree to which changes in the prostitution laws affected levels of prostitution and police enforcement practices. This assessment will help answer the question posed in the introduction to this dissertation regarding the degree to which the criminal law is effective in controlling prostitution. Thus, the analysis in this chapter will provide an empirical and theoretical link between the historical analysis conducted in the previous chapters and the analysis of Bill C-49.

4.1 THE STREET OFFENCES ACT OF 1959

The 1959 amendments to the Street Offences Act in Great Britain arose out of the recommendations of the Committee on Homosexual Offences and Prostitution, commonly known as the "Wolfenden Committee". This committee was convened in 1954 to examine English law regarding prostitution and homosexuality. At that time, both activities were subject to legal sanctions in England[3], and the task of the Wolfenden Committee was to determine if the law should be changed in this regard. It should be noted that both prostitution and homosexuality were the topic of a fierce and wide ranging debate in English society during the timespan immediately before the Committee was convened. This debate centred around the relative usefulness of attempting to use the criminal law to enforce morality. Thus, although the Wolfenden Committee was primarily charged with examining the technical aspects of laws regarding prostitution and homosexuality, the

general issue of morality and the law quickly became an overriding concern in the deliberations of the Committee (Greenland, 1961).

The Wolfenden Committee tabled its report in 1957, in which it concluded that there were insufficient grounds for prohibiting either activity, and thus it recommended that both should be legalized (Parker, 1983). In the report, the Committee took great care to make it clear that it was not necessarily suggesting that either activity was socially or morally acceptable, and emphasized that its conclusions were based on practical considerations related to the trouble and expense of attempting to enforce laws against activities which were essentially victimless. Despite these caveats, the Wolfenden Report engendered considerable controversy when it was released. Part of the reason for this controversy can probably be traced to the essential dualism which characterized the report. On the one hand, the Committee was clearly of the opinion that the enforcement of private morality by means of the criminal law was an inappropriate activity for the state to undertake. Since prostitution and homosexuality appeared to fit the criteria of "private morality", the Committee members felt that they had little choice but to recommend that legislation against prostitution and homosexuality be repealed. Unfortunately for the committee, many people feared that such an approach would open the way for the legal toleration of many other "socially repugnant" acts. This, they argued, would eventually threaten the existence of the English way of life, and these groups were understandably upset by the recommendations of the Wolfenden Committee[4].

A second aspect of the controversy devolved from the fact that despite its liberal philosophical stance, the Wolfenden Report actually articulated

some specific proposals which led to a toughening of legal controls on prostitution. While this may seem a bit ironic in a report which started a controversy because its philosophy was perceived as too liberal, such was nevertheless the case. In what was perhaps a bid to countervail its liberal moral philosophy, the Committee proposed that the penalties for public soliciting and living off the avails of prostitution be increased as a means of controlling the public nuisance aspect of prostitution (Greenland, 1971). By concentrating on the nuisance aspect of prostitution as a justification for recommending tougher legislation, the Committee may have been trying to appease the groups offended by its liberal philosophy. If this had worked, the Committee would have been able to expound a liberal moral philosophy, while at the same time using practical considerations to justify advocating stronger laws. Unfortunately, this tactic (if that was what it was) only served to antagonize those who favored more liberal prostitution laws without appeasing the conservative groups. Thus, the Wolfenden Report failed to win the approval of either side in the dispute.

Despite the general lack of approval, the British Parliament decided to accept the Wolfenden Report and proceed with amendments to the Street Offences Act based on its recommendations. A number of points are relevant with respect to the development of these amendments. First, the new law sharply increased the penalties for street soliciting and living off the avails of prostitution, a move which was in accordance with the recommendations of the Report. However, laws prohibiting other forms of prostitution were apparently left untouched (Geis, 1972). Despite the fact that this latter approach clearly contravened the recommendation of the Wolfenden Committee that prostitution other than streetwalking should be

legalized, it met with little opposition during the drafting of the amendments. Indeed, the entire process went relatively smoothly once the initial furor had died down, and the only note of dissension occurred when three female members of the Committee objected to the relatively lenient penalties imposed upon pimps and panderers. As a result, the maximum penalty for these offences was raised from two years to five years in the new legislation.

Before discussing the implementation and effectiveness of the new amendments, several additional factors regarding the Street Offences Act of 1959 are worth discussing at this point. First, the British Parliament apparently felt that only women were capable of prostitution, as the legislation did not apply to males. Secondly, the police were given sweeping powers to harass and arrest suspected prostitutes, a factor which forced them underground into the exploitive clutchs of pimps and panderers (Ibid). Finally, the amendments were characterized by a complete absence of any provisions to prosecute the male customers of prostitutes. This omission was not an oversight, as it had been specifically excluded by the Wolfenden Committee on the grounds that it would be too difficult to prove that that the customers had been soliciting for the purposes of prostitution. Since the standards would be exactly the same as those for proving that the female prostitutes had been soliciting male customers, this logic is somewhat difficult to comprehend.

Despite the obvious chauvinistic bias evident in these factors, British feminist groups did not lobby against the legislation[5]. In fact, many women's groups were actively involved in the drafting of the law, and except for the previously mentioned input regarding the light penalties

imposed on pimps, these groups did not appear to disagree with the provisions of the amendments to any significant degree (Ibid). This factor may suggest that that many feminists did not consider prostitution to be a feminist issue. In any event, the concern for public order was obviously considered more important than the social conditions of the prostitutes[6]. In this respect, the laws regarding prostitution do not appear to have evolved very far from the historical patterns of domination noted in the previous chapter.

In examining the implementation of the new law, it quickly becomes apparent that it was not effective. While there is limited evidence to suggest that it brought about a drastic drop in the number of arrests for prostitution during the years immediately following its implementation (Greenland, 1961), this drop was short lived. The prostitutes quickly adapted to the new laws and began to rely on pimps and panderers to direct customers to them. (In fact, it is entirely possible that this drop in the number of arrests was largely due to the inability of the police to cope with the changes in operating styles on the part of prostitutes.) In any event, the numbers quickly increased over the next several years (Geis, 1972: 189). Thus, the results of implementing more severe laws on prostitution in Great Britain appeared to have little effect on the amount of prostitution which was practiced. Unfortunately, however, the new laws did increase the numbers of pimps and panderers living on "the avails of prostitution", and thus increased the amount of exploitation imposed by males upon the female prostitutes (Geis, 1972: 188; Swinger, 1969: 81)

In addition to being largely ineffective, the new legislation also contributed to the increased mobility of prostitutes and the creation of

semi-official "red light" districts. With regard to the mobility aspect, the new legislation contained provisions for issuing two warnings before a woman was formally charged with soliciting. This provision was intended to allow novice prostitutes an opportunity to leave the profession before they became thoroughly involved in it. Instead, however, it was simply used by many prostitutes to circumvent the law. In this respect, the prostitutes would simply collect their two warnings in one locale and move to new one where they were unknown to the police. They could continue this practice almost indefinitely without being charged. This loophole obviously contributed to the ineffectiveness of an otherwise tough law.

The red light districts were created by the law as a result of a curious chain of interactions. First, the new law appeared to give the police enough power to clean up street prostitution; and as a result, the political powers fully expected this to occur in an expedient fashion. The police, however, realized that it was impossible and undesirable to completely eradicate prostitution (Geis, 1972). Thus, in order to appear effective, the police identified areas in which the practice of prostitution would offend minimal numbers of people. They then negotiated with the prostitutes and other affected people and agreed to turn a "blind eye" as long as the prostitutes stayed within the boundaries of the designated areas. In this manner, Great Britain adopted a policy which had long been used on the continent as an effective means of reconciling the illegality of prostitution with its desirability. Both of these situations (i.e. the warning system and the red light districts) permitted prostitution to flourish despite the severe penalties provided in the new Street Offences Act. However, the importance of the latter turn of events

should not be be underestimated as it likely allowed the police to control the practice of prostitution so as to minimize the nuisance aspects of it. To this extent, the new law can be considered successful.

4.2 THE NEW YORK PENAL CODE - 1964 TO 1970

The amendments to the New York State Penal Code represent one of the few instances where changes to legal controls on prostitution have been meticulously documented with respect to all of the factors which played roles in the development of the legislation. The initial impetus for changes to the previous laws appears to have originated during the early sixties in response to a broadly based reform movement aimed at updating and simplifying the existing laws (Roby, 1971). While the general thrust of this reform process was aimed at reducing the penalties applied to prostitution, the American Social Health Organization and various feminist groups were also lobbying against the immunity which the patrons of prostitutes enjoyed under the existing legislation. Because of this pressure, the 1965 amendments to the New York Penal Code, which were otherwise liberal in orientation, included a "patrons clause" making it illegal for a male to solicit a female for the purposes of prostitution.

While the feminist and civil libertarian groups were generally pleased with the new amendments, the new law did not meet the approval of the police and various business groups. These groups were unhappy with the new laws, and they expressed their disapproval in several ways. For example, the police simply refused to enforce the patrons clause. While the reasons for this stance are unclear, it effectively nullified the lobbying efforts of the feminist groups (id:440)[7]. In addition, the police argued that

the new laws were much more lenient than the previous laws and that this hampered their efforts to control prostitution. As a result, they attempted to step up police actions against prostitutes by using non-criminal laws, e.g. loitering by-laws. However, this tactic was condemned by civil liberties groups and many politicians and judges. Thus, the police were forced to discontinue the crackdown, and as a result joined forces with the business groups. This set the stage for the next phase in the evolution of New York's prostitution laws.

Following the events described above, the next major reform initiative occurred in 1967, when a group of merchants put pressure on the City of New York to clean up certain areas of midtown Manhattan because they felt that the widespread presence of prostitution was interfering with legitimate business activities[8]. Having been thwarted in their previous attempts to control prostitution by using existing laws, they now turned their attention to changing the law itself. Specifically, they wanted prostitution in any form rendered illegal, along with much tougher penalties for public soliciting. The City of New York reacted by asking the state government to enact changes to the New York State Penal Code granting the police and other local authorities more power in dealing with prostitutes (but did not go so far as to request that prostitution itself be made illegal). The resulting reform process was to embroil two levels of government and numerous individuals and organizations in a protracted controversy over which form the new laws should take.

While numerous groups were involved in the debate, each taking a somewhat different position, the most pronounced split in the controversy was between those favoring the suppression of prostitution and those

advocating an emphasis on civil rights. In the former category were the NYC Police Department, the City government and various commercial groups. The latter category was composed of defence lawyers, a few individual politicians and the state Correctional Association. During the period between 1967 and 1969, several bills were prepared and introduced into the state legislature (Ibid)[9]. After several false starts, amendments were passed in 1969, designating the act of prostitution as a Class "B" misdemeanor. This substantially increased the penalties for prostitution to the extent that they were greater than the pre-1965 provisions. This appeared to appease the police and business groups, and the controversy regarding prostitution in New York appears to have died down.

In concluding this discussion of the changes to the New York Penal Code, several important points need to be made about the entire "reform" process. One of the most interesting and surprising of these points centres on the relative absence of identifiable women's lobby groups in the process. After the New York City police managed to effectively nullify the patrons clause, the feminist groups appeared to lose interest and made no further efforts to influence the process. While the reasons for this absence are unclear, this apparent abdication left the way open for the politicians to decide the issue on practical grounds aimed at appeasing the largely male business lobbyists. Another important point involves the fact that while the laws were changed three times between 1965 and 1970, ranging from moderate to lenient to severe, the actual numbers of prostitutes did not change throughout the entire period (Id: 446). Since the timespan was too short for other factors to have influenced the numbers of prostitutes, the obvious conclusion is that the severity or laxness of the criminal law regarding prostitution had little effect on the activities of prostitutes.

4.3 THE 1972 AMENDMENTS TO THE CANADIAN CRIMINAL CODE

The 1972 amendments to the Canadian Criminal Code arose largely out of dissatisfaction with the previous law on the part of the courts and the legal profession. Prior to 1972, section 164(1)c[10] of the Canadian Criminal Code had contained broadly worded vagrancy provisions which were widely used by the police to control the activities of prostitutes. Referred to as "Vag C", these provisions empowered the police to detain all known prostitutes who could "not give a good account of themselves". Effectively this gave the police enormous discretionary power to arrest any woman whose activities did not meet their approval. In practice this law was used to detain prostitutes and suspected prostitutes for twenty four hours, after which they would be released without charge[11].

While law enforcement officials considered these vagrancy provisions effective in suppressing the activities of prostitutes, they were condemned by other groups on the grounds that their broad scope and vague wording presented genuine problems of interpretation for the courts. As was noted in the previous chapter, the courts had experienced considerable difficulty in deciding when a suspected prostitute had to be accosted by the police, and in defining certain key elements such as "wandering about" and "public place". While these issues were resolved by the end of the 1960's, the vagrancy laws also came under attack because they appeared to discriminate against women and were contrary to the Canadian Bill of Rights (1960). Inasmuch as the vagrancy provisions required a common prostitute to "give a good account" of herself when asked by the police, it was argued that they created a "presumption of guilt" based on the woman's real or presumed status, and also contravened her right against self incrimination[12]. It

was further argued that this threat was exacerbated by the fact that the emphasis of the provisions was on the "status" of the individual prostitute, and not her actions.

The concerns outlined above ultimately led to a movement for the repeal of the vagrancy laws based on the argument that they were inappropriate in a modern "democratic" society. In examining the evolution of this movement, it is appropriate to start by reviewing several cases which occurred in the late 1960's and early 1970's. The first such case is the Ontario Provincial Court decision in R. v. Viens ((1970), 10 CRNS 363). In this case, Viens, who was known to police as a prostitute, was observed propositioning a man in a restaurant. Viens and her customer then proceeded separately to the man's hotel, where they were observed engaging in sexual intercourse by a detective. When she left the hotel, Viens was accosted by the police and asked to give a good account of herself. When she refused, stating that she wished to consult a lawyer, she was promptly arrested for vagrancy. At her trial, Viens challenged the charges on two grounds, arguing that they contravened her right to equality before the law and her right to counsel[13].

In dealing with the challenges presented by Viens, the trial judge noted that the vagrancy provisions clearly required a suspected prostitute to explain herself in order to avoid arrest. Inasmuch as it was unreasonable to expect her to have legal counsel with her, the provisions indeed appeared to contravene her right to counsel under the Canadian Bill of Rights. However, while the judge did allude to the possibility of self incrimination occurring due to an absence of legal counsel, he did not explicitly deal which the more general question of whether the vagrancy

laws forced the defendant to incriminate herself, irrespective of the availability of counsel. This omission is unfortunate, as it can be argued that the "reverse onus" nature of the vagrancy law was such that Viens would not have been able to avoid arrest even if legal counsel were immediately available. (Unless, of course, they advised her to lie to the police.)

With respect to the challenge based on "equality before the law", the court appeared to disregard Viens' argument that the law was invalid because it only applied to women. Instead, the judge focused on whether it was constitutional for the law to discriminate against prostitutes as an identifiable group. In so doing, the court noted that the Supreme of Court of Canada had recently ruled that "status" offences, i.e. offences which only applied to a certain class of people, were unconstitutional under the Canadian Bill of Rights (1960)[14]. The court further noted that being a prostitute was a perfectly legal status in and of itself, and thus concluded that it was unconstitutional to make it illegal for a prostitute to be in a public place. While this conclusion, combined with the previous one, was enough to win Viens an acquital, the decision still left unanswered the crucial question of whether it was legal to pass laws which only applied to women, even though they did not apply to all women. This omission is an important one because it restricted the applicability of the decision to a very narrow set of legal points, and did not attempt to address the more important question of why the vagrancy provisions only applied to females. After all, it is perfectly possible for males to become prostitutes.

Despite the failure of the court to rule on two crucial issues with respect to vagrancy, it might appear that the decision in Viens represented a step forward in the evolution of Canada's prostitution laws. This is particularly so in light of the fact that the case was never appealed by the Crown. Unfortunately, however, the Viens decision was immediately disregarded by courts in other provinces. The British Columbia case of R. v. Lavoie ((1971), 5 C.C.C. (2d) 368) is a case in point. In this instance, the BC Provincial Court rejected Lavoie's argument at trial that the vagrancy provisions violated her rights to equality before the law and against self incrimination. As a result, she launched a summary appeal in the BC County Court[15]. In dismissing the appeal, the County Court judge advanced two arguments. First, he explicitly rejected any attempt to argue that the vagrancy provisions contained within the Canadian Criminal Code violated the equality before the law provisions outlined in the Canadian Bill of Rights. While the judge did note the decision in Drybones, (described in endnote 13) he argued that this decision was inapplicable because it dealt with an entirely different combination of facts and law. In this respect, the court argued that the Indian Act had applied to all Indians, while the vagrancy provisions only applied to common prostitutes, and not to all women. Unfortunately, the defence never advanced the argument that they applied to all prostitutes and that being a prostitute was legal status. In any case, it is unlikely that this argument would have been successful, as the judge implicitly expressed the opinion that while prostitution might be legal, it was neither a desirable nor an acceptable status.

In addition to dismissing the equality challenge, the court also rejected Lavoie's contention that the vagrancy provisions forced her to incriminate herself, arguing that her statement to the police officer was not evidence before a "court or tribunal". In handing down this decision, the judge ruled that the police request that she give a good account of herself was of an investigatory nature only. He further argued that while her failure to give a good account of herself did result in her being arrested and charged with vagrancy, the police were still required to prove the essential elements of the charge, namely that she was a "common prostitute" and was "wandering in public". Despite the fact that these distinctions appear rather technical, the County Court decision was upheld by the BC Court of Appeal and followed by the Ontario Supreme Court in R. v. Latreille, (1970).

The cases discussed above constitute the last reported cases dealing with the pre-1972 vagrancy laws. Despite the reluctance of the courts to overturn the vagrancy provisions on the basis of the Canadian Bill of Rights, it was becoming clear that the legal profession was uncomfortable with them. This is evidenced by the failure of the Crown to appeal the Viens decision, and by the lackluster manner in which the Crown argued the cases in the Lavoie and Latreille decisions. Further, the entire question of prostitution control became part of a much larger debate regarding the issue of when the state is allowed to intervene in the lives of its citizens. In the context of the liberal morality generated by the sexual revolution of the 1960's it was becoming clear that many people felt that sexual morality should be outside the purview of the criminal law. This philosophy had already been used by Pierre Trudeau in his famous 1968

pronouncement that "{t}he state has no business in the bedrooms of the nation". While he was referring to homosexuality, it was becoming clear that the public was also willing to apply it to the issue of prostitution[16].

In addition to the "liberal" argument regarding state interference in the private lives of the public, the general question of discrimination also became an important issue during the 1960's. In this respect, the Drybones case clearly limited the state's right to restrict the actions of a particular group in ways that were not applied to the public at large. In many respects, this legal approach was founded in the increasingly widespread belief that most "status" offences involved a type of discrimination that could not be justified on rational-legal grounds. While the courts generally refused to apply this principle directly to prostitution, the philosophy it embodied undoubtedly affected the attitudes of the courts and legal profession. This change in attitudes likely accounted for the drastic drop in reported prostitution cases during the latter part of the 1960's.

While the above two issues were undoubtedly the most important philosophical issues involved in the debate over Canada's prostitution laws, there are additional factors which are relevant to the discussion. First, there was also a debate developing with respect to the entire issue of vagrancy, including that which was not prostitution related. In the case of non-prostitution related vagrancy, it was a criminal offence for anyone to be in a public place without a "visible means of support". While this was ostensibly based on the belief that indigent people were more likely to commit crimes to support themselves, it was becoming clear that it also

made poverty a crime. Since racial and other minorities (including women) were more likely to end up as vagrants, the law was obviously biased along class, racial and chauvinistic lines. As a result, the non-prostitution related type of vagrancy generated more criticism and controversy than "Vag C" did. Interestingly enough, the fact that non-prostitution related vagrancy provisions discriminated against women engendered more controversy than the prostitution related ones did[17]. However, because the two offences were part of the same Canadian Criminal Code provisions, prostitution related vagrancy was "dragged along" in the debate. Thus, the vagrancy provisions contained in section 164(1)c were repealed in 1972 and replaced with section 195.1 which prohibited soliciting in public for the purposes of prostitution.

In closing this discussion of the 1972 amendments to Canada's prostitution laws, there are two important points which need to be mentioned briefly. First, it appears that the demise of the prostitution related vagrancy provisions was tied in many respects to issues which were largely unrelated to the sale of sex, and about which there was considerable political agreement. Thus, when the proposed amendments to the Canadian Criminal Code were debated in Parliament, they were supported by all political parties and were enacted with little discussion, and in the complete absence of public discourse. As was noted previously, there was almost no media attention to the issue; and the government did not attempt to consult the public and/or interest groups before implementing section 195.1. While the lack of public interest may explain the quick passage of the amendments, the fact that consultations were not held, and that there was no attempt to study the issue in any depth, was likely responsible for

the hostility evidenced by the police toward the new anti-soliciting provisions. This, combined with other factors, such as the reluctance of the courts to apply the new laws to males helped create a climate of dissatisfaction which ultimately led to the failure of the law. However, this will be discussed in Chapter 8 of this dissertation.

In addition to the lack of planning discussed above, it is obvious that prostitution never became a major issue for Canadian feminists. While the 1967 Royal Commission on the Status of Women did recommend that the vagrancy provisions be repealed, prostitution was given relatively little emphasis compared to many other issues. Further, when Parliament was debating the recommendations of the Royal Commission on the status of women, Grace MacInnis, the Member of Parliament for Vancouver-Kingsway, expressed her complete approval of the new anti-soliciting provisions because they applied equally to men and women. The fact that one of Canada's most influential feminists appeared to ignore the social factors which force women into prostitution speaks volumes about the narrow focus of the feminist movement[18]. Unfortunately, it was left to Douglas Hogarth, the Parliamentary Secretary to the Solicitor General, to criticize the new law because it failed to provide for the prosecution of male customers.

4.4 SUMMARY

From the preceding discussion, it seems clear that legal controls on prostitution have rarely been successful in eradicating or even controlling it for any significant length of time. For example, the changes to New York's prostitution laws did not affect the levels of prostitution. This is

despite the fact that several changes were made during the period under discussion. Similarly, while the levels of prostitution initially dropped in England after the amendments to the Street Offences Act, they quickly rebounded to previous levels. Finally, while the number of arrests in Canada declined after the passage of more liberal laws[19], this was in comparison to the almost "draconian" vagrancy provisions which were previously in force. In this respect, it is important to note that we are discussing arrest statistics, and that many of the arrests for vagrancy did not lead to convictions or even to charges. As was noted previously, the police frequently used the vagrancy law as a harassment tool, without any intention of following through on the charges. When the vagrancy provisions were repealed, the police lost their power to detain prostitutes virtually at will. For this reason, the number of arrests did drop more drastically in Canada than in England and New York State. Unfortunately, there is no evidence available as to the actual numbers of prostitutes, and thus it is impossible to accurately determine the effect of the new law on actual levels of prostitution.

The point mentioned above leads this discussion to a consideration of a fundamental (and unfortunately unavoidable) weakness with respect to the analysis conducted in this chapter. With the exception of New York, all of the data used in the analysis has been based on arrest statistics, and there is little independent information available regarding the total numbers of prostitutes before and after the legislative changes in each country. This is considered a serious problem since changes in the numbers of arrests do not necessarily correlate with either the actual numbers of prostitutes or the effectiveness of the new law. For example, changes in

overall police priorities and/or seasonal fluctuations in the numbers of prostitutes could well affect arrest rates independently of the changes to the law. Thus, without additional longitudinal information on numbers of prostitutes, it is difficult to draw any firm conclusions regarding the effect of the legislative changes discussed in this chapter[20]. For example, the passage of tougher prostitution laws would lead one to predict that arrest rates would initially climb, followed by a reduction in the numbers of prostitutes, followed still later by a reduction and leveling out of arrest rates as the situation stabilized. (Of course, the reverse would be predicted for more liberal laws.) Thus, assessing the real effect of legislative changes requires long term information on both arrest rates and numbers of prostitutes, while controlling for unrelated changes in police priorities and seasonal fluctuations. Unfortunately, this information is rarely available.

In addition to the question of effectiveness, two further points of commonalty between the three case studies can be identified. First, with the exception of the patrons clause enacted in New York, all three examples of legislative change were characterized by a relative lack of participation by feminist groups. While some women's groups were involved in the development of the different amendments, there is little evidence to suggest that they took a feminist stance. This would appear to indicate that feminists do not regard prostitution as a pressing issue. Secondly, there was also a widespread reluctance to prosecute male customers. This is particularly true of England and New York. In England the necessary provisions were specifically excluded from the law, while the New York police simply refused to enforce such provisions. While the Canadian

legislation appeared to apply equally to males and females (either as prostitutes or clients), the courts were reluctant to apply them to males until the late 1970's.

NOTES

[1] The specific legislative changes to be discussed are the 1959 amendments to the Street Offences Act in Great Britain, the amendments to the New York State Penal Code during 1960 to 1970, and the 1972 amendments to the Canadian Criminal Code.

[2] This is important because it will be argued in Part II of this dissertation that the amendment process and contents of Bill C-49 have similarly set the stage for its ultimate failure.

[3] While only homosexuality was actually illegal, the practice of prostitution was restricted in ways which rendered prostitution an illegal occupation even if the act itself was technically legal.

[4] See Wasserstrom (1971) for a detailed discussion of this controversy, including the Hart-Devlin debate which erupted after the Wolfenden Report was tabled.

[5] It must be noted that Greenland (1961) argues that there was a powerful feminist lobby against the Bill. However, he does not provide any specific details to support this contention. In any event, most other writers support the position made in this chapter (Decker, 1979; Geis, 1972).

[6] However, the apparent acquiescence of the women's groups may also indicate that the power relationships involved in the amendment process were such that the feminists decided to support the new legislation in the hopes of gaining concessions in other areas. If this interpretation is true, this situation serves as an example of the subservient position which British women occupied with respect to the male dominated political system at that time.

[7] This set of events serves as an excellent example of the manner in which the police can influence criminal justice policy so as to thwart the wishes of a legislative body (as discussed in the introduction to this thesis).

[8] In actual fact, it was the widely publicized accounts of one or two sensational robberies of clients by prostitutes that triggered much of the public clamor over prostitution. There is little solid evidence to show that the numbers of prostitutes in Manhattan had increased significantly during this period.

[9] Although the passage of criminal law is a state prerogative, any interest group can draft a bill and attempt to persuade a member of the state legislature to sponsor it.

[10] It should be noted that the actually numbering of the sections dealing with vagrancy were revised periodically, even though the contents of the provisions remained the same. Except where it is necessary to refer to the provisions by section number, the writer will use the generic term "vagrancy provisions".

[11] Conversations with vice squad officers in Winnipeg, Toronto and Calgary have confirmed this practice.

[12] Sometimes referred to as "reverse onus" clauses, this type of provision was once common in Canadian criminal law. While they are normally limited to situations in which a defendant has already been found guilty of an included offence (e.g. once a person has been found guilty of possessing narcotics, he/she must rebut the presumption that it was for the purposes of trafficing), such was not the case with respect to the vagrancy provisions. It should be noted that many of these reverse onus clauses have been successfully challenged on the basis of the "Charter of Rights".

[13] In actual fact, she challenged it on three grounds, the third ground being that she was not wandering in public. However, this ground was not crucial to the outcome of trial or to the argument being advanced here.

[14] The court was relying on the Supreme Court decision in R. v. Drybones ((1970), 3 C.C.C. 355). This case involved a native Indian man who had been charged under the Indian Act with drinking alcohol outside of a reserve. The Supreme Court ruled that since this particular provision only applied to treaty Indians, it contravened the equality before the law guarantees incorporated in the Canadian Bill of Rights.

[15] Because the Provincial Court decision is unreported, this analysis will rely on the logic expressed in the County and Appeal Court decisions.

[16] This assertion is based on a comprehensive review of the Canadian popular press between 1968 and 1972. During this period, there were only two magazine and only a few newspaper articles dealing with prostitution.

[17] These assertions are based on an analysis of the parliamentary debates regarding changes to the Canadian Criminal Code during this period.

[18] In many respects, this can be equated to the argument made during the debate on non-prostitution related vagrancy to the effect that "the vagrancy law was not discriminatory because the rich and poor were equally prohibited from sleeping under bridges".

[19] For example, the Report of the Fraser Commission provides statistics which indicate that there was a drastic drop in the number of prostitution arrests in 1973, followed by a less drastic but steady decline throughout the 1970's. This phenomena will be analyzed more thoroughly in Chapter 7.

[20] This weakness characterizes most prostitution research of this type. Unfortunately it is difficult to overcome in ex post facto types of analysis. Since it is impossible to "go back in time" to collect data on the numbers of prostitutes in a particular area, a researcher must rely on existing data to provide this information.

Chapter 5

AN APPLICATION OF THE THEORETICAL FRAMEWORKS TO THE HISTORY OF PROSTITUTION

As was noted in the introduction to this dissertation, the purpose of Part I has been to examine the historical evolution of legal controls on prostitution in order to set the context within which prostitution developed and to provide a basis for assessing the validity of the sociology of law theories outlined in Chapter 1. The intent of this chapter is twofold. First, a point by point assessment will be conducted of the degree to which the standard sociology of law theories can be used to explain the historical patterns discussed in Chapters 2, 3 and 4. This assessment will also include an attempt to answer the other questions posited in the introduction. Second, a revised theoretical model will be outlined which incorporates the factors which were explained by the standard theories, combined with those which were not. This model will conclude by advancing a revised set of postulates which will be used in analyzing the development and implementation of Bill C-49.

5.1 AN ASSESSMENT OF THE TRADITIONAL THEORIES

In carrying out this assessment of the traditional theories, separate assessments will be conducted of the degree to which the Rational-Functionalist, the Liberal-Conflict and the Radical-Conflict models are adequate for explaining the history of prostitution presented in Part I.

5.1.1 The Rational-Functional Model

This discussion will be broken down into separate considerations of each of the four postulates articulated in Chapter 1 with respect to the Rational-Functionalist model. For the sake of convenience, each postulate will be reprinted immediately preceding its discussion.

> Prostitution control will occur through rational processes in which careful assessments are made of the nature and scope of the problem area(s) and the best method of resolving the problem(s). These assessments will necessarily include a consideration of the degree of social harm represented by prostitution.

In dealing with the assertion that prostitution control will occur through a rational process, one can easily find many examples from the previous analysis which refute this postulate. For example, it was demonstrated that early prostitution control was often dictated by the prevailing religious tradition, and that abstract conceptions of "evil" were frequently used to justify a particular course of action. In most instances, no attempt was made to assess the actual social harm attached to the practice of prostitution. In this respect, prostitution often evoked emotional reactions from fundamentalist religions which were acted on without careful study. Even in those cases where attempts were made to base a prostitution control strategy on "scientific" assertions about the undesirability of prostitution, there is no evidence to suggest that any serious research was carried out. This latter assertion is particularly true of the Contemporary period and the eugenics movement which developed in Canada during the 1920's. While this movement was based partly on the results of the various Royal Commissions into prostitution, the position advocated by the eugenists went far beyond the Commissions' findings, such that it can only be described as an attempt to use science to justify a

viewpoint motivated almost entirely by several different types of bigotry combined into one movement.

In dealing specifically with the question of social harm, it should be noted that the fear of VD was often used to justify periodic attempts to repress prostitution. Venereal disease was certainly a problem during many of the time periods discussed in this Part, and thus it could be classified as a significant social harm. Unfortunately, however, there are several points which mitigate against concluding that the authorities were responding rationally to a real or perceived social harm. First, the fact that the fear of VD was not also extended to male customers suggests that there were other factors involved in the crackdowns. Further, in many instances the authorities made no attempt to determine the exact relationship between prostitution and VD. In other cases, such as the contagious disease legislation passed in Britain and Canada, the authorities pressed ahead in the face of evidence which suggested that the laws were ineffective. Finally, the uncoordinated and diverse ways in which the First World War combatants dealt with a similar problem also provided evidence that prostitution control was not based solely on rational assessments of the VD threat posed by prostitution.

> The approach to prostitution control in a particular society will generally reflect the overall consensus of values in that society regarding prostitution.

In dealing with the assertion that prostitution control would reflect an existing consensus of values regarding prostitution, we encounter a problem of a different sort. While there is ample evidence to suggest that prostitution was heavily stigmatized throughout most of recorded history, it is equally clear that prostitution control rarely reflected this

apparent consensus. For example, there is no evidence to suggest that any society ever attempted to eliminate prostitution entirely. Further, there was frequently a profound difference between the values and objectives articulated by the authorities and the action which was actually taken. While in some cases the authorities admitted that prostitution was a necessary evil which had to be controlled but not eliminated, this was rare. The most common practice was to pretend to practice repression, while actually practicing regulation. Although this "hypocritical" position may have actually represented an implicit consensus among the authorities, it did not reflect the apparent consensus in the general population. In any event, even when prostitution was openly tolerated, it was based on the rationale that it was necessary to meet certain male "needs", and not on a rational assessment of social harm. This was particularly evident in the attitudes expressed by early Christian theologians and in the decision to tolerate prostitution during the First World War against the wishes of most feminist groups and the general public.

> Prostitution laws will be implemented in a generally fair and equitable fashion, and without regard for the relative status of any of the affected groups or individuals.

The postulate that prostitution control would be administered in an open and fair fashion is strongly repudiated by the evidence advanced in this part. First, it is abundantly clear that prostitution control has been concentrated on women throughout most of history. This has meant that the males involved in ancillary roles largely went unpunished, and that the male customers have been ignored for the most part. In addition, the fact that the authorities often ignored the "higher class" courtesans and paramours provides evidence that a class bias was operating in addition to

the chauvinist one. This class bias was also evidenced by the manner in which early Canadian laws clearly discriminated against lower class females in protecting them from seduction and procurement. Finally, the way in which the Canadian authorities misused the Federal and provincial laws during the 1920's also supports the contention that the prostitution control was not conducted in a fair and open fashion.

> The impact of prostitution control will be in accordance with the consensus of values referred to above, and will be generally positive for all affected parties, including residents, businesses, the criminal justice system and the prostitutes themselves.

With respect to the argument that the effect of prostitution control with be in accordance with a societal consensus of values, it is important to note that at least two different types of consensus of values may have been operating. If one is referring to a purported general consensus that prostitution is an evil which ought to be eliminated, it can be stated that prostitution control has been a monumental failure. However, if one accepts that there may have been an implicit consensus among the male dominated elite regarding prostitution as a <u>necessary</u> evil which must be regulated to satisfy male interests while keeping its worst features out of sight, prostitution control becomes much more "successful". In this respect, the previous chapters have clearly documented the manner in which prostitution has been "managed" to confine it and keep it within acceptable limits. More significantly, while various groups have advocated its elimination, there have been few serious attempts to do so. Thus, the "functional" nature of prostitution control can only be demonstrated if one assumes a malicious breach of trust on the part of the authorities.

In dealing with the alleged positive effects of prostitution control, it appears obvious that males were the major beneficiaries. In addition to the customers who went unpunished, the ancillary players, i.e. pimps and panderers, frequently benefited from the periodic crackdowns. Since police repression simply forced the prostitutes off the street, the pimps and panderers were able to control the prostitutes more easily. In addition, it was evident in the discussion of the changes which occurred in the late Contemporary period that the police and business groups were the main beneficiaries of changes to prostitution laws in Great Britain and New York (although the reverse was true in Canada). In this respect, the female prostitutes rarely derived any true benefit, as even the rare periods of liberality were really intended to further male interests. It can be argued that no serious attempt was ever made to identify and remedy the underlying "causes" which drove women into prostitution[1]. This factor, combined with the willingness of women's groups to identify with male interests, virtually ensured that the interests of prostitutes and lower class women would never receive serious consideration by the authorities responsible for prostitution control.

5.1.2 The Liberal-Conflict Model

As in the previous section, this discussion will be broken down into separate considerations of each of the four postulates articulated in Chapter 1 with respect to the Liberal-Conflict model. For the sake of convenience, each postulate will be reprinted immediately prior to its discussion.

> The major thrust of prostitution control will reflect the need to resolve conflicts arising from disagreements among different groups and/or from the perceived inadequacies of existing laws.

It must be noted that considerable evidence exists to support both of the assertions included in this postulate. First, it is clear that the socio-legal history of prostitution has been characterized by almost continual conflict amongst the various interested parties. During the early Christian era, much of the conflict was between religious and secular authorities, with religion usually carrying the day. However, by the dawn of the Victorian age, the conflict had broadened to include many different groups, all in conflict with each other and without any clear cut delineation into religious and secular camps. This aspect was particularly evident with respect to the conflict which arose between the conservative and radical factions of the British feminist movement. During the late Victorian age and the early Contemporary period, this pluralistic type of conflict broadened even further and began to incorporate specific discussions of the inadequacies of the existing approaches to prostitution control. For example both the 18th century Contagious Diseases Acts and the Canadian reaction to the VD problem during and after the First World War evolved out of a debate over the degree to which existing laws were adequate to address the problem of venereal disease. Similarly, the stricter approach instituted towards male ancillary players prior to the First World War was also the result of a disagreement over the adequacy of Canadian laws against white slavery.

> Any discussions regarding changes in approaches to prostitution control will be characterized by a large degree of openness with respect to the ability of different groups to achieve input into the process.

It must be noted that the evidence regarding this postulate is much less clear cut than that advanced for the previous one. During much of the time period discussed in this analysis, the prostitution debate was between the

church and the state, both of which were dominated by males. While women's groups did start to play more significant roles during the Victorian age, they generally were not very influential unless they sided with the males. Thus, with a few exceptions, women lacked meaningful input into formulation of prostitution control policies during the Victorian age and the early Contemporary period. Even in those rare instances where women did exercise influence, the "reformers" were usually middle class. Since the prostitutes themselves never achieved any influence, it must be concluded that changes in prostitution control have not been characterized by any significant degree of sensitivity to the people who are affected most by its vagaries. The only notable exception to this general rule was the manner in which D.A. Watt was able to lobby successfully on behalf of Canadian prostitutes during the late 1800's. Unfortunately, while he was able to rally public opinion to the reform cause, most of his major concerns were not included in the 1892 Canadian Criminal Code.

> While any particular strategy of prostitution control will likely reflect a compromise among the positions of the various groups achieving input into the process, they will better reflect the positions of the dominant groups. However, the relative influence of the various groups may change over the course of the development.
>
> Prostitution laws will be implemented in such a fashion that they will better reflect the interests of the dominant groups. However, the relative influence of the various groups may change over time.

The last two postulates of the liberal-conflict approach deal with essentially the same issues, and thus will be discussed together. In both cases, these postulates contain initial assertions which appear true, followed by ones which are less supported by the evidence discussed in this Part. First, limited evidence exists to suggest that some form of

negotiation and compromise was carried out with respect to the contemporary changes discussed in Chapter 4. In these instances, feminist groups in Britain and New York were involved in the amendment process and even managed to instigate minor changes to their respective pieces of legislation. This would appear to support the argument that there would some compromise among the interested parties. However, since the changes were minor, it is likely that the male elites really gave up very little in return for the endorsement of the women's groups. In addition, there is ample further evidence to demonstrate the ease with which males were able to control most of the key aspects of prostitution control, despite the nominal participation of feminist groups.

Insofar as the second assertion contained in both postulates is concerned, there is little evidence to suggest that the relative influence of the various groups changed periodically. While there was a gradual shifting of control from the church to secular authorities, this occurred over hundreds of years and is not the sort of shifting patterns of dominance envisioned by the liberal-conflict model. Further, while the feminists did gain more input, particularly with regard to the contemporary changes, this influence was largely illusory and in any case was always less that that of the males. In this respect, it will be remembered that the liberalizing trend evident in the repeal of the Canadian vagrancy provisions was instigated and controlled by the largely male-dominated legal profession. Thus, while the pluralist model may fit the scenario in some respects, women were largely excluded from serious participation.

5.1.3 The Radical-Conflict Model

As in the previous section, this discussion will be broken down into separate considerations of each of the three postulates articulated in Chapter 1 with respect to the Radical-Conflict model. For the sake of convenience, each postulate will be reprinted immediately prior to its discussion.

> Prostitution control will reflect the ideological perspective being advocated by the particular combination of government and elites existing in a particular time and place.

In addressing this postulate, there is considerable evidence to support the contention that prostitution control always represents ideological concerns. For example, the early history of prostitution control was clearly tied to religious precepts which were frequently modified by more pragmatic chauvinist concerns. This resulted in a combination of ideologies which condemned prostitution on religious grounds, but accepted it as a necessary evil insofar as male interests were concerned. As the Protestant reformation swept Europe, the ideology was modified to reflect the monogamous model of family relations which was part of the new faith. Thus, prostitution lost its "necessary evil" status and a generalized crackdown was instituted against it. However, because single men were exempt from the monogamous model, prostitution was never totally repressed because it was perceived to provide a necessary service for them.

This approach to prostitution control continued until well into the Victorian age, when concern regarding VD and the "welfare" of the prostitutes started to dominate the discussion. Unfortunately, both of these concerns continued to be channelled within the overall patriarchal

ideological framework which still dominated most societies. This conclusion is supported by the way the enforcement of the Contagious Diseases Acts in Canada and Britain identified women as the major culprits in the "VD epidemic". While the "welfare" issue appeared to represent a more sensitive (and possibly feminist) motivation for prostitution control, it nevertheless represented mostly middle class values. While the reformers may have meant well, their attempts to help prostitutes usually exemplified the paternalist and chauvinist attitudes which the middle classes had always exhibited towards lower class women. Further, because there was never any serious attempt to remedy the underlying causes of prostitution, these "reform" efforts were doomed to failure.

In closing this discussion of the degree to which prostitution control reflected the prevailing ideology, it is necessary to consider the periodic crackdowns which were instituted against the male pimps and procurers who exploited female prostitutes. While these crackdowns might indicate that prostitution control was diverging from the prevailing patriarchal structures, such was not really the case. These crackdowns were usually motivated by sentiments which were unrelated to to the decline of patriarchy. In many instances, they were most likely due to a misguided sense of paternalism, which viewed women as children in need of protection from their male oppressors. This suggestion is borne out by the fact that middle and upper class women were almost always afforded greater protection against procurement than lower class women. A secondary motivation for the crackdowns was likely based on racist attitudes. For example, it is clear that the furor over white slavery during the late 1800's and early 1900's was at least partly motivated by the exclusionist and anti-foreign

sentiments which were permeating British and Canadian societies at that time. In this respect, rumors that foreigners were attempting to abduct Canadian and British girls for the purposes of prostitution inflamed public opinion enough to bring about stricter laws against procuring and pandering. The resulting mobilization against white slavery was completely compatible with patriarchy, and simply indicated that Canadian and British males were taking action to protect <u>their</u> women. In this instance, lower class women were temporarily considered more valuable than foreign males.

> Within the general ambit of the first postulate, prostitution laws will primarily reflect the interests of the economic elites and much less importance will be attached to the interests of other groups. However, the elites will attempt to make it appear that the control process is operating fairly.
>
> The enforcement of prostitution laws will be directed primarily at those groups who threaten the interests of the economic elites, while other groups will be relatively ignored by the enforcement apparatus.

Since both of these postulates involve the same principles, they will be discussed together. In attempting to assess whether prostitution control has been dominated by business elites, it must be noted that this analysis suffers from a lack of detailed information regarding early enforcement practices. However, the church strongly influenced prostitution control until the Victorian age, and it appears that their activities were motivated by religious sentiments rather than economic ones. (For example, while the Church was a major property owner, there was no evidence that the church position was mmotivated by economic issues.) While the major players during the Victorian age represented a much broader cross section of individuals and groups, there is little evidence to suggest that business groups were able to exercise undue influence. This situation appears to

hold for the early part of the Contemporary period, including the Great Depression and the Second World War.

Once the analysis moves into the post-war period, however, the picture begins to change. Commencing in the early 1950's, a pronounced shift occurs in the reported cases, such that charges involving prostitutes practicing in restaurants and hotels began to dominate the vagrancy cases almost exclusively. While there is no direct evidence to suggest that the business owners requested such a crackdown, it is a possibility. This trend became even more pronounced in the contemporary amendment processes discussed in Chapter 5. In New York State, for example, the primary impetus for stricter prostitution laws originated with Manhattan businessmen who were afraid that the rampant street prostitution in midtown Manhattan was exerting a negative effect on their businesses. Further, when the law was amended to provide for the prosecution of male customers, the business interests successfully prevailed on the New York police not to enforce it. It seems clear from this situation that the businessmen wanted the prostitutes controlled, but did not want their potential customers discouraged in any way from coming to the area[2].

A similar, though less dramatic, situation occurred with respect to the enforcement of the Street Offences Act in Britain. In this instance, the impetus appeared to come from a wide range of interest groups, and it is less obvious that business interests dominated the process. However, it must be noted that a proposal to include male "kerb krawlers" within the ambit of the legislation was discarded largely because businesses were opposed to it. Further, the police eventually identified areas which did not offend major business interests and effectively turned them into

unofficial red light districts. The fact that the total number of prostitutes remained constant over the long term likely indicates that the police were able to manage prostitution so that it did not upset the largely male business interests while still ensuring that sufficient males would be enticed downtown where they were potential customers for the legitimate businesses. (This assertion assumes that the approved red light areas were reasonably close to the major business areas, which was the case in London.)

5.2 A REVISED MODEL OF PROSTITUTION CONTROL

The analysis conducted in the previous section assessed the degree to which the three standard models of law and society could be used to explain the socio-legal history of prostitution. While various aspects of these models appeared to apply to some of the events discussed, it can generally be concluded that none of the models offered a completely satisfactory explanation for all of the events. This failure was can be attributed to two major reasons. The models either failed to account for significant historical events, or else certain postulates of a model would be repudiated by the historical analysis conducted in this Part. Therefore, what remains to be accomplished in this section is to summarize the aspects of the standard models which did apply to the history of prostitution, and to identify those historical phenomena which need to be accounted for in a revised theoretical approach to the history of prostitution. These points can then be combined into a single model which offers a more complete explanation.

Four postulates from the standard models were partially confirmed by the analysis in this Chapter.

> The major thrust of prostitution control will reflect the need to resolve conflicts arising from disagreements among different groups and/or from the perceived inadequacies of existing laws.
>
> Prostitution control will reflect the ideological perspective being advocated by the particular combination of governmental and non-governmental elites existing in a particular time and place.
>
> Within the general ambit of the first postulate, prostitution laws will primarily reflect the interests of the economic elites and much less importance will be attached to the interests of other groups. However, the elites will attempt to make it appear that the control process is operating fairly.
>
> The enforcement of prostitution laws will be directed primarily at those groups who threaten the interests of the economic elites, while other groups will be relatively ignored by the enforcement apparatus.

Despite the partial support for these postulates, there are many issues which were not explained by them. Therefore, it is necessary to revise these postulates and add additional ones before an adequate model of prostitution control can be developed. In this respect, there are six issues which are not adequately addressed by the above postulates.

1. The first issue which must be accommodated within a revised model is the enormous effect that patriarchal structures exerted on the entire process. Because of these structures, male interests took precedence over any other interests and/or conflicts which may have been relevant in particular situations. Thus, while there were frequent conflicts among the male participants, the conflicts were never allowed to override male interests in general.

2. The second issue which must be dealt with is the class bias which operated in tandem with the chauvinist one. This bias was not only evidenced in the different protections afforded to lower and upper class women; but was also evident in the failure to prosecute higher class courtesans and paramours. This latter bias was likely due to the fact that these types of prostitutes were patronized almost exclusively by upper class males.
3. The third issue centred around the manner in which male elites were able to manipulate public opinion regarding prostitution. While there often was considerable discussion regarding prostitution, a closer examination reveals that the discussion was rarely completely open, and at best resulted in a "false consciousness" based on a misunderstanding of the true situation.
4. While prostitution control was rarely "rational" in the sense of attempting to identify the problems and select the best solutions, it was frequently rational in the political sense. This was particularly evident during the contemporary changes discussed in Chapter 5, where a wider range of groups were involved. In the cases of New York and Britain, the males appeared to cooperate with the women and even agreed to several amendments proposed by women's groups. By the political expedient of agreeing to what were usually minor compromises, they were able to convince the women's groups to endorse their respective legislative packages. In any event, women's groups were only really effective when they joined forces with male groups. This limited the degree to which they advanced a uniquely feminist approach.

5. The two remaining issues involved the ineffectiveness of most prostitution laws and the side effects induced by attempting to legislate morality. While there were few instances where a particular control strategy was successful in eliminating prostitution or even reducing it over the long term, evidence was uncovered to suggest that the illegality of prostitution led to several undesirable "side effects". Two of the most important of these side effects were the the tendency of the police to engage in unethical conduct and the fact that pimps were able to control the prostitution trade more easily when it was driven underground by tougher laws.

These points will now be amalgamated with the previous four postulates to produce a set of propositions specifically intended to be applied to the development and implementation of Bill C-49.

(1) The development of Bill C-49 will reflect the need to resolve conflicts arising from disagreements among different groups and/or from the perceived inadequacies of existing laws. However, while attempts may be made to follow a rational approach to prostitution control, the process will still be dominated by short term political considerations.

(2) Bill C-49 will reflect the ideological perspective being advocated by the particular combination of governmental and non-governmental elites which are dominant during its development. While there may be women represented among these elites, they will generally adopt the views of their own particular elite groups and will not advocate a uniquely feminist approach.

(3) The implementation of S. 195.1 will be directed primarily at those groups who threaten the interests of the economic elites, while other groups will be relatively ignored by the enforcement apparatus. This will lead to numerous inequities with respect to the implementation of the law.

(4) Bill C-49 will be relatively ineffective at reducing the overall numbers of prostitutes, however, it may be effective in giving police more power to "manage" the more unpleasant aspects of street prostitution. It will also likely lead to more unethical police practices and other undesirable side effects.

(5) The overall development of Bill C-49 and implementation of S. 195.1 will reflect a class bias which will cut across gender lines. While the elites may attempt to make it appear that the process is operating fairly, feminist and other non-elite groups will rarely be able to influence the process to any degree.

As was noted in the introduction, these propositions will constitute the "thesis" to be assessed in Part II of this dissertation. Although the propositions are intended to explore specific aspects of the development and implementation of Bill C-49, they contain a series of class and feminist dimensions which will be expanded into a broader theoretical analysis in the conclusion to this dissertation.

Notes

[1] This issue will be dealt with in the concluding chapter. At this point, it is important to note that the writer implicitly views prostitutes as victims who are frequently "forced" into prostitution by factors beyond their control. In this respect, numerous studies have identified such common factors as family violence, child abuse, and unemployment in the backgrounds of many prostitutes.

[2] This paradox is characteristic of the dilemma which frequently faces business owners in high prostitution areas. Many researchers have noted that businesses often benefit from the fact that prostitutes attract paying customers to their area. See Prus and Irini (1980) for a more detailed discussion of this issue.

PART II

AN EMPIRICAL ANALYSIS OF BILL C-49

5.3 AN OVERVIEW OF PART II

Part II will be concerned with conducting an analysis of the development and implementation of Bill C-49. Two caveats are being placed on the implementation part of the analysis. First, the major focus of this study will be on the politics of prostitution control in the cities of Vancouver, Edmonton, Winnipeg and Toronto. While some attention will be paid to the effectiveness of Bill C-49 in reducing the total amount of prostitution, this will not be a major focus since the official evaluation contracted by the Department of Justice has already covered that ground. Second, this analysis will concentrate almost exclusively on adult prostitution. While the writer considers the issue of juvenile prostitution very important, it necessarily involves different issues and largely different interest groups. In this regard, it is the opinion of this writer that juvenile prostitution primarily involves child abuse issues which are covered under different legislation. Adult prostitution, on the other hand primarily involves class and chauvinist issues, combined with questions dealing with civil liberties and the ramifications of attempting to legislate morality.

Part II consists of the following chapters.

1. Chapter 6 outlines the methodology used in gathering the information required to analyze the development and implementation of Bill C-49.
2. Chapter 7 conducts an analysis of the development of Bill C-49. This analysis will commence immediately after the developments discussed in Chapter 5 and continue through to the proclamation of Bill C-49 in January of 1986.

3. Chapter 8 analyzes the implementation of Bill C-49 in Vancouver, Edmonton, Winnipeg and Toronto.

4. Chapter 9 consists of the final conclusions. It includes an analysis of the degree to which the development and implementation of Bill C-49 fits the revised model postulated in Chapter 5. In this respect, an emphasis will be placed on urban politics as distinct from national and provincial ones. The Chapter concludes with a brief discussion of several avenues for future research which were indicated by the analysis conducted in this dissertation.

Chapter 6

THE METHODOLOGY EMPLOYED FOR THIS RESEARCH

The intent of this Chapter is to describe the methodology which was used in conducting the empirical research on the development and implementation of Bill C-49. This discussion will be broken down into the following components:

1. an outline of the general research strategy which was used;
2. an outline of the specific data collection steps which were carried out; and
3. a brief discussion of the techniques used in analyzing the data.

6.1 THE RESEARCH STRATEGY

The methodological approach utilized in this research primarily involved qualitative techniques aimed at uncovering the in-depth information necessary for the comparative theoretical analysis which is conducted in this part. This qualitative methodology was implemented in accordance with the principles of "grounded theory" which dictated that the specific details of the research should be allowed to evolve gradually as the research progressed[1]. Thus, comparatively little attention was given to creating neat categories of information or ensuring that a random sample of the available information was collected. While some types of information were not available in all cities, this was accepted as an unavoidable limitation of this type of research. Four research designs were used to

collect the information in this study: media searches, surveys, observation, and the analysis of existing documents. These techniques were supplemented by the use of official statistics where appropriate. (The specific application of these designs is described in the next section.)

6.2 SPECIFIC DATA COLLECTION STEPS

This section will be divided into separate considerations of the following areas:

1. The initial methodological steps aimed at providing background information for the entire research process.
2. The methodological steps aimed at analyzing the development of Bill C-49.
3. The methodological steps aimed at analyzing the implementation and impact of Bill C-49.

6.2.1 Initial Methodological Steps

The following initial methodological steps were carried out to provide background information in preparation for the other stages of the research.

1. An exhaustive media search was carried out for the period between 1977 and 1980 to help outline the initial development of street prostitution as a political issue immediately before and after the Hutt decision. This media search was based on the Canadian Periodicals Index and encompassed all articles dealing with street prostitution in the cities of Vancouver, Toronto, Winnipeg and Edmonton.
2. A demographic review was carried out to provide a detailed demographic description of prostitution in the different cities

prior to the implementation of Bill C-49. This was carried out to provide background information on the practice of street prostitution in the various cities and to provide "baseline" data for assessing the development of the "prostitution problem" in each city. As such, it yielded valuable insights into the entire street prostitution issue. This review relied on existing sources of information, including police reports, media articles and published articles. The following specific types of information were collected.

a) - locations in which prostitution was concentrated

b) - social organization of prostitution, i.e pimps, etc.

c) - a general estimate of the levels of prostitution

d) - age and sex ratios of the prostitutes

e) - a preliminary list of the individuals and groups affected by prostitution

f) - a comparison of the four cities with respect to (a) - (e)

3. An initial telephone survey was carried out in all four cities, targeting all individuals and groups who might conceivably be involved and/or interested in the issue of street prostitution. This survey accomplished the following objectives:

a) Provided a more refined list of those individuals and groups affected by the Hutt decision.

b) Identified the individuals and groups who played significant roles with respect to the issue.

c) Provided a more detailed list of potential informants for the later stages of the research.

6.2.2 The Development of Bill C-49

The following methodological steps were carried out to collect information on the factors which instigated and affected the development of Bill C-49:

1. An in-depth media search was conducted of the issue in all four cities. This search was used to provide detailed information on the development of street prostitution as a political issue. While the main data gathering technique was to review the contents of the articles themselves, the overall tone and media stance was also analyzed.
2. A series of in-depth unstructured interviews were conducted with selected individuals identified as playing significant roles with respect to the issue. The aim of this step was to obtain information on the factors which contributed to the development of Bill C-49 from the perspective of the different interest groups which were involved. This survey included police officials, officials in the Federal Ministry of Justice and the appropriate provincial Ministries of the Attorney General, municipal politicians and local interest groups. An attempt was made to maximize the representativeness of the sample by employing a modified quota sample which included informants from all categories of groups in proportion to their numbers and perceived importance. However, because of the small sample size and the tendency of potential informants to "self select" out of the interviews, it was not always possible to maintain the quotas[2]. In keeping with the principles underlying grounded theory, the interviews were kept unstructured

and the questions were largely open ended during the initial part of each interview. However, towards the end of each interview, an attempt was made to structure the overall content, using the questionnaire contained in Appendix D as a guide. In addition, the following steps were included as part of this survey:

a) The questionnaire contained in Appendix D was mailed to those potential informants who had expressed a willingness to participate in this study but who were unavailable for personal interviews.

b) Follow-up questions were directed at certain individuals who had been identified as particularly reliable and/or helpful sources. These follow-up questions generally involved issues which had come to light as the research progressed, and thus had been omitted from the initial interviews. In certain instances, selected individuals were treated as "key informants" and used to verify and/or cross check information obtained from other sources.

3. Existing documents were analyzed to provide detailed information on the events which contributed to the development of Bill C-49 and additional insights into the positions of various groups and organizations. This information was used to cross check and verify the information obtained from the interviews. As well, the results obtained from each type of document was compared to those obtained from other types wherever possible. The following types of documents were included in this step:

a) - the minutes of municipal council meetings

b) - position papers published by community groups

c) - research reports prepared on the issue

d) - committee reports on the issue (including the Fraser Committee)

e) - Hansard

6.2.3 Implementation and Impact

An analysis of the implementation of a particular policy or program is customarily divided into separate analyses of the "process" by which the policy or program is implemented and its "impact" once it is implemented (Doern & Aucoin, 1979). However, in the case of Bill C-49, the federal Ministry of Justice has already conducted a thorough review of the impact of the legislation. Further, the implementation "process" and the "impact" of Bill C-49 are intertwined to a great extent, thus making it difficult to separate the two for analytic purposes. For these reasons, it was decided to concentrate primarily on the political aspects of the implementation process, and to analyze the impact of the legislation only when it was directly relevant to the theoretical analysis. The following methodological steps were carried out:

1. A detailed analysis was conducted of media articles dealing with the implementation of Bill C-49 in the four cities (as per that described under the developmental steps).
2. A series of in-depth unstructured interviews were conducted as part of the survey described under the developmental steps.
3. A detailed analysis was carried out on the following types of existing documents:

a) - the minutes of municipal council meetings

b) - position papers published by community groups

c) - internal memorandums

d) - private communications between participants

e) - research reports prepared on the issue

f) - committee reports on the issue

4. A series of short telephone interviews were carried out, targeting residents and businesses in high prostitution areas to obtain their opinions regarding the effect of Bill C-49 on street prostitution in their area. The respondents were selected non-randomly from the telephone directories in the respective cities.

5. Direct observation of the areas where prostitution is prevalent was routinely carried out in all cities. This consisted of regular monitoring of the "strolls" to determine the levels of noise, numbers of prostitutes, the activities of the prostitutes, and the amount of traffic. The aim of this tactic was to provide firsthand information to cross check the information derived from interviews and other sources. While this observation was mostly passive in nature, occasional attempts were made to conduct brief informal interviews with the prostitutes. It must be noted that because of the "logistical" problems associated with implementing such a research design in four cities, the data from this observation were necessarily unsystematic in nature. Thus, while this observation is still being done periodically in Winnipeg, it was limited to a one week period in the other cities. Once again, a modified type of "quota" sample was used, in which all prostitution areas in each

cities were visited in proportion to the amount of street prostitution existing in each area. In this respect, the areas with the highest concentrations were visited at least twice daily, usually in the afternoon and late evening.

6.3 DATA ANALYSIS

The analysis of qualitative data involves special considerations which are not present with respect to quantitative data. In quantitative data analysis, the collection, analysis and interpretation of the data are separate processes. For example, the analysis of the data can never commence until the collection is complete, and then usually takes the form of statistical manipulations on numerical information. Similarly, the interpretation of the data consists of attaching theoretical significance to the results of the statistical analysis, and obviously cannot occur until after the analysis is complete. Thus, each stage is dependant on the preceding one, and if errors are made in the earlier stages, it is an expensive and time consuming process to "retrace ones steps" and remedy the error.

In qualitative analysis, however, the procedure is radically different from that described above. First, while the collection, analysis and interpretation of the data are still conceptually distinct categories, in actual practice they constitute an interrelated and overlapping sequence. More specifically, these three operations are considered an ongoing process, linked by a series of feedback loops, such that the results of each stage influence the operation of all other stages. In accordance with the principles of "grounded theory", the qualitative analysis used in this

research ensured that the data collection stage was not completed before the initial results of the analysis and interpretation were available to guide the further collection of the data. The remainder of this section will outline the specific data analysis steps which were carried out:

1. Initial Organization of the Data: As the data were collected, an initial ordering of the data was carried out. This took three forms. First, the data were divided into that pertaining to each city in the study. Following this, the data were further divided into three major parts corresponding to the three major segments of the research, i.e. background information, development, and implementation. Finally, a preliminary "mapping" of the data into an initial factorial model was carried out. It should be noted that this procedure deviated somewhat from the principles of "grounded theory". In this respect, a rigorous application grounded theory would have allowed the entire model to "emerge naturally from the data". However, because of the short period of time spent in each city, this not possible and certain a priori assumptions were made about the factors which would be relevant to this research.
2. Initial Focusing of the Analysis: Once substantial amounts of information had been collected and ordered as outlined above, the emerging analysis was focused with respect to the research goals outlined in the introduction. At this point, an initial assessment was made regarding the overall adequacy of the data being collected, and revisions were made to the overall approach. In addition, follow-up questions were directed at the appropriate individuals. (This was first done after the research was completed in Vancouver and repeated after the other cities as well.)

3. Detailed Categorization of the Data: This step is crucial inasmuch as it constitutes the first time that the data were examined for their "substantive" content. In carrying out this step, the data were organized into detailed substantive categories based on the "relationships" which existed between the different factors and variables. Three techniques were used to impose analytical rigor on this process: convergence/divergence, logical inference and inductive typologies. Convergence refers to the process of determining what items in the data fit together. This involved looking for regularities in the data and using them to induce initial relationships which appeared to explain parts of the policy process. These tentative relationships were then fleshed out by a process of logical inference, which involved "logically" deducing what other relationships ought to be present and then searching for evidence to support them. Once several relationships were identified in this fashion, they were transformed into an inductive typology by grouping them into categories of relationships based on common underlying dimensions, i.e. economic status, feminism, etc. Once the typology was sufficiently developed, the analyst used the principle of divergence to determine the degree to which the various categories and dimensions were mutually independent. This was done by assessing the degree to which various bits of data could be placed into two or more categories and the degree to which a category could be placed under more than one dimension.

4. Re-Focusing the Analysis on Emerging Themes: As the research progressed, additional themes and relationships continued to suggest themselves from the analysis, and the research was periodically

re-focused on these new aspects of the analysis. At this point, additional research or a re-analysis of existing data was caried out. This re-focusing was conducted repeatedly as the analysis proceeded until closure appeared to have been reached.

5. Construction of Process-Outcome Matrixes: The construction of several process-outcome matrixes constituted the next stage in the explanatory process. Basically, a process-outcome matrix is a special typology in which the dimensions are arranged so that they intersect to create "cells" at the points of intersection. The left vertical and the top horizontal axes of the typology represent different dimensions of the data. The cells are used to contain the various outcomes associated with each combination of dimensions. An example of such a matrix used to explore the effect of different types of political processes on enforcement strategies is found in Appendix D (Figure 8.1). In this matrix, the left vertical axis is used to represent police enforcement strategies while the top horizontal axis is used to represent political factors which affected the process.

As can be seen from Figure 8.1, each strategy can be associated with more than one outcome (and vice versa) depending on the other factors associated with the process. When the various cells are full, the resulting matrix organizes the data to provide a detailed "pictorial" representation of all of the possible combinations of processes and outcomes, along with the political factors associated with the combinations. Used in this way, the factors outlined along the top axis really constitute "intervening variables" which modify

the outcome associated with a particular enforcement strategy. This allowed the matrix to be used to suggest possible relationships and other factors which augmented and refined those already induced during the detailed categorization of data stage of the analysis. Similar matrixes were used to explore other aspects of the development and implementation of Bill C-49.

6. A Theoretical Explanation of Bill C-49: The final stage in explaining of the development and implementation of Bill C-49 involved applying the factors and relationships identified in the previous stages to the theoretical models outlined in Chapter 6. The identified factors and relationships were carefully matched to the propositions of each theory to determine the degree to which any of the theories explained the policy processes. Three techniques were used to maximize the validity of this theoretical analysis:

   a) Consideration of Rival Explanations: It is generally considered axiomatic in scientific research that several different possible explanations will fit the data to varying degrees. Therefore, in selecting the explanation which appeared most appropriate, the analysis in this dissertation carefully considered alternate explanations.

   b) Consideration of Negative Cases: In a similar vein to the previous point, evidence was collected which did not fit the chosen explanation (referred to as "negative cases"). These negative cases were identified and their theoretical implications used to revise the theoretical model wherever possible.

c) Triangulation with Respect to Key Propositions: It was considered essential to attempt to uncover at least three different types of data to support all important theoretical propositions developed during the analysis. This was accomplished by methodological and/or source triangulation.[3]) This tactic was intended to provide corroboration and guard against the possibility that a single supporting piece of data could be coincidental. In this respect, information from different sources and methods were constantly cross compared in an attempt to suggest rival explanations and provide negative cases.

NOTES

[1] See Glaser and Straus (1967) for a detailed description of this approach. The specific way this approach was used in this research will be discussed more fully in the section on data analysis.

[2] In general, politicians were the most likely to decline to participate while the local interest groups were the least likely to opt out.

[3] See Denzion (1978) for a detailed discussion of this technique.

Chapter 7

AN ANALYSIS OF THE LEGAL AND POLITICAL FACTORS WHICH INFLUENCED THE DEVELOPMENT OF BILL C-49

Bill C-49 was proclaimed into law on December 28, 1985 amidst some of the most bitter controversy ever engendered with respect to Canadian criminal legislation. Referred to as the "communicating" law, this legislation replaced the 1972 anti-soliciting provisions, whose development was discussed in Chapter 4. The intent of this Chapter is to provide an in-depth analysis of the development of Bill C-49. In carrying out this analysis, the discussion will will commence by analyzing the implementation of the 1972 anti-soliciting provisions. Because the "failure" of these provisions is considered instrumental in the development of Bill C-49, particular emphasis will be placed on outlining the reasons for their failure. In addition, this discussion will attempt to identify and analyze the significant events and issues which contributed to the development of Bill C-49. These will include the immediate aftermath of the 1978 Hutt decision, the role of the Fraser Committee, the role of local politicians and/or local interest groups and the drafting and enactment of Bill C-49. Throughout this analysis, special attention will be paid to the political processes associated with these events and issues. While the analysis in this chapter will necessarily include all three levels of government, greater attention will be placed on the local politics occurring in the cities of Vancouver, Toronto, Winnipeg and Edmonton.

7.1 THE IMPLEMENTATION OF SECTION 195.1

As was noted in Chapter 4, the prostitution-related vagrancy provisions were repealed in 1972 and replaced with Section 195.1 which prohibited soliciting in public for the purposes of prostitution. This change can be considered a milestone in the development of Canadian prostitution law for several reasons. First, inasmuch as section 195.1 concentrated on the actions of the prostitute instead of her status, it restricted much of the power that had previously enabled the police to detain prostitutes virtually at will. Second, it can also be argued that this approach clearly indicated that Parliament was only concerned with the nuisance aspect of street prostitution, and thus provided more precise guidelines for the criminal justice system to use in prostitution control. Finally, because section 195.1 appeared to apply equally to males and females, it was widely considered an improvement by feminist groups and civil libertarians, many of whom argued that the new provisions would eliminate much of the chauvinism which had characterized the enforcement of the previous vagrancy provisions. All in all, it can be argued that the new law appeared to place rational, clearly defined limits on prostitution control, which would bring it into line with the enforcement practices and standards of proof applied to other types of criminal activity.

In assessing the degree to which the above assertion was realized, the most appropriate place to commence the discussion is by analyzing the way in which the courts applied the new law. In conducting this analysis, it quickly becomes clear that section 195.1 was not free of the types of ambiguity that had plagued the previous vagrancy provisions. In this respect, there were three specific issues which had to be dealt with before

the new law could be applied in a consistent fashion. From a feminist point of view, the two most important of these issues involved the dual questions of whether males could be considered prostitutes and whether male customers could be charged for attempting to solicit female prostitutes. While section 195.1 was couched in gender neutral terms, it was far from clear how the new law would be applied by the police and the courts. In addition to these questions, an even more basic issue involved the definition of the type of activity which was necessary to constitute "soliciting" under the section. Since each of these issues had to be worked out through the various levels of courts in all ten provinces (or at least until the Supreme Court of Canada rendered a decision), the initial implementation of section 195.1 was fraught with ambiguities and inconsistencies.

The first two reported cases under the anti-soliciting law involved the question of whether males could be considered prostitutes within the ambit of section 195.1. In R. v. Patterson ((1972), 9 C.C.C. (2d) 364), an Ontario county court ruled that a male could not be convicted of soliciting under section 195.1. This case involved a male transvestite who solicited another male while passing as a female. Patterson was charged with soliciting and convicted in Provincial Court because all of the required elements under section 195.1 appeared to be met. However, Patterson successfully appealed his conviction to the Essex County Court. In overturning Patterson's conviction, the court argued that the term "prostitute" only applied to females, and since section 195.1 specified "soliciting for the purposes of prostitution", it was logically impossible for a male to be convicted under the section. In reaching this decision, the Court argued that since the anti-soliciting provisions did not specify

that the term "prostitute" included males, it was necessary to rely on a standard dictionary definition which restricted it to females (Id: 366). In this respect, the Court appeared to be influenced by the definition used in previous vagrancy cases. Considering that that the new section 195.1 had been specifically drafted to replace the vagrancy provisions with a gender neutral definition of prostitution, this decision is disappointing. Since the court was not bound to apply the definition used in vagrancy cases, it can be argued that it chose to maintain a chauvinistic bias with respect to prostitution.

Another case involving male prostitution was decided by the British Columbia Supreme Court a few months later. The case of R. v. Obey ((1973), 11 C.C.C. (2d) 28) involved a defence appeal against a conviction for soliciting for the purposes of prostitution. In this case, the court held that while the term "prostitute" might only apply to females, a male could be convicted of soliciting for the purposes of prostitution under section 195.1. The judge appeared to distinguish between soliciting for the purposes of prostitution and actually being a prostitute, thus making it possible to convict male prostitutes in the Province of British Columbia. While there are only limited statistics regarding the degree to which male prostitutes were prosecuted, there is some evidence to indicate that they were prosecuted in Vancouver and even received harsher penalties than their female counterparts (Layton, 1979). However, it is unlikely that the police and courts were motivated by any particular desire to treat males and females equally. It should be noted that most male prostitutes service other males, and it is entirely possible that the desire to prosecute male prostitutes was based on a dislike of homosexuals in general[1]. In this

respect, at least one researcher has noted that the police in particular took great delight in harassing and arresting the male transvestites working in downtown Vancouver (Id: 112).

While the Obey decision, combined with homophobia, did ensure that male prostitutes were prosecuted in Vancouver, there is no indication of cases in other provinces, and thus it is difficult to determine whether male prostitutes were equally prosecuted across Canada. It would appear that the decision in Patterson would be binding on all provincial courts in Ontario, since there is no record of it being overturned by the Ontario Court of Appeal. Further, the Toronto police were quoted in the media as stating that male prostitutes could only be convicted if the police overheard them soliciting a potential customer (G & M, Aug 11 1977: 5). This would appear to indicate that the police were reluctant to mount undercover operations against male prostitutes[2]. It is also worth noting that even though the Obey decision allowed males to be convicted of soliciting in British Columbia, the BC Court nevertheless had appeared to accept the basic premise that only females could be considered prostitutes, and thus failed to eliminate the chauvinistic bias which characterized most of the basic issues involved in prostitution control. While Parliament did attempt to rectify this situation by enacting Bill C-127, which defined prostitutes as persons of either sex who provided sexual services in return for financial gain, this did not occur until 1982. Since this was well after the Hutt decision, it will be discussed in the next section.

While male prostitutes might have been prosecuted to some extent, it is likely that straight male customers were almost never prosecuted under the new legislation. Despite the fact that section 195.1 was gender neutral,

there were no reported cases involving males charged for soliciting the services of a prostitute during the first several years of its existence. In fact, it was not until 1978 that any superior court attempted to grapple with the issue, and even then the double standard was well evident. For example, in the 1978 Ontario cases of R. v. Di Paola ((1978) 43 C.C.C. (2d) 199) and R. v. Palatics (Ibid), the Supreme Court of Ontario ruled that male customers could be convicted with soliciting insofar as their actions created offensive nuisances[3]. These two cases were similar insofar as they both involved defendants who had engaged in loud and obnoxious conduct in trying to attract the attentions of a prostitute. For example, Di Paola had followed an undercover policewoman for almost a block, honking his horn repeatedly before she approached his car. Palatics had engaged in similar behavior, finally opening his door and proclaiming loudly, "a straight lay for $20.00" (Id: 201). In reaching his decision, the Justice noted that the behavior of the men was of the sort that might easily offend any "respectable" woman on the street, and thus had to be curtailed. This statement implied that a male customer who acted discreetly could not be convicted, and is significant insofar as no such test was applied to females charged with the same offence.

As cautious as the above decision was in assigning liability to male customers, it was not always followed by other courts. The only other reported case in this period was the British Columbia Court of Appeal decision in R. v. Dudak ((1978) 41 C.C.C. (2d) 31). In this case, it was held that male customers were simply attempting to obtain sexual services, and since they were not prostitutes, they could not be convicted under section 195.1. Thus, despite the fact that the courts and the legal

profession were instrumental in precipitating the demise of the vagrancy provisions, it appears that they were initially reluctant to eliminate the chauvinist bias in Canada's prostitution laws. Further, Canadian police forces appeared to have largely adopted the decision in Dudak and made few, if any, attempts to have the decision overturned. In fact, Don Winterton, then President of the Canadian Association of Chiefs of Police, noted in an editorial published in the Canadian Police Chief that the decision in Dudak meant that the police could not charge customers until the Federal government amended the Criminal Code (Winterton, 1980: 6). Considering that the police had been diligent in attempting to "get around" other court decisions dealing with female prostitutes, this apparent acceptance of immunity for male customers suggests that the police were not seriously interested in prosecuting males[4].

With respect to the separate issue of what type of behavior was necessary to constitute soliciting under section 195.1, the courts initially appeared willing to restrict the operation of the section to those cases which clearly involved a nuisance to the public at large. For example, in R. v. Nagy ((1972) 12 C.C.C. (2d) 29) the Ontario Provincial Court acquitted a female prostitute on the grounds that the prosecution had not established that the accused had "solicited" an undercover police officer who was posing as a prospective customer. In this respect, the Judge ruled that it was insufficient to prove that the woman had simply made it known that she was available for prostitution, and that it was necessary to establish that she had importuned the customer by "bothering, pestering or annoying" him in a "pressing or persistent" manner (Id: 29). This decision was subsequently affirmed (at least partially) by the Ontario

High Court decision in R. v. Goobie ((1973) 11 C.C.C. 92d) 538). In this case, the court agreed with the Nagy decision insofar as the necessity for importuning was concerned. However, the court weakened the effect of the decision by adding that the importuning did not have to be done by words, and that gestures, winks and accompanying demeanor could be considered importuning[5].

The next several years witnessed a series of cases which vacillated between reaffirming the "nuisance" principle laid down in Nagy and applying less restrictive definitions of soliciting under section 195.1. While this analysis will not discuss each case in detail, there are three cases which are noteworthy. In the 1974 decision of R. v. Gallant ((1978) 17 C.C.C. (2d) 555), the Vancouver County Court ruled that a "mere nod" could constitute soliciting under section 195.1 depending on other circumstances. In this case, a Vancouver detective stopped beside a female prostitute, and nodded at her when she looked into his car. She returned the nod and entered the car. Once in the car, they negotiated a price for oral sex, upon which she was arrested for soliciting. The Court held that the entire series of events, including the negotiations inside the car, could be considered importuning. In this respect, the judge ruled that a car could be considered "public" place within the meaning of section 195.1.

The remaining two cases involving the definition of soliciting are two contradictory decisions rendered by the Ontario and British Columbia Courts of Appeal. In the British Columbia case of R. v. Phillips ((1974) 19 C.C.C. (2d) 27), the BC Court of Appeal essentially held that a prostitute could be convicted of soliciting even though she had only engaged in a "friendly" conversation with a police detective who admitted that he had not attempted

to discourage the conversation in any way[6]. On the other hand, the Ontario Court of Appeal, in R. v. Rolland ((1975) 27 C.C.C. (2d) 485), conclusively ruled that it was necessary to prove "pressing and persistent" conduct that created an objectionable nuisance to the public. The Court further noted that merely making oneself available for prostitution was insufficient for a conviction under section 195.1. These two cases essentially polarized the argument, and subsequent court decisions tended to follow one or the other of the two appeal court interpretations. One of these cases was the 1976 BC Court of Appeal decision in R. v. Hutt ((1976) 32 C.C.C. (2d) 199) which will be discussed in detail in the next section.

Before discussing the Hutt case, it is appropriate to briefly discuss the attitude of the police and other criminal justice officials toward section 195.1 prior to this decision. In this respect, it is important to note that Canadian police forces had been unhappy with section 195.1 from the outset (Winterton, 1980). At least part of their antagonism can be attributed to the fact that the new law was designed to give the police enough power, and only enough power, to control the worst aspects of street prostitution. While this assertion might appear paradoxical, its logic becomes clear once one realizes that controlling street prostitution was only one of the uses (and perhaps not the most important use) which the police made of the previous vagrancy provisions. The police readily admit that they rely on street prostitutes as prime sources of information on the criminal subculture in general[7]. In order to obtain the maximum amount of information, the police had previously used their broad powers under the vagrancy provisions to coerce the prostitutes into a symbiotic relationship in which they traded information for relative immunity from police action.

The replacement of the vagrancy provisions with section 195.1, which required much tougher standards of proof, deprived the police of this "leverage". The fact that the police resented this situation is amply demonstrated by the many media articles detailing the inadequacy of section 195.1 well before the Hutt case in 1978[8].

7.2 THE HUTT DECISION AND ITS AFTERMATH

The 1978 Hutt decision has been widely heralded as being responsible for the demise of the anti-soliciting law contained in section 195.1 of the Criminal Code. While opinions vary as to the overall effect that this decision exerted on the numbers of prostitutes in major Canadian cities, there is little doubt that this decision affected police practices and court decisions across Canada. It also initiated a protracted and at times bitter debate which eventually embroiled the police, the courts, prostitutes, resident's groups and local, provincial and federal politicians in an intensely partisan political process over the best way of dealing with street prostitution. For this reason, it is considered necessary to discuss the Hutt case in much greater detail than any of the other cases discussed in this chapter.

Initially, there was little to distinguish the Hutt case from many of the other such cases going through the courts during the late seventies. A Vancouver prostitute, Debra Hutt, was convicted in BC Provincial Court of soliciting an undercover Vice Squad officer. With respect to the facts of this case, all parties agreed that Hutt had simply engaged the officer in a discreet conversation and that no pressure or annoying tactics had been used. Further, it was established that Hutt had almost immediately entered

the detective's automobile, and that most of the interaction, except for an exchange of nods, had occurred within the car as it moved in traffic. Up to this point, the case was entirely consistent with the BCCA decision in R. v. Phillips (Supra) and to a lesser extent with the Ontario High Court decision in R. v. Goobie (Supra). However, Hutt's counsel, Tony Serka, decided to launch an appeal despite the existence of higher court decisions unfavorable to his client. This appeal was heard in the Vancouver County Court by way of a trial de novo in the latter part of 1975.

The Vancouver County Court overturned Hutt's conviction on the grounds that the prosecution had failed to prove that she had made a "nuisance" of herself[9]. As a result, the Crown further appealed to the BC Court of Appeal, arguing that the County Court Judge had erred in defining "soliciting" solely in terms of a "nuisance". On May 19, 1976, the Court of Appeal unanimously agreed that the appeal should be allowed and convicted Hutt of soliciting under section 195.1. However, while all three justices had agreed on this point, there was a split decision regarding the reasons for overturning the County Court decision[10]. The majority decision, written by Robertson, J.A., argued that although it was necessary for the Crown to prove that Hutt had done something more than simply "make herself available for prostitution", it was not necessary to prove that she had been annoying or persistent. The majority went on to note that by entering the car uninvited and engaging in a discussion of her services and prices, Hutt had clearly met this test. In the minority decision, Carrothers, J.A. argued that the County Court Judge had relied on an outdated definition of the term "importune" as it related to soliciting. The Justice noted that while "importune" had once carried a connotation of pressure or

persistance, in modern usage it simply denoted soliciting for an immoral purpose. Thus, all that was necessary to sustain a conviction under section 195.1 was that Hutt had accosted the police officer for the purposes of prostitution, and that it was not necessary to establish anything beyond that.

In examining the BCCA decision in Hutt, and particularly the minority decision, it is apparent that it extended the definition of soliciting under section 195.1 beyond that outlined in previous British Columbia decisions. The defence requested and received leave to appeal the case to the Supreme Court of Canada on the grounds that the BCCA had erred in its definition of "soliciting" under section 195.1. The defence counsel, Tony Serka, decided to press ahead with the appeal for at least three reasons[11]. First, despite the higher court decisions to the contrary, Mr. Serka was convinced that the Parliament of Canada had intended that only behavior which created a nuisance or bothered other people should be included within the ambit of section 195.1. Second, because the cases dealing with the issue were split between those following the Ontario Court of Appeal decision in Rolland and the BC Court of Appeal decision in Phillips, it was becoming imperative that this contradiction be resolved. Finally, the minority decision in the Hutt case clearly extended the ambit of section 195.1 in British Columbia, a factor for which he may have felt responsible. The appeal to the Supreme Court of Canada ultimately dealt with three issues: 1) the definition of the type of activity necessary to support a conviction under section 195.1; 2) whether a car can be considered a "public place"; and 3) whether an appeal court can overturn an acquittal and impose sentence without the accused being present and

given an opportunity to make a representation. (This last ground is not relevant to the present analysis and will not be discussed further.)

The Supreme Court of Canada rendered its decision on February 7, 1978, in which it unanimously concluded that the BC Court of Appeal had erred in law with respect to the definition of "soliciting" under section 195.1. In giving reasons for judgement, all members of the court essentially agreed that the term referred only to conduct which was "pressing and persistent". It was established that Hutt had simply entered the officer's car after exchanging nods. Thereafter, she simply responded to his questions, and ultimately agreed upon a price for sexual services. Since it appeared that the officer had encouraged the interaction (he testified at trial that one of his duties was to make it appear that he wanted a girl for sex) and controlled the interaction for the most part, it was clear that Hutt had not engaged in pressing and persistent behavior.

With respect to the definition of "public place", the court split five to four, with the majority (composed of Spence, J., Laskin C.J.C., Martland, Dickson, and Estey, JJ.) deciding that an automobile could not be considered a public place inasmuch as it was privately owned and under the exclusive control of the driver. While the minority (composed of Richie, J., Pigeon, Beetz, and Pratt, J.J.) did not specifically disagree with this opinion, they argued that it was not necessary to consider this issue once it was established that Hutt had not been "soliciting" as defined in section 195.1. Interestingly, the majority identified this issue as the strongest (and perhaps most important) grounds for appeal. However, since the defence had neglected to specifically include it in the original application for leave to appeal, the Court was technically barred from

ruling on it even though it was raised at the actual appeal. While this conclusion officially rendered the majority decision regarding the definition of "public place" obiter dictum, and thus not binding on subsequent cases, it was now clear how the Supreme Court would rule on the issue in any future cases.

The reaction to the Supreme Court ruling in Hutt was not long in coming. While the initial news reports were restrained and relatively factual, the media quickly realized that they had a "media event" of substantial proportions on their hands. Almost immediately the print media began to publish inflammatory articles detailing how the new ruling played into the hands of the prostitutes, while tying the hands of the police. In fact, the Supreme Court of Canada had essentially reaffirmed the 1975 Ontario Court of Appeal decision in Rolland, which argued that a prostitute had to be pressing and persistent before she could be convicted under section 195.1. In the furor, this particular piece of information appeared to go unnoticed. This is unusual considering that while the Rolland decision had occasioned some negative publicity in the Toronto media, the police had apparently managed to cope, at least to some degree.

In attempting to identify and explain the chain of events which occurred in the aftermath of the Hutt decision, the role of the media can easily be identified as one of the major factors influencing the public furor which developed during 1978. In this respect, the press in Toronto and Vancouver took a much more vocal and reactionary stance towards the Hutt case than occurred in most other major Canadian cities. For example, within two weeks of the decision, both the Vancouver Sun and the Globe and Mail began publishing inflammatory articles outlining the negative effects of the

Supreme Court decision on police abilities to control prostitution. Using headlines such as "Supreme Court Decision Would Force BC Police into Bed with Prostitutes to Win Cases" (G & M, Mar 9, 1977: 8) and "Hookers out in Force in Van with new Legal Immunity" (VS, Mar 11, 1977: B1), the media combined their discussion of the Hutt case with exaggerated estimates of the numbers of prostitutes on the streets to insinuate that a deluge of hookers, drug pushers and other criminal types would soon be threatening respectable citizens in their own neighborhoods. In the face of an almost daily barrage of such dire predictions, business groups and other affected citizens became alarmed at what was perceived as a major law and order crisis. As a result, pressure began to mount for a quick resolution of the issue (Libby Davies; Harry Rankin).

The mounting public clamor continued unabated during 1978, and it became apparent that the issue would not disappear without some fairly significant official action. For a variety of reasons, Vancouver became the initial focus for the political events which developed. First, Vancouver's mild winters and its status as a major tourist area had always ensured that its year round population of prostitutes was higher and more visible than in most other Canadian cities (with the possible exception of Toronto). Second, the previously noted 1977 decision of the Vancouver police to concentrate on bawdy houses had resulted in the closure of several bars and nightclubs which had previously allowed prostitutes to operate undeterred[12]. In addition, several others were warned to "clean up their act" and subsequently began to refuse admission to known prostitutes. These events forced large numbers of prostitutes (up to 300 in one estimate) onto the streets, where they migrated to the lower Davie Street area in the West

End and the area along Georgia between Burrard and Hornby Streets in Vancouver's downtown business district. (See map in Appendix B for details) This contributed to a drastic increase in the numbers of street prostitutes which was unrelated to the Hutt decision (Lowman, 1985)[13]. However, in the media panic over street prostitution, the public attributed the large numbers of visible prostitutes to the effect of the decision.

In retrospect, the prostitutes had probably picked the wrong areas to congregate from a political standpoint. The Davie Street area was an upper middle class area of expensive apartments and condominiums, located along English Bay, one of Vancouver's most celebrated tourist attractions. The Georgia Street area contained several of the most expensive business and tourist hotels in Vancouver. As could be expected, neither of these groups, i.e. the hotel owners or the West End "yuppies", were particularly pleased with their new neighbors. These groups directed powerful lobbies at Vancouver City Council and the Vancouver Police Department to "do something" about the problem. It can also be assumed that the local politicians did not approve of Vancouver's prominent tourist and business areas being inundated with prostitutes[14]. As a result, the Mayor of Vancouver, Jack Volrich, called on the Federal government to enact tougher prostitution laws and ordered the Vancouver Police Department to increase uniformed patrols in the affected areas to deter the more obnoxious aspects of the situation (VS, Feb 21, 1978: D10). At approximately the same time, the Minister of Justice, Ron Basford, who represented the Federal riding of Vancouver Centre in which both of the above areas were located, announced that he intended to introduce legislation in Parliament amending the Criminal Code to eliminate the need for "pressing and persistent" conduct.

However, he rejected calls for either an anti-prostitution loitering law or a return to the vagrancy provisions, both of which were being advocated by many police forces (G & M, Feb 23, 1978: T4).

The next major factor to influence the political situation with respect to street prostitution was the positions taken by police forces across Canada. From a publicity standpoint, Canadian police forces were unanimous in their condemnation of the Hutt decision and they banded together to lobby for legislative change. The Canadian Association of Chiefs of Police, chaired by Chief Don Winterton of the Vancouver Police Department, vocally argued that the police had experienced a steady erosion of their powers to control street prostitution ever since the demise of the former vagrancy provisions. He further argued that Parliament had to assume political responsibility for street prostitution by either enacting tougher laws or else legalizing it. (The latter course of action would at least take the heat off the police.) (Winterton, 1980). Concurrent with their political activities, most Canadian police forces began a concentrated effort to develop new strategies for controlling street prostitution. For example, the Vancouver and Toronto police adopted the practice of charging prostitutes with soliciting under section 195.1 if they approached several different men within a short period of time. In addition, most police forces also experimented with using a wide variety of non-criminal legislation to control the worst aspects of street prostitution[15]. These tactics were at least partially successful, and the public furor started to die down by the middle of 1978 (as indicated by the lack of news articles on the subject).

The above scenario had lasted only a few months when the Vancouver Police Department abruptly abandoned any attempts to control street prostitution. The Toronto police, on the other hand, continued their harassment of prostitutes and their customers. This led to critical articles in the Vancouver media comparing the Vancouver Police Department unfavorably to their Toronto counterparts (VS, Aug. 4, 1978: A12;VS, Aug. 10, 1978: B1). These articles precipitated an acrimonious debate in which the two police departments began accusing each other of unethical conduct. The Toronto police argued that their Vancouver counterparts had abdicated their responsibility to protect the public. The Vancouver force countered by suggesting that the Toronto police were acting illegally by using non-criminal legislation to control street prostitution. Insp. Bill Nicol, OIC of the VPD Vice Squad, argued that it was up to the Federal government to enact new legislation if they wanted changes in the manner in which street prostitution was controlled (VS, Aug 4, 1978: A12). Most other Canadian police forces adopted Vancouver's lead and stopped laying soliciting charges under section 195.1 (and most other types of secondary charges as well). However, the Toronto police continued their campaign against prostitutes until the 1981 Supreme Court decision in Whitter and Galjot effectively eliminated the practice of charging prostitutes who solicited several men within a short period of time[16].

There are two additional factors which are relevant to the police behavior described above. First, as was noted in the previous section, Canadian police were dissatisfied with section 195.1 from its enactment, and most Canadian police forces had favored tougher laws long before the 1978 Supreme Court decision. However, since the Hutt decision had prompted

the Minister of Justice to introduce tough amendments to section 195.1, most police forces had initially attempted to utilize creative interpretations of section 195.1 and other types of legislation as an interim strategy for controlling street prostitution. However, when these amendments failed to gain legislative approval during 1978 and 1979, the police realized that tougher prostitution laws were not going to become a reality without strong political pressure. Thus, almost all Canadian police forces stopped attempting to control street prostitution as a conscious tactic aimed at allowing public indignation to build to levels which the politicians could not ignore[17]. The reason for this behavior was simple: the police did not want Hutt overturned unless they could also achieve the complete repeal of section 195.1. In fact, one senior police officer has admitted that the police had generally viewed the Hutt decision as a "golden opportunity" to lobby for much tougher prostitution laws[18]. Because the Toronto police had previously had to contend with the Rolland decision, which was essentially similar to Hutt, they continued to attempt to control street prostitution until the Supreme Court decision in Whitter and Galjot made it impossible. At this point, they also joined the political campaign against section 195.1.

The next important factor which needs to be discussed is the reaction of the Federal government to the Hutt decision. As was noted earlier, Ron Basford, the Liberal Minister of Justice, had promised to introduce amendments to the Criminal Code making it easier for the police to prosecute prostitutes for soliciting in public. As a result, he introduced an omnibus criminal law amendment package (Bill C-51) on May 1, 1978, which removed the need for pressing and persistent conduct and expanded the

definition of public place[19]. However, the Bill never made it past first reading. The package was reintroduced in the next session of Parliament (as Bill C-21) with similar results. At this point, a further variable was introduced to complicate the matter. During this period, the police were achieving some success at controlling prostitution through the interim measures discussed earlier in this section. However, these tactics were brought to the attention of the House of Commons by the Opposition who complained that the police were abusing their powers. Eldon Wooliams, Conservative justice critic, attempted to have the entire issue of soliciting referred to the Standing Committee on Justice and Legal Affairs for a complete study. However, because this motion required unanimous consent, it was easily vetoed by the Liberal government (Hansard, 30th Parliament, 1st Session, Vol. VI: 5993). While it was likely that the government had simply wanted the police to "hold the fort" until they could introduce new legislation, many police organizations became convinced that the government was not serious about finding a solution to the problem of street prostitution (Winterton, 1980)[20].

The Liberal government made one further attempt to bring in new anti-soliciting legislation during the final session of the 30th Parliament. In this respect, it appeared that one of the major reasons for the failure to pass the omnibus bill quickly was that it also included amendments unrelated to the issue of prostitution, many of which were contentious in their own right. Thus, Marc Lalonde, who had replaced Ron Basford as the Minister of Justice, decided to separate the soliciting provisions from the rest of the omnibus bill, and introduced Bill C-44 in early 1979. This legislation contained the amendments to section 195.1

previously contained in the omnibus bill, and in addition stipulated that both males and females could be considered as prostitutes. The government hoped to pass the Bill before the end of the session and appealed to the Opposition to dispense with the Standing Committee stage to allow the legislation to be passed before Parliament was dissolved for a general election (which had already been announced).

Initially, all three parties had agreed to support the quick passage of Bill C-44 (G & M, Feb. 28, 1979:1). However, by this point in time, the proposed amendments were being attacked by several feminist groups, including both the Canadian Advisory Council on the Status of Women and the National Association of Women and the Law. The latter organization was particularly vocal in arguing that the proposals were unnecessary and an infringement of the rights of prostitutes who did not practice their trade in an aggressive fashion. As a result, the NDP reversed their initial support, and refused to grant the unanimous consent necessary to bypass the committee stage. In doing so, they argued that soliciting was too important an issue to be dealt with in haste, and that the police should be required to appear before the Standing Committee on Justice and Legal Affairs to justify why they needed tougher laws. Considering that the Toronto and Montreal police were able to achieve reasonable control by using the secondary tactics discussed earlier, this did not appear to be an unreasonable request. Further, Stu Leggatt, NDP justice critic, also argued that the amendments were particularly remiss in that they did not specifically apply to male customers. Interestingly, the government replied that it had been unable to get the consent of the provinces for this proposal. Thus, Bill C-44 was allowed to die on the order paper without being brought in for second reading[21].

The Liberal government of Pierre Trudeau was defeated shortly thereafter by the Conservatives under Joe Clark. The Conservative Minister of Justice, Senator Jacques Flynn, did not immediately attempt to introduce amendments to section 195.1 despite the likelihood that the Liberals would support such a course of action. In fact, one of his first acts was to articulate a Conservative government policy against amending the Criminal Code regarding prostitution (Robertson, 1988). Despite continued pressure from police groups and Vancouver politicians, Flynn continued to maintain that tougher criminal laws were not the answer[22]. In fact, he even went so far as to suggest that municipal bylaws might represent a better way of dealing with street prostitution. When pressed on the issue, he noted that as a non-elected Senator, he was not subject to the same degree of "political" pressure as Members of Parliament, and thus could be more "objective" about the issue (G & M, Aug. 10, 1979:9). Flynn's comments were immediately criticized by the Canadian Association of Chiefs of Police, the Vancouver Police Department and numerous Vancouver local politicians. Feminist groups, on the other hand, praised Flynn for having the courage to resist the pressure to jump on the "tougher laws" bandwagon. In particular, Debra Lewis, of the Vancouver Status of Women, argued that it would be hypocritical to enact tougher laws against female prostitutes when little was being done to eliminate the street harassment of women (non-prostitutes) by males looking for prostitutes (VS, Aug. 15, 1979: A12). However, it was unlikely that Flynn would have agreed with these latter sentiments, as he had reportedly ridiculed suggestions that male customers be prosecuted.

In concluding this discussion of the Conservative government's approach to prostitution, it must be noted that the Conservatives failed to articulate any consistent policy towards street prostitution. In this respect, Flynn's initial positition on the issue represented a complete departure from their previous enthusiastic support of Bill C-44 when it was introduced by the Liberals. While the reasons for this first policy reversal are unknown, it was quickly followed by a second one. Flynn was unable to resist the political pressure from the police and municipal politicians (and perhaps even from his own party), and in late 1979 he agreed to explore the possibility of strengthening section 195.1 (Montreal Gazette [MG], Nov. 27, 1979: 14). However, one month later, he appeared to change his mind once again and declared that he was satisfied with the existing law (VS, Dec. 28, 1979: A7). This apparent indecision was likely due more to the lack of a clear policy direction, exacerbated by the Conservative's minority position, than it was to genuine changes in philosophy. Unfortunately, the confusion only served to further alienate the police, and created a stalemate in which the police resumed their practice of ignoring street prostitution (with the notable exceptions of Toronto and Montreal)[23].

The Conservative minority government was defeated in early 1980 and the onus shifted back to the Liberals. By this time, it was apparent that the problem of street prostitution could no longer be ignored in the hope that the police would be able to develop strategies for dealing with it using existing laws. Public pressure continued to build in Vancouver, Calgary and other major cites, including Toronto and Montreal for the first time (Toronto Star [TS], Jul. 29, 1980: A3). This prompted many municipal

governments to explore the possibility of drafting municipal bylaws aimed at controlling street prostitution. Two of the most important examples of this approach were the bylaws enacted by Calgary and Montreal on May 26, 1980 and June 25, 1980 respectively. While these laws were initially successful, and thus prompted several other cities to follow suit, it became obvious that they were likely to be overturned by higher courts, and thus represented a temporary solution at best (CH, May 23, 1981: A7) [24]. This situation, combined with the Whitter & Galjot decision discussed earlier in this section, refocused the discussion on the need for stricter prostitution laws. The debate shifted to the House of Commons, and in the face of what can only be described as monumental pressure from the media, police, private interest groups, and all levels of politicians, the Liberal government reluctantly admitted that a thorough review of Canada's prostitution laws was becoming unavoidable. This contributed to the elevation of soliciting to the top of the federal political agenda, and instigated a debate which will be discussed in the next section.

7.3 LEGAL AND POLITICAL EVENTS BETWEEN 1981 AND 1984

The intent of this section is to outline the significant legal and political events which occurred between 1981 and 1984. In this respect, the initial impetus came from the municipal level in the form of a joint resolution from the mayors of Canada's two largest cities, Toronto and Montreal, calling on the Federal government to enact tougher laws against street soliciting (MG, Aug. 1, 1981: 3). This event is significant for two reasons. First, it represents the first time that municipal politicians in Central Canada had publicly raised the issue[25]. Without being too

cynical, it is possible to suggest that the Federal government was willing to ignore the issue as long as it was restricted to Western Canada. This hypothesis is supported by the fact that the only time that the Trudeau government took action was when the issue was pursued by the Minister of Justice, Ron Basford[26]. As will be outlined later in this chapter, the coming "on side" of Mayors Drapeau (Montreal) and Eggleton (Toronto) was instrumental in the subsequent passage of a similar resolution at the Conference of Mayors of Major Cities later in 1981, and was an important factor in raising the issue to the top of the Federal political agenda.

The second reason for the importance of the Montreal/Toronto resolution is the particular time frame in which it occurred. It should be noted that at this point in time, the anti-prostitution bylaws in Calgary and Montreal appeared to be working reasonably well. In fact, Calgary's was lauded by several feminist groups for the "fair" way in which both males and females were being targeted (CH, Aug. 13, 1981: B4)[27]. As a result, the public and political pressure was starting to wane, and many other cities, including Vancouver, began drafting similar legislation[28]. Thus, the sudden intervention of Drapeau and Eggleton helped revive street soliciting as a visible media issue. This was reinforced when the Associate Chief Judge of the Alberta Provincial Court acquitted Jacqueline Westendorp of charges under the Calgary bylaw on October 8, 1981. He held that the bylaw was ultra vires because it infringed on the Federal government's sole prerogative to enact criminal legislation (G & M, Oct. 8, 1981: 9)[29]. While the Calgary police continued to enforce the law[30], and the Montreal bylaw was technically unaffected by this ruling, it nevertheless resulted in increased political pressure on the Federal government to remedy the

situation. This pressure continued to build during the latter part of 1981 until the Mayors of Montreal, Toronto and Vancouver announced on November, 28, 1981 that they were tired of waiting for Ottawa to change the soliciting law, and that they planned to draft their own amendments and submit them to the Minister of Justice (MG, Nov. 28, 1981: 7).

The events discussed above ensured that street prostitution could no longer be ignored by the Federal government. The increasing necessity for political action was reinforced when the Supreme Court of Canada, in an unusual foray into the political arena, publicly chastized the Federal government and advised it to amend section 195.1 if it wanted changes to the control of street prostitution (G & M, Dec. 2, 1981: 1; Whitter & Galjot, 1981). The debate on the floor of the House of Commons was led by Pat Carney, Conservative MP for Vancouver Centre. When Bill C-53, dealing with sexual offences and the protection of children, came up for second reading, Ms Carney demanded to know why provisions dealing with street prostitution were not included. On December 17, 1981, she tabled a petition in Parliament signed by 678 residents of Vancouver's West End urging the government to take immediate and drastic action to amend the Criminal Code regarding street soliciting. She also spent considerable time graphically describing the harassment that the residents of the West End had to endure at the hands of prostitutes, their pimps and prospective customers. She further argued that she had canvassed all of the women's groups in the Vancouver area and that all of them had indicated that they favored tougher laws against street prostitution[31]. She completed her discussion by articulating four issues that had to be addressed in any legislation regarding street prostitution: 1) It must redefine soliciting

to remove the need for pressing and persistent conduct; 2) It must provide for the prosecution of male customers; 3) It must include males in the definition of prostitution; and 4) It must re-define public place (presumably to include cars) (Hansard, 32nd Parliament, 1st Session, pp. 14171-14174).

The new Liberal Minister of Justice, Jean Chretien, agreed to ask the Standing Committee on Justice and Legal Affairs to consider street soliciting along with the rest of Bill C-53. However, the NDP refused to give the necessary unanimous consent for the referal unless a special sub-committee was set up to conduct a complete investigation into all aspects of street prostitution, including non-criminal ways of controlling it. This condition was refused by the government and the referal was dropped (Ibid)[32]. Interestingly enough, the Minister of Justice appeared to be in no hurry to deal decisively with the soliciting issue. Under questioning in the House of Commons, he admitted that the issue was a complex one, and that he had received representations from many different viewpoints. This situation would appear to indicate that there was a need for a special sub-committee to thoroughly examine the issue, and thus his refusal appeared to constitute stalling. In the political wrangling that ensued, it was left to the NDP Justice Critic, Svend Robinson, to argue on behalf of the rights of women, as few of the female MPs chose to do so at this point in the discussion. However, both Ms Carney and Mr. Robinson continued to press the issue, albeit from radically different perspectives, and the matter was finally referred to a special sub-committee on May 6, 1981 (Hansard, 32nd Parliament, 1st Session, p. 17081).

The Special Sub-Committee on Street Prostitution elected to proceed with public hearings in which interested groups and individuals were invited to present their views. Numerous groups took advantage of this opportunity, including the Canadian Advisory Committee on the Status of Women and the National Association of Women and the Law. While these two groups generally argued in favor of decriminalization, they were countered by numerous business groups, residents associations and municipal politicians who wanted much tougher laws[33]. In the interim, the issue continued to dominate the media and local political agendas. Despite the clamor, the Minister of Justice refused to act while the Special Sub-Committee was considering the issue, arguing that it would be foolish to do so without waiting for their recommendations. However, he did introduce Bill C-127 which defined a "prostitute" as a person of either sex who engaged in prostitution. This legislation was passed without fanfare on October 21, 1982. This did not still the debate in the House of Commons, however, and for the first time female MPs began to advocate the feminist position. In particular, Celine Hervieux-Payette, Member of Parliament for Montreal-Mercier, repeatedly took the government to task over the issue of whether males (i.e. pimps & procurers) were also being prosecuted. (Apparently arguing that it was not sufficient to go after male prostitutes.) (Hansard, 32nd Parliament, 1st Session, p. 18517; Id, pp. 18589-590).

During the first three months of 1983, two significant events occurred which ought to have exerted a conclusive effect on the government's plans regarding prostitution. The first event occurred on January, 25, 1983, when the Supreme Court of Canada allowed Westendorp's appeal against the Calgary

bylaw, arguing that it was a thinly disguised attempt to usurp the exclusive Federal power to enact criminal law (R. v. Westendorp, 1983). This effectively closed the door to municipal regulation of street prostitution as long as soliciting was covered under the criminal law[34]. This was followed by the March 24 release of the Report of the Special Sub-Committee, which advocated tougher laws for dealing with street prostitution. The most important aspects of the position of the Special Sub-Committee included the recommendations that a public offer or acceptance of an offer to engage in prostitution be a summary offence, that a customer be equally liable to prosecution and that a public place should include a vehicles in public places and private places open to public view[35]. While the report of the Special Sub-Committee received some criticism from conservative groups on the grounds that it did not go far enough with respect to noise and other forms of public harassment, it was much more severely criticized by lawyers and feminist groups as being both unnecessary and draconian in nature (Sunday Star [SS], Mar. 27, 1983: A9; WFP, Mar. 28, 1983: 3).

The two events discussed above left the Federal government with two logical alternatives for dealing with street prostitution. First, they could have simply accepted the recommendations of the Special Sub-Committee and introduced tough new provisions which would almost certainly have won the support of the Conservative caucus. This approach would likely have satisfied the business and resident's groups, and would have placated the majority of municipal politicians. Alternately, they could have amended the Criminal Code so as to specifically allow the provincial and/or municipal governments to control street prostitution through non-criminal

legislation[36]. This would have essentially entailed decriminalizing street soliciting, and thus might have met the approval of the NDP. Since it would give the provinces (and through delegation, the municipalities) the legal power to control street prostitution in much the same fashion as any other business, it might have also satisfied the more conservative groups as well. Unfortunately, the Minister of Justice did neither, and thus intensified the controversy over street prostitution.

The Minister of Justice immediately informed the House of Commons that he had no intention of accepting the recommendations of the Special Sub-Committee because he felt that they were completely unacceptable in a liberal-democratic society (Hansard, 32nd Parliament, ist. Session, p. 26718). Instead he tabled a draft bill in the House of Commons on June 23 1983, and at the same time announced the formation of a Special Committee (non-Parliamentary) on Prostitution and Pornography to be chaired by Vancouver lawyer Paul Fraser. (This Committee, known as the "Fraser Committee", will be discussed more thoroughly in the next sub-section.) The draft bill tabled by the Minister of Justice was formally introduced as Bill C-19 on February 7, 1983, and included provisions for charging customers and stipulated that soliciting in vehicles located in public places would also be illegal.

The Minister of Justice had clearly intended Bill C-19 as a temporary measure while waiting for the Fraser Committee report. However, this did not preclude a spirited and acrimonious debate in the media. On the one hand, the police and municipal politicians decried the bill as totally inadequate to control street prostitution. (In the words of Mike Harcourt, Mayor of Vancouver, it was total "cuckoo land".) (WFP, June 27, 1983: 11).

In contrast, some feminists defended the Bill, arguing that the customer provisions were long overdue. In particular, Joan Wallace, member of the CACSW and a previous member of a federal committee on prostitution, responded to Mike Harcourt by suggesting that it would be inappropriate to draft a tougher law simply to solve Vancouver's problem (Ibid). The debate even spilled over into the House of Commons where Pat Carney could not resist making one last attempt to berate the Liberals for their inadequate action regarding street soliciting. During debate over Bill C-19, Ms Carney cynically asked MacGuigan what he hoped to accomplish by making male customers liable to prosecution, since section 195.1 could not be enforced against either sex. While she was probably correct, she also displayed a monumental insensitivity to the important symbolism of the Bill from a feminist standpoint. In any event, the Bill died on the order paper when the Liberal government of John Turner was defeated by the Conservatives under Brian Mulroney.

Before moving on to discuss the Fraser Committee, it is necessary to briefly touch on a number of events and issues which arose during 1984. One of the most interesting of these involved the "sudden birth" of street prostitution as a community issue in Toronto. While Toronto mayor, Art Eggleton, had previously been active in lobbying the Federal government for tougher soliciting laws, it never became a high profile community issue until the middle of 1984. The details of this phenomena will be discussed in the section on interest groups; however, it is important to note the immediate and profound effect that it exerted on the Toronto media. While the Globe & Mail and the Toronto Star had regularly covered the prostitution debate during the preceding years, the nature of the coverage

had been restrained and neutral. With the advent of street prostitution as a community issue, however, the tone and content of the media articles became much more critical of the Federal government's response to the issue, and almost as inflammatory as those in the Vancouver Sun and the Calgary Herald. The media began to carry articles extolling the prostitution "crisis", and detailing the prostitution-related problems of Toronto residents and businesses (TS, Oct. 3, 1984: A6). This led to an increased emphasis being placed on the issue by Toronto local politicians, who began to lobby Federal politicians and the Ontario Attorney General for tougher laws. (This aspect of the development of Bill C-49 will be discussed in the section on interest groups.)

While the Toronto events were transpiring, the situation in Vancouver had remained at the forefront of the public consciousness, largely due to the activities of the West End residents organization, CROWE. This kept up the pressure on local politicians, who in turn began to pressure the provincial government. This brought about two further attempts to solve the soliciting problem in the West End, one municipal and one provincial. On Mar 14, 1984, Mayor Harcourt announced that Vancouver would enact a new bylaw prohibiting the sale of anything on a public street. Secondly, the Socred Attorney General, Brian Smith, agreed to seek a civil injunction banning prostitutes from the West End (MG, May 10, 1984: B1) [37]. The British Columbia Supreme Court granted an interim injunction banning street soliciting west of Richards Street on July 4, 1984 (see map) [38]. While the details of this injunction will be discussed in the section on interest groups, the most interesting aspect of the whole event from a broad legal perspective was the fact that the injunction was remarkably effective at

forcing street prostitutes out of the West End. This effectiveness, combined with the previously mentioned effectiveness of the Montreal and Calgary bylaws, prompted Donald Johnston, Minister of Justice during the brief tenure of John Turner's caretaker administration, to publicly support the "bylaw approach" (HCH, July 26, 1984: 9). However, the Liberal government of John Turner was defeated in August of 1984, and the focus of attention shifted to the Conservatives under Brian Mulroney.

Given the attitudes expressed by the Conservatives during prior Parliamentary debates, and the strident lobbying conducted by Pat Carney[39], it could have been expected that the Conservatives might attempt to enact tougher laws without waiting for the Fraser Committee report. Certainly, John Crosbie, the new Conservative Minister of Justice, immediately identified the control of street prostitution as a national priority (Halifax Chronical Herald [HCH], Oct. 6, 1984: 5), and there was media speculation that a new law would soon be announced (VS, Oct. 6, 1984: A9). At the same time, Svend Robinson, who had regained his position as NDP Justice Critic, rearticulated the official NDP position on prostitution as one of "decriminalization". Thus, when the 33rd Parliament opened in November of 1984, Robinson immediately warned John Crosbie against any "knee jerk response to public pressure. Mr. Crosbie replied that he fully intended to wait for the Fraser Committee report before taking action (Hansard, 33rd. Parliament, 1st Session, pp. 48-53). Perhaps the most surprising aspect of the debate was the announcement by Bob Kaplan, former Solicitor General and new Liberal Justice Critic, that the Liberals would support the removal of the "pressing and persistent" requirement (Hansard, 33rd Parliament, ist. Session, p. 1393). This apparent reversal of the

Liberal position astounded many MP's and called into question the sincerity of the Liberal's previous position on the matter.

One further issue remains to be discussed with respect to the political events between 1981 and 1984. This issue involves the lack of participation by many female politicians in the discussion over street soliciting. This lack was particularly evident at the federal level. While there were several women on both sides of the House during this period, with the previously noted exception of Celine Hervieux-Payette, they rarely attempted to advance the feminist perspective. In fact, when Judy Erola, Minister of State for the Status of Women in the Liberal government, was questioned on the proposals for tougher laws, she ducked the issue and refused to offer an opinion (Hansard, 32rd Parliament, ist. Session, pp. 22513-4). The refusal of the Minister directly responsible for representing women's interests and rights to become involved in the debate demonstrates the degree to which some feminists failed to consider prostitution a feminist issue. This assertion is bolstered by the number of prominent female politicians who sided with the more conservative business and residents groups. In addition, to Pat Carney, whose activities have been discussed in detail, there were several local politicians who also advocated tougher prostitution laws, and even lobbied women's groups in this regard.

7.4 THE ROLE OF THE FRASER COMMITTEE

The Special Committee on Pornography and Prostitution (hereafter referred to as the "Fraser Committee") was established on June 23, 1983, when Justice Minister Mark MacGuigan rejected the recommendations of the Special Sub-Committee of the Standing Committee on Justice and Legal Affairs. The Fraser Committee was instructed to examine the dual issues of pornography and prostitution in Canada and to make recommendations to Parliament regarding the best way of dealing with these issues[40]. In examining the work of this Committee, the first important issue which must be dealt with involves the reason for the establishment of the Committee in the first place. Considering that the Special Sub-Committee of the Standing Committee on Justice and Legal Affairs had just finished studying the problem of street soliciting, and that the Badgely Committee was then concurrently examining juvenile prostitution, it appeared that the Fraser Committee was unnecessary and would simply delay needed action. This particular view was certainly the one espoused by the Conservatives, many local politicians and various local interest groups.

In dealing with the question of why the Fraser Committee was established, there are several factors which are relevant. First, it was clear from the outset that the Minister of Justice was very unhappy with the recommendations of the Special Sub-Committee, and that he was attempting to find a politically viable was of avoiding having to implement its recommendations. From this perspective, it is possible that the Fraser Committee was created in the hope that it would bring in different recommendations from those advanced by the Special Sub-Committee. In this respect, it should be noted that the Minister of Justice had not been able

to completely control the makeup of the Special Sub-Committee, since its members were automatically drawn from the Standing Committee on Justice and Legal Affairs, which was a pre-existing tri-party parliamentary Committee. Thus, it was inevitable that the Special Sub-Committee would contain members who favored stricter prostitution laws. However, because the Fraser Committee was a non-parliamentary committee, its membership was totally at the discretion of the Minister of Justice. While it might be too cynical to conclude that MacGuigan stacked the Fraser Committee so as to obtain the sort of recommendations that he wanted (although this accusation was certainly made by others), an examination of the membership of the Committee clearly indicates that its composition was heavily biased along liberal and/or radical-feminist lines[41]

Another relevant factor in the creation of the Fraser Committee involved the "political" nature of all parliamentary standing committees. Since all three political parties were represented on the Standing Committee on Justice and Legal Affairs, it is likely that the different positions evidenced during debates in the House of Commons would simply be carried over into the Special Sub-committee deliberations. In this regard, it is possible that partisan political wrangling may have precluded a completely objective investigation of the issue. In addition, all of the Sub-Committee members were elected politicians, and thus were politically responsible to their constituents. Considering that general public opinion, as evidenced by the media articles on the subject, favored tougher anti-soliciting laws, the recommendations of the Special Sub-Committee were understandable and even predictable. Thus, in setting up a non-parliamentary committee, MacGuigan may have intended to remove the Committee from partisan politics and hoped to insulate it from direct political pressure.

In assessing the possibilities raised above, it was clear that MacGuigan intended to give the Fraser Committee the intellectual freedom to conduct an in-depth investigation of both issues before making any recommendations. In this respect, the Fraser Committee was provided with a generous research budget, and its terms of reference were sufficiently broad to allow it to consider any issue or factor which it deemed relevant or necessary in carrying out its mandate. In particular, the Committee was directed to examine prostitution control in other societies and to consider all possible alternatives before drafting their recommendations. Further, the terms of reference specifically included common bawdy houses and living off the avails of prostitution. All of these factors appeared to indicate that the government was interested in more than a "quick fix" to the immediate problem of street soliciting.

A final factor related to the establishment of the Fraser committee involved the possibility that the Minister of Justice may have been trying to buy time in the hopes that the issue would "cool off" politically. In this respect, it is important to note that the Liberals were in the midst of a leadership struggle and that an election was imminent. Thus, it was entirely possible that MacGuigan was simply too busy to bring in new comprehensive legislation, and was also unsure of what position the new leader of the Liberal party would take toward the issue. As well, the proximity of an election may have prompted MacGuigan to try and defuse a politically volatile issue. In any event, the media also appeared preoccupied with the leadership contest and subsequent election, as it was a full three months before any serious comment was made in the media beyond a brief description of the new Committee and some initial criticism about

its membership (Edmonton Journal [ED], Jun. 23, 1983). As well, a perusal of Hansard indicates that there was little discussion when the Fraser Committee was established and even Pat Carney foreswore her usual diatribe[42].

Once the media turned its attention to the Fraser Committee in the latter part of 1983, the criticism quickly mounted as article after article castigated both the make-up of the Committee and its plan of operation. In this respect, the media, local politicians and many interest groups criticized both the membership of the Committee and the methods it adopted. For example, Gordon Price, head of CROWE, argued that it was "stacked" in favor of liberals, civil libertarians and feminists (VS, Aug. 23, 1983: A3). His organization petitioned the Minister of Justice to include an additional five committee members representing communities which were experiencing significant problems with street prostitution. MacGuigan refused, stating that these members would "bias" the Committee because they would only represent their own "narrow interests". Price furiously replied that the Committee was already biased and that the additional members would help balance the membership. In addition, the Minister refused to grant CROWE's request for funding to present a brief to the Fraser Committee despite the fact that prostitute's groups had received such funding. This infuriated Price, who then alleged that the actual process of the Committee was also discriminatory, and that it was unlikely to present an objective view of the issue (Ibid). Both of these criticisms were endorsed by Vancouver Mayor, Mike Harcourt, who variously described the committee as a stalling tactic (VS, Dec. 9, 1983: A3) and as a "terrible sham" (G & M, Jan. 10, 1984: 9) [43].

Despite the allegations made against the Fraser Committee during its inauspicious first few months of operation, there is little doubt that its members were determined to carry out their assigned role as thoroughly as possible. One of the probable reasons for the Committee's apparent slow start involved the decision to undertake voluminous background research before actually setting up their first public hearings. In addition, the Committee also undertook a careful exploration of the relevant philosophical considerations, ranging from the liberal to the conservative, and including the feminist, civil libertarian and constitutional perspectives. In examining the latter two perspectives, they carefully considered the ramifications of the Charter of Rights and Freedoms and the federal/provincial division of powers (Fraser, 1985). While these tactics may have made it appear that the Fraser Committee was stalling, they also helped ensure that the committee members approached the public hearings with a good understanding of the prostitution issue, and that they would be less likely to overlook important aspects of their assigned task.

Once the Fraser Committee actually began to solicit public input, its first order of business was the production of a discussion paper designed to identify the relevant issues and to serve as focal point for the public hearings. In this discussion paper, the Committee members began by stating that they considered it impossible to devise a "perfect" solution to the question of prostitution, and that many compromises would be necessary. They went on to identify and discuss many relevant issues, including the degree of social harm associated with prostitution, the question of civil rights, the tolerance of sexual diversity and the degree to which laws would be effective against prostitution. With respect to the latter issue,

they also raised the question of which types of laws, i.e. civil or criminal, federal or local, should be used to control prostitution. They concluded by identifying three possible ways of dealing with prostitution: 1) legalization and government regulation; 2) decriminalization and the use of bylaws to control street prostitution; and 3) tougher laws to deal with street prostitution. While the Committee acknowledged that public opinion likely supported the third alternative, they noted that the anti-soliciting bylaws in Calgary and Montreal had appeared more effective that the previous criminal sanctions. This apparent bias was further reinforced by the Committee's strong criticism of the manner in which enforcement practices had concentrated on prostitutes to the virtual exclusion of male customers.

With the above framework in mind, the Fraser Committee commenced public hearings across Canada in January of 1984. The procedure followed in these hearings was relatively informal inasmuch as the Committee decided against using Committee counsel to question participants (MacLaren, 1986). While this approach added considerably to the work load of the Committee members, they felt that utilizing counsel would intimidate witnesses and limit the ability of the Committee members to ask questions. The hearings opened simultaneously in Calgary and Edmonton on January 9, and in Vancouver the following day. During these first three public hearings, the vast majority of witnesses described the situation with regard to street prostitution as intolerable and demanded that something be done to control it. While the major emphasis of these presentations was on lobbying for tougher criminal laws, others favored any solution which would facilitate the control of street soliciting, including legalization and zoning (VS, Jan. 14, 1984:

A5). Significantly, it must be noted that many of the women's groups making presentations sided with the residents and demanded tougher laws. For example, a coalition of "professional career women" made a joint presentation to the Fraser Committee, in which they blasted the feminist movement for defending the prostitutes and thus delaying the necessary legislation[44].

In analyzing the concerns expressed by the groups favoring a ban on street prostitution, it appeared that the major concerns involved the noise and ancillary crime associated with street prostitution and the harassment of non-prostitutes by potential customers. In this respect, seniors groups expressed most concern about the fear of crime, whereas middle class women (as represented by Alderperson May Brown of Vancouver City Council) were most upset with being mistaken for prostitutes. In addition, other groups (e.g. the Rental Housing Council of BC) appeared worried about losses in rental income and declining property values (VS, Jan. 16, 1984: B6). Significantly, while none of the presentations mentioned males being harassed by prostitutes, most of the participants identified the prostitutes as the "culprits". This included most of the women, although some did emphasize the need to concentrate on the customers as well (VS, Jan 13, 1984: A14). In addition, many of the presentations appeared to rely on overly sensational tactics to sway the Committee. For example, at least one witness argued that pimps were invading high schools and attempting to recruit girls as young as twelve (CH, Jan. 10, 1984: A3). However, the veracity of this allegation was not established, and there were no further reports of such practices in the press.

As the Fraser Committee continued with its initial hearings, it came under criticism from the media and local politicians. As early as January 11, 1984, an editorial in the Vancouver Sun labeled it as a "sham" and argued that it was being used by the Liberal government as an excuse for inaction (VS, Jan. 11, 1984: A4). This was reinforced by Sun columnist Pete Martin, who lambasted the Committee members for appearing bored and disinterested during those presentations favoring stricter control of street soliciting. In particular, he denounced their impatience and rudeness during a presentation made by Eleanor Hardley, a senior residing in the West End. According to Martin, they yawned and gossiped during Ms Hardley's presentation and only appeared interested when she ultimately recommended that prostitution be legalized and regulated (VS, Jan. 13, 1984: A4). Martin argued that this behavior indicated that the Committee had already made up its mind and was only interested in submissions which reinforced their biases. This view was echoed a few days later when Brian Smith, the BC Attorney General, described the Committee hearings as an "outrage" which would do nothing to help solve the problem. It was this conclusion which helped him decide to seek a civil injunction banning prostitutes from the West End.

The intense media scrutiny waned after the initial few hearings, and thereafter the Fraser Committee only made the news when particularly controversial presentations were made. Unfortunately, it can be argued that most of these presentations were noteworthy for the way in which they dogmatically represented very narrow interests, and that few participants attempted to take a more general approach to the issues. For example, David Crombie, former Mayor of Toronto, made a presentation arguing in favor of

stricter laws on February 7, 1984. When asked by Committee member Joan Wallace if he had any idea where the prostitutes would go if they were forced off the street, he replied that "it was not his concern" (CH, Feb 7, 1984: F8). The opposing side was no less dogmatic. When Peggy Millar, President of the Canadian Organization for the Rights of Prostitutes (CORP) was making a presentation in favor of decriminalization, she rejected any suggestion that prostitution should be controlled by zoning. She asserted that people who chose to live in areas frequented by prostitutes had to expect some inconvenience (VS, Feb. 7, 1984: B1). These two examples illustrate the self serving polarization evident in the views expressed before the Fraser Committee, and also serve to underline the difficulties facing the Committee members in attempting to reach a reasonable compromise between the many conflicting interest groups.

Unfortunately, the stances described above were generally typical of most of the presentations made to the Fraser Committee. The participants either represented the narrow interests of specific groups or else described the problems of particular areas. The exceptions to this general rule involved the presentations made by the national offices of some organizations. In particular, the Canadian Civil Liberties Association and many feminist organizations can be commended for taking a more general perspective. In this respect, perhaps the most balanced presentation was made by Doris Anderson, President of the National Action Committee on the Status of Women. Ms Anderson reviewed the various issues from a feminist perspective, while also conceding the problems caused by prostitution for the residents of affected neighborhoods. Unfortunately, she was unable to offer the Committee any concrete advice, and her presentation contained little that had not already been said many times before.

The final group of presentations to be discussed are those made by police departments and organizations. In this respect, it should be noted that most major police departments made submissions, and that they were usually allied with their respective City Councils[45]. The comments made by Chief Bob Stewart of the Vancouver Police Department can be considered as typical of the police response to the Fraser Committee. Interestingly enough, Chief Stewart's presentation, while advocating stiffer laws, was remarkably moderate and pragmatic in approach. He agreed that tougher laws would not allow the police to eliminate street soliciting. However, he stated that he thought that such laws would deter some prostitutes from operating, and in any event would give the police more power to control the areas where prostitution was practiced[46]. However, his failure to consider the need to deter the customers indicated that he considered the prostitutes as the primary problem. When questioned about legalization, he stated that while he was not against legalization or decriminalization in principle, he felt that either approach would create more problems than it would solve (VS, Mar. 3, 1984: A10). However, he declined to be specific about the the potential problems, and one is drawn to the conclusion that his opposition to legalization or decriminalization was based on factors other than the effectiveness of non-criminal laws to control street prostitution.

The Fraser Committee held a total of 23 hearings in 21 major Canadian cities between January 9, 1984 and June 21, 1984 (with two separate hearings being held in both Toronto and Vancouver). While a wide variety of individuals and organizations made oral and/or written presentations, the vast majority of submissions were polarized between those wanting tougher

laws and those favoring legalization and/or decriminalization[47]. Further, many submissions which favored one of the latter approaches simply considered it an effective way of controlling street soliciting, and submissions which specifically emphasized the rights of prostitutes (and the feminist position in general) ranked a distant third. In any event, once the hearings were over, the Fraser Committee (and to a lesser extent, the subject of prostitution itself) disappeared from the media agenda while the Committee discussed its findings and prepared its report. This did not mean, however, that it had slipped from the political agenda as well. For example, a meeting of the provincial and territorial Attorneys General held in Whitehorse during September, 1984 concluded that injunctions and other civil remedies were not the real solution, and resolved to lobby the Federal Minister of Justice for tougher laws regardless of the recommendations of the Fraser Committee (VS, Sept. 21, 1984: F9).

In late 1984, the issue resurfaced when the new Conservative Minister of Justice, John Crosbie, announced that he would do something to control street prostitution. Since the Fraser Committee had not submitted its report yet, Crosbie appeared to be denigrating the work of the Committee by suggesting that he had decided on a course of action independent of the Fraser Committee report. This feeling was reinforced in January of 1985 when Crosbie complained publicly that the report was overdue, and that he was considering bringing in legislation without waiting for the report (G & M, Jan 23, 1985: 8). Indeed, he admitted that the Justice Department was already studying the issue and preparing to introduce early legislation to control street prostitution. In fairness to Mr. Crosbie, the report was seriously overdue, and local interest groups had begun their lobbying

efforts again. For example, the Nova Scotia Attorney General applied for a civil injunction similar to the one obtained by British Columbia. While this attempt was unsuccessful, it clearly indicated that the street prostitution was becoming a political issue once more. However, the Fraser Committee indicated in April that the report was finally ready and the Federal government announced that it would be released on April 23, 1985. This announcement generated considerable media attention in western Canada. Many newspapers speculated about the nature of its recommendations, and the Winnipeg Free Press predicted that its recommendations would reflect the concerns expressed by residents and other local interest groups (WFP, April 23, 1985: 1).

The Fraser Committee report was released at 3:00 p.m. on April 23, 1985. Those individuals and groups who had hoped for a quick and definitive end to the "problem of street prostitution" were destined to be disappointed. While the Fraser report contained several specific recommendations dealing with prostitution, most of them represented the liberal-feminist end of the political spectrum. The most significant (and controversial) aspect of the report involved its stated a priori assumption that the practice of prostitution should generally be outside the purview of the criminal law. In this respect, the Committee recommended that most prostitution-related activities should be decriminalized, except where they contravened non-prostitution criminal law or constituted a public nuisance (Fraser, 1985). In addition, it was recommended that prostitutes should be allowed to work out of their own homes as long as no more than two prostitutes worked out of a specific location. Further, the Fraser Committee also recommended that the provinces be given the authority to licence and

regulate larger types of bawdy houses. The general philosophy of the report was clearly liberal in orientation and intended to remove any moral connotations associated with the control of prostitution. In this respect, it was somewhat surprising that the Committee rejected the relevance of the Charter of Rights provisions except for the equality provisions contained in section 15[48].

The reaction of the media, local and provincial politicians and affected interested groups was immediate and largely unequivocal in condemning the Fraser Committee's recommendations on prostitution[49]. Politicians ranging from Vancouver Mayor Mike Harcourt and BC Attorney General Brian Smith through to John Crosbie himself loudly argued that a much tougher approach was needed with respect to street soliciting (VS, April 24, 1985: A16). In addition, the Attorney Generals of Nova Scotia and British Columbia were quick to reject any possibility of legal bawdy houses. This view was echoed by many municipal politicians, including the redoubtable Mike Harcourt, who derisively suggested that the Fraser Committee members be forced to chair zoning hearings considering the location of bawdy houses in their own neighborhoods.

Interestingly enough, the Fraser Committee report was not particularly popular with prostitutes either, many of whom objected to any form of regulation. For example, Marie Arrington, Spokesperson for the Alliance for the Safety of Prostitutes (now POWER), stated that while prostitutes were in favor of decriminalization, they would fight any attempt to legalize and regulate the prostitution trade. She reiterated this position in a June, 1989 interview, arguing that most prostitutes viewed legalization as an attempt to tax and control them. This concern was also voiced by many

feminist organizations. Louise Dulude, spokesperson for the National Action Committee on the Status of Women, argued that this approach would simply turn the state into a pimp, and would do little to solve the real underlying problems which drove women into prostitution. Similar sentiments were expressed by Debra Lewis of the Vancouver Status of Women. In this respect, it was obvious that the Fraser Committee, in sticking to the liberal-feminist position, had failed to go far enough to satisfy the more radical feminists.

Despite the initial storm of criticism, there was some cautious praise for the Fraser Report. The strongest support came from Derek Corrigan of the BC Civil Liberties Association, who praised the Committee members for their courage, but expressed doubts that the politicians would implement their recommendations (VS, April 23, 1985: A1). In addition, several media articles lauded the Committee for attempting to steer a middle course through the many conflicting viewpoints (WFP, April 26, 1985: 7). For example, Marjorie Nicols, a Vancouver Sun columnist, praised the report for its careful research and labelled it a "brilliant Canadian compromise" (VS, April 25, 1985: A5). In general, however, the media reaction must be criticized as less than responsible, and sensational headlines such as "Committee says Make Bordellos Co-op" were altogether too common. As well, many media articles misleadingly suggested that the Fraser Committee had advocated legalized prostitution, when that option had clearly been rejected in favor of a limited form of decriminalization.

In terms of the reaction of the major political parties to the Fraser Report, the NDP expressed general approval, while stating that it did not go far enough towards decriminalizing prostitution. After some reflection,

other politicians also began to express qualified approval for some of the Committee's recommendations. For example, Brian Smith decided that the public nuisance aspect of the recommendation on loitering was sound and publicly urged John Crosbie to implement it as soon as possible. This particular recommendation even met the approval of some police officials. Deputy Chief Thomas Flanagan of the Ottawa Police termed the report a "positive step" (G & M, April, 24, 1985: 8), while Chief Robert Lunney of the Edmonton Police offered cautious support, although he suggested that problems over the definition of "nuisance" might still plague the police and courts (Id: 1). Interestingly, Pat Carney did not comment directly on the report to the media. This may have been because John Crosbie quickly announced that he would study the report and consult with the provincial Attorneys General in the fall. In fact, he went so far as to establish an interdepartmental committee to study the report. He also announced that he would introduce tougher provisions against street soliciting as an interim measure. Despite a warning from Svend Robinson that the NDP would fight such legislation, these provisions were introduced a few days later as Bill C-49.

In summarizing the role of the Fraser Committee in the development of Bill C-49, several factors can be identified which limited the usefulness of the Committee. First, it seems obvious that the Fraser Committee was widely viewed as a stalling tactic, and that many people did not believe that it would contribute to a solution to the prostitution dilemma. This was evident from the content and tone of most media articles, and was also expressed in the interviews which this writer conducted during 1989. Second, it appears in retrospect that the Committee elicited little

information that was not already known, and only served as a forum for the various interest groups to publicly restate their positions. This led to increased polarization and made the likelihood of achieving a constructive compromise between the attitudes of the conflicting interest groups extremely remote. Thus, although the Fraser Committee served to focus public opinion, it was unable to change it to any degree. In addition, the transfer of power from the Liberals, who established the Committee, to the Conservatives clearly prejudiced any chance of the recommendations being being adopted. The Conservatives had always favored much tougher laws, and the Fraser Committee must have realized that legalization and/or decriminalization was not likely to be considered a feasible option for dealing with street prostitution.

The remaining comments on the Fraser Committee constitute a criticism of the Committee recommendations themselves. While the Committee stated an a priori assumption that most prostitution-related activities should be decriminalized, they went on to recommend that a new anti-prostitution section be added to section 171 with respect to loitering. This recommendation can be criticized on two grounds. First, although the Committee clearly intended that this provision was to be used only in cases where a public nuisance was created, the definition of the term "nuisance" could conceivably lead to the same situation as occurred in the Hutt decision. In addition, the retention of such a section in the Criminal Code would almost certainly preclude any attempt to control street prostitution through non-criminal laws (either municipal or provincial) for the same reasons that the Calgary and Montreal bylaws were overturned.

In attempting to analyze the reasons for the loitering recommendation, it is necessary to examine both the external political pressure being placed on the Fraser Committee, and the internal political dynamics of the Committee[50]. In this respect, there was some degree of external political interference with the Fraser Committee by the Liberals. For example, the Minister of Justice, Mark MacGuigan, announced early in the life of the Committee that he was opposed to legalized prostitution (McLaren, 1986). In addition, it has been conceded by one of the Committee members that there was considerable discussion within the Committee regarding what course of action to recommend, and the eventual compromise which was necessary between what was perceived as "ideal" and what might be "politically saleable" (Id: 46). Thus, the apparent contradiction between the stated philosophical assumption and the more specific recommendation may have reflected a conflict between the two male members (one a Liberal lawyer and the other a former police chief) and the more radical feminist members. This latter factor was likely influenced by the considerable media pressure for a quick definitive solution. Finally, the time pressure placed on the Committee by John Crosbie likely also provided an impetus for the Committee to reach a quick consensus so that the report could be released without further delay.

In the final analysis, the Fraser report represents a well researched and thoughtfully written investigation into two complex and controversial topics. While there were some contradictions evident in the final recommendations, these are understandable given the controversial nature of the subject matter and the many conflicting viewpoints expressed before the Committee. Considering the amount of political, public and media pressure

placed on the Committee, Derek Corrigan's characterization of the report as "courageous" seems particularly appropriate. As such, the recommendations of the Fraser Committee with respect to prostitution can be described as a triumph of careful analysis and ethical beliefs over political expediency. Unfortunately, for reasons beyond the control of the members, they were destined to be largely ignored.

7.5 THE IMPACT OF LOCAL POLITICS ON THE DEVELOPMENT OF BILL C-49

The intent of this section is to assess the degree to which local political issues were relevant in the development of Bill C-49. This analysis will concentrate on identifying the various interest groups which were involved in the issue of prostitution at the local level, and on analyzing the degree to which they were able to influence the enforcement of prostitution laws and the development of Bill C-49. These issues are important for two reasons. First, it can be argued that the participation of local interest groups in controversial issues represents one of the most basic examples of "grass roots democracy" in action. Second, the ability of different interest groups to influence events serves as an indicator of both the nature of local politics and the extent of local power structures. Thus, it is crucial to the analysis in this chapter to identify the various groups and to assess their relative ability to influence the issue of street prostitution, including local enforcement patterns and the development of Bill C-49. While local interest groups were active in most large Canadian cities, this discussion will focus on Vancouver, Toronto, Edmonton and Winnipeg[51].

7.5.1 Local Politics in Vancouver

The logical place to start this analysis is in the City of Vancouver prior to the 1979 Hutt decision. During the 1970's, street prostitution in Vancouver was centred in three basic areas: 1) the Downtown business district near Georgia Avenue and Hornby Street (Area A - Map in Appendix B); 2) the West End along Davie Street, between Butte and Cardero Avenues (Area B - Map in Appendix B; and 3) the skidrow area around Main and Hastings, near the harbour (Area C - Map in Appendix B). The prostitutes in this latter area were older and less attractive than in the other areas, and their numbers remained constant throughout the time period under discussion in this sub-section. The area contained many cheap hotels and bars, as well as cheaper retail businesses. Many of the residents were on welfare and often transient, living in rundown apartments and rooming houses. In any event, the residents and businesses in this area appeared disposed to co-exist peacefully with prostitution and thus there was little conflict during this period. For this reason, the skidrow area will not be discussed further at this point.

In discussing the Downtown business district, it must be noted that this area had been frequented by prostitutes for many years prior to the Hutt decision without any serious problems. There are likely two reasons why this was so. First, the highest class of street prostitutes operated in this area to service the patrons of the many luxury hotels located there, and both the prostitutes and their wealthy clients wished to conduct their business as discreetly as possible. Second, there was a high degree of cooperation between the hotel security people and the police. In return for "keeping an eye out for wanted criminals" (i.e. prostitutes), the Vancouver

police made it a priority to respond quickly to calls from the hotels. In this way, the hotels were able to ensure that the level of prostitution in their immediate vicinity was kept within desireable limits. This situation evolved into an uneasy form of cooperation between hotel security and the prostitutes, insofar as the prostitutes realized that the police would respond quickly to any calls from the hotels[52]. However, when the Vancouver Police Vice Squad closed the Philliponi clubs in 1977 (discussed earlier in this Chapter), a large number of prostitutes were forced onto the streets, where they migrated to the Georgia and Hornby area and/or the West End, with the majority initially going to the former area[53]. This drastically increased the numbers of prostitutes working in the downtown business area and upset the delicate balance which had previously existed. This inevitably led to conflict between the hotels and the prostitutes, and set the stage for the first round of political action in which the hotel owners and other business groups demanded action.

The other major prostitution area in Vancouver was the West End, a high rise apartment area bordering on English Bay. A similar situation existed in the West End prior to the mid 1970's. Although there was a greater mix of prostitutes in the West End, ranging from teenagers (including almost all of the male prostitutes in Vancouver) through to adults in their mid to late twenties, there was remarkably little conflict (Kohlmeyer, 1982). Further, while the closure of the Penthouse Cabaret did result in larger numbers of prostitutes working the Davie Street strip, the West End situation took longer to develop into a political issue. As Lowman (1985) and other sources have noted, the numbers of prostitutes in this area increased steadily after the closure of the clubs, both prior to the Hutt

decision and for at least two years afterwards, without creating a great deal of conflict. (This is also borne out by the lack of media attention prior to 1980.) This situation suggests that neither the increased numbers of prostitutes nor the Hutt decision were primarily responsible for the later conflict over street prostitution.

The initial difference between the Georgia and Hornby area and the West End was likely due to two factors. First, the West End was spread over several blocks along Davie Street, and thus was much larger than the Georgia and Hornby area. This allowed it to "absorb" many more prostitutes without becoming saturated. In addition, the prostitutes initially remained on the North side of Davie, towards what was traditionally called the "core" of the West End (see map). This area was much less developed than the areas south of Davie and across Denman Street, where most of the expensive condominiums and restaurants were located. The core of the West End still contained many older homes, rooming houses and cheaper "low rise" apartment buildings, whose residents were probably less likely to complain about the presence of prostitutes. However, during the late 1970's and early 1980's this started to change as developers demolished many of the older buildings and replaced them with newer buildings. (Alternately, they renovated existing buildings.) The end result was more expensive housing, whose residents were less likely to tolerate street prostitution in the area. This established the basis for the second stage in the evolution of prostitution into a political issue, namely the creation of several residents groups who wanted prostitution out of their "backyards".

Despite the factors outlined above, the 1978 Hutt decision nevertheless did play a role in the transformation of street prostitution into a

volatile political issue. While there is some disagreement over the effect that this decision exerted on the numbers of prostitutes, there is little doubt that it encouraged street prostitutes to become more aggressive[54]. This factor, combined with the increased numbers of prostitutes, may have led to increased levels of "street nuisance" in those areas where street prostitution was prevalent. However, there are two caveats which must be placed on this conclusion. First, it is important to note that the vast majority of the nuisance activities were perpetrated by customers and potential customers[55]. Further, a far more important factor behind the development of street prostitution into a high profile issue was the outright refusal of the Vancouver Police to attempt to control the noise and harassment associated with street prostitution. While this factor was discussed previously in this chapter, it can be argued that the police constitute one of the most powerful interest groups with respect to criminal justice issues, and thus it will be discussed again at this point. In terms of Vancouver, many different sources have argued that the Vancouver Police refused to intervene in the events unfolding in the Davie Street area, even though they clearly could have charged customers for traffic violations and/or noise bylaw offences[56].

The stance of the Vancouver Police after the Hutt decision immediately brought them into conflict with West End residents, downtown business groups and Vancouver City Council. As early as March 30, 1978, the Vancouver media were criticizing the Vancouver police for not doing enough to protect the residents and businesses from harassment (VS, Mar 30, 1978: D12). However, the previously good relationship between the police and the downtown hotels was to give the hotel owners and business interests an edge

in combating the increased levels of prostitution. The Vancouver Police Department was subjected to intense lobbying by the Vancouver Chamber of Commerce, the Downtown Vancouver Association, the BC Hotels Association and other business groups. These groups were helped by pressure from Vancouver City Council, which was becoming increasingly concerned about the negative civic image presented to tourists and other visitors by the rampant street prostitution in the city's downtown business district. This pressure caused the police to place increased emphasis on the area, and ultimately most of the "extra" prostitutes were pushed over into the West End. The Downtown area returned to its former uneasy truce between the police, the hotels and the prostitutes, and there was little media attention paid to this area after 1980.

As a result of the events described above, the West End began to experience a serious "prostitution problem" by the early part of the 1980's, and West End residents began to lobby the Vancouver Police Department and Vancouver City Council for assistance. In discussing these events, there were two main residents groups which evolved in the West End during this period. The best organized of these two groups was the Concerned Citizens of the West End (CROWE), headed by community organizers, Gerry Stafford and Gordon Price. This organization was formed in late 1981 (approximately) and was composed mainly of middle class professionals who had moved into the area after the Core development boom described previously in this sub-section. CROWE characterized itself as a political lobby group dedicated to making local and federal politicians take responsibility for the problem of street prostitution in Vancouver, with particular reference to the West End (Gordon Price)[57]. Accordingly, it

quickly launched an extensive and well organized lobbying campaign, targeting all levels of politicians as well as the Vancouver Police. In particular, CROWE presented Pat Carney with a petition demanding tougher laws and made several presentations to City Council meetings asking that the police be directed to concentrate on the West End.

In carrying out their lobbying campaigns, CROWE conducted extensive research into the numbers of cars circling the West End, the numbers of prostitutes on the streets, the levels of noise, and other relevant factors. This research was incorporated into elaborate position papers which were submitted to city council members, the police and other officials[58]. CROWE was also instrumental in the development of other protest groups and frequently assisted these groups organize protests, although they were careful to distance themselves from some of the more radical groups[59]. CROWE's high degree of organization, combined with its largely middle class membership base, gave it degree of local influence "all out of proportion to their level of public support", and was largely responsible for Vancouver City Council taking a tough stance towards street prostitution[60]. Among the actions directly precipitated by CROWE were the establishment of permanent traffic diverters to disrupt the traffic patterns of potential customers, and the passage of a resolution urging the Minister of Justice to quickly introduce new legislation to deal with street prostitution. In addition, CROWE was also influential in prompting the Vancouver civic administration to reconsider drafting a bylaw aimed at street prostitution. In fact, when the City Solicitor, Terry Bland, announced the proposed bylaw, he suggested that the police would tolerate prostitution in bars and clubs as long as it was kept off the street (VS,

Jan. 13, 1984: A1). This statement exemplifies the degree of influence wielded by CROWE.

A second group which appeared somewhat later in the political campaign by West End residents was Shame the Johns (STJ). This group focused on the customers as the source of the problem and was formed in March of 1984 in response to a media article deploring the middle class male customers who exploited very young prostitutes (VS, May 25, 1984: A3)[61]. From the outset, STJ took a much more radical approach, in which they disdained any hope of reaching a negotiated solution. One of their first tactics involved targeting a middle class male from West Vancouver (a wealthy suburb) and descending on his home complete with television cameras (Ibid)[62]. While there was some membership overlap between STJ and CROWE, STJ contained a much larger proportion of radicals. For this reason, CROWE attempted to distance itself from Shame the Johns, and their tactics were criticized by City Council and the Vancouver Police. As time progressed, these tactics became increasingly aggressive, and started to involve physical confrontations between the residents and customers (and sometimes the prostitutes and pimps as well). As a result, Brian Smith, the Attorney General of British Columbia, became alarmed at what he perceived as an increasingly "vigilante" atmosphere in the West End, and he decided that he could not wait for the Federal government to remedy the situation. As a result, he applied to the BC Supreme Court for a civil injunction banning prostitutes from the West End and Downtown areas (WFP, May 10, 1984: 15). An interim injunction was granted on June 21, 1984, and prostitutes were prohibited from operating west of Richards Street (see map).

The interim injunction cleared the prostitutes out of the West End and Downtown areas almost as if someone had waved a magic wand. The Davie Street strip became deserted over night, as the prostitutes attempted to find alternative locations for plying their trade. They quickly settled on two areas near the City centre. The first area was along Seymour and Richards Streets, near where the Penthouse Cabaret had been located (Area D - Map in Appendix B). In some respects, it is ironic that the problem was pushed back to the area where it had started. Because this area was primarily a business area which was deserted at night, relatively little conflict was caused by the move. However, this was not the case with the second area chosen by the prostitutes, which was located on the south shore of False Creek between the Main and Cambie Street bridges (Area E - Map in Appendix B). Known as "Mount Pleasant", this area was primarily a working class residential area which was slowly being taken over by warehouses and light industry. In this respect, it was hoped that the low population density and mixed land use patterns would allow the prostitutes to co-exist peacefully with the existing residents.

Unfortunately, the hope for peaceful co-existence was not to be realized. Almost immediately, the same problems that had existed in the West End surfaced in the Mount Pleasant area. However, in this case, the police were even less responsive to residents' complaints than they had been in the West End. As a result, several residents groups were organized in the hope of getting action from City Hall and the police. The two most important of these groups were the Mount Pleasant Committee on Street Prostitution (MPCSP) headed by Timothy Agg, and the Mount Pleasant Action Group (MPAG), headed by Phylis Alfeld. Both of these groups were dedicated

to political action as a means of solving the problem; however, MPAG was much more radical in its political approach. In addition, it also became involved in the same types of activities as STJ had tried in the West End, i.e. confrontation with the prostitutes, their customers and pimps[63]. MPCSP, on the other hand, attempted to interact with politicians and prostitutes in as conciliatory way as possible. For example, it lobbied on behalf of a compromise solution which would legalize soliciting in non-residential areas but prohibit it in residential areas[64]. As well, MPCSP attempted to consult with the prostitutes in a non-confrontational manner and to obtain their cooperation in keeping the noise down[65]. In general, however, the problem was basically unsolvable and the police began refusing to respond to prostitution-related calls.

This stalemate continued until well into 1985, despite the fact that the police were increasingly being criticized by many groups and individuals, including many local politicians. In this respect, one of the most vociferous critics of the police inaction was Alderman Harry Rankin, who argued that the police had "gone on strike", and insinuated that the situation would be different if Mount Pleasant was a middle class area. This particular question is interesting in light of the response of another politician to the Mount Pleasant problem. One of the people whom the Mount Pleasant residents had appealed to for help was Gary Lauk, NDP MLA for the areas of False Creek and the West End. According to several residents group representatives, Mr. Lauk was completely uninterested in their problem, and declined to get involved in any way (Phylis Alfeld). Considering that he had been extremely vocal in support of CROWE, and had publicly lobbied the Social Credit Attorney General for action, the Mount Pleasant residents

were almost certainly justified in feeling abandoned. Further, Mr. Rankin may well have been correct in his assertion that there was class bias evident in the way street prostitution was handled.

Finally, in October of 1985, frustrated Mount Pleasant groups organized an overnight "occupation" of City Hall, which incidentally was only a few blocks away from the Mount Pleasant stroll (G & M, Oct. 5, 1985: A8). This finally prompted some action on the part of the police, and the politicians began to search for a solution. One of the first courses of action was to explore the possibility of an another injunction. When the Attorney General ruled out this course of action, Vancouver City Council began to consider the possibility of setting up an informal "red light" district in an non-residential area. Accordingly, they identified a warehouse area on the shores of False Creek and installed street lighting to make the area safer for the prostitutes. While the prostitutes initially agreed to move, they later changed their mind after the Vancouver Police Vice Squad continued to arrest the first few prostitutes who made the move. This situation arose because of a lack of communication between the Patrol division responsible for Mount Pleasant (Team 6) and the Vice Squad. While Team 6 had agreed not to arrest prostitutes in the assigned area, Vice had not been party to the deal and refused to honor it[66]. This brought the situation back to its original stalemate. However, the police did begin to respond to calls and adopted a policy of moving the prostitutes from one block to another so that one area was not constantly subjected to the traffic and other forms of harassment. They also began charging drivers with traffic violations and bylaw infractions where possible[67].

The final category of interest groups to be discussed with respect to the Vancouver political scene involves those individuals and groups which were primarily identified with the interests of women. (This category will include female politicians.) There were many such groups in the Vancouver area, and many did express nominal support for the feminist position that the prostitutes were also victims in the prostitution debate. However, their support was only nominal in most cases, and few groups attempted any extensive lobbying on behalf of prostitutes. One obvious exception to this general rule was the prostitutes themselves. As early as 1980-81, Vancouver prostitutes were actively lobbying on behalf of prostitutes' rights, and were instrumental in establishing a hostel for teenage prostitutes. Further, in June, 1982, the Alliance for the Safety of Prostitutes (ASP) was formed by Sally De Quadros and Marie Arrington. The stated purpose of this organization was to represent Vancouver prostitutes and to attempt to negotiate with residents groups such as CROWE. However, it soon became obvious that CROWE was not interested in negotiating with the prostitutes. While ASP representatives did attend several community meetings, they were denied the right to participate and were subjected to abuse (VS, Jan 16, 1984) [68]. As a result, ASP attempted to lobby politicians and other groups directly, and organized a march on Vancouver City Hall in April of 1983. However, with two major exceptions, the prostitutes were largely ignored by politicians and other groups.

One exception was the Vancouver Multi-Cultural Women's Association, which extensively lobbied local politicians against taking a tough stand against the prostitutes, and advocated going after the customers instead. A second major exception was Libby Davies, a COPE alderperson who attempted

to convince city council that tougher laws were not the answer to what was primarily a social problem. However, neither the Multi-cultural Women's Association or Libby Davies were able to completely dominate the women's lobby, and many women's groups sided with the residents and businesses in demanding tougher laws[69]. It is particularly discouraging that these groups were much more effective than those groups which supported the feminist position. This not only detracted from the effectiveness of the feminist groups, but was also used to great advantage by the anti-prostitution forces who were able to argue that prostitution was not really a feminist issue.

One of the most important of the anti-prostitution women's groups was a loose coalition of "professional women" led by Carole Walker, who lobbied long and hard in favor of a "get tough" approach to prostitution control. Ms Walker later became active in the Committee of Progressive Electors (COPE) and was influential in convincing COPE to adopt a policy against legalizing prostitution[70]. Interestingly enough, Ms Walker "crossed party lines" to support Alderpersons May Brown and Margaruite Ford of The Electors Action Movement (TEAM), who were leading a campaign to have Vancouver City Council endorse Mayor Mike Harcourt's tough anti-prostitution stand (The Vancouver Province [VP], May 17, 1983: B1). May Brown was also instrumental in convincing the Vancouver Council of Women, an umbrella organization representing nearly all Vancouver women's groups, to endorse tougher laws against prostitution (VS, April 23, 1983). It was this endorsement that Pat Carney was able to use so effectively in convincing her cabinet colleagues to support Bill C-49. This situation was particularly regretable inasmuch as the endorsement was not unanimously

supported by all of the member groups[71]. However, this did not appear to bother any of the four female politicians, who appeared to completely abdicate any sense of responsibility for the interests of the prostitutes, and their public pronouncements showed a complete insensitivity towards the plight of the lower class women who make up the ranks of street prostitutes.

7.5.2 Local Politics in Toronto

This discussion will now address the local political scene in Toronto. Interestingly enough, the development of street prostitution into a political issue in Toronto exhibited many similarities to the Vancouver situation described in the previous subsection. During the early 1970's, street prostitution in Toronto was centred in three main areas: 1) an area along Yonge Street and some of the side streets to the east of Yonge Street (Area A - Map in Appendix B).; 2) an area to the west of Yonge street near the YMCA and the downtown financial district (which is occupied primarily by male prostitutes serving male clients) (Area B - Map in Appendix B). and 3) an area along Lakeshore Drive in Entobicoke (Area C - Map in Appendix B)[72]. The first hint of friction between the prostitutes and other groups occurred in the aftermath of the murder of Emanuel Jacques in July of 1977. This murder touched off a wave of protests against the entire "Yonge Street strip", including the prostitutes who worked there[73]. These protests led to a campaign to clean up the area, and in July of 1980, many Yonge Street businessmen began to pressure the police and civic officials to "drive away the hookers" (TS, July 29, 1980: A3). The police complied and most of the prostitutes were driven off Yonge Street into the

surrounding areas, where they migrated east into the Wellesley area (see map) [74].

This eastward migration of prostitutes initially created little conflict as the Wellesley area was a "trendy" neighborhood of art galleries, discos, bars and "bohemian" restaurants, whose residents and habitues were disinclined to get upset about "a few hookers" (Peter Maloney). The prostitutes continued their eastward migration until they infiltrated the Glouchester and Shellbourne area, which was a rundown area of rooming houses and other decrepit housing. While the Glouchester and Shellbourne residents did not immediately object to the increased presence of street prostitutes[75], the stage was set for future conflict. Both of these areas had been targeted for a dramatic "re-gentrification" program, which saw large numbers of middle class professionals move into the area between 1982 and 1984, and begin renovating much of the older housing stock (Doreen Campbell). Up to this point, the chain of events had essentially paralleled the situation which had occurred in Vancouver's West End a few years earlier. In this respect, Toronto's new "gentry" were decidedly unimpressed with the prospect of sharing their neighborhood with street prostitutes, and began to lobby for their removal.

At this point, the similarity to the Vancouver situation ended. There were two major differences between Vancouver and Toronto in terms of the way in which prostitution evolved into a political issue. The first major difference involved the approach taken by the residents in Toronto. The middle class people moving into the Wellesley and Shellbourne areas included a large number of academics, doctors, lawyers and other professionals who generally subscribed to a liberal moral philosophy and

were cognizant of some of the background factors in the prostitution issue[76]. They appeared more sympathetic to the plight of the prostitutes and wished to avoid being characterized as "narrow minded" conservatives. Thus, from the outset, the residents groups avoided the type of anti-prostitution rhetoric which was so evident in Vancouver, and instead lobbied for a solution which would accommodate the needs of the prostitutes (William MacGill).

The second major difference involved the reaction of the Metro Toronto Police Department. In this regard, it will be remembered from the discussion in the previous sections that the Toronto police had persisted in charging prostitutes after the Hutt decision until the Whitter & Galjot decision made it almost impossible. This attitude also characterized the police reaction to the complaints which started to emanate from residents in 1982. When a group of residents from the Shellbourne area lobbied for increased police action in May, 1982, the Toronto police almost immediately instituted a crackdown and also started a lobbying effort of their own, in which they urged the Police Commission and City Council to petition Parliament for action. While this approach may not have accomplished a great deal, it served to reassure the residents that the police were on their side. Further, during 1982 and 1983, the police experimented with "creative" solutions to the prostitution problem, such as posting uniformed officers on the streets in problem areas (Toronto Police Commission, 1983). These tactics further reassured the residents and also helped alleviate some of the worst aspects of the street harassment.

The police approach described above was able to keep the residents relatively appeased throughout 1982 and 1983, such that there was virtually

no organized residents groups until well into 1984. The first such group was the Earl Street Residents Association (ESRA) which was formed in June of 1984. This group was composed almost entirely of middle class professionals, and was headed by a University of Toronto Sociology professor who had recently bought a townhouse on Earl Street. This group immediately established contact with the Aldermanic representatives for the area, and enlisted their aid in convening a public meeting to discuss the issue. This meeting was held on June 18, 1984, and was attended by Aldermen Jack Layton and Dale Martin. Numerous residents and organizations located in the area attended or sent representatives. In addition to organizing public meetings, ESRA also undertook an extensive and sophisticated lobbying campaign aimed at the Metropolitan Toronto Police and all three levels of government. In order to back up their position, they conducted research into and documented such factors as traffic patterns, levels of noise and the numbers of prostitutes on the street.

Generally, the substantive response of Toronto City Council was similar to that in Vancouver: i.e., to lobby other levels of government and experiment with traffic diverters. These tactics were marginally effective at best, and were sometimes opposed by groups who felt that the "solution" created more problems than it solved. For example, Dr. John Provan, Chief Surgeon of Wellesley Hospital, wrote a strongly worded letter to Alderman Jack Layton demanding that the traffic diverters be removed because they inhibited the free flow of traffic in the area. In order to counter this and other criticisms, the City of Toronto[77] maintained a sophisticated public relations campaign which not only involved Alderpersons attending community meetings, but also included the participation of some local

politicians in "hooker patrols" (TS, Jul. 28, 1984: A6). This willingness to get involved, combined with a much higher level of police involvement than in Vancouver, kept residents groups fairly quiet during the period prior to the enactment of Bill C-49.

Another category of interest groups involves those identified with women's issues and/or the interests of the prostitutes themselves. In this respect, Toronto contained many groups organized to advocate for the interests of women and the feminist position in general. However, most of these groups concentrated their efforts at the national level, and many restricted their involvement to media pronouncements and testifying before the Fraser Committee. Two notable exceptions were the Canadian Organization for the Rights of Prostitutes (CORP) and the Toronto Elizabeth Fry Society. CORP had been active in Toronto since the early 1980's and was primarily involved in lobbying politicians with respect to the problems faced by prostitutes. Among their "demands" were an attempt to negotiate informal red light districts and a request that Toronto City Council support legalized bawdy houses (G & M, Oct 21, 1983: 5). While the Elizabeth Fry Society was also active in lobbying for the welfare of prostitutes, its main emphasis was on providing support services which were primarily aimed at helping prostitutes leave the profession. For example, Ms Nancy Quinn, a criminologist employed by the Elizabeth Fry Society, criticized the Toronto area governments for not providing enough funding for counselling programs and other ameliorative services to prostitutes (G & M, June 15, 1984: M3).

The emphasis of the Elizabeth Fry society on helping prostitutes leave the profession (as opposed to lobbying for decriminalization) occasionally

created conflict with the CORP objective of decriminalization. This conflict limited the degree of cooperation between the only two groups who were actively lobbying on behalf of prostitutes at the local level in Toronto. However, there is no evidence to suggest that any women's groups actually lobbied in favor of tougher laws as occurred in Vancouver. Further, most of the female politicians were at least nominally sympathetic to the plight of the prostitutes. In this regard, Barbara Hall, a Toronto alderperson, attempted to press the feminist position at City Council meetings. At the provincial level, Susan Fish, MPP for St George, circulated a questionnaire which solicited support for the legalization of prostitution. The results of this questionnaire generally supported legalized prostitution, and Ms Fish attempted to lobby this position at the Federal and provincial levels. Unfortunately, this was the extent of the feminist involvement in the prostitution issue in Toronto, and when Bill C-49 was announced, most feminist groups were conspicuous by their silence.

7.5.3 Local Politics in Winnipeg

During the late 1970's and early 1980's, street prostitution in Winnipeg was practiced in three main areas: 1) the "hi track" along Albert Street in the Exchange District (Area A - Map in Appendix B).; 2) the "lo track" centred on Austin Street in Point Douglas, a lower class housing area east of Main Street (Area B - Map in Appendix B) ; and 3) the "hill" behind the Legislative Buildings along the Assiniboine River, and extending eastward along Kennedy Street (Area C - Map in Appendix B) (This latter area was populated almost exclusively by male prostitutes). It should be noted at the outset that Winnipeg had experienced few problems with street

prostitution during the late 1970's and early 1980's simply because there was little demand for prostitutes in Winnipeg compared to other centres (WFP, Jul. 5, 1979: 3). This situation did not appear to increase immediately after the Hutt decision, and in fact may have decreased. In this respect, at least one senior Winnipeg Police officer has suggested that the decision may have caused many Winnipeg prostitutes to move to Toronto and Vancouver (Insp. Cherniack). This lack of conflict appeared to prevail during the next few years, and there was little media attention or other indications of conflict between the prostitutes and other groups such as residents and business owners.

However, this state of affairs ended in the early part of 1982, when increased numbers of prostitutes working in Winnipeg prompted the Winnipeg Police Department to ask City Council to pass an anti-soliciting bylaw (WFP, April 8, 1982: 3). It is possible this request was motivated by the success that the Calgary Police were having with their bylaw, as there was no other indication that Winnipeg had a serious problem with street prostitution at that time. In any event, City Council refused to enact such a law on the grounds that it would likely be ruled unconstitutional by the courts. Later in August of 1982, the Winnipeg Police again expressed concern about street prostitution. In this instance, the police were worried about rumors that the Los Bravos motorcycle gang was about to move in on the Albert Street prostitutes, and that a gang war between the Bikers and the existing pimps was imminent. While these rumors never materialized, the police reaction did serve to raise the visibility of street prostitution in the media. Interestingly, public opinion failed to rally behind the police, and most people appeared unconcerned about the issue. In

fact, the Albert Street merchants appeared to like the presence of the prostitutes, as they "were good for business" and were not offensive to either customers or people working in the area (WFP, Dec. 31, 1982: 3). This turn of events surprised the police, and the issue was allowed to drop for several years.

This situation lasted until the middle of 1984, when street prostitution began to acquire a much higher "political" profile in Winnipeg. The development of the issue occurred in two separate areas. First, a group of residents from the streets surrounding the "hill" area behind the Legislative Buildings began to complain about the presence of the male prostitutes who operated in the area. This particular scenario is interesting for several reasons. First, the "hustlers" had occupied the territory for at least ten years without any problems. In fact, the police confirmed that it had been one of the quieter areas of the city up to that point. Similarly, the Lieutenant Governor, Pearl McConigal, whose official residence was located on the Legislative grounds in the heart of the area, said that she was not bothered by the presence of the prostitutes (WFP, June 23, 1984: 1). In fact, both the police and the Lieutenant Governor were at a loss to explain the sudden change, as they were unaware of any sudden increase in the level of activity in the area.

However, a closer examination of the scenario described above does suggest a possible explanation for the "sudden" development of prostitution as a political issue. When one examines the population demographics of the area, a familiar pattern emerges. Up to 1982-1983, this area had been a mixture of "run down" housing, interspersed with a few newer buildings which were occupied mainly by young single people (including a high

proportion of gays). These people appeared to co-exist peacefully with the prostitutes, and in fact the area was well known as a trendy residential area and a "gay meeting place". However, commencing in approximately 1983-1984, developers began to renovate many buildings and replace much of the other housing with newer buildings. As a result, the population of the area began to change as many middle class professionals moved into the area[78]. As occurred in Toronto and Vancouver, the new residents were not happy with the presence of the prostitutes. In this case, there was a double stigma in that the prostitutes and their customers were gay, which many residents objected to as well. In any event, the situation continued for the next few years, ultimately resulting in the installation of traffic barriers to disrupt the flow of traffic in the area. Unfortunately, these barriers actually increased the problem; however this will be discussed in the next chapter.

The second area in which prostitution developed into a political issue was the Exchange District. In July of 1984, several businesses in the area complained that the prostitutes and their clients were creating problems. This led Winnipeg City Council to consider asking the Attorney General, Roland Penner, to consider an injunction similar to the one granted in Vancouver. While this course of action was ultimately rejected, a closer analysis of the situation reveals some interesting information. First, it appears that the only businesses who were complaining about the prostitutees were several expensive nightclubs which had located in the Exchange District during the preceding two years. While the nightclub owners were apparently upset because their customers were being propositioned by prostitutes and prospective "johns", other businesses were

unconcerned about the problem (WFP, April 28, 1985: 1). Nevertheless, this situation brought about a debate in City Council regarding the possibility of dispersing the prostitutes throughout the city, with some Council members arguing that it was unfair to leave all the "sin" concentrated in the core area. While this may well have been a valid argument, one is forced to wonder why this concern for the core area only surfaced after several wealthy businessmen lobbied city hall. While little positive action was ever taken on the suggestion to disperse the prostitutes, the debate broadened to include proposals for the licencing of prostitutes and ultimately died a natural death as Bill C-49 appeared imminent.

The final category of interest groups to be discussed are those associated with the interests of women or who lobbied on behalf of the prostitutes. The first group to become involved on behalf of the prostitutes was a "gay" community organization which supported the male prostitutes on the hill. When the residents of the area were complaining about the male "hustlers", Chris Vogel, President of Gays for Equality attempted to mediate and has been credited with helping defuse the situation (Jane Runner). In addition, it must be noted that the feminist organizations in Winnipeg did not shy away from defending prostitutes' rights when the occasion demanded it. In this respect, the Manitoba Action Committee on the Status of Women was quick to criticize the Winnipeg Police for their treatment of prostitutes. For example, in April of 1984, MACSW spokesperson, Carolyn Garlick, accused the police of extorting money from the prostitutes under threat of arrest.

While the allegations noted above were never proven, MACSW and other feminists continued to speak up on behalf of prostitutes. In June, 1985,

Lydia Gyles, wife of the Chief Provincial Court Judge, organized a public debate between herself, several prostitutes and Inspector Tony Cherniak, OIC of the Vice Division. The extent of her influence was such that Inspector Cherniak actually went on the record as favoring "mutual tolerance" between residents, business groups and the prostitutes (WFP, June 16, 1985: 7). Winnipeg feminists went even further in supporting prostitutes, and MACSW was instrumental in the creation of the prostitutes' lobby group known as Prostitutes and Other Women for Equal Rights (POWER). This was the first instance of a "mainstream" feminist organization becoming involved with prostitutes in such a "hands on" fashion. In addition, MACSW helped POWER organize a seminar on legal rights for prostitutes and helped convince feminist lawyers to donate their time and talents[79]. The effect of this support was such that the creation of POWER was applauded by other social service organizations, including the Main Street Project and even the Winnipeg Police (although their approval was limited to the "bad tricks sheet" compiled by POWER).

7.5.4 Local Politics in Edmonton

The appearance of street prostitution as a local political issue in Edmonton first occurred in March of 1980. At this time, a group of Arlington Street residents[80] complained that prostitutes had started operating south of Jasper Avenue, and lobbied City Council to have them pushed back to the north side of Jasper. City Council refused this request, arguing that such a course of action would be tantamount to sanctioning a red light district on the north side of Jasper (CH, Mar. 31, 1980: A3). Nevertheless, the police did increase patrols in the area, and the problem

appeared to disappear. Interestingly enough, the stated police strategy was one of promoting "peaceful coexistence" between the residents and the prostitutes (Edmonton Journal [EJ], Apr. 1, 1980: B1). This strategy, more than any other factor, may have been responsible for the relative lack of conflict over street prostitution in Edmonton.

Despite the fact that the immediate problem was quickly solved, the incident generated a debate over the feasibility of establishing a red light district in Edmonton. The "pro forces" were led by George Kiado, Director of Social Planning for the City of Edmonton, who argued that this course of action would minimize the nuisance effect of street prostitution and give the police greater control over the prostitutes. Robert Lunney, Edmonton Police Chief, lobbied against a red light district, arguing that it would not solve the problem, and that it would be unwelcome no matter where it was located. However, this did not deter many Downtown residents and businesses, who presented a 200 name petition to City Council demanding that the prostitutes be pushed out of the downtown area, and into a lower class area along the CNR tracks (WFP, April 1, 1980: 28). Ultimately, however, the Edmonton Police Department vetoed the possibility of a red light district, and began to experiment with other solutions, including traffic diverters (EJ, Aug. 19, 1980: B1). This approach apparently solved the problem in the short term, as there was no further mention of it in the media during 1980-81. In fact, when the possibility of a municipal bylaw was raised at Council in 1981, the Edmonton Police Department asserted that it was not necessary as they had the problem under control (EJ, July 3, 1981: A2).

While the issue of street prostitution continued to surface periodically in Edmonton, the debate never heated up to the same extent as in Vancouver and Toronto. In this respect, the political discussion in Edmonton was remarkable for several reasons. First, Edmonton was the only city included in this study where the police attempted to negotiate with the prostitutes. In so doing, the police resisted attempts to have them "harass the prostitutes off the streets", and instead attempted to mediate between the prostitutes and residents and businesses. (EJ, Aug.1, 1982: B2)[81]. This mediation was relatively successful, inasmuch as it minimized conflict between the prostitutes and other groups. When this is compared to the ineffectiveness of the "hands off" strategy employed by the Vancouver Police, and the relative ineffectiveness of Toronto's approach, it would appear that negotiating with the prostitutes might well be a key factor in successful prostitution control.

A second way in which the Edmonton political situation was remarkable involved the apparent willingness of the Edmonton City Council to consider red light districts and the possible licencing of prostitutes at an early stage of the process. While both of these alternatives were eventually ruled out as being unconstitutional, they exemplify the degree to which Edmonton was willing to take a practical, common sense approach to street prostitution. Indeed, this attitude often extended to the general population as well. While media reports indicate that there was mixed feelings about a red light district, a poll taken at a public debate held during early 1983 found that a slight majority of the participants were in favor of legalized prostitution (EJ, April 26, 1983: B4). Interestingly enough, there were never any well organized interest groups active during

this period. While the Alliance of Concerned Residents on Street Soliciting (ACRSS) did appear on the scene in 1984, its position was never made clear, and it is unlikely that it exerted any significant effect.

The apparent liberal attitude taken in Edmonton may be at least partly attributable to the position taken by the Edmonton media, and in particular by the Edmonton Journal. Unlike the emotional, anti-prostitution diatribes published by the Vancouver and (to a lesser extent) Toronto media, the Edmonton Journal generally took a restrained, analytic position which attempted to consider all sides in the debate. As a result, it often took the lead in analyzing the various proposals, and on more than one occasion castigated the police and City Council over their action or lack of action (as the case was). Even more significantly, the editorial stance taken by the Journal generally favored decriminalization and opposed tougher sanctions as being both unnecessary and unlikely to succeed. In this respect, it was highly critical of the 1982 recommendations of the Special Sub-committee, and expressed general approval for the Fraser Committee recommendations. This consistent approach likely served a "watchdog" function over the activities of police and City Council, while also shaping public opinion.

The final category of interest groups to be discussed with respect to the Edmonton political scene involves those individuals and groups which were primarily identified with the interests of women. (This category will include female politicians.) In this respect, the Alberta Status of Women Action Committee (ASWAC) actively promoted the rights of prostitutes from a very early stage in the debate. For example, ASWAC Co-ordinator, Mary Smith, immediately rejected the 1980 call for a red light district in a

lower class area. She argued that this proposal would make it easier for the police to exploit the prostitutes, and instead advocated cracking down on the customers as a means of solving the problem (WFP, April 1, 1980: A3). In a similar fashion, Mary Burlie, Director of the Boyle Street Community Service Co-op, also actively lobbied on behalf of juvenile prostitutes, and frequently criticized the police for their lack of attention to the male customers of juvenile prostitutes. This position was also taken by Tricia Smith, Executive Director of the Elizabeth Fry Society, who lobbied against Bill C-49, arguing that it discriminated against women (EJ, Nov. 17, 1985: A11). One final group which attempted to advocate the rights of prostitutes was the Alberta Human Rights and Civil Liberties Association. While not strictly speaking a feminist organization, AHRCLA actively advocated the feminist position and consistently opposed any attempts to establish red light districts on the grounds that such a course of action would unfairly restrict the prostitutes' right to earn a living in a "legal" occupation (EJ, April 26, 1983: B4).

It can be argued that all of the above groups were influential in keeping Edmonton Council from adopting the type of approach taken in Vancouver. However, it should also be noted that many prominent feminists either remained silent on the prostitution issue or advocated a more conservative position regarding the control of street prostitution. In this respect, most of the female members of Edmonton City Council refused to become involved in the prostitution debate, and some lobbied actively for tougher laws. An example of the latter was Alderperson Bettie Hewes, who consistently sided with the residents and business interests, and as early as 1980 was advocating a "get tough" approach to prostitution (WFP, April

1, 1980: 28). This approach was also followed by another female alderperson, Olivia Butti, who argued that Jasper Avenue businesses were suffering because of the "unsafe streets" created by the prostitutes (EJ, Sept. 12, 1985: E8). (This was despite the fact that other polls had indicated that most potential customers were unconcerned about the presence of street prostitution.) In addition, the Alliance of Concerned Residents on Street Soliciting was headed by a woman, Shirley Krause, and this organization appeared to favor a more restrictive approach to controlling street prostitution. Finally, there was no real attempt by Edmonton prostitutes to lobby on their own behalf. While a group calling itself "The Friends of Jezebel" was organized in 1984 to fight for the rights of prostitutes, this group was never very active and appeared to disappear after one brief media announcement (EJ, Mar. 1, 1984: D8).

7.5.5 Summary

In summarizing this discussion of the role of local interest groups in influencing prostitution control during the development of Bill C-49, there are several common elements which need to be identified. First, one of the factors which appears in all of the cities is the class bias which characterized the enforcement of legal controls on street prostitution. In this respect, prostitution control only became a priority when it moved into middle class residential areas or infringed upon business interests. This was particularly evident in Vancouver, where the problem was ignored in Mount Pleasant until the residents occupied City Hall in protest. Related to the class bias, the issue of "gentrification" was an important factor in all cities except Edmonton. In most instances, street

prostitution had existed in the problem neighborhoods for years without serious conflict until the areas were "rehabbed" by middle class professionals. It can further be argued that the nuisance levels rarely increased, and that the conflict was primarily due to the fact that the new residents simply did not want to share their neighborhoods with prostitutes, no matter how quiet or discreet they might be.

In addition to the questions of class bias and gentrification, the behavior of the police was an extremely important factor in determining the degree of conflict that occurred in any particular city. In this respect, the behavior of the Vancouver Police must be described as the most reprehensible, in that they almost completely abdicated their responsibility to protect the public. Not only did they refuse to take action in cases where it was warranted, at least one source argued that they actually went so far as to encourage prostitutes to harass the residents in order to create political pressure. Thus, it is hardly surprising that Vancouver had the highest levels of conflict over street prostitution. This conflict was proportionately less in Toronto where the police attempted to control prostitution by using creative enforcement tactics. And in Edmonton, where the police negotiated with the prostitutes and attempted to mediate between the residents and the prostitutes, the level of conflict was kept to minimal levels.

The final general factor which must be summarized with respect to local interest groups is the generally disappointing response of women's groups and the feminist movement to the problem of street prostitution. While many feminist organizations did lobby on the national level, there is little evidence to suggest that the local branches of these same organizations

were particularly active on the local political scenes. This situation was particularly true of Vancouver, where many female politicians and women's groups actively supported the residents and businesses. While the Elizabeth Fry Society in Toronto was active in supporting prostitutes, its primary emphasis was on helping prostitutes to leave the profession, and there were few groups actively supporting the rights of prostitutes. The only exceptions to this general rule occurred in Winnipeg and (to a lesser extent) Edmonton where many mainstream feminists were active in lobbying on behalf of prostitutes. However, the activities of feminists in Edmonton were countervailed by the fact that many female politicians advocated tougher sanctions against street prostitution. This entire scenario is important, since it will be argued in the next section that the general lack of feminist support for the rights of prostitutes was at least partially responsible for the degree to which Bill C-49 diverged from the recommendations of the Fraser Committee.

7.6 THE DRAFTING AND ENACTMENT OF BILL C-49

Bill C-49 was introduced into the House of Commons for first reading on May 2, 1985, exactly six working days after the Fraser Committee report was released. It was obvious at a glance that the contents of the Bill deviated drastically from the Fraser Committee recommendations[82]. These two factors, i.e. the divergence from the Fraser Committee recommendations and the speed with which the new legislation was introduced, indicate that the legislation was prepared well before the Fraser Report was tendered. They also indicate that the Minister of Justice, John Crosbie, had decided on a course of action with complete disregard for the committee process

which was underway when he assumed the position of Minister of Justice. This assertion is borne out by his derogatory comments while the Fraser Committee hearings were underway and the public impatience which he displayed before the report was ready. Further, Crosbie had announced prior to the release of the Fraser Report that he planned to bring in legislation to give the police enough power to control street prostitution. In fact, he went so far as to assert that he would use closure to ensure quick passage if the NDP attempted to block such legislation (WFP, Apr. 26, 1985: 10).

The contents of Bill C-49 were enthusiastically endorsed by the police and most local politicians (with the notable exception of Mayor Marion Dewer of Ottawa) (G & M, Oct. 30, 1985: A4). However, the obvious discrepancy between the proposed legislation and the recommendations of the Fraser Committee prompted some criticism from civil liberties organizations and feminist groups (WFP, May 3, 1985: 4). In this respect, Crosbie attempted to deflect some of the criticism by asserting that Bill C-49 was only an interim measure, and by promising that a more thorough review of the prostitution laws would be undertaken after he had had a chance to examine the Fraser Report in more detail. In addition, he attempted to appease the feminist groups by ensuring that Bill C-49 was gender neutral, and by emphasizing the degree to which the new legislation would be used to target male customers. While this aspect of the legislation might be cited as an example of the increasing political influence wielded by feminist groups, it was likely also designed to please the many "straight" middle class women who were being harassed by potential customers in the mistaken belief that they were prostitutes. In any event, many feminists expressed skepticism that male customers would be routinely targeted to the same

extent as female prostitutes. (This point will be an important aspect of the evaluation in the next chapter.)

Crosbie's promise to conduct a "thorough review" of all prostitution laws was an important factor in obtaining the quick passage of Bill C-49. This review was initially planned for the fall, but Crosbie's statements during the Parliamentary debate on the legislation suggest that this promise was far from sincere. For example, he asserted during debate over second reading that the legislation fulfilled one of the two major principles expounded by the Fraser Committee, namely that individuals adversely affected by street prostitution were entitled to protection. However, in so doing, he contravened the second major principle, namely that prostitution was a social problem that had to be dealt with in its entirety if prostitution control was to be effective. While the Fraser Committee had identified several possible options aimed at both controlling prostitution and dealing with some of the concerns of the prostitutes, Crosbie blithly dismissed them, stating that he did not think they would be effective (Hansard, 33rd Parliament, 1st Session, Vol V: 6374). These comments indicate that he never seriously intended to consider the Fraser Committee recommendations. In any event, when fall arrived, the promised review was pushed back to Christmas, and ultimately forgotten.

In examining the specific reasons for the nature of Bill C-49 (as opposed to the background factors already discussed), there are several factors which must be discussed briefly. The first such factor was undoubtedly the degree to which public opinion appeared to strongly oppose a more lenient approach to the control of street prostitution. In this respect, Crosbie relied on a 1984 survey conducted for the Fraser Committee

which indicated that fully 84 per cent of the population were firmly against legalized street prostitution and that 71 per cent favored increased police powers to deal with it (Id: 6376). This public opinion was also reinforced by continued pressure from local interest groups in Toronto and Vancouver who demanded that the problem of street soliciting be "solved once and for all" (WFP, Apr. 26, 1985: 7). These factors undoubtedly made it difficult for the government to consider decriminalization, even though it might have given the municipalities more power to control street prostitution through bylaws and other non-criminal forms of regulation. In any event, the provinces appeared firmly against any form of legalized prostitution, including the establishment of legal bawdy houses[83].

While the political factors identified above were instrumental in setting the stage for Bill C-49, the most important factor behind the tough provisions of the legislation was undoubtedly the change in government which saw the Conservatives assume power in late 1984. Since the Conservatives had always taken a much tougher stance towards the issue, it was unlikely that they would endorse the recommendations of a non-parliamentary committee appointed by the Liberals. More importantly, however, the change in government was to give Pat Carney greater leverage over the government's approach to street prostitution, and she immediately began lobbying for tougher laws to clean up the problem. This fact was acknowledged by Crosbie as he introduced the Bill into Parliament, when he stated that he had "been under tremendous pressure from .... Miss Carney ...." (Hansard, 33rd Parliament, 1st Session, Vol V: 6373). Indeed, there are persistent rumors "floating around" Ottawa that Bill C-49 resulted from a "deal" between Carney and Crosbie, in which Carney agreed to support

Crosbie with respect to a Bill dealing with fisheries on the Atlantic coast in return for a tough approach to street prostitution.

While the rumors discussed above have never been substantiated, they have been reported to the author from several sources, all of whom wished to remain anonymous. In addition, there are several other factors that lend credence to the suggestion that a deal had taken place. In this respect, it should be noted that Crosbie had originally refused to bring in legislation prior to the release of the Fraser Committee report, even though "interim" legislation would have seemed more appropriate at this time. Then, just as the Fraser report was due, he appeared to "have a change of heart" and announced that he intended to give the police enough power to control street prostitution. While this may have indicated that he realized that the Fraser Committee was not going to bring the sort of recommendations that he wanted, it is also consistent with the notion of a deal being struck. The fact that Crosbie did not consult with the provincial Attorneys General[84], and had previously taken little interest in the debate over street prostitution, suggests that the decision to introduce Bill C-49 was not based on a careful assessment of the problem. Considering that Ms Carney's riding was the principal beneficiary of Bill C-49, one must at least consider the possibility that several years of research and public hearings were overridden by immediate political expediency.

In discussing the passage of Bill C-49, it is necessary to briefly outline the events which occurred after the legislation was introduced into the House of Commons. As was noted previously, Bill C-49 was given first reading on May 2, 1985. At 9:00 p.m. on June 26, 1984, exactly two days before the House was to adjourn for the summer, the Minister of Justice

attempted to introduce the Bill for second reading and urged that it be passed as quickly as possible. In order to accomplish this, he requested that it be referred to the Standing Committee on Justice and Legal Affairs before the summer break. However, the House adjourned for the day a few minutes later and Crosbie did not attempt to pursue the Bill in the remaining two days of the session. In this respect, it is likely that Crosbie never expected to have his request granted, but was simply attempting to manipulate the opposition into taking responsibility for delaying the legislation. In any event, he quickly attempted to obtain political mileage out of the situation when he told a Vancouver citizens's group that the NDP had blocked the legislation. This in fact was untrue, as there is no indication in Hansard that the NDP had attempted to block the Bill at that time (Hansard, 33rd Parliament, 1st Session, Vol IV: 6236).

The Bill was reintroduced for second reading when the House resumed sitting on September 9, 1985. In introducing the legislation, Crosbie spent over an hour extolling the virtues of the legislation, including several obvious appeals to the feminist and civil rights constituencies. In this respect, he dwelt on the fact that the provisions of the legislation would apply to both males and females and that the entire issue of street prostitution would be given more attention later in the fall. One major change that had appeared over the summer, likely in response to increased media criticism, was the stipulation that Bill C-49 would be evaluated within three years to both assess its overall effectiveness and identify any specific problems which might arise (Id: 6377). While this compromise does suggest some degree of sensitivity to the concerns of the feminist and civil libertarian groups, it also indicates fairly conclusively that

Crosbie did not intend to consider other ways of dealing with street soliciting despite the fact that he continued to label Bill C-49 as an "interim" measure.

Insofar as the remainder of the debate over second reading is concerned, the positions of the participants split along predictably partisan lines. In this respect, the Liberals and the NDP opposed the legislation, while the Conservatives attempted to support the basic position expounded by Crosbie when he introduced the Bill. While it is not necessary to discuss all of the specific criticisms in detail at this point, it can be noted that they encompassed the civil rights, feminist and effectiveness issues already discussed elsewhere in this dissertation. However, there are several important factors which warrant further discussion at this point. The most significant of these is the degree to which the female members of the NDP and Liberal parties united to present a concerted attack on Bill C-49. In this attack, they not only criticized the way in which it diverged from the Fraser Committee recommendations, but also castigated the government for ignoring the pimps and procurers who prey on street prostitutes, and for not addressing the social problems which force many women into prostitution in the first place[85]. This remarkable display of feminist solidarity was the first time that female politicians had appeared to recognize (publicly at least) that prostitution was related to the general position of women in society.

The second factor which warrants further discussion is that many local politicians who had been clamoring for action with regard to street prostitution began to rethink their earlier enthusiastic approval of Bill C-49. The Canadian Federation of Municipalities spent most of a meeting in

June of 1985 discussing the Bill, and ultimately expressed several reservations about its approach. More specifically, the members unanimously endorsed a report of their Task Force on Street Soliciting which criticized Bill C-49 for not dealing with prostitution in a more comprehensive fashion[86]. The Opposition parties seized on this factor as evidence that the Bill did not even meet the needs of the people who had lobbied for it in the first place. They further argued that the Bill would never have been necessary if the police had done their job and enforced traffic laws and anti-noise bylaws. In this respect, they pointed to the success experienced by Ottawa in using these tactics, combined with community action which included the prostitutes. Thus, the Opposition argued that it was not necessary to enact "interim" legislation, and called on the government to drop Bill C-49 in favor of developing comprehensive legislation which accounted for all of the Fraser Committee recommendations. Lucie Pepin (Liberal - Outremont) was particularly vocal in demanding that Crosbie reveal a "complete package" for dealing with prostitution (Ibid). Given that he had already promised a thorough review of the issue later in the fall, this suggestion appeared reasonable. Crosbie's refusal to consider it suggests that he may have already decided on Bill C-49 as a "definitive" solution to the problem of street prostitution.

The last factor to be discussed with respect to the debate over second reading involves the comparative lack of participation by the Conservative rank and file members. Almost all of the debate involved Opposition members criticizing the Bill and the only two Conservatives who attempted to defend the Bill were Pat Carney and Rob Nicholson of Niagara Falls. None of the other Conservative MP's chose to publicly support the Bill, including Flora

MacDonald who was invited to speak but declined. This suggests that many of the Conservative MP's really did not support Bill C-49 and only voted for it because of party discipline. However, none of the criticism deterred Crosbie, who continued to insist that the legislation was necessary. In fact, Pat Carney went so far as to suggest that many urban residents might resort to vigilante action if the Bill was not passed quickly. In any event, the Bill was referred to the Standing Committee on Justice and Legal Affairs at 5:20 p.m. on June 9, after only a few hours debate. It appeared that neither Opposition party really attempted to seriously delay the legislation, and that they were willing to let it pass after they had completed the "necessary" posturing.

Bill C-49 was in Committee for a grand total of two weeks. Considering the controversial nature of the legislation, this was an absurdly short period of time. Despite its shortness, however, numerous individuals and groups made presentations both supporting and opposing the Bill during the Committee stage. The supporters of the Bill included many police officials, the mayors of Montreal, Vancouver and Niagara Falls and the Attorney General of Ontario. Almost without exception, these groups had a personal or political vested interest in stronger prostitution laws. The groups opposing the legislation were more diverse and most were less personally involved in the issue[87]. The criticisms raised by these groups basically centred around the possibility of abuse by police officers and the failure of the Bill to address the real issues behind prostitution. Despite these criticisms, however, Bill C-49 was brought back before the House with only one minor amendment relating to the prosecution of customers[88].

Bill C-49 entered third reading on November 19, 1985, and John Crosbie left it to his Parliamentary Secretary, Mr. Chris Speyer, to guide the legislation through the debate. While Speyer conceded the criticisms raised in Committee, he answered them in an extremely glib and superficial manner. With respect to the inadequacy of the Bill to address the real problems associated with prostitution, he asserted that it was not intended to deal with all aspects of prostitution and that a more thorough review was due in the fall. (The fact that "fall" was almost over did not appear to occur to him.) In terms of the possibility of abuse by the police, he argued that all laws can be so abused and that he was confident that Canadian police would not take undue advantage of the Bill's admittedly broad provisions (Hansard, 33rd Parliament, 1st Session, Vol VI: 8610). Considering that Canadian police had not hesitated to abuse their powers under the previous vagrancy provisions, it can be argued that Speyer's confidence was overly optimistic.

Once again, the Opposition attacked Bill C-49, making many of the same arguments that had been made during second reading. In addition, they also criticized the government for ignoring the many presentations made in Committee against Bill C-49 and argued that it was clear that a significant proportion of the population strongly opposed the legislation. Interestingly enough, some of the testimony in support of the Bill also provided the Opposition with ammunition for arguing against the Bill. For example, the Mayor of Vancouver had testified that he was not interested in banning prostitution entirely and only wanted to get it off the street. Lynn MacDonald (NDP - Broadview-Greenwood) seized on this statement, and argued that Bill C-49 would actually work against this goal insofar as it

did not legalize bawdy houses. She asserted that it was illogical to prohibit bawdy houses if one only wanted to push prostitution off the street and not ban it entirely (Hansard, 33rd Parliament. 1st Session, Vol VI: 8647).

In addition to the general social criticisms, Bill C-49 also came under attack from a purely legal perspective. John Nunziata (Liberal - York South-Weston) argued that in addition to constituting a "knee jerk political reaction" to a problem that existed only in certain large urban centres, Bill C-49 was simply too vague to be enforced successfully. He went on to detail several evidentiary problems with the wording of the Bill, which he argued would lead to court challenges and could possibly hold up the legislation "...for months and months, if not years" (Id: 8649). Despite all of the criticisms leveled against Bill C-49 during the course of its passage, the Conservatives insisted on pushing ahead with it, and used their huge majority in the House of Commons to pass it on November 20, 1985. The Bill was given royal assent on December 20, 1985.

7.7 SUMMARY AND CONCLUSIONS

The discussion in this chapter has centred on the identification and analysis of the socio-legal and political factors which contributed to the development and enactment of Bill C-49. This analysis commenced with an examination of the anti-soliciting provisions contained in the Canadian Criminal Code after 1972, and attempted to explain the reasons for the apparent failure of section 195.1 as a mechanism for controlling street prostitution. There are several factors which emerged in this respect. First, the anti-soliciting provisions can be described as an essentially

"good" law which addressed the problem of street prostitution without giving the police unlimited powers to harass prostitutes at will (as they had had under the previous vagrancy provisions). While there were some minor problems of interpretation, these provisions were working reasonably well at their stated aim of controlling street prostitution. Despite this, however, they were extremely unpopular with most police forces well before the 1978 Hutt decision restricted their operation. This dissatisfaction on the part of the police was largely due to the fact that section 195.1 had deprived the police of the power to harass prostitutes and force them to provide information on the criminal sub-culture.

The second major factor which emerged from the analysis in this Chapter involves the fact that the conflict over street prostitution in the cities examined in this study was either present before the Hutt decision or else was unrelated to it. For example, in Vancouver it was the earlier closure of two nightclubs which forced many prostitutes out on the streets where they caused problems for businesses and residents. In Toronto and Winnipeg, the conflict was primarily due to urban renewal which saw previously lower class "red light" areas gentrified into expensive housing for upper and middle class professionals. These new residents were unhappy with a pre-existing prostitution problem and began to lobby for action. (This factor was also relevant in Vancouver's West End, but occurred after the club closures mentioned above.) Finally, the issue of street prostitution arose in Edmonton well after the Hutt decision and there is no evidence to suggest that they were linked in any way. Further, the Edmonton police were able to contain the problem, even thought the Hutt decision had supposedly restricted their powers. Thus, it must be stressed that there is little

evidence to suggest that the Hutt decision itself was instrumental in the development of the street prostitution problem.

Another relevant factor which emerged from the discussion in this Chapter is the issue of police power to control street prostitution. In this respect, it is clear that while the Hutt decision did restrict police powers with respect to street prostitution, it by no means completely deprived them of their ability to control the problem. This is borne out by the fact that the Toronto police were able to cope with an earlier Ontario decision which was similar, and had applied greater efforts to controlling street prostitution after Hutt than many other police forces. Further, it was also noted that the police in Ottawa and Edmonton were able to successfully use other (non-criminal) laws, combined with community action and negotiation with the prostitutes to eliminate the worst aspects of street prostitution. The major reason why these tactics were not used in other cities appears to be that the police had refused to act in the hopes that public pressure would result in a completely new law. This indicates that the Hutt decision did not deprive the police of the necessary power to control the street soliciting problem, and that section 195.1 was likely adequate if the police had acted properly. In light of all of these factors, it must be concluded that the major effect of the Hutt decision was that it precipitated a virtual police "strike" in some cities which exacerbated the problem and contributed to the growing public clamour for a solution.

In terms of the political response to the growing problem of street prostitution, the initial reaction of the Federal government was to ignore the issue. While both the Conservatives and the Liberals made some attempts

to sound tough and promise action, both parties engaged in a number of stalling tactics aimed at defusing the situation. In 1980, however, Pat Carney (PC - Vancouver Centre) made the issue a priority and thereafter the Conservatives took a consistently tough approach toward street prostitution. However, they remained out of power until 1984, and Ms Carney was forced to confine her activities to partisan sniping in the media and attacking the Liberals during debates in the House of Commons. Insofar as the other levels of government are concerned, the provinces generally confined their activities to occasional attempts to publicly lobby the Federal Minister of Justice to "solve the problem". (The only exception occured in British Columbia, where the Attorney General successfully applied for an injunction which forced the prostitutes out of the West End.) This appeared to hold regardless of the particular political party in power, and the provinces appeared to be following Roland Penner's view (discussed earlier in this chapter) that the entire issue of prostitution was best avoided if possible.

At the municipal level, the politicians combined lobbying with concrete action, and many cities experimented with using municipal bylaws to control street prostitution. Without exception, these bylaws were overruled by the courts on constitutional grounds. This finally convinced the Liberal government that significant changes were necessary to Canada's prostitution laws. In this respect, it was obvious that the government had essentially two choices: either legalize prostitution or enact much tougher laws to override the Hutt decision. The latter choice was recommended by the House Standing Committee on Justice and Legal Affairs. However, instead of accepting this recommendation, the Liberal Minister of Justice, Mark

MacGuigan, elected to establish the Fraser Committee to study the issue once more. While this committee carried out a thorough review of the entire issue of prostitution (and not just street soliciting), it uncovered little new information. Despite this lack of new information, however, the Fraser Committee did make several sensible recommendations which essentially favored a modified decriminalization approach to prostitution. However, the Conservatives were now in power, and these recommendations were ignored when Bill C-49 was drafted.

There are two additional factors which must be highlighted in this conclusion to the development and enactment of Bill C-49. The first factor that became abundantly clear in the analysis carried out in this Chapter is the "class bias" which characterized the entire prostitution issue in the four major cities discussed. This was evident not only in the differential way in which prostitution laws were enforced, but also extended to the political influence wielded by the various interest groups. In this respect, an examination of the relative success of CROWE in influencing the Vancouver City Council compared to the manner in which the Mount Pleasant groups were virtually ignored indicates that local politics were far from egalitarian with respect to the prostitution issue.

A second major factor which cannot be emphasized too strongly is the lack of influence by feminist groups. This was apparent at all levels, although the details varied between the federal and municipal levels. At the municipal level, the lack of influence was due largely to a lack of participation by local feminist groups in the local political process. In some cases, feminists ignored the interests of the prostitutes and actually sided with the residents and business interests, thereby lending increased

credibility to the anti-prostitution forces. While there was much greater participation by feminists at the federal level, they were unable to significantly influence the drafting of Bill C-49. This scenario is almost completely consistent with the analysis carried out in Part I of this dissertation. However, the fact that many feminist groups and individuals did begin to realize that prostitution was a feminist issue, and did attempt to influence the enactment of Bill C-49, offers hope for the future. This issue will be given particular attention in the next chapter when the implementation of S. 195.1 is analyzed.

NOTES

[1] It is considered useful at this point to distinguish between male "hustlers" and male "hookers". The former are straight appearing males who service gay or bisexual males, while the latter are transvestites who provide sexual (usually oral) services to straight men who are unaware of their true sexual identitiy.

[2] In fact, this is true even today. During my research in Toronto, Insp. Clarke, OIC of the Morality Squad, mentioned that it is difficult to get officers to work undercover against male "hustlers" because they are afraid that someone might see them and draw the wrong conclusions. However, this does not appear to apply to male "hookers". This bias will be discussed more fully later in this dissertation.

[3] While these cases involved separate trials, their appeals by stated case involved similar issues. As a result, they were heard together.

[4] For example, after the Hutt case, many police forces, and particularly the Toronto and Ottawa police, attempted to control prostitution by using a wide variety of other legislation. This will be discussed more thoroughly in the next section.

[5] In actual fact, the court rejected the appeal because it dealt with matters of factual interpretation which could not be considered by an appeal by stated case. However, the judge noted that the above points would apply in an appeal on the merits or in a trial de novo.

[6] Actually, the court argued that "importuning" was necessary but then defined the term in very broad terms.

[7] Interestingly, senior police officals in several police forces have stated that prostitutes are considered more reliable informers than other members of the criminal subculture because they are not really criminal in the same sense that robbers and drug traffickers are.

[8] In fact, police dissatisfaction with 195.1 is cited as one of the major reasons for the Vancouver police decision to concentrate on bawdy houses. This resulted in the much celebrated "Philponni" case in which a prominent Vancouver nightclub was targeted as a haven for prostitutes. The closure of the Penthouse Cabaret on Richards Street forced a large number of prostitutes onto the streets, thus at least partially precipitating the street prostitution crisis. This factor will be discussed more thoroughly in the next section.

[9] This decision is apparently unreported and I am relying on information contained in the BC Court of Appeal decision for this statement.

[10] While the normal practice in Canadian law is to argue on the basis of majority decisions, the minority decision in this case is important to the subsequent chain of events, and thus it will also be discussed.

[11] This information is based on a personal interview conducted with Mr. Serka in June of 1989.

[12] The most important of these were the Penthouse Cabaret on Richards Street and a gay bar on Burnaby Street which had catered to male prostitutes. The latter was less well publicized and I am unaware if the owners were ever charged with criminal offences.

[13] In fact, Lowman argues that the numbers of prostitutes had steadily increased in both of these areas well before the Hutt decision (Lowman, 1985). The Fraser Commission also documents a steady increase in the numbers of street prostitutes between the

[14] In fact, there were several media articles complaining about the bad impression that the "ladies of the night" were creating for tourists and other visitors. As well, this issue surfaced at several council meetings and in internal correspondence between City Council and the Vancouver Police Department.

[15] Loitering bylaws, anti-noise laws, and using the provincial Motor Vehicle Acts to harass potential customers were among the most common strategies. In addition, the Winnipeg Police Department adopted the policy of charging prostitutes with "counselling an indecent act" whenever they suggested having sex in a park or other public place.

[16] These two cases had originated separately in Vancouver during 1980. This was well after the Vancouver police had stopped taking action against street prostitution and thus cannot be used to explain this action.

[17] In fact, there were allegations in the Vancouver Sun as early as March of 1978 that the police were deliberately refusing to charge prostitutes (VS, Mar. 30, 1978: D12).

[18] This information was provided conditional to a guarantee of anonymity.

[19] These amendments left section 195.1 untouched and added a new section 195.2.

[20] In fact, they may have had a point in this regard. Interviews with senior government officials have indicated that the politicians were perfectly willing to allow the police to handle it as long as they could keep the issue quiet. In particular, Mr. Roland Penner, former Attorney General of Manitoba, has stated that most politicians viewed prostitution as a "no win situation", and were reluctant to take any action which was not absolutely required.

[21] The NDP later claimed that they had only agreed to support the introduction of Bill C-44, and had never agreed to dispense with the committee stage (G & M, Mar. 1, 1979:1). However, a perusal of Hansard reveals that the NDP had indeed agreed to support the Bill. In an interview in June, 1989, Svend Robinson, present NDP Justice Critic, defended this course of action by arguing that the NDP official policy on prostitution had always favored decriminalization. He further noted that prostitution was a social problem which would resist "quick fixes" and/or harsh laws. Thus, he felt it was particularly inappropriate to bypass the committee stage (where a more indepth discussion could be undertaken). Without being too cynical, it is also

likely that the NDP decided that they would gain more political support by voting against the legislation than they would if they voted for it.

[22] However, this did not stop the Liberals, who were now in opposition. Art Phillips, who replaced Ron Basford as the Liberal Member of Parliament for Vancouver Centre, introduced a private members bill which essentially duplicated the contents of Bill C-44. Needless to state, it never passed first reading. Interestingly enough, this bill might have passed if it had made it to the top of the order paper, as the Conservatives were in a minority government. Considering that the contents of the Bill were popular with many Conservatives, it might have represented a chance to deal with a politically explosive situation without having to take formal responsibility for it.

[23] While Vancouver police did attempt to crackdown sporadically, for the most part they continued their hands off policy. For example, While they cracked down briefly after Bill C-44 was introduced, they appeared to cease activities once it became apparent that the Bill was not going to pass (Calgary Herald (CH), Mar. 17, 1979:1). Later in June, 1979, they again conducted a series of sweeps, but it is generally agreed that this was simply to clear the streets because a major police convention was going to be held that summer (G & M, June 28, 1979:12). The most interesting thing about these crackdowns is that appeared to be remarkably effective, thus indicating that the police had enough power to control prostitution when they really wanted to do so.

[24] These bylaws attempted to regulate prostitution like any other business and prohibited prostitutes from operating in certain areas of their respective cities. While the provincial courts in both provinces initially accepted the validity of the bylaws, the provincial Courts of Appeal overturned the laws in October (Calgary) and December (Montreal) of 1981. The Calgary case was sent to the Supreme Court of Canada as a test case where the anti-soliciting bylaws were conclusively overruled on the grounds that they constituted an infringement of the Federal government's exclusive right to pass criminal law. While Montreal and Vancouver later attempted to pass bylaws prohibiting the sale of anything on the street, these laws were largely unsuccessful (Robertson, 1985).

[25] It should be noted, however, that most of the Aldermen on Toronto council disagreed with Eggleton, and suggested that he was either overreacting or else playing political games. It was well known that Eggleton was courting the mayors of Vancouver and other major cities regarding the presentation of a common front to the Federal government on certain economic issues.

[26] In fact, Mike Harcourt admitted that it was almost impossible to get the attention of the Federal government without having the participation of Toronto and Montreal.

[27] It should be noted that the Calgary bylaw was initially criticized by the Alberta Human Rights and Civil Liberties Association on the grounds that it was an unnecessary infringement of basic freedoms and

that it was also unconstitutional (G & M, June 30, 1981: 2). However, their criticisms were apparently ignored by other interested parties. In particular, the Calgary merchants approved of the plan.

[28] In this respect, both Toronto and Vancouver considered bylaws up to the planning stage. Both cities placed their proposed laws on hold when the Calgary one was overruled in Alberta Provincial Court. While Vancouver decided to pass its bylaw when the Alberta Court of Appeal upheld the Calgary bylaw in a Crown appeal of Westendorp, Toronto elected to wait until the Calgary bylaw had passed the Supreme Court of Canada. However, because of the problems with the Calgary and Montreal bylaws, Vancouver avoided mentioning prostitution specifically and instead passed a "street activities" bylaw which prohibited creating a nuisance on a public street. The process by which Vancouver drafted its bylaw is interesting in one particular respect. An interview conducted with Terry Bland, Vancouver City Solicitor, in June of 1989 elicited the admission that Vancouver City Council had attempted to enlist its female members to liaise with feminist groups to convince them of the necessity for the bylaw. While some of the females refused, several prominent Vancouver politicians, including Alderperson May Brown, a high profile NDP feminist, and Pat Carney, Conservative MP for Vancouver Centre, were "very successful in bringing the local women's groups around". Unfortunately, Ms Brown failed to respond to requests for an interview left at her office and home. Similarly, an attempt to interview Ms Pat Carney was met with an angry refusal.

[29] Actually, Westendorp was the first person charged under the bylaw, but because the Associate Chief Judge reserved judgement for a lengthy period of time, other cases had resulted in convictions in the interim.

[30] Because the decision was at the Provincial level, it was not binding on other Provincial Court Judges.

[31] She also detailed the formation of a residents lobby group, the Concerned Citizens of the West End [CROWE]. However, the activities of this group will be discussed later in this Chapter.

[32] Under Standing Order 43 of the House of Commons, additional items can be added to an existing bill and/or sent to committee for further study only if unanimous consent is obtained. Further, when a topic is referred to a Standing Committee without including a specific piece of legislation, a special sub-committee is set up, comprised of some of the members of the standing committee.

[33] Interestingly, while local politicians were almost unanimous in asking for tougher laws, the mayors of several major cities, including Montreal, Toronto and Vancouver, indicated that they would be happy if the law was changed to allow municipal bylaws to work effectively. Unfortunately, under current Canadian Constitutional arrangements, only the Federal government is empowered to enact legislation dealing with criminal matters.

[34] As a result of this decision, Vancouver rescinded its bylaw and

Toronto elected not to proceed with its version. In many respects, this was unfortunate as the various bylaws appeared to be effective tools for controlling street prostitution (witnessed by the many media articles extolling the manner in which they swept the street clean of prostitutes.) The problem, however, was that they were ultra vires. (See endnote 37 for a more complete discussion of this aspect of Canadian constitutional law.)

[35] Specifically, the Special Sub-Committee made five recommendations:

1. That whatever changes are made to s. 195.1 of the Criminal Code, it should be amended to remove the uncertainty as to whether clients are liable to prosecution;

2. That a new offence be added consisting of the offering or accepting of an offer to engage in prostitution in a public place, punishable on summary conviction by a fine of up to $500, or 15 days imprisonment in default of payment;

3. That the definition of "public place" be amended to include vehicles in public places, and private places open to public view;

4. That a new offence consisting of the offering or accepting of an offer to engage in prostitution with a person under the age of eighteen be enacted, punishable either on summary conviction or by indictment; and

5. That the operation of the proposed amendments be reviewed by a committee of the House of Commons within three years of their coming into force.

[36] Under the BNA Act, the Federal government is accorded the sole right to enact criminal legislation, whereas the regulation of legitimate business is the purview of the provinces. While prostitution itself is legal, street soliciting is illegal. Thus, an municipal or province law would likely be ruled unconstitutional unless the Federal government amends the Criminal Code to specifically allow the provinces to do so.

[37] An attempt was made to interview Brian Smith while conducting the Vancouver portion of my research. However, he failed to respond to telephone requests for an interview and to a followup letter.

[38] It should be noted that Nova Scotia also attempted the obtain such an injunction on behalf of Halifax, but was turned dowm by the NS Supreme Court and the NSCA (on appeal). Manitoba also considered this course of action but did not proceed with it.

[39] In fact, Ms Carney was quoted on July 14, 1984 as stating that the Conservative government would move quickly to enact tougher anti-soliciting laws (VS, July 14, 1984: A5).

[40] The specific terms of reference for the Committee were:

1. to consider the problem of access to pornography, its effects and what is considered to be pornographic in Canada;

2. to consider prostitution in Canada with particular reference to loitering and street soliciting for prostitution, the operation of bawdy houses, living off the avails of prostitution, the exploitation of prostitutes and the law relating to these matters;

3. to ascertain public views on ways and means to deal with these problems by inviting written submissions from concerned groups and citizens and by conducting meetings in major centres across the country;

4. to consider the experience and attempts to deal with these problems in other countries, including the United States, the European Economic Community and selected Commonwealth countries such as Australia and New Zealand; and

5. to consider alternatives, report findings and recommend solutions to the problems associated with pornography and prostitution in Canada (Report of the Special Committee on Pornography and Prostitution, 1985).

[41] The members consisted of Paul Fraser, a Vancouver lawyer and a prominent Liberal; Susan Clark, a sociologist and Director of the Institute for the Study of Women at Mount St Vincent University in Halifax; Mary Eberts, a lawyer and prominent feminist who was a board member of the Canadian Civil Liberties Association and of the Metro Toronto Action Committee on Public Violence against Women and Children; John-Paul Gilbert, a senior member of the National Parole Board and past Director of the Montreal Police Department; John Maclaren, then Professor of Law at the University of Calgary and a radical criminologist; Andree Ruffo, a feminist lawyer specializing mainly in family law; and Joan Wallace, a prominent feminist whose credentials included past Board member of the CACSW, former Director of Canadian Research Institute for the Advancement of Women, founding President of the Vancouver Status of Women, and member of the Human Rights Tribunal of the Canadian Human Rights Commission. Of all these members, only John-Paul Gilbert represented the police interests and Paul Fraser can possibly be considered neutral. The rest undoubtedly brought a radical and/or feminist perspective to the Committee.

[42] In fact, it is likely that all three parties were glad to let street prostitution cool off as a political issue. As several politicians, including Roland Penner, have noted, emotional issues like prostitution represent "no win" situations, particularly at election time when votes will be lost whatever position is taken.

[43] Interestingly enough, Harcourt spent the entire press conference talking about the problem of street soliciting in the West End, and did not specifically outline why the Fraser Committee was a "sham". Presumably, anything which delayed tougher anti-soliciting laws fit that description in his mind.

[44] These "professional career women" were Sandra Amos, Barbara Brett, Marie Hietangas, Linda Thayer and Carole Walker. An attempt was made to interview Ms Walker in June of 1989, however, she failed to respond to messages left at her home and City Hall.

[45] The major exceptions involved Ottawa and Winnipeg. In Ottawa, the Ottawa Police were in favor of tougher laws whereas the Mayor, Marion Dewar, was completely against such an approach. (In fact, she had strongly opposed the joint resolution passed by the Conference of Mayors of Major Cities in 1984.) In Winnipeg, both the Winnipeg Police Department and the City Council boycotted the Fraser Committee hearings. When questioned, Mayor Norrie stated that he thought it was a waste of time because Ottawa was not really interested in what the mayors thought. (Of course, it should be noted that Winnipeg did not have much of a prostitution problem at that time.)

[46] He identified a "hierarchy" of prostitutes, ranging from those marginally involved to those completely committed to the lifestyle, and argued that tougher laws would help keep the former from becoming more seriously involved.

[47] A complete listing of all participants can be found in the appendix to the Fraser Committee report.

[48] Section 15 guarantees people equal treatment before the law, and the Fraser Committee felt that the manner in which prostitution control focused on the female prostitutes (as opposed to male customers) contravened this section. Interestingly, the other provisions relating to freedom of expression, freedom of choice with respect to goods and services, and the right to earn a living were deemed inapplicable.

[49] It must be stressed that this discussion is limited to the Committee's recommendations on prostitution, and that its recommendations regarding prostitution were much more favorably received.

[50] Because all of the Committee members contacted have refused to respond to requests for an interview, this discussion will rely on comments recorded in the press and on an article published by John MacLaren, the only academic represented on the Committee.

[51] It is conceded that this limitation may miss important events in other cities. However, it will provide continuity with respect to the analysis to be conducted on the implementation of Bill C-49. In any event, it can be argued that these four cities represent a broadly based sample of Canadian cities, such that they can be considered typical of the types of local interest group politics arising in Canadian cities.

[52] This information was obtained in a telephone interview with the Director of Security for the Georgia Hotel. It was also confirmed by OIC of the Vancouver Police Vice Squad.

[53] The Penthouse Cabaret was an expensive nightclub catering to a mainly business clientele (and undercover cops as it turned out), and the prostitutes working in it were at the high-end of the prostitution

hierarchy. As a result when the clubs were closed, these prostitutes "naturally" attempted to follow their clients to the Georgia and Hornby area.

[54] This was confirmed by Marie Arrington, founding member of ASP, and current President of POWER.

[55] This assertion is based on the writer's personal experiences living and working in the West End of Vancouver during 1977 to 1982. As well, many other groups, including the police, concede this point. This factor likely explains why the Georgia and Hornby area was plagued by less nuisance than the West End, as most of the customers in that area were tourists and out of town businessmen who were less likely to create a disturbance.

[56] One of the individuals who has made such an assertion is Tony Serka, a Vancouver lawyer who defended Debra Hutt. He informed this writer that he personally observed assaults occurring in full view of Vice Squad detectives taking notes in cars, who did not intervene. Other informants have suggested (anonymously) that the Vancouver Police even went so far as to encourage the prostitutes to harass West End residents.

[57] This information is based on a interview conducted with Gordon Price in May, 1989. Hereafter in this analysis, information which is derived from a specific interview will be identified by the subject's name in brackets immediately following the relevant information. A complete listing of informants is contained in Appendix C.

[58] Copies of some of these papers are in the possession of the writer and are available for interested parties to peruse. As a further indication of the extent of CROWE's organization, it made five (5) separate submissions to the Fraser Committee hearings.

[59] This information is based on an interview with Mr. Chris Harris, West End resident and member of the NDP Civil Rights Committee. Mr. Harris noted that CROWE attempted to distance itself from some of the tactics used by Shame the Johns and a radical Mount Pleasant organization headed by Stephanie Agg.

[60] This assessment is based on information provided by Ms Libby Davies, A Vancouver Alderperson. Ms Davies has provided this writer with information and documents indicating that almost one half of all presentations to Council were opposed to tougher legislation. Nevertheless, Council passed a resolution urging the tougher laws be enacted as soon as possible.

[61] The article in question was titled "Shame the Men who buy our Children", (VS, Mar. 5, 1984: A5), and was written by columnist Rick Ousten. It precipitated an enormous outpouring of emotion, and for the first time the customers were identified as major villains.

[62] Other tactics included copying the licence numbers of customers and publishing them in a newsletter, taking pictures of customers picking up prostitutes, sending letters to the families of men seen on the

strip and outright physical intimidation.

[63] In fact, Phylis Alfeld informed this writer that they routinely carried out "hooker patrols" armed with baseball bats. It should be noted that most of the information contained herein was obtained in interviews with Ms Alfeld and Mr. Agg.

[64] This information is based on a private letter between Tim Agg and the federal Minister of Justice, John Crosbie dated Feb. 02, 1985.

[65] Tim Agg described an incident in which he was able to quiet a group of noisy hookers by mentioning that there were children trying to sleep in a nearby apartment building.

[66] An alternate explanation for this situation involves the possibility that the businesses in the new "red light" area disliked the proposal and lobbied the Vice Squad to kill the deal. This is borne out by some media articles dealing with the proposed plan (VS, Oct. 9, 1985: A3).

[67] This information was provided by S/Sgt THompson of Vancouver Police Department (Team 6), OakRidge Substation. It was also confirmed by Mr. Tim Agg, who emphasized that the police had had plenty of power, even after the Hutt case, to control the worst aspects of prostitution.

[68] This was also borne out by letters written to Alderperson Libby Davies and by Marie Arrington in a 1989 interview.

[69] Although it should be noted that Libby Davies expressed the opinion that the feminist groups were able to delay and moderate council reaction to the prostitution issue, and may have even influenced Bill C-49 in this respect. In addition, there were several feminist organizations which lobbied at the national level. The most prominent of these was the National Association of Women and the law which influenced the recommendations of the Special Sub-Committee of the Standing Committee on Justice and Legal Affairs. The Vancouver chapter of this organization, headed by Gayle Raphael, was active in this regard.

[70] COPE (Committee of Progressive Electors) was considered the "social-democratic" party in Vancouver civic politics, and traditionally championed the interests of the lower classes and other minorities. Up until this point, COPE had not articulated a formal policy on prostitution, but many COPE Alderpersons had sympathized with the prostitutes (of which Harry Rankin, Libby Davies and Bruce Erikson were the most prominent).

[71] In fact, Jillian Riddington of the National Action Committee on the Status of Women wrote a letter to the Vancouver Sun criticizing May Brown, arguing that Ms Brown only consulted those members who she knew supported her viewpoint.

[72] This latter area was not a problem during this period and will not be discussed further in this chapter.

[73] While Emanuel Jacques was ostensibly a 12 year old shoe shine boy, it was generally believed that he had also been a male prostitute. In any event, there appeared to be little doubt that he had been killed by four male homosexuals who had picked him up for sexual purposes.

[74] This information and much of the following information is based on interviews conducted in Toronto in June, 1989. In the case of direct quotes or particularly important information, the name of the informant will be identified in brackets. A complete listing of these informants is contained in Appendix C.

[75] It should be noted that there had always been small numbers of prostitutes in both of these areas. In the words of Valerie Scott, President of CORP, "the Wellesley and Shellbourne areas had been a whores' stroll for a hundred years without any major problems". Thus, what happened was simply that the numbers of prostitutes increased dramatically over a three to four year period.

[76] This assertion is based on a perusal of the membership lists of residents organizations and statements attributed to such groups in the media.

[77] It should be noted that the Metro Toronto Council failed to get involved in the prostitution issue to any great degree. Thus, unless noted otherwise, all references to Toronto politicians are to the City of Toronto. The role of Metro Council will be discussed further in the next chapter.

[78] This process is commonly referred to as "gentrification" and became commonplace across North America, as many middle class professionals became attracted to the conveniences of living downtown. While popular with property owners in these areas, it has led to the wide spread displacement of the traditional residents of these areas.

[79] Two Winnipeg lawyers who are prominent in defending prostitutes and lobbying on their behalf are Heather Leonoff and Mary Jane Bennett.

[80] This area was in the heart of the "stroll". It should be noted that there are two main areas in which street prostitution is practiced in Edmonton. The "stroll" is located in the downtown business district along Jasper Avenue between 104 Ave and 107 Ave and is a largely middle class area (Area A - Map in Appendix B). The lower class "drag" area is located near the railway tracks in the Boyle and MacCauley Street areas (Area B - Map in Appendix B).

[81] This attitude frequently extended to other forms of cooperation as well. For example, the Edmonton Police Department and the prostitute community cooperated with regard to identifying certain prostitutes who were robbing clients (EJ, Oct 27. 27, 1982: C1).

[82] The actual provisions of Bill C-49 have already been discussed in this dissertation and can be found in Appendix A.

[83] This opposition extended to the NDP government in Manitoba, where the Attorney General, Roland Penner, firmly ruled out legal "brothels" in

Manitoba (WFP, Apr. 24, 1985: 1). Penner's opposition is particularly unusual since the official NDP position on prostitution was decriminalization. In addition, it should be noted that a later Gallup poll on the issue indicated that the Canadian public was ambivalent about legalized bawdy houses, with 47% against, 44% in favor, and 9% expressing no opinion (WFP, Jul. 12, 1985: 14). Thus, the provinces could conceivably have supported legalized bawdy houses without enduring too much political fallout, as long as it was promoted as a way of reducing street prostitution.

[84] This information was provided by Mr. Roland Penner, Attorney General of Manitoba at that time.

[85] Among the most prominent members in this regard were Sheila Copps, Lucie Pepin and Margaret Mitchell. Ms Mitchell's stand was particularly courageous from a political standpoint because she represented Vancouver East, which includes the Mount Pleasant area.

[86] For example, the report suggested that Bill C-49 was tantamount to cutting off the tip of an iceberg and then assuming that the iceberg itself had ceased to exist simply because the tip was no longer visible. The Task Force further recommended that Bill C-49 not be passed in its original form, and at the very least, that it be amended to include recommendations 59 & 60 from the Fraser Committee report dealing with increased penalties for customers and pimps.

[87] These included the National Association of Women and the Law, the National Action Committee on the Status of Women, the Canadian Association of Rights and Liberties, the Canadian Bar Association and Mayor Marion Dewar of Ottawa. Mayor Dewar was the only big city mayor to oppose Bill C-49, however, she was less actively involved in lobbying the Federal government than either Mayor Eggleton or Mayor Dore.

[88] The information contained in this paragraph was obtained from media reports and the parliamentary record contained in Hansard.

Chapter 8

THE IMPLEMENTATION OF S. 195.1

The intent of this Chapter is to conduct a comparative analysis of the manner in which S. 195.1 was implemented in the cities of Vancouver, Toronto, Edmonton and Winnipeg between 1986 and 1989[1]. While the major focus of this analysis will be on the identification and analysis of the political factors which influenced the enforcement strategies, an assessment will also be made of the effectiveness of the law as a mechanism for controlling street prostitution. In addition, an attempt will be made to identify any "side effects" which may have resulted, either intentionally or unintentionally, from the implementation of Bill C-49. In order to facilitate this analysis, each city will be discussed individually, followed by a separate concluding section in which the four cities are compared with respect to these issues.

8.1 THE IMPLEMENTATION OF S. 195.1 IN VANCOUVER

Vancouver is the most appropriate place to commence an assessment of the implementation of S. 195.1 for several reasons. First, as was noted in the previous chapter, Vancouver was the city in which the Hutt decision was handed down, instigating the street prostitution "crisis" which ultimately led to the drafting of S. 195.1. Second, Vancouver experienced far more problems with street prostitution than any other Canadian city. As a result, it seems clear that Vancouver will provide a crucial "acid test"

upon which to assess the success or failure of S. 195.1. Finally, Vancouver also took a more "confrontational" approach in dealing with its prostitution problem than other cities. Thus, Vancouver can also be expected to provide the benchmark for discussing the reaction of the police, politicians and the legal system to the implementation of S. 195.1.

In order to facilitate an orderly discussion of the manner in which S. 195.1 was implemented in Vancouver, it is necessary to outline several important points about the organization of the Vancouver police. Responsibility for the control of street prostitution was divided between the uniformed patrol officers and the Vice Squad[2]. Vancouver had adopted a "team" policing concept, in which the uniformed patrol personnel were organized into "teams", each of which had relatively autonomous responsibility for policing a specific area of the city. Three Patrol Teams were responsible for areas with high concentrations of street prostitution: 1) Team 1 -- the Downtown area, including the West End and the Richards and Seymour areas; 2) Team 3 -- the Downtown EastSide area, including Chinatown and the Strathcona areas; and 3) Team 6 -- the Oakridge Substation, including the Mount Pleasant area. The Vice Squad, composed entirely of plainclothes detectives, operated on a city wide basis, virtually in isolation from the teams responsible for each area. As a result, there was very little cooperation between the Vice Squad and the patrol teams. Further, while the Patrol Teams gave priority to community liaison and frequently took the wishes of area residents into consideration, the Vice Squad was largely isolated from these concerns (S/Sgt Thompson).

In addition to police organization, several political variables must be noted. First, community activist Gordon Price had been elected to City Council, largely on the basis of his anti-prostitution activities. Because Vancouver utilizes an "at large" system of aldermanic representation, they were expected to represent the interests of the entire city and not just the areas in which they resided. While Mike Harcourt was still Mayor, he had won the leadership of the provincial NDP party, whose official position on prostitution favored decriminalization. The new Mayor-elect was Gordon Campbell, a successful Vancouver businessman, whose major priority was to further Vancouver's development as a world class city. His only real interest in prostitution lay in ensuring that it did not impact negatively on Vancouver's image as a tourist and business centre (Chris Harris). At the provincial level, Brian Smith was still Attorney General, but Bill Vander Zalm, who had a strong religious commitment to the family and other traditional values, had replaced Bill Bennett as Premier. These general points set the stage for the implementation of S. 195.1 in Vancouver. The discussion of the events which occurred during its implementation will be conducted temporally, with the years between 1986 and 1989 being discussed separately.

8.1.1 S. 195.1 in 1986

During the first few weeks after the proclamation of S. 195.1, it appeared that the law was successful in driving prostitutes off the streets. A "head count" taken on January 8, 1986 netted a grand total of six prostitutes working the streets of Vancouver, with four arrests being recorded. Since all six were in the Seymour/Richards area, and no

prostitutes were spotted in Mount Pleasant, Phylis Alfeld was quick to express her approval (VS, Jan 8, 1986: A3). This situation continued for several days, and many people, including Gordon Price, formerly head of CROWE and now a Vancouver alderman, began to label the law a "success". As a result, on January 11, 1986, Attorney General Brian Smith asked the BC Supreme Court to lift the interim injunction which had barred prostitutes from the West End. However, this course of action drew criticism from both sides of the prostitution issue, with both Gordon Price and Tony Serka expressing their disapproval. Price was concerned that the move would lead to a return of the prostitutes to the West End, while Serka was unhappy because it circumvented the appeal which he had launched against the injunction (VS, Jan 11, 1986: A3). In this appeal, Serka had argued that "civil" injunctions could not be used against criminal activities for the same reasons that the prostitution by-laws were invalid. When Smith asked the BC Supreme Court to lift the injunction, this issue remained unresolved. Despite these reservations, the injunction was lifted a few weeks later on January 30, 1986.

The reservations over the lifting of the injunction were treated in a low key fashion by the media, and most people appeared pleased with the new law. However, there were some muted protests from several radical feminist organizations, who argued that the law went too far. For example, the Alliance for the Safety of Prostitutes and the Vancouver Lesbian Connection organized a "wave in" to protest the law and challenge the police to take action. They argued that the law was so broad that a wave was sufficient to lead to an arrest. In addition, Vancouver Rape Relief criticized the law as being unnecessary and argued that it would be used to

target women. While these groups were supported by Svend Robinson, their concerns were derisively dismissed by Mayor Mike Harcourt (VS, Jan 16, 1986: 3). It is important to note that none of Vancouver's mainstream feminist groups joined in the criticism of S. 195.1.

While the prostitutes continued to remain off Vancouver streets for several weeks, this was not necessarily the result of police activities. Since arrest statistics were also low, it is likely that many prostitutes had vacated the streets until they had an indication of how the police would enforce the new law. Once they began to reappear in greater numbers, the arrests increased and the "honeymoon" quickly ended. It had been clear from the outset that the new law would be extensively challenged in the courts, and the increased numbers of arrests quickly led to several challenges based on the Charter of Rights and Freedoms. The first such challenge occurred on February 24, 1986, when Tony Serka, representing Michelle McLean, argued before Provincial Court Judge Keith Libby that the law was so broad as to constitute a "blanket prohibition" of prostitution and thus was unconstitutional (VS, Feb 24, 1986: A2). (This argument was based on the logic that since prostitution itself was legal, it could be regulated but not prohibited.) On March 18, Judge Libby invalidated the provisions which labelled a car as a public place (VS, Mar 18, 1986: A3). The Crown immediately appealed the decision and announced that the police and Crown counsel would continue to process charges (Ibid).

Before the first appeal could be heard, another challenge was launched on more specific grounds under the Charter of Rights and Freedoms. On March 29, 1986, Brigit Eider, representing Marie Tremayne, argued that S. 195.1 contravened section 2b (freedom of expression), section 2d (freedom of

association), and section 7 (absolute liberty to pursue legal activities without undue interference) of the Charter of Rights and Freedoms. On April 10, 1986, Provincial Court Judge R. Leminski ruled that the law infringed section 2b and acquitted Ms Tremayne. In his judgement, he first ruled that on the face of it, the law could be considered a "reasonable" limitation on freedom of expression. However, by applying the "overbreadth" doctrine to S. 195.1, Judge Leminski concluded that the scope of the law was such that it could be applied to virtually any conversation dealing with prostitution, i.e. a friend borrowing money to visit a prostitute or a tourist asking a taxi driver where to find a prostitute[3]. It seemed clear that the overall effect of S. 195.1 was to restrict all public communication related to the legal activity of prostitution, and thus constituted a "constructive" violation of section 2b (R. V. Tremayne, 1986). He further held that since prostitution was a legal occupation, it was unreasonable for it to be subjected to the type of "blanket prohibition" which resulted from the constructive violation of section 2b (Ibid; Judge Leminski).

The Crown quickly appealed this decision, and in contrast to the previous appeal, all future prostitution charges were placed on hold until after the appeals were dealt with (although the police continued to lay charges). This decision brought prostitutes "out of the woodwork" in greater numbers and and raised the ire of community groups and politicians. In particular, Brian Smith and Mike Harcourt were vitriolic in their emotional tirades condemning the decisions. Both politicians issued dire predictions that the city would soon be overrun with prostitutes and argued that any blame for the failure of S. 195.1 must be laid squarely on the

courts (VS, April 24, 1986: A1). In Mount Pleasant, which again bore the brunt of the resurgence of street prostitution, Phylis Alfeld and other community leaders led protest marches against the decisions. The prostitutes responded by arguing that they were not the problem and that the police should target the noisy customers who were the real culprits (VS, April 26, 1986: A3). While these events were transpiring, Mike Harcourt directed the Vancouver Police to move against several bawdy houses operating in Mount Pleasant and forced more prostitutes out on the street, (VS, Mar. 27, 1986: A3). Considering that the major goal was to keep prostitutes off the street, this action suggests that the Vancouver Police had failed to develop a coherent strategy for dealing with prostitution.

The above mentioned constitutional challenges were heard together on May 2. The senior Crown attorney, Joseph Arvary, argued that section 2b of the Charter of Rights and Freedoms was never intended to apply to prostitution. He further argued that S. 195.1 did not constitute a "blanket prohibition" and thus did not violate the "overbreadth" doctrine (VS, May 2, 1986: D6). On May 7, 1986, the BC Supreme Court allowed both Crown appeals, and thus S. 195.1 had withstood its first series of court challenges in Vancouver. The courts subsequently applied the law in a stringent fashion, and even entered convictions in cases where the police had initiated the conversations and had denied being police officers when asked by the prostitutes. This tactic appeared to contradict the stated intent of the law, which was to counteract the nuisance caused by prostitutes and/or customers soliciting in public. However, there is no evidence to suggest that civil libertarian or feminist groups protested this strategy. In addition, the Crown instituted the practice of routinely asking that area

restrictions be made part of probation orders for prostitutes (but not for customers) convicted under the law. In general, this request was acceded to by the courts, although this tactic was of dubious effectiveness since most prostitutes simply moved to the edge of the restricted area (VS, May 9, 1986: A3) [4].

Despite the tough new judicial approach, prostitutes had appeared to have overcome their fear of S. 195.1 and continued to remain on the streets in enough numbers to constitute a continuing problem from the perspective of many community groups. In fact, the area restrictions mentioned above may have exacerbated the problem by expanding the red light area. Referred to by some as the "creeping red light district" phenomenon, it spread the problem of street prostitution over a larger area and actually increased the amount of public outcry. This was particularly true of the Mount Pleasant area, where residents responded by calling for an injunction to bar prostitution. However, despite repeated lobbying by community groups, Attorney General Brian Smith rejected an injunction for the area, stating that the residents would have to wait for the new law to "sort itself out through the courts" (VS, June 14, 1986: A3). This stance is somewhat unusual in that the law, which had already been upheld by the British Columbia Supreme Court, was not effective and that little would be gained by waiting for further court decisions. While there is no evidence that the prostitutes ever migrated back to the West End after the injunction was lifted, one wonders what the reaction would have been if that area had experienced a resurgence of street prostitution[5].

The next few months witnessed an acrimonious debate over street prostitution which involved the police, courts, politicians, prostitutes

and residents. After their initial tough stance towards S. 195.1, the courts again began to apply a more civil libertarian approach. On July 4, 1986, a Provincial Court Judge rejected a request for area restrictions, arguing that they were unconstitutional (VS, Jul 4, 1986: H7). This was followed on August 2, 1986 by another Provincial Court decision acquitting a prostitute because the conversation she had with a Vice Squad officer was "too vague" (VS, Aug 2, 1986: A3). This infuriated many community groups and a Mount Pleasant group led by Stephanie Agg took to the streets to note licence numbers and to harass prostitutes and customers. This brought them into conflict with pimps, and the situation quickly degenerated into a chaotic "free for all" similar to that which had characterized the pre-S. 195.1 period (Phylis Alfeld). Once again, many residents were convinced that the Vancouver police were using Mount Pleasant as a "dumping ground" for street prostitution (Tim Agg).

In fairness to the Vancouver police, it must be noted that they were often powerless to do anything about the prostitutes. S/Sgt Thompson of Team 6 (operating out of the Oakridge Substation) noted that the prostitutes were usually smart enough to evade uniformed patrols, and that the police did not have the manpower to respond to all of the noise and disturbance-related calls from the Mount Pleasant area. He further noted that Mount Pleasant residents frequently called the police over minor incidents, and that they would experience fewer problems if they adopted a more "live and let live" approach. In fact, this writers's own observations tended to confirm this assertion, as routine walking tours of the Mount Pleasant area failed to observe the sorts of incidents and harassment described by the residents. In any event, as a result of the residents

complaints the Vancouver Police established a Police Liaison Committee chaired by Insp. Christianson, Officer in Charge of the OakRidge Substation. While assessments of the effectiveness of this Committee vary[6], the police did appear to pay greater attention to complaints from the Mount Pleasant area. For example, Team 6 (uniformed Patrol) instituted a practice of organizing periodic "blitzes" in which prospective customers were targeted for traffic checks and other types of harassment. In addition, they stepped up the frequency of visible uniformed patrols near where prostitutes were working to discourage customers from cruising the area (S/Sgt Thompson).

During the same time period, residents and businesses in the Seymour and Helmeckan area began to complain about the numbers of prostitutes. Alderman Don Bellamy raised the matter at a City Council meeting and criticized the police for ignoring this area. He suggested that the police should "harass" the prostitutes if they were unable to enforce the law otherwise (VS, Jul 25, 1986: A3). This led the police to complain that they were doing all that they could to enforce the law, but that the failure of the courts to hand down appropriate sentences was undermining the effectiveness of their efforts. In response, the City of Vancouver erected several street barricades to disrupt the flow of traffic through the area. Despite the fact that this tactic was costing $1100 a week by November, it was relatively ineffective (VS, Nov. 1, 1986: A10). This state of affairs continued throughout the remainder of 1986, with most of the affected groups attempting to blame each other for what was quickly being labeled as the "failure" of S. 195.1 in Vancouver.

On November 1, 1986, Judge Edmund Cronin handed down a "landmark" decision which gutted S. 195.1. He acquitted Kathy Marie Head by holding that it was not illegal to communicate in public for the purposes of prostitution unless it was also accompanied by an attempt to stop a car or pedestrian, and/or other "aggressive" behavior. This decision was subsequently followed by Judge T.D. McGee, who acquitted Angela Robinson on November 4; and by Judge Pauline Maughan, who acquitted Teri Gail Misyl on November 6 (VS Nov. 6, 1986: A3). This trio of decisions effectively brought the law back to the post Hutt situation, and the Attorney General quickly ordered an appeal of the Head decision. In the interim, most prostitution related charges were placed in abeyance and the situation quickly deteriorated even further. By the latter part of 1986, street prostitution was becoming a problem in Chinatown, where area restrictions had pushed the prostitutes out of their traditional Pender and Hastings Streets area onto the side streets where they came into conflict with residents and businesses. (See the previous chapter for a more detailed discussion of this area.)

In summarizing the enforcement of S. 195.1 during its first year, it seemed clear that the new law was not the definitive solution which many people had hoped it would be. After a promising beginning, the legislation had quickly became bogged down in a series of court challenges which limited its effectiveness. Further, once the prostitutes overcame their fear of the law, they quickly developed new strategies to cope with it, including not discussing anything until inside the potential customer's car and waiting for the customer to make the first offer (Marie Arrington). This led all parties, including the police and the Regional Crown Counsel,

Bob Wright, to conclude that the law was not working as well as had been hoped. As a result, community activists stepped up their lobbying efforts directed at the provincial Attorney General (VS, Nov. 15, 1986: A10).

One other issue must be discussed regarding the initial implementation of S. 195.1, and that is the chauvinist bias which characterized its enforcement. During the first year, twice as many prostitutes were charged as customers, and Marie Arrington of POWER demanded to know why this differential existed (VS, Nov. 15, 1986: F7). While the Vancouver Vice Squad responded by claiming that it was "more complicated" to arrest male customers, this was likely not the true explanation. On the rare occasions when customers were charged, they were often handled more leniently by the courts. In fact, on one occasion, a provincial court judge chided the police for bringing customers into court and directed them to go after the "real problem", namely the prostitutes and the pimps (VS, Jul 25, 1986: A3). In light of such judicial attitudes, it is likely that the police would have been discouraged from charging customers even if they had been inclined to do so.

8.1.2 S. 195.1 in 1987

As 1987 dawned, all parties began the process of attempting to resolve the many outstanding issues related to S. 195.1 and the control of street prostitution in general. The Crown appeal of the Head case was heard in Vancouver County Court on January 8, 1987. On January 14, Judge Sheppard upheld the appeal and the Vancouver Police were technically back in business. However, it was generally agreed that the law was not really effective at controlling street prostitution, and the police and

politicians began to explore other possible solutions. Premier Bill Vander Zalm, fresh from a trip to Europe, suggested that a carefully controlled red light district might be the answer (VS, Feb 12, 1987: A18). This suggestion was immediately rejected by the new mayor of Vancouver, Gordon Campbell, who argued that it would be impossible to find a neighborhood which would accept it. While this discussion continued for some time, most prostitutes were also opposed to a red light district and the proposal was ultimately dropped (Marie Arrington) [7].

While the political debate was going on, the Vancouver police quietly instituted a policy of automatically arresting and detaining all prostitutes charged under section 195.1 (VS, Apr 7, 1987: A3). Considering that this policy was not applied to customers, who were usually released on an appearance notice, it clearly discriminated against the female prostitutes[8]. Marie Arrington of POWER raised the issue on several occasions but was unable to influence police practices. However, on April 7, 1987, County Court Judge Stu Leggett ruled that the practice violated section 9 of the Charter of Rights and Freedoms against arbitrary detention (VS, Apr. 7, 1987: A3). Thus, the police were forced to apply the same provisions regarding arrest and detention to prostitutes as applied to other types of criminals (and as were applied to the male customers of prostitutes). Interestingly, the BC Civil Liberties Association, while nominally supportive of the court decision, also expressed sympathy for the police policy as the "only way of dealing with the problem" (Ibid).

As 1987 progressed, it was becoming increasingly clear that S. 195.1 was having little impact on street prostitution in Vancouver. Everyone from community groups through to the police and crown prosecutors admitted that

the law was not working. Media articles claimed that there were just as many visible prostitutes as there were before the law was passed, and that the only change was that the prostitutes were slightly more restrained in their approach to customers (City Managers Report to Council, June 18, 1987). However, since most of the nuisance was created by traffic noise and other factors unrelated to the actual negotiations between the prostitutes and their customers, this change provided little consolation for the affected residents. In October, 1987, the Regional Crown Counsel, Bob Wright, admitted that the police were not trying to enforce the law equally in all areas, but were using it selectively to force prostitutes out of residential areas and away from schools (VS, Oct 27, 1987: D18). He argued that they were achieving some degree of success in this endeavor. However, this assertion was contradicted by Insp. Don Keith, the newly appointed OIC of the Vice Squad, who described the law as having a minimal impact on the problem (Ibid) [9].

In closing the discussion of the enforcement of S. 195.1 during 1987, it must be pointed out that the chauvinism noted during 1986 was even more evident during the following year. In addition to the previously mentioned policy of detaining female prostitutes while releasing male customers on appearance notices, the arrest ratio of prostitutes to customers had increased. When Tony Serka criticized the police for targeting women, he was rebuffed by Bob Wright, who labelled him "naive" and argued that it was much more difficult to go after customers than prostitutes (VS, Oct. 24, 1987: D18). While the essence of the difficulty involved the need for male backup officers to make the actual arrest, one wonders why the police never made greater use of the "blitz" tactics described earlier in this section.

It is important to note that any criticism of the police tactics emanated from male lawyers and/or POWER, and that mainstream feminist organizations did not become involved in the debate. In fact, Marie Arrington publically criticized feminists for their lack of involvement and their "moralistic" desire to get women out of prostitution. This criticism was reiterated by Laurie Bell, a feminist author who urged mainstream feminists to lobby for the legalization of prostitution so that conditions could be improved for the women who wished to remain in it or who were forced into it as a way of surviving (VS, Nov.16, 1987: A8).

8.1.3 S. 195.1 in 1988

The general consensus that S. 195.1 was a failure continued into 1988, with the police, crown prosecutors and residents continuing to blame the courts for the situation. In February, Vancouver Police Chief Bob Stewart advocated that prostitutes be given seven days in jail for first offences and called on the Federal government to make prostitution an indictable offence so that the police would have greater powers of arrest and the right to fingerprint prostitutes. He also severely criticized the courts for their lenient sentences and announced that the Vancouver police would begin publishing the names of convicted prostitutes and customers. This announcement was greeted with a storm of protest from the judiciary and the legal profession. Tony Serka immediately labelled Stewart's suggestions unrealistic and suggested that his proposal to publish names was possibly libelous. He was joined by Marie Arrington who argued that stiffer penalties would have little effect on prostitutes because most of the women simply had no other alternative. She noted that many prostitutes were

already receiving the maximum six months sentence and that this did not deter them (VS, Feb. 6, 1988: A1).

In addition to Serka and Arrington, Chief Stewart was also criticized for overstepping his role as police chief by K. Price, President of the B.C. Trial Lawyers Association, and Leigh Harrison, President of the B.C. Branch of the Canadian Bar Association. They argued that the function of the police was to investigate crimes and charge offenders, and that the police had no business commenting on matters of court procedure and sentencing. While the judiciary avoided criticizing Stewart directly, some reacted to his statement in an indirect fashion. On February 6, 1988, Provincial Court Judge John Davies dismissed a case on a technicality, arguing that since the police were going to publicize names it was necessary to be very careful in convicting people charged with communicating for the purposes of prostitution (VS, Feb. 7, 1988: A3). Despite these criticisms, however, the public and many local politicians expressed strong support for Stewart's proposals (VS, Feb. 6, 1988: A1).

As 1988 continued, the controversy over street prostitution appeared to abate in both the Mount Pleasant and Seymour/Richards areas. However, it began to appear as an issue in the Downtown Eastside area of Vancouver between Hastings Street and the harbour (see map). This problem appeared to stem from two factors. First, the area restrictions imposed by the courts pushed the prostitutes off their traditional area around Gore Street and into the Strathcona area. This area had recently undergone a limited redevelopment when the provincial government constructed a series of "low income" housing developments for families with small children. Thus, when the prostitutes began moving into areas frequented by children, conflict

arose and various community groups began to organize in a manner similar to Mount Pleasant (Christine Micklewright). However, at this point, all similarity to the Mount Pleasant situation ended.

Several factors influenced the scenario which developed in Strathcona, with the most important one being the attitude of the residents. As was noted in the previous chapter, the residents of this area were predominately low income, with a large proportion on welfare or chronically unemployed. As a result, they were much more likely to empathize with the plight of the prostitutes. This contrasted sharply with the Mount Pleasant residents, who were predominantly working class and very conservative. While the Strathcona residents did not want the prostitutes working beside schools or in residential areas at night, they did not necessarily want them forced out of the area entirely. Thus, instead of appearing on the streets with baseball bats and cameras, they entered into negotiations with the prostitutes in an attempt to reach a solution[10]. The prostitutes responded by agreeing not to work near schools and negotiating a "no go" map outlining areas where the prostitutes would not work. This map was distributed to prostitutes working in the area, who were asked to avoid the indicated areas.

A second factor which influenced the positive resolution of the Strathcona situation was the behavior of the police. As was noted in the introduction to this section, this area was policed by Team 3, which had relative autonomy to develop an enforcement policy regarding street prostitution. The officer responsible for coordinating the Team 3 response to street prostitution was S/Sgt Fred Biddlecomb, and much of the credit for the cooperation between the prostitutes and other groups in the

Strathcona area can be traced to the intelligent and pragmatic approach he applied to the problem. One of Biddlecomb's first actions was to consult with the residents and streetworkers[11] to determine their priorities. He also became involved in negotiations between the prostitutes and the residents, and even suggested that patrol personnel would tolerate some prostitution if the prostitutes stayed away from schools and residential areas. Patrol officers were directed to steer prostitutes back toward Hastings and other commercial streets if they were found in residential areas (VS, Apr. 20, 88: B5). In the event that a prostitute seemed determined to remain in a "no go" area, the police would harass her and in some cases even parked a marked police cruiser near her "until she got the message" (S/Sgt. Biddlecomb).

It should be noted that although the majority of the evidence supports the scenario outlined above, there was some disagreement about the effectiveness of the initial police response to the Strathcona situation. A group of Strathcona residents who were unhappy with the levels of street prostitution in the area organized the Strathcona Prostitution Action Committee (SPAC) in May Of 1988. This group was particularly upset over a Vancouver Sun article which praised the efforts of the Vancouver Police and suggested that the residents and prostitutes had worked out the compromise described above. Christine Micklewright, who was President of SPAC, argued that many prostitutes refused to honor the "no go" maps and that the Police had been much less effective than the media article had reported (Presentation to Vancouver City Council from SPAC, May 15, 1988). The group organized a short lobbying campaign aimed at Vancouver Police and City Hall. This quickly resulted in the formation of a Special Police Liaison

Committee for Strathcona which met with the dissatisfied residents and drew up a plan of increased uniformed patrols. Three area prostitutes also attended the meeting and participated in the discussion and negotiations over the problem (City Manager's Report to Council, August 26, 1988). This appeared to resolve the issue, as there was no further indication of trouble in the area (Ibid)[12].

The Vice Squad was not party to the arrangement described above and continued to charge prostitutes in the Strathcona area, regardless of where they were working. However, because it was a lower class area, there were fewer complaints and the Vice Squad devoted less attention to it than to the other two areas. For this reason, the Team 3 response worked much better than a similar plan implemented in Mount Pleasant prior to 1986 (see previous chapter for a discussion of the failure of the red light district.). As a further example of the different approaches used by Team 3 and the Vice Squad, in May the latter closed a Chinatown hotel which had been operating as a common bawdy house. This prompted several people, including Professor John Lowman of the School of Criminology at Simon Fraser University, to criticize the police for forcing several prostitutes out onto the streets where they were a greater nuisance. Lowman went on to argue that the bawdy house law in general was responsible for contributing significantly to the problem of street prostitution. Insp. Don Keith of the Vice Squad defended the police action by arguing that the police were required to enforce existing laws and generally only took action against bawdy houses if they received a complaint (VS, May 30, 1988: A3). Although this may have been partly true, it is interesting that there were no further prosecutions of bawdy houses mentioned in the media during 1988 and 1989.

The final major incident in 1988 involves the possibility of "side effects" resulting from the implementation of S. 195.1. It also speaks volumes about the attitudes of some criminal justice officials. In September, a controversy erupted over the high number of assaults against prostitutes and several unsolved murders of prostitutes in Vancouver. Marie Arrington and other prostitutes' spokespersons complained that the new law had increased the amount of violence against prostitutes because it forced them to enter cars without carefully screening the occupants. This had become a particular problem since a County Court ruling that a stationary vehicle was a public place, but that one moving in traffic was not[13]. The police responded that their efforts to solve the murders, including a special task force to investigate them, were hampered by the prostitutes' refusal to cooperate. While this may have been true, it still did not explain why the assaults and murders had increased after S. 195.1 was implemented. In any event, the prostitutes complained that it was difficult to cooperate since the police refused to conduct interviews on an "without prejudice" basis (Marie Arrington)[14].

POWER also complained that the Crown practice of seeking area restrictions also contributed to the problem by forcing the prostitutes to work in less safe areas and/or adopt riskier tactics, i.e. hitchhiking. In response, Regional Crown Counsel Bob Wright made what must be regarded as the most irresponsible comment of the entire debate when he stated that he "could not understand how the prostitutes could complain that their safety is not protected while they are breaking the law" (G & M, Sept. 8, 1988: A1). He appeared to feel that individuals who were guilty of minor criminal offences were not entitled to protection against murder and/or serious

bodily harm. This attitude displayed a monumental insensitivity to the issues which had been debated over the preceding ten years. Unfortunately, the sadest aspect of this scenario was that Wright's comments were not criticized by any Vancouver feminist or civil libertarian groups, and were never even reported in the Vancouver media.

8.1.4 S. 195.1 in 1989

By the beginning of 1989, the process of implementing S. 195.1 in Vancouver was essentially completed and enforcement policies had been worked out. The initial series of court challenges had been heard and for the most part, the law had been upheld by the courts[15]. However, it was generally agreed that the law was not detering prostitution, and the police and most residents groups continued to advocate even tougher laws. Despite this situation the controversy had essentially died down, and it appeared that most of the affected groups had entered into an uneasy compromise. The general population apparently realized that it was impossible to eliminate prostitution, and a poll conducted in August found that a majority of Vancouver residents favored legalized brothels as a means of minimizing the amount of street prostitution (MG, Aug. 20, 1989: A7). While Chief Stewart and Mayor Campbell quickly rejected this possibility, the poll indicated that the citizens of Vancouver were tired of the issue and would support any solution which controlled the problem.

At approximately the same time, the Ministry of Justice finally released its long awaited evaluation of S. 195.1. The Vancouver police did not fare well in its report and another storm of controversy erupted which occupied media headlines for the rest of 1989. For the most part, the evaluation

report simply reiterated in greater detail what everyone had been stating all along, namely that the law was not working and that considerably more female prostitutes than male customers were being charged. In addition, the section dealing with Vancouver, which had been authored by Professor John Lowman, criticized the Vancouver Police for not making enough effort to prosecute customers. Citing a total of 1420 charges in the first two years of the law, Lowman argued that only 24% involved customers. The Vancouver Police challenged these figures as much too low. Chief Stewart argued that police statistics indicated approximately 2500 separate defendants were charged in the same period, including 1000 male customers (VS, Aug. 22 1989: B1).

While the basis for the above noted discrepancy was never uncovered, Lowman also criticized the Vancouver Police for allowing a "class bias" to develop in the prosecution of customers, arguing that wealthy customers were much less likely to be charged than less affluent ones. It happened that most of the wealthier customers frequented the Seymour and Richards area, where the more attractive and more expensive girls were located. Because of the large number of attractive prostitutes in this area, female police undercover officers found it difficult to compete and thus tended to operate in other areas, leaving the area almost completely to the real prostitutes (Ibid). (One is tempted to wonder if there were really no attractive females in the Vancouver Police Department, but such musings would be somewhat unfair, not to mention irrelevant to this analysis.) While the immunity for more affluent customers was at least partially an accident, there were possibly other factors which were relevant as well. In this respect, one unnamed Vancouver police officer informed this writer

that they had to be careful in charging customers because "they (the customers) might sue you if they were acquitted". This scenario reinforced the general pattern of preferential treatment accorded to male customers compared to female prostitutes.

In concluding this discussion of the implementation of S. 195.1 in Vancouver, there are several important issues which need to be summarized briefly. In light of the almost overwhelming chauvinist bias which characterized the police enforcement of the law, the question of feminist involvement is of paramount importance. It must be noted that there is little evidence to suggest that any mainstream feminist organizations ever adopted prostitution as a feminist cause in Vancouver. With the exception of POWER and a few other extremely radical organizations (i.e. Vancouver Lesbian Connection), most of the criticism of the police overemphasis on female prostitutes emanated from male lawyers and politicians. While a few female politicians attempted to defend the interests of prostitutes, they were easily counterbalanced by more conservative female colleagues. In addition, most of the residents groups who were vehemently opposed to street prostitution were dominated by female members. The most surprising aspect of this scenario is that many of the women who were most opposed to street prostitution classified themselves as "strong feminists"[16].

An additional issue involves the attitude which the Vancouver Police assumed towards citizens affected by street prostitution. There was a considerable difference between the Patrol Teams and the Vice Squad in this regard, and the internal dynamics of the Vancouver police were such that there was a singular lack of cooperation between the two units. While the Patrol Teams attempted to liaise with the residents and other groups, their

efforts were frequently undermined by Vice Squad officers who failed to consult with the Teams. This problem was compounded by the attitude of the residents who placed inordinate demands on police resourses because they refused to tolerate even the most minor types of prostitution activities. Thus, with the exception of the Strathcona area, the overall relationship between the police, prostitutes and residents was one of hostility and mistrust. This was unfortunate since the cooperation and negotiation which occurred in the Stathcona area was the only instance where the Vancouver Police were able to control prostitution to the satisfaction of the residents.

The final issue regarding the implementation of S. 195.1 centres on the relative lack of interest shown towards the issue of street prostitution in Vancouver. Considering the degree to which the issue had dominated the media and political agendas prior to the development of S. 195.1, it was logical to expect that a similar priority would be placed on the new law and that a public furor would develop when the law proved ineffective. However, neither possibility occurred despite the fact that the law quickly became embroiled in a series of legal challenges which limited its effectiveness. An analysis of the media articles for the period indicates that street prostitution was not considered the high profile issue that it had been prior to the development of the law. Similarly, it was also obvious that it no longer constituted an important political issue inasmuch as most politicians either declined to be interviewed or professed not to been involved in the issue. (This was despite the fact that an analysis of previous media articles clearly indicated that they had played prominent roles in the pre-Bill C-49 debate.) Indeed, it appeared that most

politicians wished to avoid the issue as much as possible, despite the fact that the affected residents and businesses attempted to put pressure on the police and politicians[17].

The above attitude was surprising considering the degree to which every politician had attempted to "jump on the prostitution bandwagon" when it was a problem in the West End (Harry Rankin). There are several possible explanations for this drastic change in attitude, none of which speak well for Vancouver politicians. The most obvious explanation is simply that street prostitution had ceased to be an attractive political "cause" for politicians. Because Vancouver utilized an at-large system of aldermanic representation, aldermen were not elected to represent specific areas. Since the three areas where street prostitution was prevalent contained relatively few voters, most elected officials were reluctant to do anything which might push prostitution from one of the established areas into another area which contained more voters. In particular, Gordon Price was extremely reluctant to risk a return of street prostitution to the West End (Harry Rankin). In addition, the various interest groups attempting to lobby on behalf of the three areas were extremely fragmented and sometimes hostile towards each other. (This was particularly true of the Mt Pleasant area.) Thus, they were never able to develop a sophisticated, well organized campaign similar to that waged by CROWE prior to the injunction in the West End. However, the most important point arising from the entire scenario involves one simple observation: the politicians, police and media appeared to pay greater attention to more affluent people than they did to less affluent people. Because the later street prostitution was concentrated in three lower/working class areas, there was little incentive

to give it the same priority that it had attracted in the West End and the Downtown business district. In the final analysis, the implementation of S. 195.1 ultimately exhibited a degree of class bias which transcended most of the other issues.

8.2 THE IMPLEMENTATION OF S. 195.1 IN TORONTO

Toronto is the largest metropolitan area in Canada and as such has the largest concentration of prostitutes in the country[18]. However, for the reasons analyzed in the previous chapter, Toronto lagged well behind Vancouver insofar as the degree to which street prostitution became a political issue in the aftermath of the Hutt decision. While it might be expected that Toronto would continue to experience fewer problems during the implementation of S. 195.1, the size and complexity of the Metropolitan Toronto area suggest that demographic, political or bureaucratic changes could alter the manner in which street prostitution was controlled. For this reason, it is important to conduct a thorough analysis of the implementation of S. 195.1, taking into consideration all the legal, political and bureaucratic factors which characterize the Metropolitan Toronto area. Thus, in order to conduct an informed discussion of the implementation of S. 195.1 in Toronto, it is necessary to offer a detailed description of the prostitution scene in Toronto and the political and organizational structures which affected how the Toronto Police implemented the new law.

In 1986, there were four areas where street prostitution was prevalent in the Metropolitan Toronto area. The two major strolls were located downtown on either side of Yonge Street and centred on the Carleton/College

Street corridor[19]. "Track I" was located on the Carleton Side of Yonge street and encompassed a large area, including much of Cabbagetown and the Wellesly/Jarvis areas. This track contained almost all of the female prostitutes and most of the transsexual/transvestite prostitutes. The demographic composition of this area varied from government subsidized low income housing to exclusive "Cabbagetown Row Houses" listing for $500,000 and more. The area also contained many pockets of "re-gentrification" in which wealthy professionals began buying up and renovating rundown housing stock. These areas are important since the new residents had been responsible for most of the political activity regarding street prostitution prior to the development of S. 195.1. "Track II" was located on the College side of Yonge and encompassed the area to the west of Bay street, near the provincial government buildings and the YWCA. It included much of the Downtown business district and was largely populated by male prostitutes servicing other males. Except for the area surrounding the YMCA, where the heaviest concentrations of "hustlers" operated, this area was only active after business hours. As a result, there was little public concern over this area.

In addition to the downtown strolls, there were two additional prostitution areas located in less central parts of Metropolitan Toronto. The most important was located along Lakeshore Drive in the City of Etobicoke. This area consisted of a commercial hotel/motel strip and was populated exclusively by female prostitutes of a somewhat lower class and price range than those on Track I. Prostitution developed into a political issue in this area largely after the implementation of S. 195.1, and thus the area was not important to the development of the law. A final

prostitution stroll was located along Queen Street West in a working class residential area near the western border of the City of Toronto (Area not shown on Maps in Appendix B). This area was much less active than the other strolls and was utilized primarily on week nights by female prostitutes who lived in the area and did not wish to "make the trip downtown" (Anonymous prostitute). The prostitutes working in this area were generally of a much lower class than those on the other strolls (Supt. Getty). Because of the working class nature of the area, it produced little public clamor or political activity.

The Metropolitan Toronto Police utilized a divisional model, in which the majority of law enforcement activities were carried out by autonomous "Divisions" responsible for policing specific areas of the city. The Divisions were supported by a centralized roster of specialized units, including the Morality Bureau, Homicide, Drugs, and the Major Crimes Unit. Under this organizational structure, responsibility for the control of street prostitution was divided between the Morality Bureau and the Divisions. The Morality Bureau operated out of the main police headquarters, and had two major responsibilities with respect to the control of street prostitution. First, it carried out the routine day to day enforcement of S. 195.1 by plainclothes officers of both sexes. However, because there were chronic shortages of female plainclothes officers, it frequently had to borrow female officers from other units or the Divisions. In addition, the Morality Bureau was responsible for coordinating and supervising the periodic sweeps which were carried out using both plainclothes Morality detectives and officers from the Divisions (usually uniformed officers who worked in plainclothes for the duration of

the sweeps). While the Divisions were required to provide the officers when requested by the Morality Bureau, the Divisions were sometimes reluctant to provide enough officers on weekends when they were busy with other types of police work. As a result, most major sweeps occurred between Wednesday and Friday (S/Insp. Clark).

The remainder of the street prostitution control activities were carried out by the Divisions[20]. In addition to lending officers to the Morality Bureau for its sweeps, the Divisions exercised two major responsibilities with respect to the control of street prostitution. First, the uniformed patrol officers were expected to monitor the street prostitution scene for drugs and other types of ancillary crime. They also carried out a low level harassment function by openly patrolling the strolls and periodically stopping and questioning both prostitutes and customers (Supt. Getty). In addition to the uniformed officers, the Divisions also had plainclothes detectives who used the same entrapment tactics as the Morality Bureau. Four Divisions were responsible for areas in which street prostitution was prevalent: 14 Division, which included the Queen Street West area; 22 Division, which was responsible for the Lakeshore Boulevard; 51 Division, which was responsible for the northern part of Track I; and 52 Division, which was responsible for the southern part of Track I and all of Track II.

The approaches taken by the various Divisions differed in several important ways. Because 51 Division had the largest concentration of prostitutes and the greatest amount of political activity, it received the most attention from the Morality Bureau during both sweeps and routine undercover operations. As a result, Division personnel concentrated their efforts on highly visible patrols intended to reduce the levels of noise

and other nuisance activities. 52 Division, on the other hand, concentrated most of its efforts on undercover enforcement tactics and largely ignored uniformed patrols. (This was because its area was mostly non-residential and they did not have to be as concerned with nuisance activities.) Their efforts were aimed almost exclusively at male and female prostitutes (as opposed to customers), and they were unique in utilizing a "walk up" approach instead of cruising the area in cars. In 22 Division, the police relied almost exclusively on the efforts of a special task force primarily composed of officers from outside the division[21]. In fact, the Division itself appeared to ignore the problem insofar as its routine operations were concerned. (This factor will be discussed at length later in this section.) Finally, 14 Division, commanded by Supt. John Getty, implemented the most unique approach to prostitution control encountered in this study. First, Supt. Getty decreed that only customers would be targeted in his division since they created most of the nuisance problems. In addition, 14 Division adopted a policy of using uniformed officers as backup to make the arrests after being signalled by female officers. Since the female officers were also drawn from the regular patrol officers, this policy eliminated the need for plainclothes detectives and allowed them to be used for "more important tasks" (Supt. Getty)[22].

There is an additional political/bureaucratic factor which should be noted before discussing the actual implementation of S. 195.1. The Metropolitan Toronto Police Department is under the bureaucratic umbrella of the Metro Council and is technically beyond the control of the various municipal governments. As well, it is administered by an "autonomous" police commission which is intended to insulate it further from local

political influence and even from direct control by Metro Council. However, this did not always operate in the manner in which it was intended. Although the specialized units operating out of the main headquarters remain relatively aloof from local politics, the Divisions are physically located in different areas and are often closely allied with the various municipal governments. This gave some municipal governments greater control over Division policy than they are legally empowered to exercise (Anonymous Local Politician). It has also resulted in discrepancies between the enforcement polices used by the Morality Bureau and the various Divisions. However, in this latter respect, it must be noted that there was a much higher degree of cooperation between the Morality Bureau and the Divisions than was the case in Vancouver between the Vice Squad and the Patrol Teams.

8.2.1 S. 195.1 in 1986

The Toronto police did not immediately begin laying charges under the new legislation, and instead spent the first week of 1986 formulating policy guidelines for its enforcement. In consultation with the crown prosecutor's office and other groups, it was decided that S. 195.1 would be applied only in cases where there was verbal communication involving an offer of money for a specific sexual act (G & M, Jan. 11, 1986: A19). This decision was taken largely to appease civil libertarian groups who had complained that a "wink or a nod" could be enough to result in charges under the new law. In addition, S/Insp. Donaldson, OIC of the Toronto Police Morality Bureau announced that the police would not make a practice of publishing the names of either the prostitutes or their customers. He also criticized the media for dwelling on the possibility that the police

would abuse their powers under the new law. He stated that S. 195.1 was not intended to wipe out prostitution, but only to force prostitutes to modify their mode of operation. He reiterated that the Toronto police intended to enforce the new law with discretion to ensure that the feared "overkill" did not occur (G & M, Jan. 18, 1986: A1).

On January 8, 1986, the Toronto Police made their first attempt to enforce S. 195.1, netting 14 prostitutes and six customers. A few days later they charged 25 prostitutes and 10 customers (Ibid). Thus, almost from the outset, the Toronto police established a pattern of going after the customers to a much greater degree than was the case in Vancouver. This concentration on customers represented a fundamental difference between the Toronto and Vancouver approaches to prostitution control, and was destined to influence all other aspects of the implementation of the law in Toronto. The Toronto Police[23] appeared to take the position that the prostitutes were largely victims, and that the pimps and customers were the real problems. S/Sgt. John Fournier announced that the aim of the Morality Bureau was to "dry up the supply of customers" and to cooperate with programs designed to help prostitutes change their lifestyles (SS, Jan. 26, 1986: A6) [24].

Another difference between Toronto and Vancouver involved the reaction of the prostitutes. Whereas most Vancouver prostitutes stayed away from the streets while waiting to see how the police enforced the new law, prostitutes in Toronto remained out in force during the first few weeks of 1986. Most prostitutes interviewed by the media professed to be unworried by the situation and stated that they would simply "wait it out" (G & M, Jan. 11, 1986: A19). In fact, some regular full time prostitutes argued

that the law had actually done them a favor by scaring the "flakeheads" off the street[25]. While most adult prostitutes generally felt that they would be able to cope with police action, some suggested that S. 195.1 would drive some of the younger prostitutes into the arms of pimps, an opinion which was shared by S/Insp. Donaldson. Many prostitutes were also afraid that the new law would bring the "weirdos" out, and some stated that the numbers of weirdos had already started to increase (G & M, Jan. 18, 1986: A1).

Despite the stated intention of the Toronto Police to concentrate on customers, many people expressed grave reservations about the potential effect of S. 195.1. For example, Svend Robinson continued to maintain that the law would drive young prostitutes into the clutches of pimps who would convince them that they needed someone to look after them. This view was endorsed by Terry Sullivan, Director of the Central Toronto Youth Services, who added that the law encouraged pimps by virtue of the fact that it did not increase penalties for pimping (Ibid). Partially in response to these concerns, the Toronto Police (including the Morality Bureau and the Juvenile Task Force) adopted a practice of taking young prostitutes to safe houses (e.g. Moberly House) without charging them. They also joined with other groups in lobbying the Federal government to legislate tougher sanctions against the customers of juvenile prostitutes (Ibid). This particular debate was partially resolved when John Crosbie announced tougher laws on juvenile prostitution on Feb 7, 1986 (G & M, Feb. 7, 1986: A1).

As the Toronto police continued to enforce the new communicating law, it became clear that while it was not deterring the prostitutes, it was

scaring the clients away. During the first three weeks of operation, only 42 customers were charged compared to 116 prostitutes, despite the fact that the Toronto police were concentrating on customers. Thus, it began to have a effect on the practice of prostitution, since street prostitutes began to leave the streets in significant numbers. On February 12, 1986, Carol Yawarski, a social worker working with adult prostitutes, announced that they appeared to have been driven underground as it was becoming increasingly difficult to contact them (G & M, Feb. 12, 1986: A19). By April, the Toronto Police announced that the numbers of prostitutes working the streets had dropped to approximately one third of their pre-S. 195.1 levels (200-300 vs. 600-700) (SS, Apr. 27, 1986: A8). While it is unclear whether the prostitutes had left out of fear of police action or because of a dearth of customers, the Toronto Police were ecstatic over the "success" of the law. They confidently announced that their strategy of going after the customers worked because middle class customers (often with families) were much more easily deterred than prostitutes, most of whom already had criminal records. They further predicted that by drying up the "demand", the "supply" would also disappear.

The Toronto Police may have been somewhat premature in their optimism. Although prostitutes temporarily vacated the streets, they did not necessarily leave the profession. Many simply changed their mode of operation. Because the customers had been scared off of the streets, the prostitutes followed them and set up businesses as escort agencies. By the end of April, the Toronto Police estimated that at least 10% of street prostitutes had moved to escort agencies (SS, Apr. 27, 1986: A8). This estimate was likely somewhat conservative, as several escort agency madams

suggested that the figure was considerably higher (Ibid)[26]. In this respect, "communicating" for the purposes of prostitution had temporarily moved off the streets and into the yellow pages. While this demographic shift in the ecology of prostitution was unpopular with the established escort agencies, it was considered a step in the right direction by many residents and businesses.

Initially, the Toronto Police appeared content to watch the transformation of streetwalkers into callgirls without taking immediate action. They explained their inaction on the grounds that escort agencies were much more difficult to investigate and in many cases were not illegal (S/Insp. Clark). Since telephone lines are not public places, it was not an offence to use them for soliciting as long as the prostitutes did their own soliciting and as long as they did not use the same location more than once to service their clients[27]. The established escort agency operators resented the new competition, not only because the former street prostitutes charged lower prices, but also because they brought an influx of pimps into the escort agency territory. In fact, it was argued that the movement of street prostitutes into escort agencies and massage parlours increased the number of pimps because they now found it easier to control their girls than when they were on the streets. While a prostitute working the streets could "turn tricks" without giving her pimp his share, this would be more difficult in an agency where the pimp could monitor all calls without leaving the office. The police were virtually powerless to control the situation since it was all underground, and they lacked an effective way of monitoring the activities of the pimps (SS, Apr. 27, 1986: A8).

As a result of the publicity generated by the above situation, several individuals and groups began to criticize S. 195.1 and the inaction of the Toronto Police. In particular, Bob Kaplan, Liberal Justice Critic, and Sylvia Gold, President of the Canadian Advisory Council on the Status of Women, argued that the law was instrumental in allowing the prostitutes to be exploited by male pimps (Bob Kaplan). In addition, a potentially more serious problem had begun to emerge regarding the movement of street prostitutes into escort agencies and massage parlours. In March of 1986, Harold MacDonald, Chairman of the Task force on Pornography and Prostitution, reported that there was evidence of increasing criminal activity associated with prostitution, particularly that involving violence against women and the development of larger prostitution organizations. He attributed this to the fact that the prostitutes were easier to organize into large scale rings once they were off the streets and located in relatively fixed places of business (G & M, Mar. 24, 1986: A3). This evidence corroborated the assertions made by prostitutes and welfare organizations that pushing prostitution off the streets had made it easier for pimps to recruit young runaways into the trade. These factors combined to convince the Toronto Police to pay greater attention escort agencies and bawdy houses (Supt. John Getty).

The increased attention on escort agencies appeared to precipitate a gradual increase in street prostitution, as many of the former streetwalkers began to return to their street haunts[28]. The prostitutes adopted new tactics to cope with police surveillance, including asking potential customers to grope them before they would discuss price. If the potential client refused or even hesitated, they would simply walk away (G

& M, May 1, 1986: A20) [29]. In addition, the first court decision overturning S. 195.1 occurred in Toronto on May 5, 1986, when Provincial Court Judge June Bernhard ruled that the law violated section 2b of the Charter of Rights (G & M, May 6, 1986: A16). While this decision was not binding on other courts, it nevertheless led to media speculation that S. 195.1 would soon be rendered ineffective by court decisions. This likely further increased the numbers of prostitutes returning to the streets, and may also have been responsible for the customers coming back. In any event, street prostitution was once again becoming a problem from the perspective of residents and businesses. While the police continued to clamp down on the traditional areas, there is some evidence to suggest that their efforts simply displaced many prostitutes to other areas[30].

In response to these events, residents and business groups began to lobby the Federal Minister of Justice and the Ontario Attorney General to take steps to remedy the situation (Dennis Magill). This pressure was at least partially responsible for John Crosbie's proposal to allow legalized bawdy houses, provided that only one prostitute worked out of each location. (It will be remembered that the Fraser Committee had recommended that two or less prostitutes be allowed to work out of their own homes.) However, when he consulted the provincial attorneys generals, all were opposed to the proposal. As a result, Crosbie dropped the proposal and announced that no further changes were planned until after the forthcoming review of the S. 195.1 was completed (G & M, June 11, 1986: A4). This focused the pressure back on the provincial Attorney General, and Ian Scott defended his position by stating that he believed that prostitutes would simply use the "legal" bawdy houses to service clients whom they had

initially contacted on the street. Thus, he argued, legalized bawdy houses would do little to alleviate the problem of street prostitution and might even encourage increased numbers of women to enter the trade (TS, June 11, 1986: A10).

While these events were transpiring, the number of prostitutes continued to grow and the Toronto Police continued to enforce the law. By August, the events had progressed to the stage where street prostitution was a major problem once again. At this point, S/Insp. Benge replaced Insp. Donaldson as Head of the Morality Bureau and it should be noted that this personnel change appeared to coincide with a shift in enforcement philosophy as well. In any event, the police began a major crack down, in which they instituted the practice of detaining arrested prostitutes overnight, despite the fact that persons charged with summary offences are normally released on appearance notices. They also asked the courts to impose a 9:00 pm curfew, combined with area restrictions, as conditions of bail (G & M, Aug. 23, 1986: A6). S/Insp. Benge announced that the "blitz" would continue as long as prostitution remained a problem, and as long as the courts cooperated (TS, Aug. 22, 1986: A1).

This shift in police practice drew criticism from several sources. Valerie Scott of CORP immediately protested what she described as the "illegal and arbitrary" detention of prostitutes. CORP also advised street prostitutes to plead not guilty as a form of protest that would clog up the court system (TS, Aug. 28, 1986: A7). In addition, John Evertman, Director of Moberly House, complained that the police had begun arresting and charging juveniles and other young prostitutes instead of taking them to Moberly House as they had done in the past. While the police claimed that

changes to the Ontario Child and Family Services Act made it more difficult to apprehend juvenile prostitutes for their own protection, the entire chain of events appeared to suggest that the Toronto Police no longer viewed prostitutes as victims.

During the approximate time that the events discussed above were transpiring, street prostitution began to heat up in another area, as residents and business owners demanded that the police clean up the "Lakeshore Strip". Located along Lakeshore Boulevard in Etobicoke, the strip was an area of lower priced nightclubs, hotels and motels. While there had always been some prostitution along the Lakeshore, the area was generally respectable and many of the moderately priced motels catered to families. However, after the police cleaned up the downtown prostitution tracks, some prostitutes moved out to this area where the police appeared content to ignore them. During this same time period, many of the motels and hotels were bought up by large corporations. While the corporations continued to operate the hotels and motels, they allowed them to deteriorate to the stage where they attracted a much rougher crowd than had previously patronized the area. At least one motel owner alleged that the new management of the hotels and motels were allowing prostitutes to operate openly in their bars and nightclubs, even to the extent of renting rooms (Ed Gadzala).

The original residents and business owners became concerned by the turn of events described above, and when routine complaints to the police failed to produce action, they organized with a view to lobbying Etobicoke City Council and the Toronto Police. (After all, if it had worked for the upper middle class yuppies downtown, why wouldn't it work for them?) Don Bellerby

of the Palace Pier Residents Association organized a concerted lobbying effort aimed at the media, Toronto Police and Etobicoke City Council. In addition, Ed Gadzala, a Lakeshore motel owner, lobbied residents and business owners to sign "Letters of Consent" authorizing the police to operate on private property and to charge prostitutes, pimps and customers with trespassing. While the corporate owners of motels were also invited to participate in this strategy, they declined to become involved. The police and members of Etobicoke Council did respond to some of these efforts; however, little was accomplished. Although the Toronto Police did concede that the area had been neglected with regard to prostitution control, they claimed that more serious investigations had to take precedence (TS, Sept. 16, 1986: A7).

While the lobbying efforts outlined above did result in some short term activity by the Morality Bureau, 22 Division initally appeared immune to public pressure. However, as public and media pressure continued to mount, the senior officers of 22 Division established a special team of investigators to deal with the problem. Referred to as "Project Spinner", this team consisted primarily of plainclothes officers seconded from other specialized units, including the Major Crimes Unit and the Drug Squad (but not apparently, the Morality Bureau). With the exception of a few female officers borrowed from the uniformed patrol branch, almost all the officers assigned to the project were from outside 22 Division. The major emphasis of the project was to deter both customers and prostitutes from using the area. While some charges were laid against customers, the police also relied on overt surveillance and other tactics designed to discourage the prostitutes. In particular, they adopted the practice of getting letters of

consent (see previous discussion) from business owners and using them to charge prostitutes and pimps with criminal trespass[31]. However, the overall effectiveness of Project Spinner was limited, and some informants complained that the police seemed to place more emphasis on using surveillance to obtain intelligence information on other types of crimes, e.g. drugs, than on the control of prostitution (Ed Gadzala).

The reaction of Etobicoke City Council was even less productive. In a typical stalling tactic, it decided to establish a task force on prostitution to investigate the allegations being made by residents and business owners. This task force was drawn from the members of Etobicoke Council and also included outside representatives from the police and the Etobicoke business and legal communities. Significantly, the affected Lakeshore residents and businesses were not accorded representation. Once the task force began holding meetings, it quickly concluded that there was a genuine problem with respect to prostitution in the designated area. However, it was less successful in reaching agreement over the appropriate solution to the problem. The majority of its members advocated a strategy of going after the offending motels and hotels by using city bylaws such as noise and fire safety regulations. However, a vocal minority of aldermen argued that the city should exercise caution in using the criminal law against individual motel owners since they might sue the city for harassment. While the logic behind this argument was never made clear, it caused a major rift on the task force and several members resigned in frustration (TS, Sept. 23, 1986: A7). As a result, the vocal minority dominated the process and the task force never really accomplished anything beyond the initial determination that prostitution was indeed a problem (Ed Gadzala)[32].

Meanwhile, the controversy over street prostitution continued in the downtown red light areas and began to polarize. By October, several mainstream groups and organizations had rallied to the side of the prostitutes. A well defined conflict of interest developed, in which the various residents groups united into the umbrella organization, "Residents for Safe Neighborhoods" (RSN), with University of Toronto sociologist, Dennis Magill, and Barry Smith, a Pembroke Street lawyer, emerging as spokespersons. On the other side of the issue, the Canadian Organization for the Rights of Prostitutes (CORP) was supported by the Elizabeth Fry Society, the Canadian Advisory Council on the Status of Women (CACSW) and Peter Maloney, an activist lawyer whose practice included many prostitutes. As 1986 drew to a close, both sides continued to lobby the various levels of government and to criticize the Toronto Police for their handling of the situation. Dennis Magill criticized the police for being too friendly with the prostitutes and for trading information in return for relative immunity from prosecution (Dennis Magill; TS, Nov. 7, 1986: A7) [33]. On the other hand, Valerie Scott of CORP complained bitterly that increased police surveillance was destroying the networks among the streetwalkers and creating hostility which interfered with subcultural practices that helped protect the women working on the street[34]. As this controversy continued, the police began to take a tougher stance towards prostitutes and carried out a series of major sweeps throughout November (TS, Nov. 19, 1986: A18).

There are two remaining issues regarding the implementation of S. 195.1 in Toronto during 1986. The first involves the degree to which mainstream feminists adopted prostitution as a genuine feminist issue in Toronto. It

must be noted that mainstream feminist organizations were much more supportive of prostitutes than had been the case in Vancouver. It was significant that the only member of the Toronto judiciary to rule against S. 195.1 was Provincial Court Judge June Bernhard. She had made at least two such rulings in 1986, despite the fact that none of the other judges appeared inclined to follow her lead[35]. However, it must be noted that there is little evidence that any female politicians played significant roles in the prostitution debate. This is somewhat surprising since it will be remembered from the discussion in the previous chapter that several feminist politicians had been active in fighting S. 195.1.

The second issue involves the question of whether the enforcement of S. 195.1 was also relatively free of chauvinist bias. As was noted earlier, the Toronto police concentrated on customers from the outset, and while this attitude changed somewhat as the year progressed the ratio of female prostitutes to male customers remained relatively equal throughout 1986. However, there is evidence to suggest that male customers were receiving preferential treatment in the manner in which they were processed. While female prostitutes were usually arrested and held overnight, males were almost always released on appearance notices once they had identified themselves and promised to go home. Despite the fact that they were criticized by numerous groups and individuals, including Aldermen Dale Martin and Jack Layton, the Toronto police maintained that it was legally impossible to hold the males overnight because communicating was a summary offence (Minutes, Sept 2, 1986 Meeting on Prostitution, City Hall). While the police argued that the difference in the treatment of customers and prostitutes resulted from the criteria outlined in the Criminal Code, many

other groups argued that it represented a systematic bias on the part of the Toronto Police[36]. In any event, this controversy became a factor in the Toronto Police decision to lobby the Minister of Justice for changes to the law to make communicating an indictable offence.

The virtual immunity from prosecution which male prostitutes enjoyed in 1986 is also relevant to the issue of chauvinist bias. With the exception of 52 Division officers, Toronto Police conducted fewer major sweeps against males than females, and almost completely ignored them in their routine enforcement activities. The police attempted to justify this anomaly by explaining that the males were not operating in a residential area, and thus were not creating the same level of nuisance as female prostitutes. While these factors were partially true, it is far more likely that the immunity also stemmed from a reluctance on the part of the police to conduct sweeps against the males because they feared being mistaken for homosexuals. Indeed, this homophobic bias on the part of the police has been well documented, and the Head of the Toronto Morality Bureau admitted in a 1989 interview that this was a continuing problem.

8.2.2 S. 195.1 in 1987

As 1987 began, the controversy and conflict regarding street prostitution intensified, with many residents complaining about harassment, vandalism and even death threats (G & M, Mar. 27, 1987: A3)[37]. This resulted in a series of meetings which culminated in the formation of a citywide Police-Community Prostitution Committee which held its first formal meeting on January 15, 1987. This Committee was composed of delegates from a wide variety of residents groups, as well as

representatives from the Toronto Police, the Crown Attorney's office and Metro and Municipal politicians. The aim of the Committee was to provide a forum for the residents to express their concerns, and to explore possible solutions to the increasingly obvious failure of S. 195.1. The first meeting was chaired by Supt. Getty, and the members present quickly agreed to hold monthly meetings to exchange information (Minutes, Police-Community Prostitution Committee Meeting, Jan. 15, 1987). While the creation of this Committee likely represented a genuine effort to deal effectively with citizens' concerns, it also was clearly an attempt to appease some of the most vocal groups and to subvert local political activity to serve the interests of the police. In this respect, one of the main items of business at the first meeting was to encourage the various residents groups to lobby their political representatives for an increase to the prostitution control budget of the Toronto Police (Ibid). (This factor will be discussed in greated detail later in this section.)

As a result of the activities of the Committee, the Toronto Police increasingly sided with the residents by cracking down on the prostitutes. The frequency and intensity of the sweeps increased and the police began the practice of attempting to keep arrested prostitutes in custody over the weekend by manipulating the bail process (G & M, Mar. 27, 1987: A3) [38]. This prompted CORP spokesperson, Valerie Scott, to protest to the media and other groups about "draconian" police tactics. In addition to their traditional supporters, i.e. the Elizabeth Fry Society and CACSW, CORP was joined in its protest by the National Action Committee on the Status of Women (NACSW) and an entirely new feminist organization, Citizens Organized for the Repeal of Prostitution Laws (CORPL). Headed by Gillian Ridgerton, a

prominent Toronto feminist, this organization was dedicated to the repeal of all prostitution laws on the grounds that they contributed to the exploitation and oppression of women. Unfortunately, this organization appeared to disappear after one or two media announcements; and there is no indication of a long term involvement in the political activity surrounding the implementation of S. 195.1.

The above noted organizations were joined by activist lawyer, Peter Maloney, who argued that S. 195.1 was totally unnecessary and was simply a political attempt to appease the middle class yuppies who had moved into the existing prostitution strolls in Vancouver and Toronto. He further argued that prostitution affected few people outside of a few narrowly defined areas in large cities, and that the law was too far reaching, considering the limited degree of public nuisance associated with prostitution (TS, Mar. 28, 1987: A8). Maloney also used these arguments in court, and achieved some degree of success when Provincial Court Judge Sidney Harris joined Judge Bernhart in finding that S. 195.1 contravened section 2b of the Charter of Rights (G & M, May 15, 1987: A23). This decision was followed by a similar decision by Provincial Court Judge Diceco in June. These decisions, coupled with the fact that the Nova Scotia Supreme Court had overturned the law in May, prompted increasing speculation that the law would eventually be ruled unconstitutional by the Supreme Court of Canada.

After gaining support from her male colleagues, Judge Bernhart reversed her earlier ruling on July 11, 1987, and decided that S. 195.1 was in fact constitutional. She reached this decision reluctantly, ruling that the law clearly violated section 2b of the Charter. However, she further concluded

that problems associated with street prostitution were great enough to justify it under section 1 (G & M, Jul. 11, 1987: A7)[39]. Interestingly enough, she may have done prostitutes a favor, since the Crown's failure to appeal her earlier decisions had limited their effect. This decision prompted defence counsel to take the issue to a higher court. (TS, Jul. 11, 1987: A9). At this point, the Crown and defense lawyers met and agreed that this case, involving defendant Jennifer Smith, would be used as a test case in Ontario. Thus, future appeals would be placed on hold until after the Ontario Supreme Court rendered a decision (Peter Maloney). Because the Crown had also appealed Provincial Court Judge DiCeco's ruling that the law was unconstitutional, the two cases were paired[40].

As 1987 drew to a close, it became obvious that despite its initial success, the implementation of S. 195.1 in Toronto was taking on a character similar to Vancouver: namely that it was not effective at controlling street prostitution. The Toronto Police announced in October that the numbers of prostitutes working the streets had doubled since the beginning of 1986 (G & M, Oct. 15, 1987: A3). The fact that most of this increase appeared to have occurred after the police had shifted their emphasis from customers to prostitutes underscored the futility of tougher laws against prostitution[41]. It was also becoming evident that S. 195.1 had continued to cause confusion and conflict for the operators of escort agencies and bawdy houses, two types of prostitution which had previously caused few problems for the police. In this regard, a report commissioned by the Hamilton Police Chief had suggested that organized crime was beginning to move into escort agencies and bawdy houses because they were easier to control than large rings of street prostitutes (G & M, Sept. 28,

1987: A1). This was in addition to previous media reports that pimps were invading Eaton Centre in a modern day version of "white slavery" to force runaway girls to work in escort agencies and bawdy houses (TS, May 12, 1987: A23). These factors appeared to indicate that the Toronto Police had taken the wrong approach in concentrating on prostitutes, and that they had been more successful with their former policy of going after customers and pimps.

During this period, the various interest groups continued their lobbying efforts directed at the federal and provincial levels of government. However, the issue remained relatively quiet in the media, largely because the new Police-Community Prostitution Committee served as a focus for political activities at the municipal and metro levels. The Toronto Police appeared to have been successful in uniting the residents behind them, as the efforts of the residents helped secure special funding for an additional 90 foot patrol officers for the downtown strolls (Letter - David Crombie to Dennis Magill, April 8, 1987). In return, the senior bureaucracy of the Toronto Police joined the residents in lobbying the Federal government. Supt. John Getty wrote a strongly worded letter to a senior Ministry of Justice official, arguing that S. 195.1 was not working and that it was impossible to control street prostitution without tougher laws (Letter - Supt. Getty to John Fleischman, Aug. 24, 1987). The combined lobbying efforts of the Toronto Police and the Toronto interest groups were instrumental in precipitating an earlier review of S. 195.1 by the Ministry of Justice. While an evaluation had originally been scheduled to take place within the first three years, the public clamor convinced the new Minister of Justice, Ray Hnatyshyn, to direct that the evaluation be

completed as expediously as possible (Letter - Ray Hnatyshyn to David Crombie, March 12, 1987).

While these events were occurring, there was another change in policy by the Morality Bureau. In what appeared to be a contradiction of the senior bureaucratic position regarding the need for tougher laws, the new head of the Morality Bureau, S/Insp. Jim Clark, announced that tougher laws were not the real answer to the problem of street prostitution. S/Insp. Clark noted that although conviction rates had improved since the implementation of S. 195.1, this had not exerted any long term effect on levels of prostitution. He also pointed to Vancouver's lack of success as further evidence for his assertion that tougher laws did not guarantee success in controlling street prostitution. (It will be remembered that Vancouver had used an extremely tough approach in implementing S. 195.1.[42]) He announced that the Morality Bureau would re-adopt its past policy of concentrating on pimps and customers. He further announced a policy of cooperation with streetworkers regarding young prostitutes, and the resumption of the former practice of taking them to safe houses without laying charges (TS, Oct. 15, 1987: A17). Finally, he also criticized the courts for their increasingly lenient treatment of customers, arguing that it was "inequitable" that a middle class male who had purchased sex from a 15 year old should only receive a $50 fine (TS, Oct. 7, 1987: A2). These decisions appeared to indicate that the Toronto Police had returned to a philosophical position which viewed prostitutes as victims.

The above comments should not be taken to suggest that the Morality Bureau (as distinct from the senior bureaucracy) was insensitive to the concerns of the residents. In fact, their stated goal was to find a way of

controlling prostitution in residential areas, and going after customers was viewed as the best way of doing it (S/Insp. Clark). In response to criticism from some Cabbagetown residents that the police had lost control of the situation, S/Insp. Clark argued that the police were continuing to charge customers and prostitutes but that the small fines imposed by the courts simply did not deter them (Ibid). However, it is likely that this argument was simply an attempt to deflect criticism onto the courts since the inadequacy of the sentences handed down by the courts was not mentioned by any of the officers interviewed by this writer. Moreover, District Crown Attorney Paul Culver stated that the police did not approach his office to ask Crown Counsel to seek stiffer sentences (other than asking for area restrictions) (Paul Culver). In any event, the residents refused to be appeased, and they became increasingly militant in their demands that prostitution be moved out of their neighborhoods. For example, during late October and early November, angry residents staged a series of protests in which they blocked traffic and intentionally solicited media attention. They borrowed tactics from some Vancouver community groups, and began taking pictures and licence numbers. However, they avoided the violence and confrontation which characterized the Vancouver protests (SS, Nov. 8, 1987: A21).

Throughout the controversy, the residents strove to make it clear that they were not against prostitution but that they simply wanted it moved to a non-residential area (Dennis Magill). To this end, some of the residents petitioned Toronto politicians to establish a "quasi-official" red light district in a business area (Bay Street was one suggestion) after normal working hours. While this possibility was briefly debated amongst various

groups, the Toronto Police were vehemently opposed to it, arguing that it would force them to become accomplices in illegal activity. As the debate continued, many local politicians (including Jack Layton and Barbara Hall) lent tacit support to the idea by arguing that the current law was not working and by suggesting that the arrests of both prostitutes and customers were pointless (TS, Nov. 6, 1987: A6). The debate among the residents themselves was also changing, as some began to argue that the prostitutes were not as much of a problem as the community groups were suggesting. One long time resident of the area argued that the real problem were the new "yuppie" residents who insisted on trying to turn the area into a "little Rodedale" (TS, Oct. 25, 1987: A14). Similarly, another resident who had previously been anti-prostitution changed her opinion when she walked her dog past a group of young prostitutes working a corner. While she expected to be harassed when she stopped for a light, she was amazed when they "made a fuss" over her little dog (Ibid). This convinced her that they were simply oppressed women who were trying to make a living the only way they knew how.

However, the attitudes discussed above remained in the minority, and the majority of the area's residents continued their efforts to force a solution to the issue. In response to the increased militancy, the Morality Bureau launched sweeps against customers for three straight nights, in which they charged over 400 customers. While some residents were pleased, many cynically suggested that it was a short term "political" reaction and continued to lobby for more permanent solutions. In particular, Cabbagetown residents spokesperson, Sandra Jackson, argued in favor of making prostitution an indictable offence where charges could be laid on "probable

grounds" (TS, Nov. 30, 1987: A2). The courts also adopted a tougher stance and some customers were ordered to assist local community groups conduct condom patrols as part of community service orders (TS, Dec 11, 1987: A1). While this pleased the community groups, it was unpopular with the legal profession and certain other groups. In particular, Valerie Scott of CORP argued that the community groups were actually vigilantes involved in the illegal harassment of prostitutes, and thus it was inappropriate for them to be supervising community service orders handed down by the courts (TS, Dec 12, 1987: A1). The community service orders initially appeared to work since the numbers of customers charged in the ongoing sweeps dropped drastically. However, they quickly lost their deterrent effect, and by the end of December residents were complaining that the community service orders were no longer working (TS, Dec. 18, 1987: A6) [43].

8.2.3 S. 195.1 in 1988

The opening months of 1988 were relatively quiet in terms of the street prostitution issue. The Supreme Court of Ontario had heard the arguments in the Jennifer Smith case on December 18, 1987, but had not yet released its decision. While the police continued their periodic sweeps, many cases were being placed on hold until the Smith case was resolved (Peter Maloney). The only real attempt to revive the public debate over prostitution occurred when Chris Korwin-Kuczynski, a conservative Toronto alderman, began lobbying the provincial Attorney General, Federal politicians and the Toronto Police for a red light district in a non-residential area. His proposal included the suggestion that if the prostitutes were given "regular paychecks", they could be forced to pay taxes like everyone else

(G & M, Feb. 5, 1988: A11). At the same time, he also called for tougher laws against street prostitution, including making it an indictable offence and allowing for charges based on "probable grounds" (Ibid). While these two positions were controversial and somewhat contradictory, they generated little public interest outside of one brief media report.

The first major political event occurred in April when Mayor Art Eggleton led a delegation of police, civic officials and residents to Ottawa to lobby the Minister of Justice for tougher laws. While Ray Hnatyshyn expressed personal support for their position, he stated that he was unable to do anything without the support of some Opposition MP's. Several members of the Toronto delegation immediately promised to lobby the Liberal and NDP Justic Critics (Internal Memo - Supt. Getty to W. Macormack, Acting Police Chief, April 14, 1988). A meeting was arranged with Svend Robinson and Bob Kaplan (who included several additional Liberal MP's). While all parties expressed sympathy for the problems experienced by Toronto residents, there was little agreement on how to solve them. Svend Robinson took the position that S. 195.1 was unconstitutional and suggested that municipal bylaws were the best way to control street prostitution. Bob Kaplan and other Liberal MP's expressed support for legalized bawdy houses, combined with tougher laws against street prostitution[44]. Ultimately, the discussion degenerated into an unresolved disagreement and the Toronto delegation was unable to obtain firm commitments of support from any of the MP's present (Minutes, Police-Community Prostitution Committee Meeting, June 9, 1988).

The first real public conflict over the issue occurred in June, when the police began cleaning up the downtown strolls in anticipation of the

industrialized nations economic summit which was being held in Toronto that year. They launched a series of sweeps which saw 380 prostitutes and 380 customers arrested during a 10 week period ending in June. They also experimented with charging prostitutes under local bylaws for offences such as littering and trespassing. If prostitutes failed to appear in court on any of the charges, including the bylaw offences, a concerted attempt was made to arrest them and hold them for trial until after the summit (G & M, Jun. 17, 1988: A15). While CORP leveled its usual criticism of the police tactics, the Toronto Police argued that the arrests were part of their ongoing enforcement of the prostitution law and were unrelated to the forthcoming summit (Ibid). In any event, the police were able to counter allegations that they had been concentrating unfairly on female prostitutes by pointing to the total number of communicating charges, which up to June 2 included 752 females and 953 males (TS, Jul. 21, 1988: D6).

The remainder of the summer was characterized by a low key media debate. On the one hand, prostitutes and their supporters argued that S. 195.1 was being used to further the interests of the wealthy who felt that street prostitution decreased property values. In particular, Peter Maloney argued that S. 195.1 served as a prime example of how the rich were able to manipulate the law to serve their own interests while ignoring the rights of the lower classes. This argument was countered by the police and crown counsel, who argued that the law was a necessary and reasonable compromise between the rights of prostitutes and residents. However, it seems unlikely that the police or the Crown Counsel were genuinely committed to such a compromise, as independent evidence indicates that they had already stepped up their lobbying efforts to convince the Federal government that tougher

laws were needed (Minutes of Police-Community Prostitution Committee, June, 9, 1988).

Another issue in the debate involved the vast disparities in sentences handed down by different judges. These disparities ranged from absolute discharges given to customers for second offences to 90 days incarceration imposed on prostitutes for first offences. While there was some discussion in the media regarding this issue, little controversy resulted, probably because it was widely felt that the law was in a state of limbo pending decisions by the Ontario Supreme Court and the Supreme Court of Canada. In fact, some judges were entering stays of proceedings on the grounds that long delays were not justified in cases involving minor offences such as prostitution (G & M, Aug. 6, 1988: A12). In this respect, the previously discussed "exemplary" sentences were no longer being used against customers, probably because many judges considered it inappropriate to hand down tough sentences in cases where the law might soon be ruled invalid.

The debate began to "heat up" slightly during the early part of the fall. The Toronto Police became frustrated with their lack of success in influencing the Federal government and announced that they would start releasing the names of prostitutes and customers convicted of communicating. This plan was enthusiastically supported by June Rowlands, Chairperson of the Metropolitan Toronto Police Commission, who argued that it would likely deter more customers than prostitutes since the latter often used false names. However, this plan had to be abandoned when all three Toronto papers announced that they would refuse to print the names (G & M, Sept. 9, 1988: A1). In a further attempt to control the prostitution problem, the police once again instituted a series of sweeps against both

prostitutes and customers. Over 40 females were arrested on September 9, and the police held many overnight on the grounds that they were suspected of giving false names (TS, Sept. 9, 1988: A32). The following night, another sweep resulted in 109 customers being charged, and the police announced that the sweeps would continue at the same level until a reduction in the levels of prostitution was evident (TS, Sept. 10, 1988: A1). They also unveiled a plan to cooperate closely with the Drug Squad to control the drug problem which was prevalent among street prostitutes (Ibid).

On November 5, at least part of the ambiguity surrounding S. 195.1 was resolved when Ontario Supreme Court Justice David Watt upheld the Crown appeal in Smith, while dismissing the defense appeal. This decision rendered the law constitutional in Ontario; however, the impending Supreme Court of Canada hearing meant that the issue was not finalized. While the Ontario Supreme Court decision came too late to be included in the Supreme Court of Canada appeal, the Attorney General of Ontario was granted "intervener" status (Peter Maloney). Interestingly enough, CORP applied for and was granted intervener status as well. It was represented by noted constitutional expert and University of Ottawa law professor, Joseph Magneat. For the purposes of the appeal, CORP became affiliated with the National Action Committee of the Status of Women and was also supported by other feminist organizations (TS, Nov. 8, 1988: A9)[45]. In this respect, it was becoming evident that Toronto feminist organizations were becoming increasingly committed to adopting the rights of prostitutes as a feminist cause.

8.2.4 S. 195.1 in 1989

The scenario described with respect to 1988 continued into 1989. The police continued their attempts to enforce S. 195.1, but by this point it was apparent to almost everyone that the law was simply not working (Insp. Clark). As a result, it appeared that public opinion and the political climate increasingly appeared to accept the possibility of establishing an officially sanctioned red light district as a means of controlling street prostitution. Thus, when Chris Korwin-Kuczynski renewed his 1988 call for the establishment of a red light district, it not only failed to engender public controversy, but the Toronto Police also failed to voice their traditional opposition to the proposal. Indeed, the first half of 1989 was characterized by an almost complete lack of interest in the street prostitution issue. This lack of interest was not likely due to a decrease in prostitution related activities, since both the police and residents had informed this writer that the levels of street prostitution were remaining relatively constant. Further, while there were occasional media reports that pimps were increasingly taking control of prostitution in Toronto and organizing larger prostitution rings (often involving juveniles), even this failed to prompt a public outcry[46].

The lack of interest in prostitution continued throughout the late spring and into the summer. While the levels of street prostitution remained high, it appeared that everyone had agreed to wait until the Supreme Court of Canada decision before planning their next course of action (Dennis Magill). While the Toronto Police continued their routine enforcement of S. 195.1, they appeared to be limiting major sweeps to special occasions when there was a "pressing" need to clear the

streets[47]. For example, a major Shriners convention was scheduled for Toronto in early July, and the Toronto Police consequently organized a series of sweeps for the last part of June[48]. These sweeps resulted in over 300 arrests, with record numbers of prostitutes (over 160) being held in custody on the grounds that they were suspected of giving false names to the police. This resulted in complaints by CORP, who also accused the police of denying the prostitutes access to their lawyers (G & M, Jul. 6, 1989: A20).

While the police denied publicly that the sweeps were connected to the convention, S/Insp. Clark and S/Sgt Shail of the Morality Bureau indicated privately that the sweeps were definitely an attempt to clean up the streets prior to the convention. This writer, who was allowed to observe one of the sweeps, overheard one officer advise a prostitute that she would be better off if she simply worked in the "hospitality" suites at the convention[49]. In a private conversation, several officers, including S/Sgt Shail, who was in charge of the sweep, admitted that they realized that the availability of prostitutes was considered a bonus by some of the Shriners and that as long as it was off the street, they (the police) were not concerned about it. While further discussing the upcoming convention, another officer noted that none of the girls would be released on an appearance notice that night, and that it was easy to find a "reason" to detain them. When asked for an example, the officer responded by suggesting that it could always be assumed that prostitutes would "continue to commit the offence" if released. However, he quickly amended his answer to include the caveat that the police always had to have "legal" grounds to detain them[50].

In August of 1989, the Ministry of Justice completed its evaluation of S. 195.1 and predictablly concluded that the law was not working in Toronto. Because the Toronto Police had not been criticized to the same extent as the Vancouver Police, the report engendered less controversy in Toronto than it did in Vancouver. This did not deter Mayor Art Eggleton from immediately demanding that the Federal government adopt tougher legislation. In fact, he went so far as to lead a second delegation of civic officials to Ottawa to personally lobby the Minister of Justice regarding the need for new laws to deal with the problem. While they were received politely by John Crosbie, it was made clear that the Federal government was not going to take action until after the Supreme Court of Canada rendered its decision (Dennis Magill). Thus, they had to be satisfied with vague promises that the Federal government would do something if the law was overturned by the Supreme Court of Canada. Considering that it had already been established that the law was ineffective in any case, this must have been scant consolation.

In concluding this discussion of the implementation of S. 195.1 in Toronto, there are several points which must be summarized briefly. One of the most important of these points is the involvement of the Toronto Police in the political activity surrounding the implementation of S. 195.1. The Toronto Police continued the practice of negotiating with the residents groups which they had started prior to the development of the law. This time, however, they went one step further and formed the Police-Community Prostitution Committee which was ostensibly intended to allow the residents to voice their concerns about street prostitution, and to facilitate the sharing of information between the police and other groups. From the

perspective of the police, however, the real purpose of the Committee was to defuse the public clamor and manipulate the local political activity so that it served their own interests. This assertion is borne out by the manner in which the Committee was used by the Toronto Police to silence their critics and to solicit support for their own budgetary needs. (See previous discusion on page 308.) Indeed, a senior Toronto Police official admitted in a 1989 interview that "he used his residents groups to put pressure on politicians when he needed it" (Supt. Getty).

By the middle of 1989, many residents had begun to realize that the Committee was not achieving enough concrete results, and began to conduct political activity outside the framework of the Committee. Ron Derraugh, an Ontario Street resident, and Bill Poole, the Director of the National Ballet School for Youth, led a delegation of residents before the Toronto Police Commission to complain about the police inaction. While Mr. Derraugh refused to comment on the issue, Mr Poole noted that many residents were becoming increasingly dissatisfied with the "all talk, no action" role played by the Police-Community Prostitution Committee (Bill Poole) [51]. Despite this increasing dissatisfaction, however, the majority of the people interviewed by this writer expressed general satisfaction with the response of the Toronto Police to the problem of street prostitution[52]. While many people were still unhappy with the level of street prostitution in their areas, they assigned responsibility for the problem to the federal politicians. This successful deflection of the blame serves to indicate how skillful the Toronto Police were at manipulating local political activity, and stands in stark contrast to the manner in which the Vancouver Police handled a similar situation.

The one major area which constituted an exception to the general satisfaction with the police response was the Lakeshore Boulevard stroll. In this area, the residents and motel owners remained dissatisfied with the results of Project Spinner despite the fact that the police claimed that it had been a success[53]. In addition, Etobicoke City Council also continued to avoid taking a hard line with the absentee and corporate motel owners. In fact, some informants noted that the situation continued to deteriorate throughout 1989, and there is one interesting scenario which may explain the situation. It appears that Etobicoke Council, supported by many corporate business interests, wanted to see the Lakeshore strip develop into an expensive, high profile tourist resort along the lake. Unfortunately, the presence of modest family oriented motels did not fit into this scenario very well. Since the business interests did not want to "tip their hand" before they obtained control of the majority of the properties along the lakeshore, they had to come up with a covert strategy for obtaining the properties cheaply. The increased street prostitution resulting from the crackdown on the downtown strolls was already encouraging some of the existing motel owners to sell out (Ed Gadzala). Therefore, it made perfect sense for the corporate business interests to attempt to subvert any serious attempts to deal with the prostitution problem along the Lakeshore.

While the above analysis is somewhat speculative up to this point, there are several additional pieces of evidence which corroborate it. First, the fact that the corporate motel owners were able to avoid prosecution for both prostitution related offences and municipal bylaw infractions supports the hypothesis that there was a "conspiracy" between Etobicoke council and

certain corporate business interests. This also helps explain the activities of the "vocal minority" on Etobicoke council who exhibited a strange reluctance to prosecute the offending motels (who were all owned either by corporations or absentee owners). Further, the fact that the Morality Bureau was more responsive to the problem than 22 Division also supports the hypothesis, inasmuch as the Morality Bureau was more removed from the influence of the Etobicoke business and political elites. The most convincing evidence for this analysis involves a comment made by a senior Toronto Police officer, who stated in passing that the motel owners' problems stemmed from the fact that Etobicoke council "wanted them out of there so that they could develop the area". While he immediately tried to withdraw the comment, and refused to elaborate, it is highly unlikely that he would make such a comment without specific knowledge of the situation. Although much of the evidence for this analysis is admittedly circumstantial, the fact that this comment seems to "explain" so many of the events which occurred in the area indicates a strong possibility that corporate interests were able to manipulate the control of street prostitution to serve their own interests.

Another important factor in the implementation of Bill C-49 in Toronto was the role played by the Canadian Organization for the Rights of Prostitutes (CORP). Unlike POWER in Vancouver, which combined political and social service activities, CORP's mandate was devoted entirely to political lobbying on behalf of prostitutes. The major goal of the organization was the complete decriminalization of all prostitution related activities (Valerie Scott). In furtherance of this goal, Valerie Scott (and to a lesser extent callboy Danny Cocherline) tirelessly lobbied politicians,

police officials and residents groups on behalf of prostitutes. One of their most notable accomplishments involved an address to the Toronto Police Commission, in which they argued that most prostitutes would be willing to cooperate with other groups if they were only consulted (Valerie Scott). While this offer was confirmed by S/Insp. Clark, he stated that the Toronto Police could not legally negotiate with any group regarding the toleration of an illegal activity. In addition to addressing the Police Commission, CORP was also granted "intervener" status at the Supreme Court of Canada proceedings involving S. 195.1. This marked the first time such a scenario had ever occurred, and CORP used its status to argue that prostitution did not constitute a serious enough nuisance to justify overriding the Charter of Rights on the basis of Section 1.

While CORP was supported by several mainstream Toronto feminist organizations, it must be noted that this relationship was an uneasy one. Valerie Scott stated that while the mainstream feminists were often supportive of prostitutes on certain issues, their basic position was that prostitution ought to be eliminated because it was exploitive of women. As a result, these organizations frequently took a condescending approach, which emphasized getting prostitutes off the streets. Ms Scott argued that no mainstream feminist organizations actively supported the rights of prostitutes to carry on their occupation unmolested by the police. She also criticized other prostitutes' organizations such as POWER for not being radical enough, and for ignoring the fact that many prostitutes were prostitutes by choice and did not want to do anything else. In this latter respect, the manner in which Ms Scott organized her own "professional" life can be used as an "ideal" example of the practice of prostitution under a

decriminalized model. She operated out of her home in a fashionable Toronto suburb and serviced an established clientele. She saw only a few clients a week, and made well over six figures of tax free income every year. Further, she did not have any problems with pimps, customers, neighbors or the police. Ms Scott's main contention was that this "ideal" would be much more common if prostitution were decriminalized, and that mainstream feminist organizations could help to solve the problems associated with street prostitution by actively lobbying for decriminalization.

8.3 THE IMPLEMENTATION OF S. 195.1 IN WINNIPEG

As was discussed in the previous Chapter, Winnipeg had experienced fewer problems with street prostitution in the aftermath of the Hutt decision than either Vancouver or Toronto. This situation was largely attributed to the attitudes of the residents and business owners, combined with the willingness of the Winnipeg Police to experiment with "creative" enforcement mechanisms to replace the soliciting provisions overturned by the Supreme Court of Canada. For this reason, it can be expected that the implementation of S. 195.1 would be similarly less problematic than in the other cities. Before analyzing the implementation of the law, it is appropriate to offer a few brief introductory comments on the prostitution scene in Winnipeg and the organization of the Winnipeg Police with respect to prostitution control at the time that the law was proclaimed.

In 1986, there were three main areas in Winnipeg where street prostitution was prevalent. The "hi track" area, where the higher class prostitutes operated, was centred on Albert Street in the Exchange District. While this area was occupied mostly by warehouses and other

businesses which were closed in the evening, it also included many theatres and restaurants which remained open late. The "lo track" area, where the lower class prostitutes congregated, was located along the East side of Main Street between Higgins and Logan Avenues. This area was part of the "skid row strip" and was populated mainly by transients and other unemployed individuals who patronized the many seedy hotels and bars located there. Finally, the "hill", a middle class housing area located near the Legislative Building, was occupied exclusively by male prostitutes servicing other males[54].

Insofar as the organization of the Winnipeg Police was concerned, the major responsibility for the enforcement of prostitution laws rested with the Vice Division. While the uniformed patrol function within the Winnipeg police was divided up among six "districts", these districts did not have undercover personnel such as existed in Toronto. (In any event, all three street prostitution areas fell within the same patrol district.) Although uniformed patrol personnel occasionally became involved in prostitution enforcement, their activities were limited to an ancillary role, i.e. investigating noise complaints, etc. Because the Winnipeg Police rarely conducted large scale sweeps, patrol personnel were not used in the actual enforcement of the law to any degree at the time S. 195.1 was implemented (S/Insp. Cherniak).

8.3.1 S. 195.1 in 1986

The Winnipeg Police instituted a short "period of grace" following the proclamation of S. 195.1 in late December of 1985. This decision was specifically intended to allow time for prostitutes to leave the streets

and for potential customers to realize that the police would be charging people who attempted to pick up prostitutes (S/Insp. Cherniak). Once this period expired, they conducted their first operation on January 7, 1986, in which one male and four female prostitutes were charged (WFP, Jan. 8, 1986: 3). From the outset, S/Insp. Cherniak, Head of the Vice Division, established a policy that charges would only be laid if a verbal offer was made involving a specific price for a specific sexual act. He further decreed that the police would not initiate conversations with either prostitutes or customers. These policies were intended to placate the civil libertarian groups who were concerned that charges would be laid on the basis of a "wink or a nod". He also wished to ensure that the enforcement practices carried out by the Winnipeg police remained as far from entrapment as possible (S/Insp. Cherniak).

The enforcement of S. 195.1 by the Winnipeg Police initially appeared to have the desired effect, as most of the prostitutes had left the streets by the middle of January (WFP, Jan 14, 1986: 3). The customers were a bit slower to get the message, and the Vice Division continued to charge males who did not realize that most of the "hookers" on Albert Street were really undercover police officers. The Winnipeg Police charged 22 male customers during the first week that the new law was enforced. This compared with nine prostitutes, of whom eight were female and one male (Ibid). It thus appeared that the Winnipeg Police were prepared to concentrate on customers and also were not afraid to go after male prostitutes[55]. This latter practice made Winnipeg one of the few cities where male prostitutes were not virtually immune from prosecution.

As the Winnipeg Police continued to enforce S. 195.1, S/Insp. Cherniak made it clear that he was not trying to wipe out prostitution, but simply to control it. He expressed cautious optimism that the new law would provide an effective tool for doing so (S/Insp. Cherniak). However, many of the social service agencies dealing with prostitutes were less optimistic and expressed concerns that it might simply drive prostitution underground, where the prostitutes would be more difficult to contact. While the Winnipeg Police acknowledged this possibility, they announced that they were monitoring the situation and could find no evidence that the prostitutes were moving into hotels and other establishments (WFP, Jan 14, 1986: 3). Further, there was also no indication that an influx of pimps was taking over the prostitution scene in Winnipeg (S/Insp. Cherniak)[56]. In fact, S/Insp. Cherniak was reasonably certain that many prostitutes had left Winnipeg permanently, preferring to practice their "trade" in larger cities such as Vancouver where the prostitution scene was more lucrative.

Insofar as public opinion was concerned, it appeared that most Winnipegers were not particularly concerned with the issue of street prostitution. A majority of the businesses in the Albert Street area did not consider prostitution a problem. Further, over 50% of the population felt that S. 195.1 was too tough, and only 13% felt that tougher laws were needed[57]. While S/Insp. Cherniak stated publicly that wives had called to thank him for preventing their husbands from using prostitutes (WFP, Feb. 16, 1986: 3), there was little public controversy over S. 195.1 in Winnipeg during the first few months of its operation. In fact, the first hint of controversy did not arise until late May, when a group of residents from the area surrounding the Hill began to complain about the noise and

other prostitution-related activities occurring in the lanes and parking lots surrounding the Legislative Buildings. When the Vice Division failed to take immediate action, Harold Taylor, Alderman for the area, lobbied the police on behalf of the residents. This prompted the patrol officers from District One to set up road blocks on the access road behind the Legislative Buildings and question drivers who appeared to be circling the area.

The public clamor over prostitution on the Hill was almost completely devoid of homophobic sentiments. Both Harold Taylor and the residents took great care to avoid anti-gay sentiments and concentrated entirely on the nuisance associated with the activities. Whether this apparently liberal attitude represented their true feelings or was simply perceived as the "politically" correct approach, it certainly paid dividends in terms of gaining support from the gay community[58]. In this respect, Chris Vogel, President of Gays for Equality, publicly supported the residents and declared that the police actions were not anti-gay "harassment" since they were also used against straight customers on the other strolls. He further argued that since most of the customers were bi-sexual men (often married), they would likely be easily deterred out of fear that their nocturnal activities would be exposed to their families and friends (WFP, May 23, 1986: 3)[59]. These tactics appeared to resolve the problem in the short term and it disappeared from the media.

The street prostitution issue remained quiet throughout the rest of the spring and summer. While a prominent Winnipeg defence lawyer, Jeff Gindin, launched a constitutional challenge to S. 195.1 in August, it went unreported in the media. The only major "media" event occurred when POWER

opened a drop-in centre for prostitutes with the backing of local feminist groups and funding from local and provincial government agencies (WFP, Sept. 3, 1986: 3). Public reaction was muted, however, and there was little or no public clamor over the fact that public money was being used to support prostitutes. Several prominent Winnipeg feminist organizations, including the YWCA, Osborne House, the Elizabeth Fry Society and the Manitob Action Committee on the Status of Women (MACSW) actively negotiated on behalf of the prostitutes (Jane Runner).

By early fall, street prostitution once again became a political issue when residents of the Hill renewed their complaints about male prostitutes in their neighborhood. This resulted in several public meetings between the residents, the police and the gay community. Chris Vogel reiterated his support for the residents and suggested that they attempt to deter customers by adopting tactics such as taking their photos and licence numbers (WFP, Sept. 26, 1986: 3). At the same time, he attempted to advance the interests of male prostitutes by suggesting that they be moved to a non-residential area near the convention centre. This proposal was never taken seriously by the police and other groups (Donovan Timmers), and was almost immediately vetoed by the Attorney General, Roland Penner (WFP, Sept. 26, 1986: 3). Instead, Mr. Penner suggested that the City of Winnipeg consider installing traffic barriers to prevent motorists from cruising through the area. It is worth emphasizing that the resulting public controversy was once again devoid of homophobic sentiments. The current Councillor, Donovan Timmers, noted that although a few residents did attempt to exploit homophobia, the police, public officials and politicians quickly distanced themselves from that approach. Indeed, gay

community spokespersons assumed a leadership role in attempting to resolve the issue and were treated respectfully by all other parties, including the police (Jane Runner).

In addition to the Hill, street prostitution also emerged as an issue in the lo-track area during this time period. This problem arose at least partly from the actions of the Winnipeg Police in attempting to clean up the Main Street strip. While this operation was directed primarily against drunks, drugs and other undesireable activities, the police also pushed many prostitutes off the strip. As a result, they migrated farther east into Point Douglas, a working class residential area between Main Street and the Red River. This led to conflict with the residents, who began to complain that the police were ignoring the problem because of their poor economic status (WFP, Oct 17, 1986: 3). Because of the increasing controversy over street prostitution, the Winnipeg Police launched their first major crackdown under S. 195.1, in which patrol officers were used to reinforce the regular Vice Division officers (Ibid).

This crackdown precipitated an intense media debate between representatives of POWER and the Vice Division of the Winnipeg Police. S/Insp. Cherniak claimed that the actions were necessary because the Courts were taking an overly lenient attitude towards prostitution. He argued that the sentences were too lenient and that it was too easy for prostitutes to be released on bail. He noted that it was not unusual for prostitutes to obtain bail even if they were already on bail for a similar offence (Ibid). On the other hand, POWER complained that the police actions were unnecessary and were intended as harassment of female prostitutes, while male customers were being largely ignored. POWER further accused the

Winnipeg Police of ignoring assaults against prostitutes and argued that they were not doing enough to arrest the violent customers who frequented the strolls (WFP, Oct. 19, 1986: 3). As a result, POWER began publishing a "bad tricks" sheet warning prostitutes about potentially violent customers. The police responded by arguing that they were trying to arrest the violent customers, but that it was difficult to obtain convictions because prostitutes refused to cooperate (Ibid). While a POWER spokesperson confirmed that the Police did check the bad tricks sheets, she stated that they did not appear really interested in following through on the investigations (Debbie Reynolds).

This debate gradually died out as the police crackdown lost momentum. The prostitutes quickly adapted to the police activities and became more cautious about picking up tricks. In addition, the courts refused to detain prostitutes without bail or impose heavier sentences. At least one provincial court judge argued that it was morally untenable for the courts to crack down on prostitution when the constitutional validity of S. 195.1 was being challenged in several provinces (Ibid). Finally, on November 4, Provincial Court Judge Kopstein released his decision on the constitutional challenge, ruling that S. 195.1 violated section 7 of the Charter of Rights which guaranteed individuals the liberty to conduct a legal activity without undue interference. Judge Kopstein further ruled that if Parliament had wanted to eliminate street prostitution, it should have legalized bawdy houses so that prostitutes had some legal venue to practice their legal occupation (R. v. Cunningham, 1986). This was considered a landmark decision inasmuch as it was the first time that S. 195.1 had been ruled unconstitutional on the basis of section 7. (The other rulings had all involved section 2b, i.e. freedom of expression.)

While POWER and certain other groups were pleased with the decision, the Crown immediately decided to appeal. In the interim, the Manager of Court Services, Wayne Myshkowsky, announced that the police and courts would continue to enforce S. 195.1 until the appeal was dealt with (WFP, Nov. 5, 1986: 3). This decision precipitated a storm of protest from many diverse groups. POWER immediately accused the police and province of waging a vendetta against prostitutes. Jeff Gindin, the defence counsel who had launched the challenge, argued that it constituted "unfair tactics" to continue to prosecute offenders while the law was under appeal. He was joined by Hersh Wolsch, President of the Manitoba Trial Lawyers Association, who argued that it was legally questionable to enforce the law while an appeal was underway, and that it would be difficult to "undo" the effect on persons convicted under the law if it were subsequently overturned by the Court of Appeal (Ibid)[60]. These protests did not deter the Attorney General, however, and the law continued to be enforced. However, many cases were placed on hold and there was no further controversy over street prostitution during the remainder of 1986 (Jane Runner).

8.3.2 S. 195.1 in 1987

In early January of 1987, the Attorney General announced that the provincial Cabinet had issued an executive order bypassing the Manitoba Court of Queen's Bench (the court to which the appeal of Kopstein's decision would normally have been directed) and had decided to refer the case straight to the Manitoba Court of Appeal. It was argued that this tactic was necessary because other provincial court judges were starting to

follow the decision, and the normal appeal process would take too long. Because of the importance of the issue, it was decided to include another case (involving bawdy houses) and to ask the Court of Appeal to also decide if S. 195.1 violated section 2b of the Charter of Rights. These changes required the approval of the defendants and turned the case from a regular criminal appeal into a constitutional challenge. (Hereafter this case is referred to as the Manitoba Reference.) This appeal was heard in early May, and Mary Jane Bennett, the defence counsel in the bawdy house case, joined Jeff Ginden in arguing the case for the defence.

The process which occurred in the appeal hearing was unusual and is worth noting at this point. According to Ms Bennett, the Court of Appeal justices quickly made it clear that they considered prostitution immoral and that they generally held prostitutes in contempt. In particular, Chief Justice Monnin was rude and arrogant. He refused to allow defence counsel to present their arguments, and frequently interrupted in an argumentative fashion (Mary Jane Bennett). While the decision was reserved for a later date, Monnin decreed that prostitution could not be considered a "legitimate" trade with respect to section 7 and rejected the section 2b argument in a derisive fashion. This attitude did not surprise the defence counsel, as both lawyers were well aware that the Manitoba Court of Appeal was one of the most conservative courts in the country. They undoubtedly realized that they were unlikely to win their case in Manitoba and that a further appeal to the Supreme Court of Canada would be inevitable (Jeff Gindin).

While the courtroom events described above were transpiring, the political scene in Winnipeg was quiet with respect to street prostitution.

S/Insp. Cherniak was replaced by Insp. Bill Evans as Head of the Vice Division in early 1987. By June, the police had stepped up their enforcement activities against street prostitutes, and were also accused of becoming more abusive towards them (WFP, Jun. 3, 1987: 1). While there is no solid evidence to link the two events, it is clear that there was a radical shift in Vice Division policy at this time. In particular, it had adopted the practice of seizing condoms carried by prostitutes charged with communicating for the purposes of prostitution. While the Vice Division claimed that the condoms were needed as evidence, a senior Crown Counsel denied that they were necessary (or even useful) as evidence (Ibid). It was further alleged that both uniformed and Vice Division officers were also seizing condoms from prostitutes even when charges were not laid (Debbie Reynolds). POWER protested these actions, and argued that in light of the AIDS threat the seizing of condoms under any circumstances was a dubious practice. While some police officers apparently hoped that seizing the condoms might deter some prostitutes from turning tricks, POWER argued that this was unlikely since most of the women were in desperate financial straits[61].

The events described above set a new tone for the enforcement of S. 195.1, and relations between the police and prostitutes continued to deteriorate throughout the spring and summer. In August, the police were successful in forcing a prostitute who had bit a police officer to undergo an AIDS test as a condition of bail (WFP, Aug. 20, 1987: 1). While the police claimed that such tactics were necessary for their protection, POWER and several defence lawyers argued that they were simply another form of harassment (Jane Runner; Debbie Reynolds). Considering that the police

practice of seizing condoms increased the AIDS risk, this sudden concern regarding the AIDS threat seemed a bit hollow. Several lawyers also argued that the ordering of an AIDS test as a pre-condition of bail was almost certainly unconstitutional (Ibid). The fact that the courts were willing to order the tests indicates the degree to which the attitudes of the provincial courts were becoming increasingly conservative.

The final series of events in 1987 resulted when the Manitoba Court of Appeal released its long awaited decision on the Manitoba Reference case in late September. As expected, the decision completely upheld S. 195.1. The Court ruled that the law did not even technically violate section 2b because the section had never been intended to apply to an activity such as prostitution. It further ruled that section 7 did not protect any occupation, legal or illegal, and thus it was unreasonable to argue that it protected prostitution simply because it was technically legal (WFP, Sept. 24, 1987: 1)[62]. In addition to these rulings, Chief Justice Monnin, who wrote the unanimous decision, went even further and commented on a possible further appeal to the Supreme Court of Canada. While noting that an appeal was likely, he expressed his surprise and disbelief that lawyers, much less courts, would even begin to think of applying the "lofty ideals" of the Charter to an activity such as prostitution (Ibid). Despite these views, the defence launched an appeal to the Supreme Court of Canada, and in a somewhat surprising turn of events, the Manitoba Attorney General (and not Legal Aid) agreed to pay all legal costs associated with the appeal (WFP, Nov. 24, 1987: 3)[63].

8.3.3 S. 195.1 in 1988

As 1988 opened, the Winnipeg Police continued to enforce S. 195.1 in accordance with the Manitoba Court of Appeal decision in the Manitoba Reference case. However, they appeared to have "toned down" their activities somewhat, as there were fewer allegations of abuse from prostitutes (Debbie Reynolds). Further, it had generally been agreed that any controversial issues would be placed on hold pending the outcome of the Supreme Court of Canada decision, and thus there was little action in the courts (Mary Jane Bennett). The only court decision relating to prostitution occurred when the Manitoba Court of Appeal drastically reduced the sentence of a man convicted of sexual assault on three young girls (aged 10, 11, and 13). In this case, the Court of Appeal held that since the girls had previously accepted money and drugs from the man, they were not completely innocent victims. In fact, Mr. Justice Gordon Hall went so far as to characterize the offender as the true victim and the girls as "perpetraters of the crime of prostitution" (WFP, Jan. 28, 1988: 5). That Justice Hall appeared to feel that a serious sexual assault against very young girls was partially justified because they had previously engaged in a limited form of prostitution displayed an enormous chauvinistic bias against females in general and prostitution in particular. While this decision was only marginally relevant to the larger issue of street prostitution, it parallels the almost vitriolic hostility which Chief Justice Monnin and the rest of the court had displayed towards the defence in the Manitoba Reference case.

The only other "political" incident to occur in the first half of 1988 involved allegations that male prostitutes were being enticed into ignoring

safe sex in return for an extra fee. Ron Harris, spokesperson for the Village Clinic (a gay community organization), publicly argued that many young male prostitutes were placing themselves and future sexual contacts at risk of contracting AIDS because they were not fully aware of the danger (WFP, Jun. 12, 1988: 1). While these allegations created considerable concern when released, their credibility is questionable for several reasons. First, this writer was unable to find any male prostitutes who had personal knowledge of the practice. In addition, one male prostitute suggested that many prostitutes would simply refuse such a request. He further noted that most customers were actually "quite paranoid" about AIDS and often brought their own condoms. While it is possible that isolated cases of the practice occurred, it seems unlikely that it was widespread.

There is one possible explanation for the above allegations. At the time that the allegations were made, the Village Clinic was lobbying for a government grant to hire two street workers to liaise with male prostitutes and educate them on the risks of AIDS. While it is not intended to question Mr. Harris' integrity, it is at least possible that the allegations were part of a ploy to create a public outcry which would improve their chances of obtaining the grant (which they subsequently received). However, it is important to emphasize that the gay community in general took an extremely responsible attitude in dealing with the male prostitutes who serviced part of the gay sub-culture. Gay community representatives constantly liaised with the police and attempted to convince male prostitutes to minimize the nuisance associated with their activities (Jane Runner). In addition, they maintained contact with POWER and did their best to support the interests of female prostitutes whenever possible (Debbie Reynolds).

The final set of events occurring in 1988 resulted from the release of the Ministry of Justice evaluation of S. 195.1. While Winnipeg was not a major site for the evaluation, it was included as part of a broader Prairie Region study. The Report essentially concluded that the new law was not working any better in Winnipeg than it was in Vancouver and Toronto (WFP, Nov. 23, 1988: 1). The researchers reached this conclusion by comparing the effect of S. 195.1 in Winnipeg, where the police had devoted considerable efforts to enforcing it, to Calgary, where the police had given it a much lower priority. Changes in the numbers of street prostitutes were about the same in both cities, thus convincing the researchers that S. 195.1 had not exerted a major impact on street prostitution in the Prairie Region (Ibid). However, the study did conclude that S. 195.1 had been instrumental in increasing the danger level to prostitutes. The authors argued that the law had scared away normal customers, while leaving a higher proportion of "crazies" prowling the strolls. Since the prostitutes were hard pressed to find customers, they were sometimes forced to accept customers whom they would otherwise reject. This conclusion was supported by the writer's own interviews conducted with prostitutes and caseworkers who worked with prostitutes on a regular basis. Both Debbie Reynolds of POWER and Jane Runner of Children's Home noted that complaints of "bad tricks" had increased drastically since S. 195.1 was implemented.

The assertions that S. 195.1 increased the danger levels for prostitutes were disputed by Winnipeg Police Chief, Herb Stephen, who argued that it was AIDS and not the law which was scaring away the normal customers (Ibid). Nevertheless he agreed that the law was not working and called for tougher legislation to deter prostitutes. This latter suggestion was

immediately rejected by POWER, which argued that prostitutes who were not deterred by the increased danger would not be deterred by tougher laws. By this time, the Supreme Court of Canada was hearing the constitutional challenges (including the Manitoba Reference), and nothing really developed in the way of public controversy. In terms of these hearings, it appeared that the members of the Supreme Court split along gender lines in terms of their sympathies. At least one of the male Justices, Antonio Lamar, appeared hostile towards the arguments presented by Jeff Gindin. On the other hand, Madam Justice Claire L'Heureux expressed considerable impatience with Donna Miller, a lawyer representing the Manitoba Attorney General (WFP, Dec. 2, 1988: 18). These expressed attitudes were likely significant. As will be noted later in this Chapter, the Supreme Court decision in fact did split along gender lines, with the four male justices voting to uphold the law while the two female justices argued that it contravened both section 2b and section 7 of the Charter of Rights.

8.3.4 S. 195.1 in 1989

The "state of limbo" which had characterized the control of street prostitution during the latter part of 1988 continued into 1989, as all parties waited for the Supreme Court of Canada to render its decision. Thus, there was little mention of the issue in the media during 1989. The only major media event arose when a Winnipeg Police Sergeant had the misfortune to find himself on the "bad tricks sheet" compiled by POWER. The incident involved allegations that the officer had coerced free oral sex from several prostitutes in the Albert Steet area by threatening to charge them if they did not comply (WFP, Jan. 6, 1989: 1). POWER placed a

description of the officer and his vehicle, a Police Supervisor's van, on their bad tricks sheet. This situation was unprecedented and undoubtedly embarrassed the Winnipeg Police. For this reason, the chain of events which transpired is noteworthy for the manner in which the media and the police responded.

In terms of the media response to the situation, it should be noted that the officer's description had been on the bad tricks sheet for a considerable time before the story appeared. This was surprising because the police regularly checked the bad tricks sheet, and it appeared in the media only when POWER decided to "go public" with their allegations (Julie X). Even more surprising was the police reaction to the situation. While the police initially appeared concerned over the allegations, they almost immediately complained that they were unable to conduct a thorough investigation because the prostitutes refused to cooperate. While POWER denied this assertion, there is little evidence that the police ever conducted a thorough investigation, and the media dropped the incident after one brief article. While this itself was significant considering the high degree of attention usually given to prostitution-related scandals, there was an additional set of events which also went unreported in the media. According to one informant, the officer in question "went back to the stroll and beat the crap out of the prostitutes" who had informed the media (Sharon Taylor). Not only was this situation never investigated but the police intensified their harassment efforts against the prostitutes working in the area (allegedly as a warning not to step out of line again) (Ibid) [64].

The remainder of 1989 remained relatively quiet with respect to the enforcement of S. 195.1. While there was a continuing controversy involving the residents of Point Douglas and the area surrounding the Hill, it was kept at a low level. The installation of traffic barriers behind the Legislative Buildings had simply displaced the male prostitutes into the parking lots and lanes of the residential area to the east and thus did little to solve the problem. However, the Winnipeg Police stepped up their patrols through the area and this appeased the residents to some degree. In addition, the residents also appeared to realize that the problem was basically unsolvable, and thus overt political activity did not develop during the remainder of the year (Donovan Timmers). Other informants suggested that the prostitutes had become more discrete, and thus there were fewer incidents of noise, public sex, etc. Routine "patrols" conducted by this writer indicated that the volume of "john traffic" through the new area appeared to have decreased significantly from the amount through the old area[65].

The residents of the Point Douglas area continued to complain about police inaction and lobbied for barricades similar to those constructed on the Hill. They argued that barricades were the only solution since the police appeared willing to use Point Douglas as a "dumping ground". The Winnipeg Police disputed these claims and offered a decidedly different view of the situation. Insp. Ray Johns, current Head of the Vice Division, vehemently denied that the Winnipeg Police were using the area as a dumping ground because it was a lower class area. He argued that the attitudes of the residents and business owners were responsible for much of the problem. Insp. Johns suggested that the residents frequently "blew things out of

proportion" and that media reports of condoms and used needles littering the area were grossly exaggerated. He argued that the refusal by many business owners in the area to allow the police to operate on their property also contributed to the problem. Since much of the prostitution-related activity took place in parking lots and behind warehouses, it was difficult, if not impossible, for the police to adequately patrol the area (Insp. Johns). It appeared that many of the businesses either relied on the prostitution trade for much of their business or else were afraid of retaliation by pimps and prostitutes. In any event, they refused to cooperate with the police, and thus the problem was unsolvable from the perspective of the police (Ibid).

The Winnipeg Police nevertheless felt that they were in control of street prostitution by the end of 1989. The only other "political" event during the year occurred when the NDP and Liberal justice critics, i.e. Svend Robinson and Bob Kaplan, announced that they would seek the repeal of S. 195.1 because the Ministry of Justice evaluation had concluded that it was not effective. This prompted the Winnipeg Police to argue that the law had been effective at reducing the "visibility" of street prostitution in the Main and Higgens area. Further, Bob Lunney, Commissioner of Parks and Recreation (and responsible for the Winnipeg Police), argued that it was impossible to assess the impact of the law since accurate "before and after" data was not available regarding the number of prostitutes (WFP, Aug. 2, 1989: 9). He also reiterated the standard police argument that the police would be able to achieve even better control if they were given tougher laws (Ibid). However, since the entire country was now awaiting the Supreme Court of Canada decision in the Manitoba Reference case, little action was expected until the decision was released.

In concluding this discussion of the implementation of S. 195.1 in Winnipeg, several important themes need to be summarized briefly. One of the most important is the manner in which the Winnipeg Police decided to implement the new law. As was noted earlier, S/Insp. Cherniak had opted to stay as far away as possible from entrapment tactics in applying the law. This policy was followed by his successors, and the Winnipeg Police continued to maintain a practice of refusing to initiate conversations with prostitutes or customers under any circumstances (Insp. Johns). Further, while they demonstrated that they were capable of enforcing the "letter of the law" against both customers and prostitutes, including male prostitutes, they frequently adopted other "non-enforcement" solutions to the problem. They appeared willing to negotiate with residents and other affected groups and demonstrated a remarkable flexibility in considering alternate solutions. After all, it was the Attorney General, and not the Winnipeg Police, who vetoed the proposal to relocate the male prostitutes to an area beside the Convention Centre.

Despite these positive aspects, there is little doubt that there was a class bias inherent in the way the law was enforced. The Winnipeg Police and local politicians clearly attached more importance to complaints emanating from the Hill and Albert Street areas than to those from the Point Douglas area. While Insp. Johns denied that this was the case, it is clear that he was more concerned about the harassment of "decent" women in the Albert Street area than about the problems of residents in Point Douglas. For example, he indignantly described in detail the way in which straight women were harassed by prostitutes and customers in the Albert Street area, while dismissing the Point Douglas situation as an "over

exaggeration". Further, he attributed the Point Douglas problem to the lack of cooperation from business owners and did not appear concerned that the residents who were being inconvenienced were not to blame for the lack of cooperation. This attitude was also evidenced by local politicians and the media. While concerned groups in the other areas were able to attract politicians and media representatives to public meetings discussing their concerns, the situation in Point Douglas rarely merited more than brief media attention.

The final issue to be summarized involves the "feminist question". It must be noted that Winnipeg feminists demonstrated a high degree of commitment to supporting the rights and interests of prostitutes. As a result, Winnipeg prostitutes were better organized than their counterparts in other cities. However, this support was limited to financial and organizational assistance, and there is no evidence that female politicians ever lobbied publicly on behalf of prostitutes (Judy Wasylycia-Leis) [66]. Despite this support and organization, Winnipeg prostitutes did not enjoy a good relationship with the Winnipeg Police. As was noted earlier in this section, the implementation of the law was marked by recriminations and allegations of misconduct. While the Winnipeg Police initially attempted to enforce the law in a non-chauvinist fashion, it is clear that female prostitutes were the major targets during the last two years of this study. This shift in emphasis was certainly reflected in the attitudes expressed by Insp. Johns. He constantly described prostitutes as a social evil, despite conceding that customers were responsible for most of the nuisance activities. He also seemed markedly unenthusiastic about the possibility of reviving the practice of using non-criminal laws to deter customers from

cruising the prostitution areas. Thus, despite a promising beginning, the implementation of S. 195.1 in Winnipeg exhibited a distinct chauvinist bias during much of the period covered in this analysis.

8.4 THE IMPLEMENTATION OF S. 195.1 IN EDMONTON

As was discussed in the previous Chapter, Edmonton (in common with Winnipeg) had experienced fewer problems with street prostitution in the aftermath of the Hutt decision than either Vancouver or Toronto. This situation was largely attributed to the generally tolerant attitudes of the residents and business owners, and the responsible approach taken by the Edmonton Journal. These attitudes, combined with the willingness of the Edmonton Police to negotiate with the prostitutes and other groups, led to a search for creative solutions to the problems created by the Hutt decision. Before analyzing the implementation of S. 195.1, it is appropriate to comment briefly on the prostitution scene in Edmonton and the organization of the Edmonton Police with respect to prostitution enforcement at the time that the law was proclaimed.

In 1986, there were three main areas in Edmonton where street prostitution was prevalent. The "stroll" area, where the higher class prostitutes congregated, was centred on 107th Street and Jasper Avenue in the downtown business district. While this area was occupied mostly by retail outlets and office buildings which were closed in the evening, it also included many theatres and restaurants which were open late. The "drag" area, where the lower class prostitutes operated, was located along 96th Street between 104th and 105th Avenues, in close proximity to the main Edmonton Police Station. This area included part of the skid row district

and was populated mainly by transients and other unemployed individuals who patronized its many bars and cheap retail establishments. Finally, the "hill" was a middle class housing area centred along MacDonald Drive, overlooking the Legislative Buildings. While it was occupied mainly by male prostitutes servicing other males, it also contained a significant number of juvenile female prostitutes.

Insofar as the organization of the Edmonton Police was concerned, the major responsibility for the enforcement of prostitution laws rested with the Morality Squad, which was part of the Special Investigations Branch of the Edmonton Police Service. Although uniformed patrol personnel occasionally became involved in prostitution enforcement, their activities were limited to an ancillary role, i.e. investigating noise complaints, etc. Because the Edmonton Police rarely conducted large scale sweeps, patrol personnel were hardly used in the actual enforcement of S. 195.1. Finally, one must note the unique role played by the Edmonton Police Commission. While police commissions are commonly employed in Canada to insulate the police from direct political control, most are largely controlled by the municipal authorities. In the case of Edmonton, the Police Commission was completely responsible for setting enforcement policy and legally was not responsible to Edmonton City Council. Although the Edmonton Council had two representatives on the Police Commission, some informants alleged that it was dominated by business interests and the police. This meant that the police could ignore "mundane political considerations" to a much greater extent that was possible in the other cities.

8.4.1 S. 195.1 in 1986

The implementation of S. 195.1 in Edmonton began without fanfare when the Edmonton Police quietly started enforcing the law on January 3, 1986. While street prostitution was not a high profile political issue in Edmonton, the advent of the law did occasion some comment in the media. The assistant manager of a large hotel located in the "stroll" area publicly welcomed the new law and stated his intent to liaise with the Edmonton Police to ensure that it was used to keep prostitutes away from the immediate vicinity of the hotel (EJ, Jan. 5, 1986: A2). At the same time, Mayor Decore expressed reservations that the law would be effective and suggested that Edmonton consider allowing a brothel to operate openly in a part of town where it would not offend too many people (EJ, Jan. 25, 1986: B1)[67]. While some Edmonton councillors (notably Lance White, Council representative on the Edmonton Police Commission) agreed with the suggestion in principle, most doubted that it would work in practice. Similar sentiments were expressed by the Edmonton Police, who noted that changes to the Criminal Code would be necessary before the police could allow a brothel to operate openly in the city (S/Sgt. Terry Whitton). The proposal was also criticized by Lorraine Mitchell of the Alberta Status of Women Action Committee (ASWAC) on the grounds that it would "legitimize" the exploitation of female prostitutes by males, but would do little to solve the problem of street prostitution (Ibid).

As the Edmonton Police continued to enforce S. 195.1, they argued that the new law was quickly proving effective in forcing prostitutes off the street. On February 7, 1986, they estimated that the numbers of prostitutes working Edmonton's streets on an average night had been reduced from 40-50

to six or seven (EJ, Feb. 7, 1986: B7). They further estimated that the law had been particularly effective at eliminating the part-time prostitutes who held regular jobs and only "hooked" when they needed extra money. Because these people usually lived "straight" lifestyles, they were particularly concerned about the possibility of being caught and thus were easily deterred. In terms of the total effect of the new law, it did not appear that the street prostitutes were being displaced into escort agencies or bars. All in all, the Edmonton Police were generally happy with the law during the first few weeks of its operation. The only negative feedback on the law occurred when prostitutes and some police officers expressed "regrets" that it had destroyed the "family" atmosphere which had existed among the prostitutes and between the police and prostitutes (Ibid). While the prostitutes were concerned with increased danger, the police were likely lamenting the loss of the information which the prostitutes had previously provided the police on the criminal subculture[68].

The initial success of S. 195.1 was short lived, and by early May the media began to comment on its reduced effectiveness. As the prostitutes became accustomed to police activity under the new law, they began to return to the street in significant numbers. This movement was given impetus by several court decisions in British Columbia (discussed earlier in this chapter) ruling that S. 195.1 violated section 2b of the Charter of Rights (EJ, May 3, 1986: C14). While the Edmonton Police attempted to correct the situation by stepping up their enforcement activities, there is little evidence that these tactics exerted any long term effect (S/Sgt Whitton). Because street prostitution was not a significant problem in

middle classs residential areas, the police did not embark on a prolonged series of sweeps (as occurred in Toronto) or harassment tactics aimed at customers (as occurred in Winnipeg). The only other incident of note in the first six months of 1986 occurred when male prostitutes operating out of the "hill" area complained that they were being harassed by "fag bashers" (EJ, Jun. 2, 1986: C14). They further claimed that the police seemed unconcerned about the problem and were also ignoring the area from an enforcement perspective. This is surprising considering that the area was occupied by many juvenile prostitutes of both sexes.

The summer months of 1986 were relatively uneventful in terms of the street prostitution issue. Although the police continued to enforce the law, there were no major crackdowns reported in the media[69] In November, street prostitution achieved a much higher political profile when Mary Burlie, a social worker with the Boyle Street Coop, alleged that Vietnamese organized crime figures were moving into prostitution in the Boyle and McCauley areas of the "drag". She argued that the Vietnamese were using "legitimate" businesses as fronts for prostitution and were particularly active in controlling juvenile prostitution (EJ, Nov. 23, 1986: C6). These allegations were immediately questioned by spokespersons for the Vietnamese Association of Edmonton and the Edmonton Police. This writer was unable to uncover any independent evidence to support Ms Burlie's allegations and their reliability is questionable. Ms Burlie also asserted that S. 195.1 was forcing young prostitutes to become more secretive and that they were at greater risk because of the need to operate clandestinely. This assertion was corroborated by several independent sources in Edmonton, including the Edmonton Police[70].

As 1986 drew to a close, street prostitution continued to occupy a high profile in Edmonton. While the scandal over the alleged Vietnamese involvement died down, the prostitutes themselves caused another furor when they moved into Riverdale, a middle class residential area adjacent to the drag area. While there had always been some prostitution on the fringes of the area, the incursion of large numbers of prostitutes into the heart of the area prompted a storm of protest from the residents. This introduced the variable of social class into the situation as the middle class residents demanded action, and the Edmonton Journal began to publish graphic accounts of the problems being experienced by the residents. This resulted in an immediate crackdown, in which the police used some of the harassment tactics being used in other cities.Interestingly, John Geiger, a columnist for the Edmomton Journal, asserted that the Edmonton Police had "caused" this problem when they harassed the prostitutes out of a rundown area of parking lots and decrepit businesses near the main police station (John Geiger). (However, this aspect of the situation will be discussed in greater detail in the next subsection.)

In closing this discussion of the implementation of S. 195.1 in Edmonton during 1986, it is necessary to comment briefly on the feminist question. It should be noted that the Edmonton Police concentrated most of their efforts on female prostitutes and paid relatively little attention to the customers. In addition, there is little evidence to suggest that Edmonton feminist groups ever attempted to defend the interests of prostitutes. While the Alberta Status of Women Action Committee did become involved in the debate over bawdy houses, they did not take a position advocating the right of prostitutes to practice their occupation. There was also no

evidence that the prostitutes themselves ever sought to organize politically or that such an organization would be supported by mainstream feminist groups in Edmonton.

8.4.2 S. 195.1 in 1987

As 1987 opened, it appeared that the scandals and public furors which had dominated the media during the fall of 1986 had been resolved, as there was little public or media attention paid to street prostitution early that year. There was some public debate over a proposed law empowering the police to detain suspected AIDS carriers, and while it did not directly involve the question of street prostitution it is significant because of the positions taken by the groups involved. The debate arose when the Edmonton Police began lobbying for greater powers to enable them to detain suspected AIDS carriers. There had been media reports that a male transvestite infected with the HIV virus was working the streets of the drag area. The Edmonton Police argued that they were powerless to stop him, and that they needed increased powers to control prostitutes who were infected with AIDS (EJ, Mar. 1, 1987: A2). While it was not clear whether the police wanted amendments to the criminal law or the provincial public health laws, it appeared that the new law would be applied only to prostitutes.

This proposal was immediately criticized by University of Alberta law professor, Anne McLellan, who argued that the proposed law would constitute an arbitrary and unnecessary infringement of prostitutes' rights without evidence that they posed a threat to society. John Decore, President of the Law Society of Alberta, supported the proposed law on the grounds that

the threat posed by AIDS was more important that individual rights (Ibid). The debate intensified when the Director of Communicable Diseases entered the fray on the side of Professor McLellan, arguing that detaining AIDS carriers was unnecessary and unlikely to be effective in any case. Although the controversy eventually died down, the most significant aspect of the debate was that neither the Alberta Status of Women Action Committee nor the Alberta Human Rights and Civil Liberties Association saw fit to comment on the issue. This abdication of an important area of their mandate was surprising, given their previous defence of prostitutes' rights, and provides an indication of the conservative legal and political climate which was developing in Edmonton at that time.

While the above debate was transpiring in the media, the first two constitutional challenges to S. 195.1 were launched in Alberta. These appeals were heard together by the Alberta Court of Appeal on March 14 and involved cases from Edmonton and Calgary. (However, only the Edmonton case will be discussed in this subsection.) The chain of events which occurred at the actual appeal hearing is reminiscent of the Manitoba Reference case in that the Appeal Court justices appeared somewhat hostile to the defense positions. For example, when Mona Duckett, representing the Edmonton defendant, Lina Stagnitta, attempted to argue that S. 195.1 was unconstitutional because it was too broad in its application, the Justices repeatedly interrupted her and took issue with her arguments before she even finished her submission. In particular, they disagreed with her assertion that the entire law had to be struck down. In what appeared to be a prejudgement of the case, they suggested that even if the law contravened section 2b of the Charter of Rights, it was possible to restrict its

operation without "throwing it out entirely" (EJ, Mar. 14, 1987: B1). They further argued that there was no evidence to suggest that the Edmonton Police were abusing the law, and that if vagueness or potential abuse were sufficient criteria for overturning laws on constitutional grounds, there would be few laws left on the books. In the end, they reserved judgement and, in another apparent prejudgement, warned defence counsel that even if S. 195.1 infringed section 2b, it might still be "justified" under section 1 (Ibid)[71].

After the "resolution" of the two debates discussed above, the street prostitution issue remained quiet for several months. However, in early July, the Edmonton Police came under criticism from residents groups in the Boyle and McCauley areas adjacent to the drag (EJ, Jul. 11, 1987: B1). As was noted in the previous subsection, the Edmonton Police had cracked down on the part of the drag nearest the main Police Station in late 1986. This had displaced some prostitutes to the Riverdale area, where the residents demanded and received an immediate police response. At the same time, the police action also displaced prostitutes across 95th Street into the Boyle and McCauley areas[72]. (The dividing line between the traditional drag area and the Boyle/McCauley areas was 95th Street.) Because these areas had always contained some street prostitution, the residents did not immediately begin to complain. However, the levels increased steadily throughout the first six months of 1987, as the Edmonton Police seemed content to allow prostitutes to occupy the two working class areas. This led to the development of residents' lobby groups within these areas, which forced the issue onto the public agenda. The Edmonton Police Commission responded by implementing a policy of harassing prostitutes until they

moved to "new ground" (Ibid). This tactic did not immediately still the debate, as many residents announced that they would "wait and see" if the police carried through on their promises.

By this point, the residents of the two areas were becoming increasingly well organized and militant. They sought media coverage and presented a policy position favoring the legalization of prostitution and the establishment of red light districts in non-residential areas (EJ, Jul. 19, 1987: D7). They collected 170 names for a petition and presented it to the Edmonton Police Commission, a tactic which prompted the police to drastically increase their enforcement activity in the areas (Ibid). While this activity temporarily alleviated the problem in the Boyle and McCauley areas, street prostitution was becoming a problem in the "stroll" area as well. In the latter case, the focus of the public furor was Claude Buzon, who owned a restaurant on Jasper Avenue in the heart of the stroll. Mr. Buzon claimed that the prostitution problem had caused a significant reduction in his business. As a result, he refused to pay his property taxes until the police did something to clean up the area (EJ, Sept. 6, 1987: A1). This protest transformed street prostitution into a high profile public and political issue and also marked the first time that it appeared on the front pages of the Edmonton Journal.

The transformation of prostitution into a "front page" issue forced the police to accord it a much higher priority than they previously had. One of their responses was to establish a "store front" prostitution control office on Jasper Avenue in the stroll area. This office was intended to provide better coordination of the enforcement of S. 195.1 by allowing the public greater access to Morality Squad officers and by speeding up the

response time to public complaints (EJ, Sept. 5, 1987: B1). In addition, Supt. Dave McHarg, Head of the Special Investigations Branch, promised that the police would step up the "regularity and intensity" of their enforcement efforts (EJ, Sept. 6, 1987: A1). While the business owners along Jasper welcomed these new initiatives, others expressed doubts that they would be effective or were even necessary. In particular, the residents of the Boyle and McCauley areas expressed fears that the police would limit their activity to the stroll and were vocal in demanding that the increased enforcement activity be extended to their areas (EJ, Sept 8, 1987: A1). On the other side of the debate, spokespersons for the prostitutes complained that the new campaign was unfair and that the police should concentrate on the "few" customers who caused most of the problems in residential areas (EJ, Sept. 6, 1987: A1) [73].

The various positions outlined above spawned a debate which dominated the media throughout most of the fall. The Boyle area residents continued to pressure the police and City Council over what they perceived as inadequate attention to their street prostitution problem. They argued that City Council was unresponsive because their area was working class. In particular, they singled out Mel Binder, Alderman for the Boyle Street area and Police Commission representative, as being useless in representing their interests on Council and at Police Commission meetings. As a result of this perceived unresponsive attitude by City Council, the residents turned their attention to the provincial level, where Pam Barrett, the NDP MLA for the area agreed to investigate the problem. After touring the area, Ms Barrett agreed that the situation was serious and petitioned Mel Binder and Lance White (the other Council representative on the Police Commission)

to try to find a solution to the problem. While both Aldermen were non-committal in their responses, Mel Binder took care to point out that street prostitution was a complex problem that was difficult to solve. He further argued that the police did not want the problem simply moved to another area (Pam Barrett). While this concern was certainly a valid one, one wonders why the police decided to exercise such caution when the problem was in a working class area, but had moved so quickly when it occurred in the middle class area of Riverdale.

Unable to convince the Police Commission to concentrate its attention on the Boyle and McCauley areas, Pam Barrett began lobbying for a red light district in a non-residential area. This proposal brought her into conflict with the leader of her own party, Ray Martin, who argued that Edmonton was not ready for such a drastic step. Instead, Martin suggested that the police ought to concentrate on the customers and pimps who were creating most of the problems (EJ, Sept. 9, 1987: A1). Despite this opposition from within her own party, Barrett's proposal met with a favorable response from the Edmonton media, and the Edmonton Journal published an editorial supporting the idea of a red light district. Meanwhile, the police continued their crackdown in the other prostitution areas, but this appeared to have little effect on their activities in the Boyle and McCauley areas. Although the police carried out a series of sweeps during early September, in which 49 prostitutes and 17 customers were charged, only one of those charged (a customer) was from the Boyle Street area (EJ, Sept 11, 1987: A1). At this point, the Edmonton Police responded to the continuing criticism by arguing that street prostitution was no longer a major problem in the Boyle and McCauley areas, and that it was impossible

to eliminate in any case. This view was hotly disputed by the Boyle Street residents, who contended that the nuisance and other problems were worse than ever.

Despite this controversy, there were certain indications that the Edmonton Police did not take a particularly hard line in enforcing the law. For example, they often gave out appearance notices to prostitutes charged twice in the same night (EJ, Sept. 11, 1987: B1). In addition, the practice of seeking area restrictions as probation and/or bail conditions was never adopted in Edmonton. In this respect, Mike Allen, Senior Crown Attorney for Edmonton, stated that although some judges imposed them occasionally, the practice was not widespread. He further noted that he was not aware of the Edmonton Police lobbying for area conditions, and that his office would never adopt it as a routine practice without "good" reasons (Mike Allen). When pressed to define what would constitute a "good" reason, Mr. Allen replied that he did not consider prostitution a serious enough offence to warrant restricting an individual's freedom to frequent certain areas.

As the controversy continued over street prostitution, the prostitutes themselves entered the debate, arguing that they were not the major problem. They further claimed that they had always occupied the Boyle Street area, and that they would never be forced into a red light district in a commercial area (EJ, Sept. 11, 1987: B1). This assertion was borne out by other sources, who informed this writer that the Boyle and McCauley areas had always been part of the drag and that the prostitutes and the residents had previously coexisted without problems (Rose Gelderman). In particular, Mary Burlie, Spokesperson for the Boyle Street Coop, argued that the problem had started a few years earlier, when escalating real

estate prices in other parts of the city had forced some middle class people to purchase homes in the area. As a result, the population demographics of the areas had gradually changed, as the previous lower class residents were displaced by more upwardly mobile residents (Mary Burlie). These new residents were offended by the spectre of street prostitution in their neighborhood and began lobbying the police and politicians for its removal[74]. Ms Burlie further asserted that while the number of prostitutes may have increased after the 1986 police crackdown on the drag, the levels of nuisance activities had not really changed.

At this point, the media also began to question the advisability of deploying such a high level of police resources against prostitutes. In particular, Edmonton Journal columnist John Geiger castigated the police for placing so much emphasis on the enforcement of S. 195.1 when more serious crimes were not being solved (EJ, Sept. 15, 1987: B1). He further argued that the police efforts were ineffective and had even exacerbated the situation with respect to the drag area (John Geiger). Police Commission member Mel Binder agreed that the law was not working, and admitted that it was hopeless to try and control prostitution without taking a much tougher approach. He suggested that publishing the names of convicted offenders might have a deterrent effect (Ibid). For their part in the debate, the Boyle and McCauley residents lobbied for the construction of diversionary barricades and the creation of one way streets to disrupt the flow of traffic through their areas. However, this proposal was criticized by the media on the grounds that it had not worked in other cities.

While neither of the above proposals was ever instituted, the Edmonton Police refused to concede defeat. They stepped up their sweeps and began using uniformed personnel to supplement the undercover officers of the Morality Squad (EJ, Oct. 5, 1987: B1). In early October, Police Chief Leroy Chahley announced that these tactics were slowly reducing the numbers of street prostitutes. He further noted that the prostitutes did not appear to have moved into massage parlours and escort agencies. While the police were unsure of where the prostitutes had gone, Chief Chahley confidently announced that they would be pursued if they went "underground" (Ibid). The police continued their crackdown, and by late October announced that they had gained control of prostitution in the stroll area. They then turned their attention to the customers in an effort to completely eliminate the problem from the downtown area. However, with the onset of winter, most prostitutes transferred their activities to escort agencies and media advertisements. Because these activities generated fewer complaints from the public, Insp. Noel Day of the Morality Squad announced that their crackdown had been a success and closed the store front prostitution control office (EJ, Dec. 31, 1987: B1). Meanwhile, the residents of the Boyle and McCauley areas wondered what would happen in the spring since their request for diversionary barricades had been denied. Inasmuch as the Stagnitta case had gone to the Supreme Court of Canada in October, many wondered if they would have a prostitution law by then.

8.4.3 S. 195.1 in 1988

The opening months of 1988 were quiet with respect to political activity involving the street prostitution issue. Because the harsh Edmonton winter

had driven most of the prostitutes off the streets, the residents groups in the Boyle and McCauley areas had discontinued their lobbying efforts. The only major media event during the early part of the year occurred when an anonymous prostitute alleged that three Edmonton police officers had coerced her into having sex (EJ, Feb. 26, 1988: A1). Alderman Lance White immediately announced that he disbelieved the allegations and castigated the media for impugning the character of three police officers on the "word of an admitted prostitute" (Ibid). This view was echoed by Mayor Decore, who argued that if the prostitute was telling the truth, she should have laid charges with the police in the "normal" fashion rather than going to the media. He added that the media had an obligation to avoid sensationalizing such cases. As it turned out, the prostitute had first complained to the police and only went to the media when the police refused to take action. While the Edmonton Police did not enter the public debate, they quietly processed disciplinary charges against one of the officers (Ibid). Unfortunately, the reactions of Alderman White and Mayor Decore to these events were never recorded.

As winter ended, prostitutes returned to the streets in greater numbers. This renewed the conflict and controversy involving the residents of the Boyle Street area, which in turn prompted the police to attempt to shift the blame onto the courts. The police replied to criticism by arguing that they were doing their best, but that the lenient sentences handed down by the courts were simply not a deterrent (EJ, Apr. 15, 1988: B1). However, despite their expressed desire for the courts to crack down on prostitution, the Edmonton Police continued their policy of maintaining good relations with the prostitutes. Several police officers were

identified in the media as caring and dedicated officers, who went out of their way to treat prostitutes fairly (EJ, May 24, 1988: A1). Anne Dolina, spokesperson for the Alliance for the Safety of Prostitutes (ASP), publicly commended the Edmonton Police for their enlightened approach and obvious desire to maintain a good working relationship with prostitutes (Ibid). This policy was confirmed by the Edmonton Police, and while it was likely self-serving for the most part, it paid effective dividends when the police decided to resume their past practice of negotiating with prostitutes. Several residents noted that the police had commenced this practice in mid-1988, and it appeared successful in minimizing the nuisance effect on businesses and residents (Ruth Gelderman).

The situation appeared to satisfy the various groups and street prostitution disappeared from the media agenda throughout the remainder of the spring and summer. However, the issue was raised again in September when the movement of prostitutes into Chinatown prompted Mayor Decore to publicly call for tougher laws. People had complained about being harassed on the streets, and Mayor Decore was particularly infuriated because several tourists and visiting businessmen were among the complainants (EJ, Sept. 6, 1988: B1). While the harassment was carried out by potential customers cruising through the area, this did not stop Decore from asking the Edmonton Police to crackdown on prostitutes and drive them from areas frequented by tourists and other visitors (Ibid). At this point, the Edmonton Police, in a rare display of disagreement with their political masters, complained that they were being forced to ignore more serious crimes in order to concentrate on street prostitution. Insp. Noel Day of the Morality Squad argued that prostitution was not a major problem in the

drag area, and that public pressure was forcing him to give an "inordinate amount of attention" to street prostitution, which was both unnecessary and ineffective (EJ, Sept. 9, 1988: A1). Nevertheless, the Edmonton Police did institute a renewed campaign against customers which included some of the harassment tactics being used in Toronto and Winnipeg[75].

The Boyle Street residents immediately took issue with Insp. Day's comments and renewed their lobbying campaign directed at municipal and provincial politicians. One of their targets was Alderman Lance White, whom they accused of failing to adequately represent their interests at City Council and Police Commission meetings (EJ, Sept. 11, 1988: A1). Although the police targeted the Boyle Street area during September and charged record numbers of customers, the residents were still not satisfied. They argued that periodic crackdowns were inadequate and demanded that City Council reconsider their previous request for traffic barricades and one-way streets to disrupt the flow of traffic through their areas (EJ, Oct. 27, 1988: B9). This time, the City Council agreed to implement the proposal on a trial basis despite the fact that most Aldermen and officials in the City Traffic Planning Office were convinced that it would not work (Rick Milligan). Pam Barrett re-entered the debate on the side of the residents and called for the appointment of additional police community control officers (Ibid). This proposal was significant since these officers were mandated to work within the community and to attempt to solve problems informally through mediation. As will be noted in the next subsection, these officers were credited by residents with much of the success which the Edmonton Police achieved in regulating street prostitution during 1989.

The traffic engineering changes, combined with the new police tactics against customers, appeared to suppress the problems associated with street prostitution during the remainder of the fall. However, it was clear that most people had become convinced that S. 195.1 was not working and that a different approach was needed. This attitude was exemplified by a University of Calgary report which recommended that prostitution be legalized and regulated (EJ, Nov. 24, 1988: D15). Although the Edmonton Police and the new Mayor, Terry Cavanagh, disagreed with the report, it generated little controversy in Edmonton. It appeared that most people were fed up with the problem and would accept "any solution which would work". By this time, however, the Supreme Court of Canada had commenced hearing the Stagnitta appeal and the issue was temporarily shelved. It seemed that not even the Alberta Attorney General, Ken Rostad, was concerned that S. 195.1 might be overturned. When interviewed about the prostitution controversy, Mr. Rostad replied that he had not seen the University of Calgary report and had not given a "lot of thought to the issue" (EJ, Nov. 24, 1988: D15). While this attitude probably reflected the opinion of most Edmonton residents, it was a bit unusual in the case of the elected official ultimately responsible for the administration of criminal justice in Alberta.

8.4.4 S. 195.1 in 1989

As 1989 opened the Edmonton Police appeared to regain control of street prostitution. While their decision to concentrate on the customers played a major role in their success, the most important factor was their decision to utilize community control officers to mediate between the prostitutes

and residents. This was particularly true of the Boyle and McCauley areas where the police appeared to have "turned over a new leaf" insofar as their attention to the area was concerned. According to one long term resident, the police began to respond quickly to complaints about prostitution related activities (Karen Dandemueller). In addition, other residents informed this writer that the Community Control Officers were working informally among the prostitutes to encourage them to stay away from schools and to reduce the noise level (Ruth Gelderman). Ms Gelderman noted that the police responsiveness had increased most significantly after the residents of the areas had organized a protest picket in June of 1989 to publicize their demands. She further remarked that most of the "good work" was carried out by the community control officers and that there did not appear to be a "lot of cooperation between them and the Morality Squad". In any event, the police activities resulted in a marked reduction in traffic through the area and a much quieter neighborhood, even though the number of prostitutes remained relatively high (Ibid).

Police activity had also extended to the stroll area and Claude Buzon, owner of Claude's Restaurant, indicated that he was now willing to pay his taxes. He noted that the police had demonstrated a more responsive attitude in 1988 and 1989, and he was convinced that they were doing all they could to control the situation (Claude Buzon). The police conceded that they had given a high priority to the "stroll" (and any other areas frequented by visitors) because of pressure from City Council and business groups (S/Sgt. Whitton). This increased attention was credited with controlling street prostitution in the downtown areas such that it was not necessary to reopen the on-site prostitution control office during 1988 and 1989.

This situation continued throughout the first half of the year, and the only major controversy arose when the mayor and some aldermen referred to prostitutes as "mosquitos" and suggested spraying them. These remarks occurred as part of a debate over the possibility of establishing a red light district near "refinery row" on the outskirts of the city. Alderman Ken Kozak had proposed the red light district as a way to completely eliminate prostitutes from the inner city. This prompted Alderman Mel Binder to argue that the situation was under control and that it would never be possible to ever completely eliminate any pest (even if a red light district were established). Mayor Cavanagh suggested that since prostitutes were pests like mosquitos, it might be possible to "spray them". While these comments had clearly been intended as a joke, the media reacted with scathing criticism. (EJ, Apr. 20, 1989: A1). A storm of protest also arose from prostitutes and social services agencies. Paul Nahireny, Director of Catholic Social Services, blasted the politicians for comparing children and other human beings to "vermin". He argued that the attitude expressed by the politicians was part of the problem with the enforcement of prostitution laws in Edmonton (Ibid). Nahireny was joined in his criticism by several other individuals and groups, including the mother of a murdered prostitute.

The controversy continued until Mayor Cavanagh and Alderman Binder agreed to meet with the murdered prostitute's mother and to apologize for for their remarks. Binder, however, tendered only a qualified apology and blamed the media for "blowing the whole thing out of proportion". Alderman Kozak refused to meet with the murdered prostitute's mother or to apologize. He argued that he had not made any such remarks, and that there

was no reason for him to apologize to anyone. Kozak's major point when he proposed the red light district was that the residents would never be completely happy unless the prostitutes were out of the city entirely (Ken Kozak). He indicated to this writer in a September, 1989 interview that local politicians were getting frustrated with the whole issue, and that it kept reappearing despite their many efforts to solve the problem. He stated that most of the complaints seemed to emanate from the middle class people who had recently moved into the prostitution areas, and that there had been fewer problems prior to the implementation of S. 195.1 (when there had been even less control). This observation is corroborated by the analysis done in the previous chapter, and reinforces Mary Burlie's earlier assertion that gentrification was a major factor in the development of street prostitution into a political issue in Edmonton.

In closing this discussion of the implementation of S. 195.1 in Edmonton, several important points need to be summarized. First, the Edmonton Police Service never made the enforcement of the new law a sustained priority and instead relied on "low-level harassment" techniques, supplemented by periodic crackdowns (Peter Royal). They had clearly adopted a "crisis management" approach, in which they responded to the issue only when public and political pressure made it necessary (Mike Allan). Similarly, it appeared that most local politicians either ignored the issue or attempted to deflect criticism from themselves when the issue could not be ignored. This conclusion was reiterated by almost all sources contacted in Edmonton, including members of Edmonton City Council who were interviewed by the writer. The class bias inherent in the police and political reactions to the issue should be noted, as both groups give

greater attention to middle class residential areas and the downtown business districts. The only exceptions to this class bias were the activities of the community control officers who were assigned to work in specific areas, and the lobbying efforts of Pam Barrett, the NDP MLA for the Boyle and McCauley areas.

Two further issues regarding the implementation of S. 195.1 in Edmonton are the degree of chauvinist bias which characterized the enforcement of the law and the degree to which prostitution became a feminist issue. While the Edmonton Police attempted to maintain good relationships with the prostitutes, it was obvious that a greater emphasis was placed on female prostitutes than on male customers. This bias was conceded by the Edmonton Police, who defended it on the grounds that it was more difficult and time consuming to successfully prosecute customers. In addition to the enforcement bias, there is little evidence to suggest that prostitution ever became a serious feminist issue during this period. In this respect, the only mainstream feminist organizations to take an interest in the issue were the Elizabeth Fry Society and the Alberta Status of Women Action Committee, and it must be stressed that their efforts did not include political activities on behalf of prostitutes. On the political scene, the only female politician seriously involved in the issue was Pam Barrett, and her position was more closely aligned with the interests of the Boyle Street residents than it was to any feminist philosophy[76]. While there were several female members of Council, only Alderperson Judy Bethel expressed support for the feminist position, and there is no indication that she ever actively lobbied on behalf of the rights of prostitutes.

The final issue involves the question of effectiveness. Despite all of the police efforts and events discussed in this section, it was obvious that S. 195.1 was never really effective at its intended purpose of controlling street prostitution. While the law did enable the police to gain somewhat greater control over the areas in which prostitution was prevalent, it quickly became clear that they could suppress it only by utilizing gargantuan amounts of resourses which would detract from other operations (Insp. Day; S/Sgt. Whitton). This deployment of resourses could be effected only for short periods of time, and many residents were already beginning to complain that the levels of prostitution and street nuisance were increasing again by September of 1989 (Ruth Gelderman). This conclusion was supported by information from Alderman Lance White, who noted that the number of citizen complaints he received was also increasing. Thus, in the final analysis, the effect of Bill C-49 in Edmonton was temporary at best, and in any event only allowed for a very limited control over street prostitution. The greatest success was achieved when the police concentrated on negotiating with the prostitutes instead of attempting to drive them off the street. It appeared to this analyst that Edmonton's problems with street prostitution were greater after S. 195.1 than they were in the immediate aftermath of the Hutt decision. While it is difficult to offer a firm explanation for this anomaly, it is likely that changes in the attitudes of the police and residents were largely responsible. It can certainly be concluded that tougher prostitution laws did not help the situation.

8.5 A COMPARATIVE ANALYSIS OF THE IMPLEMENTATION OF S. 195.1

The preceding sections of this Chapter conducted separate analyses of the manner in which S. 195.1 was implemented in the cities of Vancouver, Toronto, Winnipeg and Edmonton. The intent of this section is to provide a summary and comparison of the major factors which influenced the implementation of S. 195.1 in the four cities. This analysis will commence with a summary of the major similarities and differences which were identified in the enforcement approaches adopted in the four cities. Following this, a comparative analysis will be conducted of the political processes which influenced the implementation of the law. In this respect, particular emphasis will be placed on those factors which appear to hold significance for the more general theoretical analysis which will be conducted in the conclusion to this dissertation. Finally, this discussion will conclude with a brief discussion of several events which have occurred since the conclusion of this study, including the release of the evaluation report by the Ministry of Justice, and its impact on subsequent enforcement activities.

A significant point of similarity is that none of the cities adopted a consistent policy regarding the implementation of S. 195.1. While initial crackdowns were instituted in all cities immediately after the law was proclaimed, they were universally short in duration; and the police in the four cities frequently exhibited considerable ambivalence regarding the specific approaches which they applied to the implementation of the new law. Further, there is absolutely no evidence that the police and municipal governments in any of the cities ever attempted to articulate long term goals or to develop comprehensive strategies for the control of street

prostitution. Considering the amount of lobbying effort which the police and municipal politicians had expended to convince the federal government that they needed a tougher law to control street prostitution, this omission is nothing short of incredible. It suggests that these groups either lacked the ability to implement the law in a coherent fashion or else were beset by internal rivalries and conflicts which precluded the development of comprehensive strategies for controlling prostitution. In any event, police enforcement policies were generally made at relatively low levels in the police command structure, i.e. by Vice Squad and Team/Divisional commanders. (These points will be discussed further later in this section.)

Aside from the absence of comprehensive strategies for implementing S. 195.1, there are several additional areas of commonalty regarding the manner in which the law was implemented in the four cities. First, it appears that the police primarily regarded the law as a "crisis management tool" which they enforced sporadically. It was commonly used to "clean up the streets" prior to conventions and conferences. In addition, it was universally used for purposes other than the control of street prostitution, e.g. coercing information from prostitutes in return for immunity from police action. The net effect of these tactics was to "corrupt" the implementation of S. 195.1 to the extent that its effectiveness was severely compromised by police activities (as opposed to the inadequacies of the law itself). The police in all four cities attempted to deflect the blame for their inability to control street prostitution onto other agencies, primarily the courts and the federal government. The ultimate expression of the attempt to deflect the blame saw

the police begin to demand even tougher laws almost immediately after S. 195.1 was proclaimed.

The inadequacies outlined above were accentuated by the apparent willingness of local politicians in all cities to allow S. 195.1 to be implemented in accordance with short term political considerations. As a result, the police and politicians responded to public pressure based largely on the political clout of the groups demanding action. While this situation was most obvious in Vancouver, where an "at large" system of aldermanic representation reduced the political importance of certain lower class areas, it was a factor in all cities. This approach resulted in an uneven application of the law, which saw some areas benefit more from police activity than others. The most significant outcome of the succession of policies outlined above was a class bias in which street prostitution was "managed" so that it inconvenienced as few middle class residents and businesses as possible. In most cities, this involved displacing prostitutes into lower class areas and ignoring them as long as they remained there.

The similarities outlined above offer several important insights into the political and bureaucratic factors which guided the implementation of S. 195.1. There were several crucial differences which are essential to a complete analysis of the manner in which the law was implemented. Two of the most important differences involved the internal dynamics of the various police forces, and the different interactive approaches which the police forces assumed towards the local interest groups which were politically active on the street prostitution issue. With respect to the question of internal police dynamics, responsibility for the implementation

of the law was divided between plainclothes "Vice Squads" and uniformed "Patrol Divisions" in all four cities[77]. However, the specific division of responsibility varied among the four police forces, as did the degree of coordination which existed between the two types of units. For example, in Toronto there was an almost equal division of responsibility combined with a high degree of coordination. This contrasted with Vancouver, where the division of responsibility was poorly defined and there was an almost total lack of cooperation. While it is difficult to assess whether the higher degree of coordination in Toronto significantly increased the overall efficiency of the Toronto Police, there is little doubt that the lack of cooperation in Vancouver created antagonism among the various interest groups and limited the degree of compromise regarding the implementation of S. 195.1. C-49. (The only exception to this general statement occurred in the Strathcona area.) In the cases of Winnipeg and Edmonton, patrol personnel played largely ancillary roles, and thus the question of coordination was less important to the overall implementation of the law.

The internal police dynamics occurring in the police departments also affected the manner in which the respective police forces interacted with the interest groups affected by street prostitution. The greater coordination which existed in Toronto clearly allowed the Toronto Police to develop a consistent policy toward such groups, and contributed to their success in co-opting the local political activity to serve their own interests. On the other hand, while the Vancouver Police bureaucracy attempted to establish police liaison committees, their effectiveness was hampered by the refusal of the Vice Squad to participate. Another aspect of the police-citizen interaction in Vancouver involved the drastic difference

between the Strathcona and Mount Pleasant areas. Although this was due to differences between patrol Teams instead of between vice and patrol, it nevertheless resulted from a lack of coordination. The success of the approach taken in Strathcona was partly due to the fact that the Vice Squad largely ignored the area because of its lower class status. Considering the degree of success which Team 3 achieved in Strathcona, it can be argued that greater coordination among all units (both vice and patrol) might have extended this success to the Mount Pleasant and Richards Street areas as well.

The manner in which the police interacted with local interest groups was also an important factor in Winnipeg and Edmonton. In Winnipeg, the police attempted to maintain a cooperative attitude towards the various groups who were concerned about the issue of street prostitution, and this attitude certainly gained the approval of the residents of the "Hill". However, the police tendency to pay greater attention to the middle class Hill area drew criticism from the residents of Point Douglas, who were dissatisfied over the lack of activity in their area. This dissatisfaction limited the ability of the Winnipeg Police to control the extent to which street prostitution developed into a local political issue. While prostitution is not a political problem in the Hill area today, it sporadically reappears as an issue in Point Douglas. Since the levels of street prostitution are similar in both areas and the Hill is occupied by homosexual prostitutes, the lack of political activity on the Hill testifies to the importance of cooperating with local interest groups. A similar scenario developed in Edmonton, where the police generally liaised better with the business owners on the "stroll" than they did with the working class residents of

the Boyle Street area. In this case, the activities of the community constables mitigated the neglect of the vice officers, and the residents generally gave the Edmonton police a higher approval rating that was accorded in Winnipeg.

An additional factor involves the degree to which feminist involvement in the process affected the amount of chauvinist bias inherent in the enforcement of the law. In the former respect, there was evidence of increasing commitment by mainstream feminists in Toronto and Winnipeg. The most important examples of this commitment were the support accorded to POWER by Winnipeg feminists and the degree to which Toronto and National feminist groups aided CORP in their fight for intervener status at the Supreme Court of Canada hearings. This involvement was instrumental in helping prostitutes achieve greater respect from the police and other groups, particularly in Winnipeg where prostitutes had never had a very good relationship with the police. There was a much lower level of feminist support in Edmonton, despite the high degree of feminist involvement which had existed prior to the implementation of the law (see previous Chapter). Finally, the involvement of mainstream feminists in Vancouver was minimal. Indeed, many female politicians and other prominent feminists sided with the anti-prostitution forces. This factor was particularly surprising, given that civil libertarian groups and male lawyers had actively criticized the police for their failure to go after male customers.

In addition to the events outlined above, there are two more general factors which suggest that mainstream feminists had not adopted the rights of prostitutes as a full fledged feminist cause. Most of the feminist groups were primarily concerned with helping prostitutes leave the

business, and few actively supported the right of prostitutes to practice their trade without undue police interference. Further, there was an almost complete lack of serious support from female politicians, who either avoided the issue, took relatively neutral positions or sided with other interest groups. Significantly, many expressed private support for the rights of prostitutes but were reluctant to do so publicly. This contradiction is important because it suggests that female politicians felt they could only achieve power and influence if they avoided the more "radical" feminist causes. It is also indicative of the strong liberal-feminist bias inherent in Canadian feminist organizations. However, this aspect of the feminst involvement in the street prostitution issue will be dealt with more thoroughly in the conclusions.

The degree of chauvinist bias inherent in the implementation of S. 195.1 was less than had been anticipated at the beginning of this research. In particular, the Toronto Police concentrated on male customers almost from the outset and had a stated policy in which the customers were identified as the major problem. Both the Winnipeg and Edmonton police forces attempted to ensure that customers were routinely included in their enforcement efforts. However, it must be noted that this situation started to change during the latter part of the period under study. In addition, it was obvious that the Vancouver Police made little attempt to enforce the law in an unbiased fashion. Although both police and crown officials attempted to justify their failure to prosecute male customers by arguing that it was more complicated than pursuing prostitutes, they were unable to explain how other cities managed to do so. Further, their reluctance to resort to the harassment tactics being practiced in other cities suggests

that they were simply not interested in deterring customers, and that the "too complicated" argument was simply an excuse. Insofar as the feminist question is concerned, there appeared to be a slight concordance between the degree of feminist involvement and the amount of chauvinist bias which characterized the enforcement of the law.

In concluding this analysis of the implementation of S. 195.1 in Vancouver, Toronto, Winnipeg and Edmonton, one remaining scenario needs to be discussed. The Ministry of Justice released its evaluation report on S. 195.1 in late 1989, in which it concluded that the law was not working. Despite the fact that S. 195.1 had been judged ineffective at controlling street prostitution in all of the cities included in this study, there was little public outcry in any of them. Further, while the police made their customary call for even tougher laws, they continued their enforcement efforts even though these efforts were only marginally more effective than those carried out in the immediate aftermath of the Hutt decision. Even more surprisingly, street prostitution had virtually disappeared as a major media issue by the end of 1989. While it is possible that the "marginally greater effectiveness" of S. 195.1 had given the police just enough extra power to keep the situation under control, this explanation is too simplistic to account for the complexities of the street prostitution scenes in the four cities. Accordingly, other explanations must be considered to account for the situation.

There are several possible explanations which account for the sudden decline in street prostitution as political issue. First, there is the possibility that affected citizens had finally concluded that nothing could be done about the problem and had decided to either live with the situation

or move to another area. This was partially substantiated by the series of non-random interviews conducted as part of this study. Another possible reason for the lack of public furor over street prostitution is that the police in all four cities had adopted the tactic of continually "moving the prostitutes around", thereby ensuring that they did not occupy the same area for a prolonged length of time. Several senior police officers and crown officials noted that S. 195.1 was useful in this regard. More importantly, the police also ensured that they paid sufficient attention to areas occupied by middle class residents and businesses, who were much more likely to engage in political activity.

The tactics outlined above were likely sufficient to deflect most of the political activity over street prostitution. An additional factor which may help explain why the issue has remained relatively quiet involves the political activity of the police themselves. The police were one of the most important interest groups which lobbyed for S. 195.1. However, despite the apparent failure of the law as a mechanism for controlling street prostitution, police criticism has been relatively restrained. To explain this apparent anomaly, one must note that S. 195.1 did restore the status quo which had existed prior to the Hutt decision, in which the police had exercised considerable coercive power over prostitutes. Most senior police officials interviewed for this study admitted that this was an important factor in the implementation of the law. It is thus unlikely that Canadian police forces will ever mount the sort of political campaign against S. 195.1 that they did after the Hutt decision.

In the final analysis, the debate over the development and implementation of S. 195.1 can be summarized as a "successful" attempt by

two powerful classes of people to manipulate the practice of prostitution to their own advantage. Canadian police forces and the residents who have chosen to reoccupy the cores of major Canadian cities have achieved most of what they wanted out of the prostitution debate. While the Supreme Court of Canada decision upholding the constitutional validity of S. 195.1 was anti-climatic for most of the participants, it was nevertheless instrumental in protecting the interests of these two groups. The fact that other groups, including prostitutes and the residents of lower class areas, continue to experience the same problems that existed prior to the implementation of the law no longer seems important to the police, politicians, and the media. Considering the lack of comprehensive strategies for implementing S. 195.1 that were noted at the beginning of this section, one must question whether the police and other authorities had ever been sincere in their stated desire to control street prostitution in an unbiased manner.

There are several important caveats much be placed on this comparative analysis of the implementation of S. 195.1. While some of these limitations were identified in the methodology chapter, it is important that they be reiterated at this point. The first limitation of the analysis relates to the fact that the type of qualitative research used in this analysis did not permit the collection of standardized categories of information in all four cities. While attempts were made to overcome this weakness, it must be noted that this feature has limited the ability to compare the cities in all respects. Second, all of the people interviewed in this research represented particular "political" constituencies. While this analyst did not encounter any evidence of outright dishonesty, the

possibility that some information was colored by "political factors" cannot be discounted. Finally, the one major limitation of this analysis relates to the limited scope of the research. Only four Canadian cities were included in this study, and it is thus difficult to determine the degree to which the conclusions apply to other Canadian cities.

NOTES

[1] Once S. 195.1 was proclaimed into law on December 28, 1985, it became S. 195.1 of the Criminal Code of Canada. All future references will be to the Criminal Code section unless it is necessary to refer to the pre-implementation time period.

[2] Technically the Vice Squad was divided into the Vice Intelligence Unit and the Vice Enforcement Unit. However, everyone, including the members assigned to them simply referred to both units as the "Vice Squad".

[3] The "overbreadth doctrine is a feature of American jurisprudence which asserts that a law is unconstitutional if its wording is such that its scope exceeds the intent of the legislature.

[4] In some instances, the prostitutes adopted other strategies such as hitchhiking to avoid the probation order. This was a dangerous tactic since the girls were unable to screen their customers throughly. In fact, at least one prostitute, Donna Kiss, was murdered by a man who picked her up hitchhiking. Marie Arrington publically accused the police and courts of causing her death by forcing her off the streets and into a more risky type of environment.

[5] Unfortunately, Brian Smith failed to respond to several requests for an interview, so this issue could not be explored with him.

[6] For example, Phyllis Alfeld characterized it as "useless" and argued that it was simply a "political move" designed to placate the residents with a minimum of effort on the part of the police. On the other hand, Reverend W.G. Bayley of St. Michael's United Church on Broadway stated that he felt that the police were sincere in their efforts to deal with the residents' complaints.

[7] In a private interview conducted in May, 1989, Marie Arrington stated that most prostitutes viewed legalization (as opposed to decriminalization) as simply an attempt by the government to regulated and tax them.

[8] Interestingly enough, Inspector Harold Brittan, OIC of the Vice Squad, noted that the policy had previously extended to male customers, but had been discontinued in 1986 "on orders from superiors" (VS, Jan 15, 1987: A3).

[9] In a private interview in May, 1989, Insp. Keith asserted that S. 195.1 was better than no law, but just barely. In the interview, he reiterated the standard police position that the law would be effective if the courts would start handing out more severe sentences. At this point, it is worth noting that the Crown Prosecutors were routinely seeking jail sentences for second and subsequent offences as follows:

1st Offence -- Probation and Area Restrictions
2nd Offence -- 90 days in Jail
3rd Offence -- 6 months in Jail (Liz Wolfram)

Insp. Keith had little advice to offer when asked who would pay for the new jails which would be necessary if the Courts started acceding to the Crown requests.

[10] It must be noted that the residents in Mount Pleasant argued that they also attempted to talk to the prostitutes, there is some doubt as to the sincerity of there efforts. When leaving Phylis Alfeld's house after an interview, where he had been assured that the prostitutes were impossible to deal with, this writer witnessed a resident leave her home (across the street) and pass by a prostitute standing quietly on a corner. In passing, she muttered an unheard remark and spat in the direction of the prostitute. If this attitude characterized all of the attempted negotiations, it is understandable why they failed.

[11] Streetworkers are individuals, either social workers or ex-prostitutes, who are hired by social service agencies to work with prostitutes on the street. The provide counselling, medical advice and other services such as needle exchanges and free condoms. They usually have a good rapport with the street prostitutes and often mediate between the prostitutes and other groups.

[12] Ms. Micklewright confirmed in a 1989 interview that the problem was quickly solved and that she was satisfied with the subsequent police activity in Stathcona.

[13] This decision was unreported in the media and was subsequently overturned by the BCCA.

[14] This term refers to a situation where the information would not be used against the prostitute herself in other criminal proceedings.

[15] The County Court decision that a moving car was not a public place was overruled in May of 1989 (WFP, May 4, 1989: 11).

[16] For example, Pat Carney, Carole Walker and Stephanie Agg were all active in the Vancouver feminist movement.

[17] In fairness to some Vancouver area politicians, it must be noted that there were several important exceptions to this assertion. For example, Alderperson Libby Davies continued to work with affected residents and attempted to represent their interests at council (while also advocating the feminist position which saw prostitutes as victims). In addition, Margaret Mitchell, MP for the Mt Pleasant area, lobbied the Minister of Justice on behalf of her constituents (Letter - Margaret Mitchell to Ray Hnatyshyn, July 29, 1988). The efforts of Ms Mitchell were partially responsible for the evaluation of S. 195.1 being instituted earlier than planned.

[18] This assertion is based on a comparison of the statistics compiled by the Ministry of Justice evaluation of S. 195.1.

[19] This corridor is one of the major east/west routes through downtown Toronto and consists of one street which changes names as it crosses Yonge Street (Carleton on the east and College on the west). (Please refer to map in Appendix B for details.)

[20] It should be noted that there were two additional Toronto Police units which played roles in the control of prostitution. One of these, the Juvenile Task Force, concentrated on prosecuting pimps who were

exploiting young prostitutes, and on apprehending juvenile prostitutes under the Ontario child welfare legislation. In addition, the One District Task Force was created to investigate the growing problem of massage parlours and bawdy houses in the Queen Street West area. Neither of these units enforced the communicating law regularly, and they will be mentioned in this analysis only when their participation affected the operation of the other units.

[21] This task force was referred to as "Project Spinner" and was composed almost entirely of plainclothes officers from other specialized units.

[22] Supt. Getty made it clear that he considered it a waste to use highly trained plainclothes detectives for routine tasks which could be easily handled by by uniformed personnel.

[23] It should be noted that the term "Toronto Police" will be used to refer to both the Morality Bureau and Divisional staff. The specific reference will usually be clear from the context, and the specific component of the Toronto Police will be clearly identified in cases where it is important.

[24] In an interview conducted in July of 1989, S/Insp. James Clark, the current OIC of the Morality Bureau, reiterated this policy and stated that his priorities were customers and pimps.

[25] The term "flakeheads" was used to refer to part time prostitutes (often housewives who needed extra cash) and transients, who were viewed as extra competition and were particularly unwelcome because they charged less and did not fit into the regular prostitution sub-culture.

[26] Other sources indicated that many street prostitutes had also either moved off the main tracks or into massage parlours. However, this aspect of the implementation process will be dealt with later in this section.

[27] If the former qualification was breached, the person doing the soliciting on behalf of the prostitutes could be charged with "living on the avails" of prostitution. If the same location was used more than once, common bawdy house charges could be laid.

[28] An alternate explanation for this return is that the former street prostitutes were not really able to compete with the established escort agencies since the traditional callgirl customers were accustomed to a "higher class" of prostitute. In addition, it is likely that the formers streetwalkers' customers never followed them in large enough numbers.

[29] A Toronto Morality Sgt. informed this writer that the police had quickly adapted to this tactic and would sometimes charge the prostitute with counselling an indecent act.

[30] In fact, this may have at least partially accounted for the earlier "success" with the implementation of the new law. In this respect, J. F. Lockett, Principal of Our Lady of Lourdes Catholic School,

complained to Mayor Eggleton that the number of prostitutes working in his area had increased steadily since S. 195.1 was implemented (Letter - J.F. Lockett to Mayor Eggleton, Jun. 6, 1986).

[31] It should be noted that there is some disagreement over this practice. The Toronto police considered this tactic very effective, and took credit for its inception. However, some of the business owners argued that they suggested it to the police and even did most of the "legwork" collecting the letters of consent.

[32] One concrete step that was taken involved installing "no stopping" signs along the affected areas of Lakeshore Boulevard (City of Etobicoke - Internal Memo - Director of Transportation to Public Works Department, Sept 5, 1986). However, it appears that no effort was ever made to enforce the no stopping bylaw on a consistent basis, and by 1989 it had apparently fallen into disuse (Sharon Moyer).

[33] This practice was confirmed by S/Insp. Jim Clark, current Head of the Morality Bureau.

[34] For example, prostitutes would often follow a practice of openly noting the licence numbers of the cars in which their friends left on dates. This practice declined with the increased police action. In addition, Ms Scott informed this writer in June of 1989 that the police had started putting female officers out on the strolls to infiltrate the prostitutes' subculture. Instead of attempting to arrest customers, these women would attempt to become friends with the prostitutes in order to gain information and to spread disruptive rumors. The net result, according to Ms Scott, was a drastic drop in cooperation among the prostitutes.

[35] Interestingly, the Crown declined to appeal these rulings, preferring instead to allow her to continue to acquit individual prostitutes. In fact, this tactic may have been the logical option since her decisions were not binding on other judges. In addition, Peter Maloney informed this writer that it was difficult for defense lawyers to find clients who were willing to undergo the expense and publicity of an appeal. Thus, the first appeal was not launched until well into 1987, and will be discussed in the next sub-section.

[36] Because prostitution was a summary offence, alleged offenders could only be detained overnight if one of four criteria were met: 1) they had previously failed to appear for trial; 2) their identity was in question; 3) there was a possibility that they would continue to commit the offence if released; or 4) they might destroy evidence if released. While most prostitutes met one or more of these criteria, most customers did not and had to be released on an appearance notice (S/Insp. Clark).

[37] For example, a school principal described how he had to carry out condom patrols every morning before the students arrived, while personnel at Wellesly Hospital complained about prostitutes soliciting business inside the hospital (TS, Mar. 28, 1987: A8). Further, Dennis Magill and Barry Smith both informed this writer that by this point the harassment was not limited to pimps and customers, and that the

prostitutes themselves had also become much more aggressive.

[38] It should be noted that this practice was not condoned by the Crown Counsel's office. Paul Culver, District Crown Attorney for Toronto provincial courts, stated that this practice was definitely not offical policy and that he would have refused any police request for Crown cooperation in manipulating the bail process. However, he conceded that it was possible on weekends since the Crown Attornies were not usually involved in bail applications outside of normal court sessions. He further stated that he had refused an earlier police request that the Crown routinely seek area restrictions for prostitutes convicted of soliciting (Paul Culver).

[39] She had originally ruled in June of 1986 that S. 195.1 contravened the section 2b guarantee of freedom of expression but invited affected groups to make submissions as to whether the restriction was a "reasonable" one. After hearing submissions on the nuisance associated with street prostitution, she reluctantly concluded that the law was a "reasonable" limitation on basic freedoms under section 1.

[40] It should be noted that the normal route for appealing summary conviction offences would be to the District Courts and from there to the Ontario Court of Appeal. However, because the affected parties had agreed that the Smith case would be used as test case (largely because it involved contradictory Charter rulings involving the same defendant), the appeal was heard in the Supreme Court. All other appeals were put on hold until the case was resolved, including a defense appeal of a District Court decision already before the Ontario Court of Appeal (G & M, Dec. 18, 1987: A21).

[41] This conclusion is based on the fact that an earlier Mar, 1987 media report had suggested that the numbers of street prostitutes were only 30% of their previous levels. Thus, it appeared that the increase had occurred in 1987.

[42] In an interview conducted in June of 1989, S/Insp Clark stated that his position was misrepresented somewhat by the media and that he was not opposed to tougher laws to deal with street prostitution. However, he reiterated his belief that prostitution was a social problem and that tougher laws would not work unless social cures were implemented as well (S/Insp Clark).

[43] The following incident can be used to illustrate the tenacity displayed by some potential customers in pursuing their objectives. A Toronto Morality Bureau officer described an incident in which a potential customer parked his car in a convenience store parking lot immediately beside several marked and unmarked police cars. He then "shouldered his way through a group of police officers and propositioned an plainclothes female officer". He was arrested and released on an appearance notice. Without wasting any time, he climbed back into his car and drove a few blocks away, where he successfully negotiated with a "legitimate" prostitute and drove off.

[44] This position was also expressed by Mr. Kaplan in a 1989 interview with writer.

[45] This appeal was heard in early December and involved cases from Halifax, Winnipeg and Edmonton. For this reason, further discussion of the Supreme Court of Canada appeal will be deferred until after these cities have been discussed.

[46] As an example of the type of rings which were being uncovered, the Toronto media described a prostitution "family" which consisted of several pimps working together to recruit runaway girls into prostitution. The prostitutes were housed in a rundown hotel on the outskirts of Toronto and driven into the city each day and returned to the hotel after the day was over. Despite the fact that most of the girls were underage and the pimps were reported to have used violence and drugs, there was little media attention beyond one article in each of the Toronto papers (G & M, Apr. 8, 1989: A16).

[47] This conclusion is based on an examination of media coverage of police sweeps during the period in question. During 1989, the media only mentioned sweeps in conjunction with some other event such as a major convention. Since the media had previously covered sweeps which were not conducted as a prelude to a special event, it can be tentatively concluded that in 1989 the police only conducted sweeps when it was "necessary".

[48] These sweeps were not unexpected, as several prostitutes informed this writer a few days before they were carried out that a major sweep was likely because of the upcoming convention.

[49] S/Sgt Shail informed this writer that it was common for convention goers to pick up prostitutes on the street and take them to the hospitality suites where they were allowed to solicit business. Since the suites were not considered public places, they were doing nothing illegal as long as they only went to a given room once.

[50] Interestingly enough, a few minutes later the S/Sgt in charge of the sweep politely but firmly indicated that this writer should "wrap up" his observations, as he was getting too busy to supervise him. One can only wonder if he really meant that he was too busy to supervise his men to ensure that they did not divulge too much information.

[51] An analysis of the minutes of several of these meetings indicates that the same issues were rehashed at most meetings and that little was developed in the way of substantive strategies for controlling street prostitution. Indeed, it appeared that their primary purpose was to provide a forum for disgruntled residents to complain long and bitterly about their problems.

[52] This included residents group representatives and people selected from the telephone book for a short non-random survey.

[53] This discrepancy between the views of the police and the motel owners over the success of Project Spinner was documented in a series of letters and internal memos between the various interest groups and the Toronto Police and Etobicoke Council. These documents are in the possession of the writer and can be made available for interested researchers to peruse.

[54] The male prostitutes working the "hill" were all of the "fag hustler" variety, as the male "hookers" operated on the other strolls with the female prostitutes. Please refer to Endnote 1 in Chapter 6 for a further definition of these terms.

[55] Indeed, this is true even today, as male prostitutes operating in the Hill area have indicated that the police regularly operate in the area. In fact, one informant stated that some some undercover officers are even willing to "go for a free grope" when invited to do so. (It will be remembered that this is a tactic used by straight prostitutes to try and identify possible police officers.)

[56] This was also confirmed by Debbie Reynolds of POWER.

[57] These figures are based on a survey conducted by Brandon University's Political Science department. It should be noted that they were questioned by Professor Greg Mason of ISER, who argued that the sample size used by the BU study was too small to ensure accurate results (WFP, Feb 16, 1986: 1).

[58] In this respect, it should be noted that the area contained a large percentage of gay residents who were equally bothered by the noise; however, the residents' spokespersons were not gay. In any event, Harold Taylor, as a politician, was likely sensitive to the votes represented by the gay residents, and thus went out of his way to appear unbiased.

[59] There is another issue involved here. In conducting interviews with gay community representatives, this writer repeatedly encountered hostility towards bi-sexuals as being "closet Queen's" who had refused to make a commitment to the gay "cause". Thus, in expressing this particular opinion, Mr. Vogel was likely also implying that since the customers were bi-sexual men who were frequently exploiting young gay males, the police tactics were not really a "gay" issue.

[60] This represents an interesting piece of legal logic. The Crown was perfectly free to ignore Kopstein's decision, and since it was not binding on other courts, could continue to enforce S. 195.1 (as was initially done in Ontario). However, once they decided to appeal the decision, they were acknowledging its legal significance and were ethically bound to respect it until it was overturned by the courts.

[61] In a recent interview, Debbie Reynolds of POWER stated that while some officers may have held this view, most were seizing the condoms purely as a form of harassment. She further noted that some officers were laughing and joking amongst themselves as they made the seizures.

[62] The provincial government was elated with this ruling in particular, since it seemed to indicate that economic rights were not protected by the Charter. This would widen the government's power to regulate and/or restrain all occupations and activities, even if legal (WFP, Sept. 25, 1987: 3).

[63] In a private interview conducted in late 1989, Jeff Gindin indicated that he had convinced the province to pay for legal costs by arguing

that if the defence had not agreed to the reference appeal which bypassed the Manitoba Supreme Court, the defence might have won at the Supreme Court level. In any event, the defence would still have had a further level of appeal remaining in Manitoba. Apparently, the chances of winning an actual appeal are much better than in a constitutional reference.

[64] In some respects, it is difficult to assess the truth of the allegations discussed above. Certainly, the police were correct when they argued that there were no specific complaints laid by specific prostitutes. This undoubtedly made it difficult for the police to proceed with charges against the officer. However, allegations that the police regularly solicit free sexual favors from prostitutes are commonly heard from many different sources. In this respect, a POWER volunteer graphically described several incidents in a presentation to a criminology class at Red River Community College. As well, a correctional officer who socializes with many police officers has indicated that police officers discuss the topic openly, and that it appears to be a common practice.

[65] For example, a recent visit to the area on a Saturday evening disclosed sporadic traffic through the major lane, with several minutes elapsing between cars in some instances. Previously, the traffic through the access road behind the Legislature had been virtually non-stop, to the point of congestion and "line-ups" for the prostitutes.

[66] Ms Wasylycia-Leis noted in an 1989 interview that prostitution rarely became an issue at the provincial level, but that she could not recall any female politicians ever becoming involved in the issue.

[67] Decore also expressed his support for the recommendations of the Fraser Committee with respect to bawdy houses, and argued publicly that they should have been incorporated into the new law (Ibid). Interestingly enough, despite the fact that these statements made Decore the first mayor of a major Canadian city to publicly support the Fraser Committee position, there was little debate in Edmonton and no mention of his position in the national media.

[68] S/Sgt. Whitton confirmed that most Edmonton police were quite ambivalent about prostitution and developed friendly relationships with many prostitutes which served to provide the police with intelligence on the criminal subculture. Since prostitutes were largely immune from prosecution in the post Hutt era, this relationship was not based on the type of coercive tactics employed by the Toronto Police after S. 195.1 was proclaimed. (It is possible that the Edmonton Police also resorted to such coercive tactics after S. 195.1 was proclaimed, but this issue was not discussed with S/Sgt. Whitton.)

[69] It is important to note that the Edmonton media had always been more restrained regarding prostitution than the media in the other cities (particularly Vancouver and Toronto). Thus, it is possible that the apparent difference in activity is simply a function of differences in media coverage.

[70] Some informants argued that the adult prostitutes also played a role in pushing the juvenile prostitutes into less public areas because they attracted too much police attention (Karen Dandermueller). This point will be discussed in greater detail later in this section.

[71] Despite the apparent hostility indicated in these media reports, Peter Royal, Duckett's co-counsel, indicated that the Alberta Court of Appeal was actually seriously divided on the issue.

[72] It should be noted that some informants argued that there was an additional factor involved in this situation. Karen Dandemuellar, spokesperson for the McCauley Community League, stated that it was mainly young prostitutes who moved into the McCauley area, and for reasons largely unrelated to the immediate police crackdown on the drag. According to Ms Dandemueller, these young prostitutes migrated into the McCauley area to avoid police attention from the Juvenile Division, and because of pressure from adult prostitutes who did not want them working on the drag because they attracted too much police attention.

[73] The prostitutes had to be careful in shifting the blame onto the customers. While they resented being the focus of police and public attention when they knew that the customers were responsible for most of the nuisance problems, they also realized that if the police cracked down too much on the customers, they would be without business.

[74] This assertion was at least partially borne out by the fact that the spokesperson for one of the residents groups admitted to being recent residents of the area.

[75] For example, the Edmonton Police began stopping cars who were cruising the red light areas. In addition to conducting routine traffic checks, the drivers were "placed on warning" that their activity in the area were being monitored by the police (S/Sgt Whitton).

[76] In fairness to Ms Barrett, it should be noted that she did express support for the feminist position regarding prostitution in an interview conducted in September of 1989.

[77] Since these two types of units went under different names in the various police forces, these generic designations will be used throughout this section.

Chapter 9

CONCLUSIONS

The discussion in this concluding chapter has two objectives. First, it is intended to conduct a detailed theoretical analysis of the development of Bill C-49 and its subsequent implementation as S. 195.1 of the Canadian Criminal Code. This will be conducted by means of a point by point assessment of the theoretical propositions developed in Chapter V, with the final proposition being expanded into a general theoretical summary of the feminist and class issues identified in the development and implementation processes. The analysis of Bill C-49 will be followed by a more general empirical and theoretical summary of the major findings contained in both Parts of this dissertation. This summary will concentrate on analyzing the degree to which Bill C-49 can be explained by the traditional theories outlined in Chapter 1, as well as expanding the feminist observations noted throughout this dissertation. In addition, an attempt will be made to identify any limitations of the research conducted in this dissertation, and possible avenues for future research will be suggested.

9.1 AN ASSESSMENT OF THE THEORETICAL PROPOSITIONS

This discussion will be broken down into separate considerations of each of the five propositions articulated in Chapter 5. For the sake of convenience, each proposition will be reprinted immediately preceding its discussion.

> (1) The development of Bill C-49 will reflect the need to resolve conflicts arising from disagreements among different groups and/or from the perceived inadequacies of existing laws. However, while attempts may be made to follow a rational approach to prostitution control, the process will still be dominated by political considerations.

The analysis conducted in Chapter 6 certainly confirms that the major impetus behind the development of Bill C-49 was the need to resolve conflicts resulting from the perceived inadequacy of the existing prostitution laws. This conflict became most acute when residents and business owners began to complain about the street prostitution problem which developed after the 1978 Hutt decision. While many groups argued that this decision had weakened the power of the police to control street prostitution, the analysis in Chapter 6 revealed that other factors were more important. In this respect, most of the conflict was traced to the gentrification of existing prostitution strolls. These areas had previously engendered few problems and the conflict only arose when the new middle class residents attempted to rid their areas of street prostitution. While many groups were involved in the issue, the official reaction to the conflict definitely favored business interests and middle class residents. This was true in all cities, but was most pronounced in Vancouver where the situation was exacerbated by the earlier police closure of several prominent nightclubs which had catered to prostitutes and their clients. This forced many prostitutes onto the streets where they created problems for residents and businesses.

Two additional points are relevant regarding the conflict over street prostitution. Despite the attempts by the police and other groups to blame the Hutt decision for the situation, most of the conflict was unrelated to

this decision as it either had existed prior to it, or only appeared much later in conjunction with the previously noted gentrification. In any event, the police likely had sufficient power to control street prostitution even after the Hutt decision, and their apparent "inability" to deal with the situation was a conscious tactic aimed at instigating the development of tougher laws. In this respect, it was noted in Chapter 6 that Canadian police forces had always disliked the anti-soliciting law and saw the conflict over street prostitution as an opportunity to lobby for tougher laws overall. A second factor regarding the conflict over the street prostitution involved the relative lack of feminist involvement in the interest group politics which resulted. However, this issue will be dealt with more thoroughly in the discussion of the remaining propositions.

With respect to the second part of this proposition, the development of Bill C-49 was clearly an exercise in political maneuvering aimed at avoiding political responsibility for the street prostitution problem. This was evidenced by the manner in which the local politicians attempted to deflect the blame onto the federal and provincial governments. Further, the reactions of the provincial and federal levels of government exhibited a desire to avoid the issue if possible and to engage in stalling and appeasement tactics when the issue could not be avoided. In this respect, the establishment of the Fraser Committee by the Liberals was likely intended to appease liberal groups while stalling for more acceptable recommendations. (See the discussion of proposition two for more details.) While this Committee was a rational attempt to deal with the problem, its recommendations were ignored by the Conservatives who had their own much more conservative constituencies to appease. Thus, while the first

proposition appears to have been validated in this study, the development of Bill C-49 deviated so drastically from a rational attempt to resolve conflicts that the integrity of the political process is suspect. This factor will be discussed further later in this section.

> (2) Bill C-49 will reflect the ideological perspective being advocated by the particular combination of governmental and non-governmental elites which are dominant during its development. While there may be women represented among these elites, they will generally adopt the views of their own particular elite groups and will not advocate a uniquely feminist approach.

There are several factors which support the contention that the content of Bill C-49 reflected the ideological perspectives of the elites which dominated its development. The most obvious of these involved the role of the Fraser Committee. It was noted in Chapter 6 that the Liberal Justice Minister, Mark MacGuigan, established the Fraser Committee largely because he was unhappy with the (conservative) recommendations of the Standing Committee on Justice and Legal Affairs. The membership of the Fraser Committee was heavily biased towards the liberal-democratic and liberal-feminist ideology favored by the Trudeau Liberals. This bias was counteracted by the fact that most of the local political activity was dominated by business owners and middle class residents who espoused a conservative anti-prostitution perspective. (Although Toronto and Edmonton were partial exceptions in this regard.) In addition to influencing local political agendas, these local elites ultimately won out overall when the Conservatives defeated the Liberals in 1985. The Conservative Justice Minister quickly disregarded the Fraser Committee's relatively liberal recommendations and introduced Bill C-49 which contained a much more conservative approach to the control of street prostitution.

Another ideological factor which was relevant to the development of Bill C-49 involved the roles played by feminist groups and female politicians. As was noted in the discussion of the first proposition, relatively few feminist groups were involved in the debate over street prostitution. While this fact alone suggests that mainstream feminists were reluctant to adopt prostitution as a feminist cause, an even more important issue is the number of female politicians who were firmly in the anti-prostitution camp. It is significant that many of these politicians represented middle class wards or ridings containing prostitution strolls. While some of these politicians nominally espoused the feminist position on prostitution, they clearly felt obligated to support the residents and business owners above any feminist principles to which they were committed. This was also true of several female lobbyists who were otherwise committed to the feminist cause. Thus, in light of the above discussion, the evidence cited in Chapter 6 appears to confirm both the ideological and feminist issues contained in the second proposition.

> (3) The implementation of S. 195.1 will be directed primarily at those groups who threaten the interests of the economic elites, while other groups will be relatively ignored by the enforcement apparatus. This will lead to numerous inequities with respect to the implementation of the law.

There is considerable evidence to suggest that S. 195.1 was directed primarily at groups which threatened the interests of economic elites. This was certainly evident in the manner in which Canadian police forces used the law as crisis management tool to clear the streets prior to important conferences and conventions. The tactic undoubtedly benefited the the hotel industry, and the hypocrisy of the police activity is borne out

by their tendency to ignore prostitutes operating in hotels at the behest of hotel guests. Additional evidence for this proposition is demonstrated by the implementation of S. 195.1 in Winnipeg and Edmonton. In this respect, Winnipeg City Council actually considered dispersing the prostitutes outside of the core area when several Albert Street nightclub owners complained. This contrasted sharply with their previous neglect of the area and their reluctance to take action on the complaints of Point Douglas residents. A similar situation was evident in the way the Edmonton police concentrated on the downtown stroll area after several business owners complained. They failed to give the same attention to the lower class drag area, and the residents of the Boyle and McCauley areas remained unhappy with police activity throughout most of the time covered by this study.

The influence of the economic elites was also evident in Vancouver and Toronto. In Vancouver, this influence was evident prior to the Hutt decision when the hotel owners were able to successfully lobby police and local politicians for a quick solution to their prostitution problem. (Because this situation will be discussed with respect to the final proposition, it will not be discussed in detail here.) The situation was somewhat different in Toronto, where the handling of the street prostitution problem along Lakeshore Boulevard provides one of the best examples of how the implementation of S. 195.1 served the interests of economic elites. The analysis in Chapter 7 suggested that Etobicoke politicians manipulated the enforcement process to encourage existing motel owners to sell their properties to large corporations. The apparent motivation for this tactic involved the wishes of Etobicoke City Council

and certain corporate developers to establish an expensive tourist resort along Lake Ontario. This factor not only serves to illustrate the inequities which characterized the implementation of the law in Toronto, but also serves to illustrate the degree of corporate influence over criminal justice. (This factor also will be discussed in more detail when the final proposition is discussed.)

> (4) Bill C-49 will be relatively ineffective at reducing the overall numbers of prostitutes, however, it may be effective in giving police more power to "manage" the more unpleasant aspects of street prostitution. It will also likely lead to more unethical police practices and other undesirable side effects.

The one major point of agreement which emerged among all parties involved in the implementation of S. 195.1 was the fact that the law exerted a minimal impact on the numbers of prostitutes operating in the four cities. Although the law had initially appeared to deter prostitutes and their customers, the deterrent effect quickly wore off as the parties developed tactics to counteract the law. There were only two major areas in which S. 195.1 demonstrated any significant level of effectiveness. The first was illustrated by the decision of the Toronto police to concentrate on customers. This tactic worked simply because the middle class customers did not wish to risk seeing their names reported in the media. The decrease in available customers forced many street prostitutes to move into escort agencies. While this created conflict with the established escort agencies, it was viewed as a partial success by the police and other groups. This situation contrasted sharply with the complete lack of success experienced by Vancouver police who concentrated on prostitutes. However, it should be noted that Toronto prostitutes returned to the street once the Toronto

police abandoned the practice and the customers returned. This would appear to indicate that targeting customers was the key to successful prostitution control and that a crackdown on prostitutes would be less successful. This point will be discussed further in the next section.

The second area in which S. 195.1 appeared effective involved the ability of police forces to selectively control the demographics of street prostitution. In this respect, the tough provisions contained in the new law allowed police to crack down on specific areas for short periods of time. This gave police more "negotiating" power to force prostitutes out of specific areas when public outcry increased to unacceptable levels. This approach only worked because police rarely attempted to crack down for extended periods of time and were willing to negotiate with prostitutes over the issue. In addition, the practice was effective only if police tacitly allowed prostitutes to work unmolested in non-targeted areas. Towards the end of the period covered by this study, the Toronto and Vancouver police used this tactic to constantly move the heaviest concentrations of prostitutes around to prevent public outcry from building up. Indeed, this issue was cited by some police officers as evidence that S. 195.1 was a "success".

In addition to its general ineffectiveness, S. 195.1 contributed to the development of several undesirable side effects. The most widespread such side effect was the fact that the new law gave police more power over individual prostitutes and thus allowed police to coerce prostitutes into becoming police informers in return for relative immunity from police harassment. It must be noted that the police themselves would not consider this side effect undesirable. It will be remembered that Canadian police

had been unhappy with the 1972 anti-soliciting provisions precisely because it deprived them of much of their power to harass prostitutes. Thus, the return of this power by the communicating provisions would likely also be considered a "success" by police. Despite this, however, the practice of coercing prostitutes into becoming police informers, possibly at personal risk, must be cited as an example of unethical conduct on the part of the police.

There are several potentially more serious side effects associated with the implementation of S. 195.1. In this respect, considerable media attention was paid to an apparent increase in violence against prostitutes after 1986. The most visible manifestation of this problem involved a surge in unsolved assaults and murders in Vancouver. However, prostitutes in all cities mentioned that there appeared to be an increase in "bad tricks" since the legislation was implemented. While it is difficult to conclusively verify "anecdotal" evidence such as this, similar accounts were offered by lawyers who noted that the number of clients complaining of bad tricks had appeared to increase. Unfortunately, an attempt to check this issue through police sources has been unsuccessful since most police departments do not always record the occupation of assault victims.

The two remaining side effects stemming from S. 195.1 have been documented by police forces themselves as part of their ongoing assessment of the law. One of the most widely noted effects of the law was the sudden increase in the involvement of pimps in the trade. This was most noticeable in Toronto where police activity drove prostitutes into escort agencies. Prostitutes, police and social workers conceded that the situation made it easier for pimps to exploit prostitutes, and the Toronto police admitted

that it was difficult to control since the activity occurred off the street. A similar situation evolved in Vancouver, where a series of media articles detailing the extent of pimp control over the prostitution trade forced the police to finally concentrate on the problem. Although there was less evidence of pimp involvement in the other cities, prostitutes in all cities suggested that there was increased pimp involvement, particularly with juveniles. In a related development, at least one police force noted that there appeared to be an increase in organized crime involvement after 1986.

> (5) The overall development of Bill C-49 and implementation of S. 195.1 will reflect a class bias which will cut across gender lines. While the elites may attempt to make it appear that the process is operating fairly, feminist and other non-elite groups will rarely be able to influence the process to any significant degree.

This proposition is intended as a theoretical summary of the class and feminist dimensions contained in the preceding propositions. Thus, the analysis will be expanded beyond the specific points discussed above to encompass several broader theoretical issues. With respect to the class dimension, this will include an assessment of both the pluralist and elitist theories of political decision making. In the case of the feminist dimension, both the liberal and radical varieties of feminist theory will be discussed. In order to further expand the scope of this proposition, an attempt will be made to relate the discussion to the analysis conducted in Part I whenever possible.

There are several major issues which are important in a theoretical application of the pluralist-elitist dichotomy to the development and

implementation of Bill C-49. The first issue which appeared after the Hutt decision involved the relative ability of various groups to influence local and federal politicians regarding street prostitution. In this respect, the political actors attempted to create the impression that the process was operating fairly, and local politicians in all cities ostensibly encouraged input from all affected individuals and groups. Despite this apparent openness, it was clear that the most successful groups were dominated by middle class males (usually lawyers and other professionals). This conclusion appeared to hold true even when other factors, e.g. degree of organization and specific tactics, were taken into account.

A related factor which supports the contention that a class bias characterized the street prostitution issue stems from the fact that the police and politicians definitely placed greater importance on middle class areas when reacting to prostitution-related complaints. This was true of all cities but was most apparent in Vancouver and Toronto. In Toronto, the police were more responsive to the concerns of the residents of the downtown stroll areas. Since the residents of these strolls were primarily middle class professionals adept at organizing and lobbying on their own behalf, the police were unable to ignore them. Similar evidence was uncovered in Vancouver where police and politicians attempted to ignore the entire street prostitution issue once it was displaced into working class areas. Although the Vancouver police did cooperate with residents in the Strathcona area, this was primarily intended to ensure that the prostitutes remained in the area and did not migrate to other (higher class) areas. This led to a situation in which prostitutes were allowed to remain in the Mount Pleasant, Strathcona and Richards Streets areas, while police

employed tactics designed to minimize conflict with residents and business owners. In this respect, it is important to reiterate an assertion made in the comparative analysis conducted in the previous chapter. While S. 195.1 was generally ineffective in controlling street prostitution, it did grant the police greater powers to keep prostitutes out of middle class areas. Once this was accomplished, prostitution ceased to constitute an important political issue.

The final issue which is important to this discussion is the involvement of large corporations in the street prostitution issue. This involvement appeared in Vancouver even before the Hutt decision, when hotel owners and other business interests successfully lobbied Vancouver police and City Council for a quick solution to the prostitution problems created by the closure of the Penthouse Cabaret. While the influence of large corporations was evident in all cities during the implementation of S.195.1, it was most apparent in Toronto because large corporations were interested in the future development of the Etobicoke stroll. In this case, there was significant evidence (albeit circumstantial) to indicate that corporate interests were able to dominate the issue to the almost complete exclusion of other groups. However, this was the only instance in which corporate interests were able to dominate the political process so completely. Further, they were unable to completely control the political process as the Morality Bureau remained relatively independent of their influence. Thus, while economic elites were generally very influential in the development and implementation of Bill C-49, they were unable to control the political agenda to the extent envisioned by the elitist perspective discussed earlier in this dissertation. Other groups, including the police,

were able to influence the political process, and thus the liberal-conflict (i.e. liberal-pluralist) model appears to fit the data to a greater extent than the radical-conflict (i.e elitist) model.

Several major points are relevant to the feminist dimension analyzed in this dissertation. The first such point involves the nature and degree of involvement by women and women's organizations in the entire street prostitution issue. In this respect, women were actively involved in the political activity following the Hutt decision, and some women even played influential roles in the development of Bill C-49. However, many of these women sided with the residents and business owners, and there was evidence of a significant degree of cooperation between these women and the male dominated elites to which they belonged. This was particularly true in Vancouver, where local political elites actively solicited the support of female politicians and other women's groups as a means of lending credibility to their anti-prostitution rhetoric. While there were isolated instances of feminist support for the rights of prostitutes, this support generally emanated from lower class women and other "marginalized" groups such as the Vancouver Lesbian Connection[1].

The above scenario also characterized the implementation of S. 195.1 in most respects. While there was some evidence of increased feminist support in Toronto and Winnipeg, the level of feminist involvement remained minimal in Vancouver and actually declined in Edmonton. It must also be noted that most of the feminist involvement which did occur was concerned with ensuring the equal treatment of female prostitutes and male customers by the police, and with providing ameliorative services aimed at helping prostitutes leave the profession. There was almost no feminist support for

the right of prostitutes to earn a living and few mainstream feminist organizations advocated the decriminalization of prostitution. This narrow approach was frequently viewed as patronizing by prostitutes and led to resentment and hostility between feminist groups and prostitutes' organizations in Vancouver and Toronto.

The issue discussed above is extremely important to the distinction between the liberal and radical varieties of feminist theory. Throughout this study, feminist involvement in the street prostitution issue was largely limited to such issues as the equal treatment of males and females and assisting prostitutes leave the trade. While these issues are important, they represent only one strand of feminist analysis: namely the liberal-feminist objective of equality before the law. In a typical liberal-feminist fashion, the feminist groups involved in the prostitution debate attempted to utilize the existing legal and political institutions to achieve these goals. The analysis in this dissertation has indicated that this strategy was relatively successful as long as they distanced themselves from the more radical goal of decriminalization. In this respect, the feminists were able to use many of the same tactics as males to achieve political power, i.e. organizing into groups and lobbying the appropriate officials. The major problem with this liberal-feminist approach is that it fails to question the validity of the socio-legal system which defines prostitution as an illegitimate activity subject to state intervention. In this respect, more radical feminists argue that the street prostitution issue is more complex than equal treatment before the law, and cannot be separated from the more general position of women in society. This issue will become the major focus of discussion in the next

section, where it will be discussed within the context of the entire history of prostitution.

9.2 AN EMPIRICAL AND THEORETICAL SUMMARY OF PROSTITUTION CONTROL

The discussion and analysis in this dissertation has attempted to conduct a theoretical analysis of prostitution control in western societies. While the analysis in Part I encompassed the historical evolution of prostitution within a broad theoretical framework, the major focus in Part II was on the political factors which characterized the development and implementation of Bill C-49. As was noted in the previous section, this analysis concentrated on identifying the interest groups involved the process. The objective of this section is to link the pluralist analysis in Part II with the more general history of prostitution discussed in Part I. It is intended to elaborate on the inadequacies of the rational-functionalist, liberal-conflict and radical-conflict theories as complete explanations for prostitution control, particularly as it relates to the feminist dimension. This analysis will extend the discussion of these theories conducted in Chapter 5, and will explore ways in which a more radical feminist analysis can better explain past patterns of prostitution control and offer insights into how prostitution might best be controlled in the future.

There are several points which can be made about the rational-functionalist approach to prostitution control. First, it was noted in Chapter 5 that there was no clearcut consensus regarding the the many different issues which appeared in the historical debate over prostitution. This was even more true of the development and implementation

of Bill C-49. In this latter respect, many different positions were espoused, even amongst the groups who were opposed to the existence of street prostitution. Second, although there were some attempts to engage in a "rational" investigation of the street prostitution problem, these attempts had little effect on the actual content of the law. This was evidenced by the manner in which the recommendations of the Fraser Committee were ignored when Bill C-49 was drafted. Finally, the rational-functionalist assertion that prostitution control would be carried out in a fair and open fashion was clearly not evidenced by the manner in which the enforcement policies were manipulated to serve the interests of business groups and upper middle class residents at the expense of lower class groups and female prostitutes.

There is somewhat more support for a liberal-conflict analysis of Bill C-49. In this respect, the instigation for the development of the new law clearly emanated from conflict among different groups over the perceived inadequacies of the existing laws. However, although many different groups were involved in the debate, there was an obvious class bias insofar as middle class groups and business interests were much more influencial than lower class groups and the prostitutes themselves. While this factor in itself is not inconsistent with the liberal-conflict model outlined in Chapter 1, the extent to which developers and middle class residents were able to influence the legislative process suggests that a radical-conflict analysis would be more appropriate. Additional support for this conclusion is found in the way in which the ideological biases of successive Liberal and Conservative governments affected their responses to the prostitution issue. However, as was noted in the previous section, women's groups

generally were less influencial than other groups unless they allied themselves with the male-dominated business and resident's groups. This factor indicates that the radical-conflict model is also inadequate as a complete explanation for the events discussed in this dissertation, and that it is necessary to resort to a much more radical type of feminist analysis.

In conducting this analysis, it is intended to utilize a type of feminist analysis based on an amalgamation and synthesis of the theories outlined in Chapter 1 and Lengermann and Nubrugge-Brantley's discussion of the radical and Marxist varieties of feminist theory (Lengermann & Nubrugge-Brantley, 1990). Radical-Marxist feminist theory regards prostitution as inherently intertwined with the dual patriarchical and socio-economic class structures which characterize most western societies. Within this context, prostitution is characterized as an extension of the subservient role which women traditionally occupy in patriarchal societies. This role has traditionally relegated women to a position as the property of males and created a double standard which accorded men greater sexual freedom than women. This double standard has affected prostitution and prostitution control in two ways. First, the existence of the double standard has necessitated the creation and toleration of a class of "promiscuous" women (i.e. prostitutes) who would serve as a sexual outlet for males. This allowed "respectable" women to remain chaste until marriage, at which point they became the property of their husbands. For this reason, there have been few attempts to eliminate prostitution, and some form of regulation has been the <u>de facto</u> policy from its inception in ancient Babylon through to the implementation of S. 195.1. As was noted

throughout this dissertation, this regulation was accomplished by means of periodic crackdowns on female prostitutes while their male customers were almost completely ignored.

The Radical-Marxists further argue that patriarchal societies extend the concept of "women as the property of males" to include the notion that women who are not the property of specific men can be considered the property of all men (O'Brien, 1981). In terms of prostitution, this has been accomplished by maintaining prostitution as a stigmatized and frequently illegal activity, whose practitioners are not entitled to the most basic protection of the law. Thus, the continued illegality of some aspects of prostitution has allowed males to control the activity and facilitated the exploitation of prostitutes by pimps. This latter point was demonstrated in this dissertation by the fact that the periodic crackdowns mentioned above were almost always accompanied by an increase in the activities of pimps and panders. In contemporary times, the implementation of Bill C-49 drove prostitutes off the streets and led to increased pimp involvement in all prostitution-related activities, including escort agencies. It is important to note that the police and other criminal justice officials were notoriously unsympathetic to prostitutes who were assaulted or otherwise harmed on the job. This attitude is indicative of the hostility exhibited towards a class of women who refused to become the property of specific males.

A second point which is relevant to a radical-Marxist feminist analysis involved the manner in which other women (non-prostitutes) reacted to prostitution. As was noted throughout this dissertation, mainstream feminists were clearly ambivalent about prostitution and most were

reluctant to consider it a genuine feminist issue. Historically, many "respectable" women took the lead in expressing contempt for prostitutes and often joined males in attempting to manipulate social and legal norms to ensure that the social and economic conditions of prostitutes were kept as degrading as possible. This was also demonstrated in contemporary times by the manner in which many female politicians sided with residents and business groups during the development and implementation of Bill C-49. Furthermore, even in cases where feminists did adopt prostitution as a feminist cause, they often had to join forces with male dominated groups in order to influence the political process. These points tend to confirm the radical-Marxist feminist argument that most women identify with the interests of their own particular class rather than those of women generally. They also support the even more radical argument that women will identify with their male oppressors in return for the affirmation of their own "respectable" status. (See Lengermann & Nubrugge-Brantley (1990) for a more complete discussion of this argument.)

The most basic proposition underlying a radical-Marxist feminist analysis of prostitution involves a synthesis of the class and feminist dimensions discussed in this dissertation. In this respect, radical-Marxist feminists argue that the existing class and patriarchal systems place lower class women at the bottom of the socio-economic hierarchy, and thus they are frequently forced into prostitution as one of their few viable means of survival. This creates a clear link between prostitution and economic conditions which is important to the question of prostitution control in several important respects. Since women enter prostitution out of "need", any attempts to control prostitution will fail unless provisions are made

to allow prostitutes to practice their trade legitimately. This conclusion was demonstrated in this study by the fact that successful control of street prostitution was only possible when the authorities negotiated with the prostitutes to allow them some freedom to operate. This was not only evident during the implementation of S. 195.1, but was also true of the legislative changes in Canada, Great Britain and New York State during the 1960's (discussed in Chapter 4).

In light of the above points, the radical-Marxist feminists argue that the most logical solution would be to decriminalize all prostitution-related activities except certain exploitive activities committed by males, e.g. pimping. Such a course of action would remove much of the basis for state intervention and limit the ability of males to control and exploit female prostitutes. In addition, the radical-Marxist feminist approach to prostitution control mandates drastic changes to the societal structures which drive women into prostitution. These changes would need to go well beyond simply helping prostitutes leave the trade, and would ultimately entail fundamental changes to the economic opportunities available to women. In this respect, it is argued that the provision of greater economic opportunities for women would do far more to reduce the levels of prostitution than tougher laws. This contention is tentatively supported by the fact that the numbers of prostitutes were much higher during the First World War than they were during World War II, when many women were able to find employment in war-related industries. Unfortunately, almost all the feminists interviewed in this study failed to make this connection between prostitution and the general socio-economic position of women in society.

In closing the discussion in this dissertation, there are several additional issues which must be mentioned briefly. First, in terms of the radical-Marxist analysis of prostitution control, it is necessary to stress that the research in this dissertation was primarily directed at identifying and analyzing the pluralist patterns which characterized the development and implementation of Bill C-49. Thus, it was not possible to collect much of the data which would be necessary to further assess the radical-Marxist feminist model. While this task will have to await further research, the following research questions are considered essential to such an analysis.

1. Is there any relationship between the level of prostitution in a particular society and the equality of opportunity accorded women in that society?
2. Is the severity of legal sanctions against prostitution related to the degree to which prostitution is controlled by pimps and other males?
3. Does the decriminalization of prostitution reduce the amount of violence against prostitutes?

Two additional issues relate directly to the more practical problems associated with attempting to control prostitution. All of the research conducted in this dissertation (both Part I and Part II) indicated that tougher laws against prostitution were ineffective at eliminating street prostitution. However, despite this general failure, there were several isolated instances in which it was possible to control prostitution by negotiating with the prostitutes and/or creating informal red light areas. These instances suggest that it might be possible to develop enforcement

strategies which would facilitate effective control of street prostitution. In this respect, there was some evidence to suggest that civil remedies, i.e. by-laws and injunctions, were more effective control mechanisms. This leads to the suggestion that decriminalizing prostitution and controlling it through non-criminal means would be a better alternative than criminal sanctions[2]. These issues indicate that there is a need to conduct further research into the practical realities of prostitution control in large urban centres to determine if it is possible to develop more effective ways of dealing with the "world's oldest profession"[3].

Notes

[1] It should be noted that Edmonton was an exception in this regard. In addition, there were individual exceptions to this general rule in Vancouver and Toronto.

[2] In order to explore this hypothesis, research needs to be conducted into the following areas:

1. Does decriminalized prostitution facilitate the control of prostitution through non-criminal mechanisms such as zoning?
2. Does decriminalized prostitution result in greater cooperation between prostitutes and other groups?
3. Does decriminalized prostitution reduce the undesireable side effects associated with prostitution, i.e. police corruption, ancillary crime and drug addiction?

It should be noted that research into these issues would necessitate cross-cultural comparisons with societies which permit legalized prostitution.

[3] In this respect, a tentative typological model has been constructed outlining how various combinations of enforcement strategy and associated political factors affected the control of street prostitution. This model is contained in Appendix D.

Appendix A

AN OUTLINE OF BILL C-49

It is felt that a more effective discussion of the provisions of Bill C-49 can be provided by comparing the new Bill to the previous Criminal Code provisions on the topic. Accordingly, the formal provisions of the respective statutes regarding S. 195.1 are outlined below:

The Pre-1986 Criminal Code Provisions

1. Every person who solicits any person in a public place for the purposes of prostitution is guilty of an offence punishable on summary conviction.

Bill C-49 Provisions

1. Every person who in a public place or in any place open to public view

   a) stops or attempts to stop any motor vehicle,

   b) impedes the free flow of pedestrian or vehicular traffic or ingress to or egress from from premises adjacent to that place, or

   c) stops or attempts to stop any person or in any manner communicates or attempts to communicate with any person

   for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute is guilty of an offence punishable on summary conviction.

2. In this section, "public place" includes any place to which the public have access as of right or by invitation, express or implied, and any motor vehicle located in a public place or in any place open to public view.

In comparing these two statutes, a number of points need to be made. First, the pre-1986 legislation simply makes it illegal to solicit in public for the purposes of prostitution. This provision leaves open two questions: namely the definition of soliciting and the definition of public place. In Regina v. Hutt (1978, 2 SCR 476.), the Supreme Court of Canada ruled that "soliciting" had to be "pressing and persistent" in order to fall within the ambit of S. 195.1. The court further ruled that the term "public place" did not apply to motor vehicles even if they were located on a public street[1]. This decision appeared to limit the applicability of the section to clearcut cases of harassment carried out on a public street.

The provisions of Bill C-49 are clearly intended to remedy this situation. For example, the definition of "public place" includes places which are open to public view, and specifically includes motor vehicles located in a public place or a place which is open to public view. These changes clearly expand the applicability of the section to the extent that it could conceivably include the yards of private residences or cars parked on private property as long as they are open to public view. Further, Bill C-49 does not refer to soliciting per se, but instead articulates three specific activities which are illegal when coupled with a discussion of prostitution. Such an approach would appear to eliminate any requirement that the activity be "pressing and persistent". Thus, the provisions of Bill C-49 appear to expand the applicability of S. 195.1, and thus will likely make prosecutions easier.

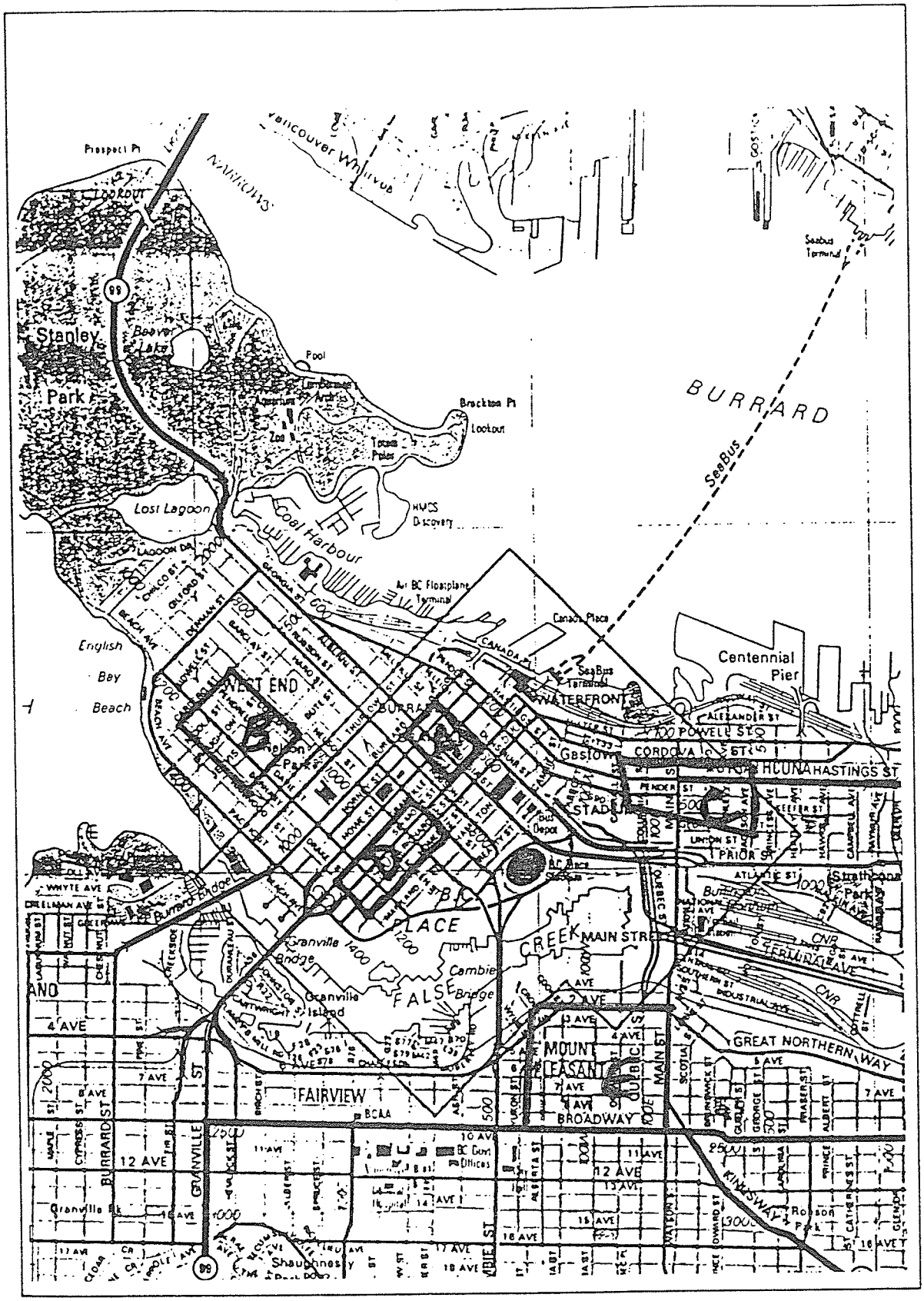
Notes

[1] It should be noted that this part of the decision was actually obiter dicta, however, the courts have generally tended to treat it as if it was binding.

Appendix B

CITY MAPS

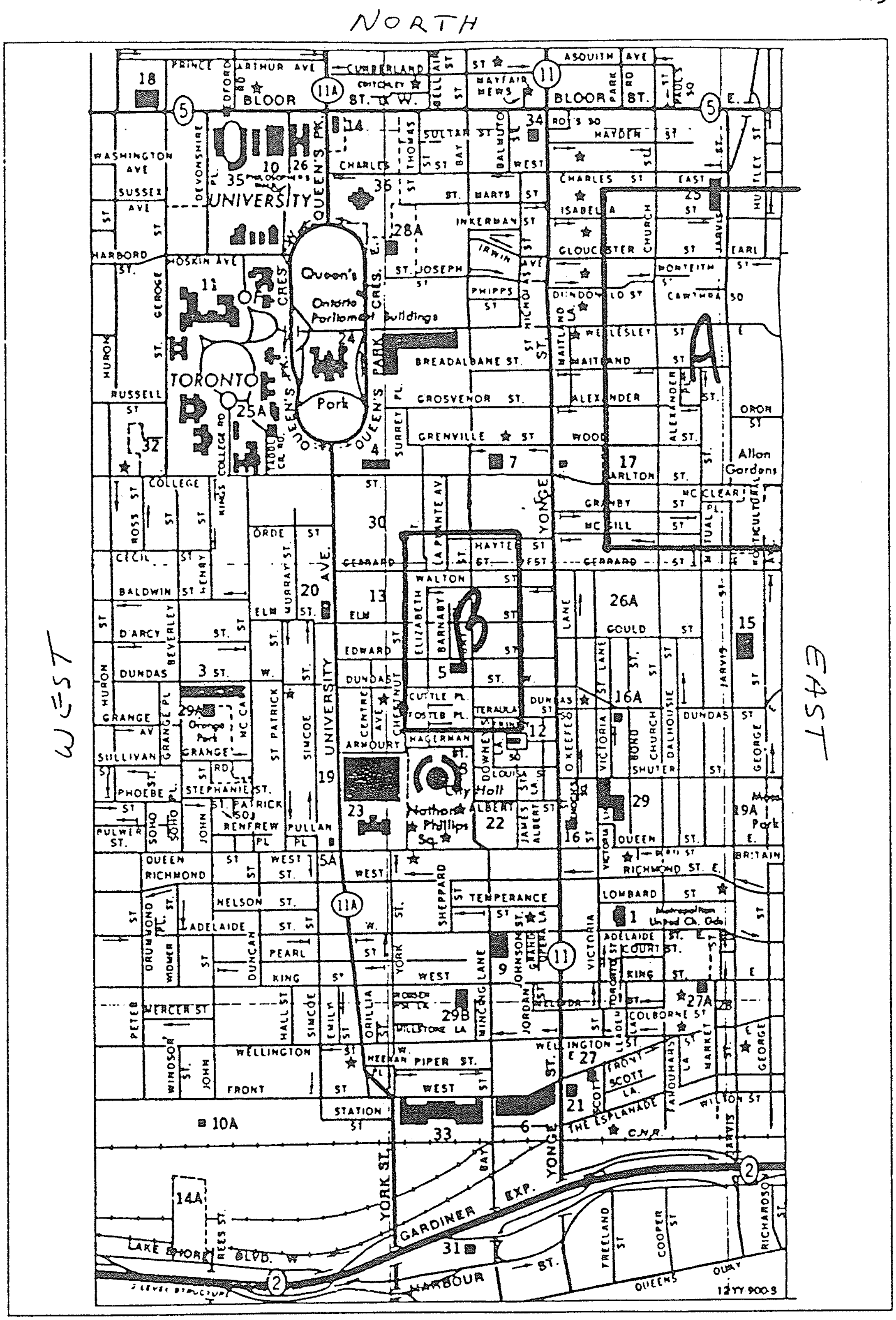
NORTH



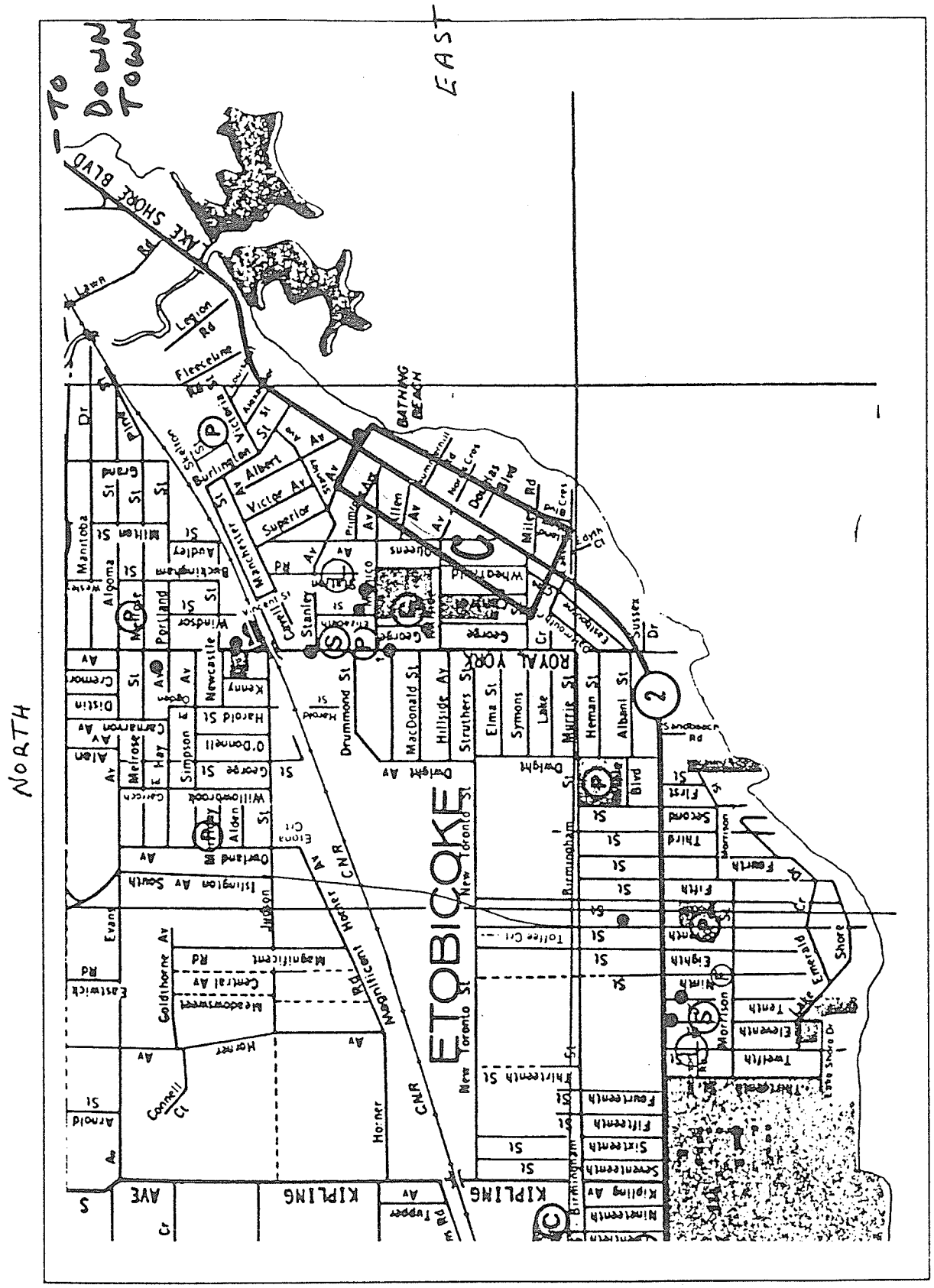
WEST

EAST

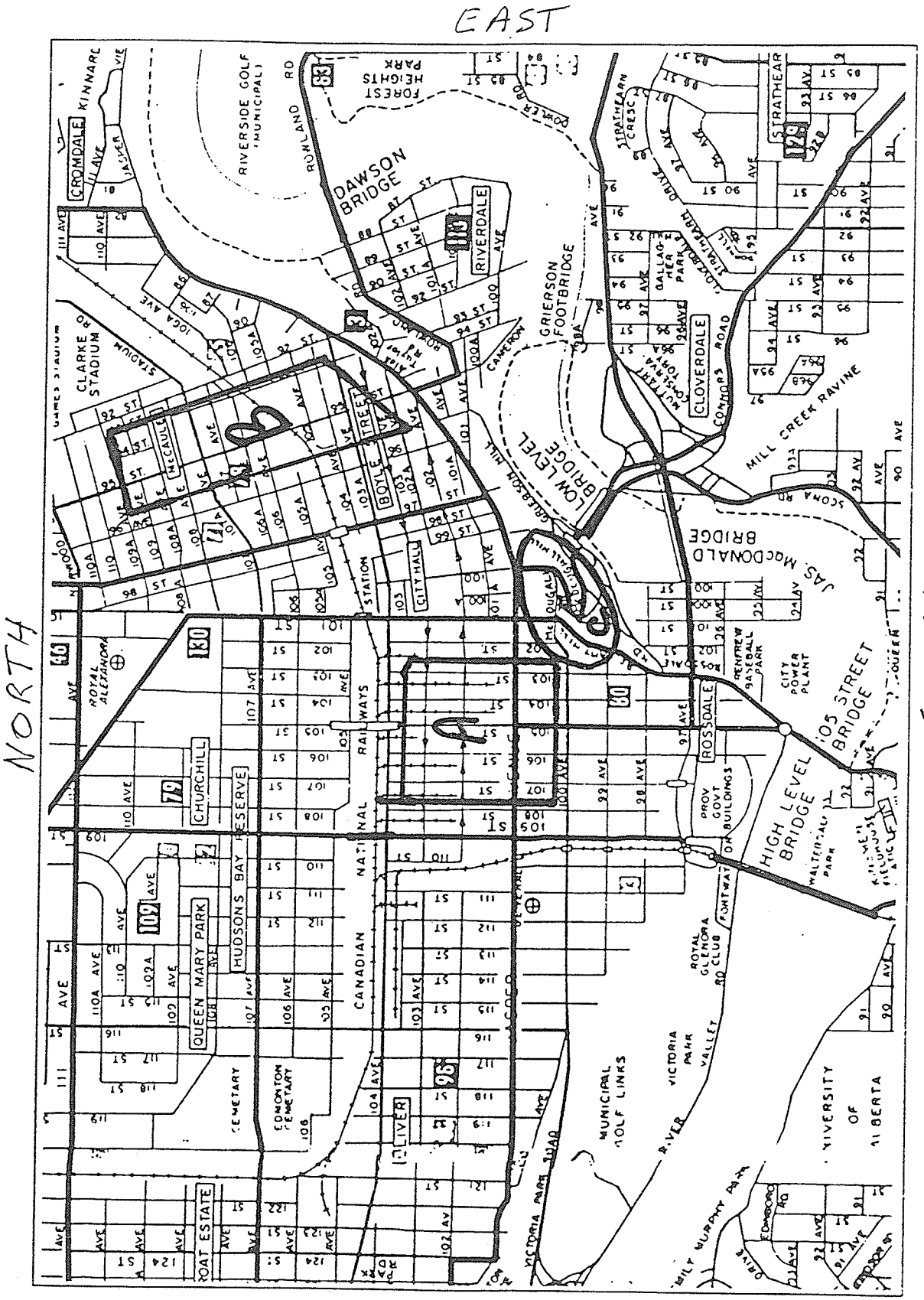
Map of Vancouver



Map of Downtown Toronto

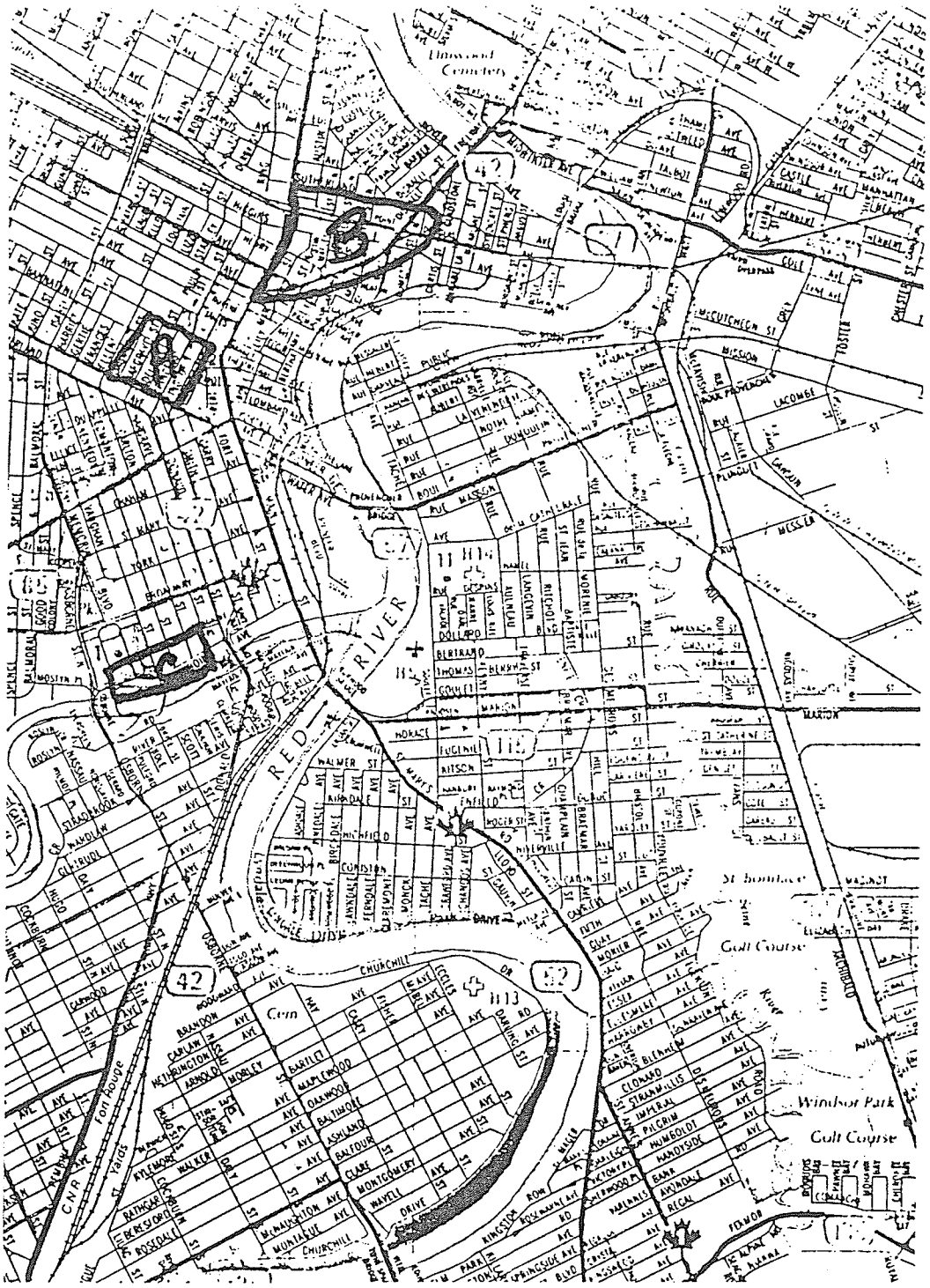


Map of Etobicoke



Map of Edmonton

NORTH



Map of Winnipeg

Appendix C

LIST OF INFORMANTS

Vancouver

Informant	Organization	Type of Interview
Tim Agg	MPCSP	In Person
Phylis Alfeld	MPAG	In Person
Marie Arrington	POWER	In Person
Rev. G. Bayley	St Michaels United Church	In Person
Terry Bland	Vancouver City Solicitor	Telephone
S/Sgt Biddlecomb	Vancouver Police	Telephone
Libby Davies	Vancouver Alderperson	In Person Telephone Printed Questionaire
Brigit Eider	Defense Lawyer	In Person
Meagan Ellis	Violence Against Women	Telephone
Chris Harris	NDP Civil Liberties Committee	In Person Telephone
Insp. Don Keith	Vice Squad - Vancouver Police	In Person
Trevor Lautens	Columnist, Vancouver Sun	Telephone
Judge Stu Leggett	Vancouver County Court	In Person
Judge Robert Liminsky	BC Provincial Court	In Person
Christine Micklewright	Strathcona Resident	Telephone
Greg Middleton	Columnist Vancouver Province	In Person
Margaret Mitchell	MP, Vancouver - Mount Pleasant	Telephone
Gordon Price	Vancouver Alderperson	In Person
Harry Rankin	Vancouver Alderperson	In Person
Gillian Riddington	Sociology, UBC	Telephone
Svend Robinson	NDP Justice Critic	In Person
Tony Serka	Defense Lawyer	In Person

S/Sgt Thompson	Team 6 - Vancouver Police	Telephone
Liz Wolfram	Asst Regional Crown Counsel	In Person

Toronto

Informant	Organization	Type of Interview
Insp. Jim Clark	Morality Bureau - Toronto Police	In Person
Paul Culver	District Crown Attorny - Toronto	In Person
Ed Gadzala	Motel Owner - Lakeshore	Telephone
Supt. John Getty	14 Division - Toronto Police	In Person
Jack Layton	Toronto Alderman	In Person
William Magill	Earl Street Residents' Association	In Person
Peter Maloney	Defense Lawyer	In Person Printed Questionnaire
Sharon Moyer	Research Consultant	In Person
Bill Poole	Director, National Ballet School for Youth	Telephone In Person
Valerie Scott	President, Canadian Organization for the Rights of Prostitutes	Telephone
S/Sgt Jim Shail	Morality Bureau - Toronto Police	In Person
Barry Smith	Isabella Street Residents Association	Telephone

Winnipeg

Informant	Organization	Type of Interview
Mary Jane Bennet	Defense Lawyer	In Person

S/Insp. Tony Cherniak	Vice Division, Winnipeg Police	In Person
Jeff Ginden	Defense Lawyer	In person
Insp. Ray Johns	Vice Division, Winnipeg Police	In Person
Bruce Millar	Senior Crown Attorney	Telephone
Roland Penner	Former Attorney-General - Manitoba	In Person
Debbie Reynolds	POWER	In Person
Jane Runner	Children's Home	In Person
Sharon Taylor	POWER	In Person
Donovan Timmers	Winnipeg City Council	Telephone
Judy Wasylycia-Leis	NDP Status of Women Critic	Telephone

Edmonton

Informant	Organization	Type of Interview
Mike Allen	Senior Crown Counsel	Telephone
Pam Barrett	NDP Leader	In Person
John Basey	Edmonton City Solicitor	Telephone
Judy Bethel	Edmonton City Council	Telephone
Mary Burlie	Boyle Street Coop	Telephone
Claude Buzon	Restaurant Owner	Telephone
Karen Dandemueller	Drag Area Resident	Telephone
Insp. Noel Day	OIC, Morality Squad, Edmonton Police	Telephone
John Geiger	Journalist, Edmonton Journal	In Person
Ruth Gelderman	Drag Area Resident	Telephone
Ken Kozak	Edmonton City Council	In Person

Helen Paull	Edmonton City Council	In Person
Peter Royal	Defense Lawyer	Telephone
S/Sgt Terry Whitton	Morality Squad, Edmonton Police	In Person

Appendix D

A TYPOLOGICAL MODEL OF PROSTITUTION CONTROL IN FOUR CANADIAN CITIES

ASSOCIATED POLITICAL FACTORS / POLICE STRATEGIES	GROUPS UNWILLING TO CONSIDER INTERESTS OF OTHER GROUPS	INTEREST GROUPS WILLING TO CONSIDER THE INTERESTS OF OTHER GROUPS	MUTED REACTION BY RESIDENTS AND OTHER GROUPS	POLITICAL INTERFERENCE
POLICE RESPOND TO COMPLAINTS FROM SELECT GROUPS	RANDOM DISPLACEMENT OF PROBLEM (VANCOUVER-WEST END & DOWNTOWN)	GREATER PUBLIC SATISFACTION (DOWNTOWN TORONTO)	UNEVEN ENFORCEMENT BASED ON INTEREST GROUP REACTION	MANIPULATION OF ENFORCEMENT PROCESS FOR PARTISAN GOALS (ETOBICOKE)
POLICE MEDIATE BETWEEN PROSTITUTES AND OTHER GROUPS		SELECTIVE TOLERATION & COOPERATION (STRATHCONA & EDMONTON)		
POLICE IGNORE PROSTITUTES IN CERTAIN AREAS	OVERT CONFLICT BETWEEN RESIDENTS & PROSTITUTES (VANCOUVER - MT PLEASANT)	INCREASED POLITICAL ACTIVITY IN IGNORED AREAS	CREATION OF INFORMAL REDLIGHT DISTRICTS- (WINNIPEG-PT DOUGLAS)	
POLICE NEGOTIATE WITH INTEREST GROUPS	RELATIVELY UNSUCCESSFUL (VANCOUVER - WEST END)	COOPERATION BETWEEN POLICE & OTHER GROUPS (WINNIPEG)		CREATION OF SEMI-OFFICIAL RED LIGHT DISTRICTS (FALSE CREEK)
POLICE CONCENTRATE ON PROSTITUTES	PRACTICED IN ALL CITIES EXCEPT TORONTO. NO CHANGE IN NUMBERS OF PROSTITUTES AND CUSTOMERS OR IN LEVELS OF NUISANCE			
POLICE CONCENTRATE ON CUSTOMERS	PRACTICED PRIMARILY IN TORONTO. LED TO A REDUCTION IN NUMBERS OF CUSTOMERS FOLLOWED BY A MOVEMENT OF PROSTITUTES OFF THE STREET. THIS CREATED HIGHER LEVELS OF PUBLIC SATISFACTION.			
POLICE MOVE PROSTITUTES FROM AREA TO AREA	PRACTICED IN ALL CITIES TOWARDS THE END OF STUDY. WAS MODERATELY SUCCESSFUL AT REDUCING PUBLIC DISSATISFACTION. WORKED BEST IN CONJUNCTION WITH MEDIATION BETWEEN PROSTITUTES AND RESIDENTS			

Figure 8.1 - A Typological Model of Prostitution Control

In reading this typology, the various police enforcement strategies are outlined along the left vertical axis, while associated political factors are described along the top axis. The intersections of the axes create cells which contain the outcome of the various combinations of strategies and associated factors. This results in a matrix of the outcomes associated with various combinations of enforcement strategies and associated factors. While it is difficult to assess the "success" of any particular strategy without knowing the goals of the relevant actors, the model suggests that negotiation and/or mediation involving the police, prostitutes and other interest groups was most likely to reduce conflict among the various groups. However, it was also apparent that this depended upon the various groups being willing to consider the interests of other groups, and in particular those of the prostitutes. In cases where some interest groups were unwilling to consider other groups, the most effective strategies appeared to be a heavy concentration on customers, combined with "blitz's designed to move prostitutes from area to area. In this respect, the concentration on customers appeared to represent a preferred tactic regardless of any other relevant factors, and the effectiveness of moving prostitutes prostitutes from area to area was enhanced by consultations among the affected groups.

In concluding this discussion of the typological model, it must be stressed that this model is considered extremely tentative and that more research is needed to further assess many of the relationships identified in this analysis. In particular, the role of the media was an important influence on many of the factors and strategies contained in the model, and further investigation needs to be conducted on the manner in which the

media can influence public opinion and police activities. In addition, the degree of coordination within police departments was an important factor in the success of various enforcement strategies. In summary, it can be suggested that a properly researched and validated model would be useful in helping local politicians and police officials manipulate the relevant factors to achieve "successful" prostitution control. However it must be stressed that the analysis in Part II has been limited to four Canadian cities, and that there is a need to conduct research in other Canadian cities, as well as other western societies.

Appendix E

QUESTIONNAIRE

QUESTIONNAIRE - BILL C-49

The intent of this questionnaire is to solicit your knowledge and perceptions of the development and implementation of Bill C-49 regarding street prostitution.

1) How familiar are you with the provisions of Bill C-49 regarding street prostitution?

   a) Very familiar ( )

   b) Somewhat familiar ( )

   c) Not at all familiar ( )

2) Were you or your agency actively involved in the development or implementation of Bill C-49?

   a) Involved in development and implementation ( )

   b) Involved in development only ( )

   c) Involved in implementation only ( )

   d) Not involved in either ( )

3) If you or your agency were not actively involved in either the implementation or development of Bill C-49, are you familiar with the development and implementation of Bill C-49?

   a) Familiar with development ( )

   b) Familiar with implementation ( )

   c) Familiar with both ( )

   d) Not familiar with either ( )

THE FOLLOWING QUESTIONS DEAL WITH THE DEVELOPMENT OF BILL C-49.

4) What was the nature of your agency's involvement in the

development of Bill C-49?

a) Was responsible for enforcement of existing laws ( )

b) Was officially involved in drafting of the Bill ( )

c) Was a non-official interest group ( )

d) Other (specify)_____ ( )

e) Not involved (Proceed to question 9) ( )

5) What position did you or your organization take towards the development of Bill C-49? _____

_____

_____

_____

_____

6) What steps did you or your organization take to try and influence the development of Bill C-49?

a) Made public statements regarding the issue ( )

b) Lobbied politicians and/or public officials on the issue ( )

c) Prepared position paper on the issue ( )

d) Other (Please specify)_____ ( )

At what level did you concentrate your efforts?

a) Local ( )

b) Provincial ( )

c) Federal ( )

8) Assess the degree of influence which you feel your organization exerted on the development of Bill C-49.

a) Very influential ( )

b) Somewhat influential ( )

c) Not influential ( )

d) Unable to Assess ( )

What is your basis for this assessment? _____

_____

_____

_____

_____

9) Assess the degree to which you feel the development of Bill C-49 was influenced by public input.

a) Very much influenced ( )

b) Somewhat influenced ( )

c) Not at all influenced ( )

d) Unable to Assess ( )

What is your basis for this assessment? _____

_____

_____

_____

_____

10) Which groups do you think exerted the most effect on the development of Bill C-49? _____

_____

_____

Why do you think these groups were effective? _____

_____

_____

_____

_____

11) Do you feel that there were factors other than the efforts of the groups mentioned in question 10 which played a role in the development of Bill C-49? If so, please identify. _____

_____

_____

_____

_____

12) If you did not attempt to influence the development of Bill C-49, Why not? _____

_____

_____

_____

THE FOLLOWING QUESTIONS DEAL SPECIFICALLY WITH THE FRASER COMMISSION

13) Are you familiar with the working of the Fraser Commission?

a) Very familiar ( )

b) Somewhat familiar ( )

c) Not at all familiar (Proceed to question 18) ( )

14) Did you or your organization participate in the Commission?

a) Made oral presentation ( )

b) Submitted postion paper ( )

c) Oral presentation and position paper ( )

d) Did not participate ( )

If you did not participate, why not? _____

_____

_____

_____

_____

15) What is your opinion of the openness of the Fraser Commission hearings?

a) Open to all members of public ( )

b) Access easier for certain groups (List below) ( )

c) Only open to certain groups (List below) ( )

d) Other _____ ( )

Please provide details and reasons for assessment. _____

_____

_____

_____

_____

16) What is your opinion of the effectiveness of the Fraser Commission as a mechanism for soliciting public opinion?

a) Very effective ( )

b) Relatively effective ( )

c) Relatively ineffective ( )

d) Totally ineffective ( )

What is the basis for this assessment? _____

_____

_____

_____

_____

_____

17) What is your opinion of the degree to which the Fraser Commission affected the content of Bill C-49?

a) Exerted a profound effect ( )

b) Exerted some effect ( )

c) Exerted no effect ( )

What is the basis for this assessment? _____

_____

_____

_____

_____

_____

THE FOLLOWING QUESTIONS DEAL WITH THE IMPLEMENTATION OF BILL C-49.

18) What was your organization's involvement in the implementation of Bill C-49?

a) Directly responsible for the implementation of the Bill* ( )

b) Set policy for the implementation of Bill C-49* ( )

c) Non-official interest group

e) Other (Specify) _____ ( )

f) Not involved* ( )

* Proceed to question 22

19) What position did you or your organization take towards the implementation of Bill C-49? _____

_____

_____

_____

_____

20) What steps did you or your organization take to try and influence the implementation of Bill C-49?

a) Made public statements regarding the issue ( )

b) Lobbied politicians and/or public officials on the issue ( )

c) Prepared position paper on the issue ( )

d) Other (Please specify)_____ ( )

At what level did you concentrate your efforts?

a) Local ( )

b) Provincial ( )

c) Federal ( )

21) Assess the degree of influence which you feel your organization exerted on the implementation of Bill C-49.

a) Very influential ( )

b) Somewhat influential ( )

c) Not influential ( )

d) Unable to Assess ( )

What is your basis for this assessment? _____

_____

_____

_____

_____

22) Assess the degree to which you feel the implementation of Bill C-49 was influenced by public input.

a) Very much influenced ( )

b) Somewhat influenced ( )

c) Not at all influenced ( )

d) Unable to Assess ( )

What is your basis for this assessment? _____

_____

_____

_____

_____

23) What is your opinion of the overall effect that Bill C-49 has exerted on prostitution in your locality?

a) It has helped reduced the numbers of prostitutes ( )

b) It has not led to any significant reduction in the numbers of prostitutes ( )

c) It has helped the police to control the areas in which the prostitutes operate ( )

d) Other (Specify) _____ ( )

What is your basis for this assessment? _____

_____

_____

_____

_____

_____

24) What is your opinion of the way in which Bill C-49 is being

implemented in your locality?

a) It is being implemented in a straightforward fashion ( )

b) It is enforced more in some locations than others ( )

c) It is enforced more against some groups than others ( )

d) It is being used to further the interests of certain groups in your locality ( )

Please provide details. _____

_____

_____

_____

_____

_____

25) What do you think is/are the major factor(s) influencing the implementation of Bill C-49 in your locality?_____

_____

_____

_____

_____

_____

26) Are you familiar with the evaluation of Bill C-49 conducted by the Ministry of Justice?

a) Very familiar ( )

b) Somewhat familiar ( )

c) Not at all familiar (Proceed to question 28) ( )

27) What is your opinion of this evaluation?

a) Very thorough ( )

b) Thorough but missed important issues (Please list below) ( )

c) Cursory ( )

d) Conducted in bad faith ( )

Please give reasons for this assessment and identify missed issues. _____

_____

_____

_____

_____

_____

28) What is your opinion of the effect of this evaluation on the subsequent implementation of Bill C-49?

a) Exerted a positive effect ( )

b) Exerted no effect ( )

c) Exerted a negative effect ( )

What is the basis for this assessment? _____

_____

_____

_____

THE FOLLOWING QUESTIONS APPLY TO RESPONDENTS INVOLVED IN THE IMPLEMENTATION OF BILL C-49 IN AN OFFICIAL CAPACITY

29) What official position did you take towards the implementation of Bill C-49?

30) Why did you take this particular approach?

31) What other alternatives did you consider? _____

_____

_____

_____

_____

Why were they not implemented? _____

_____

_____

_____

_____

_____

_____

32) What in your opinion is the strongest point(s) of Bill C-49?

_____

_____

_____

_____

_____

What is the weakest? _____

_____

_____

_____

_____

33) In carrying out your role regarding Bill C-49, did you either formulate or receive guidelines regarding the implementation of Bill C-49?

a) Formulated guidelines

b) Received guidelines

c) Both formulated and received guidelines

d) Neither formulated nor received guidelines

34) For whom did you formulate guidelines and what was the nature of these guidelines? _____

_____

_____

_____

_____

_____

35) From whom did you receive guidelines and what was the nature of these guidelines? _____

_____

_____

_____

_____

_____

36) As an official responsible for the implementation of Bill C-49, did you attempt to solicit public input regarding the issue?

a) Solicited input from the general public

b) Solicited input from certain groups

c) Did not solicit public input

Please provide details of groups and/or why you did not solicit public input. _____

_____

_____

_____

_____

_____

THE FOLLOWING ARE GENERAL QUESTIONS DEALING WITH YOUR PERCEPTIONS OF PROSTITUTION IN YOUR LOCALITY

37) What do you consider to be the most important issue regarding street prostitution in your locality?

_____

_____

Why? _____

_____

_____

38) How effective do you feel that Bill C-49 is at dealing with this issue? _____

_____

_____

_____

39) Are you aware of Bill C-15 dealing with juvenile prostitution?

a) Very familiar ( )

b) Somewhat Familiar ( )

c) Not at all Familiar ( )

40) Were you or your organization involved in the development or implementation of Bill C-15?

a) Involved in development ( )

b) Involved in implementation ( )

c) Involved in Both ( )

d) Not involved in either ( )

41) How would you rate the development of Bill C-15 compared to Bill C-49?

a) Bill C-15 was more straightforward

b) Bill C-15 was less straightforward

c) Bill C-15 & Bill C-49 were similar

What is the basis for this assessment? _____

_____

_____

_____

_____

_____

42) How would you rate the implementation of Bill C-15 compared to Bill C-49?

a) Bill C-15 was more straightforward

b) Bill C-15 was less straightforward

c) Bill C-15 & Bill C-49 were similar

What is the basis for this assessment? _____

_____

_____

_____

_____

43) Please list any other organizations or agencies which you feel might have been involved in either the development or implementation of Bill C-15. _____

_____

_____

_____

Name _____ Position _____

Organization _____

_____

Mailing Address _____

_____

_____

Telephone _____

Best Time to call _____

Are you in possession of any documents relating to prostitution

and/or Bill C-49? _____

If so, what is the nature of the documents and are you willing to make them available to other researchers? _____

_____

_____

_____

_____

REFERENCES

Acton, J., P. Goldsmith, & B. Shepard, (1974). Women at Work. Toronto: Canadian Women's Educational Press.

Acton, W. (1968). Prostitution. New York: Frederick A. Praeger, Publishers.

Advisory Council on Reconstruction, (1943). Post-War problems: Final report of the Sub-Committee. Ottawa: King's Printer.

Bacchi, C. (1983). Liberation Deferred: The Ideas of the English Canadian Suffragettes, 1877-1915. Toronto: University of Toronto Press.

Bristow, B. (1977). Vice and Vigilance. Dublin: Gill and MacMillan Ltd.

Buckley, S. & J.D. McGinnis (1982). "Venereal Disease and Public Health Reform in Canada". Canadian Historical Review. Vol 63(3) pp 340-360.

Bullough, V. (1964). The History of Prostitution. New York: University Books.

Cassel, J. (1987). The Secret Plague: Venereal Disease in Canada, 1838-1939. Toronto: University of Toronto Press.

Clark, C.K. (1920) "Juvenile Delinquency and Mental Defect" Canadian Journal of Mental Hygiene. Vol 2, p 228.

Connelly, M. T. (1980). The Response to Prostitution in the Progressive Era. Chapel Hill: The University of North Carolina Press.

Covington, R., E.B. Stason, J.W. Wade, E. Cheitham & T.A. Smedley. (1969). Legal Methods. Meriola (New York): The Foundation Press.

Decker, J.F. (1979). Prostitution: Regulation and Control. Littleton: Fred B. Rothman & Co.

Denzin, N. (1978) The Research Act: A Theoretical Introduction to Sociology. New York: The Free Press.

Engels, F. (1984). "The Origins of the Family, Private Property and the State" in Feminist Frameworks. (A. Jagger & p Rothenberg, Eds.) New York: McGraw-Hill Book Company.

Glaser, B. & A. Strauss (1967). The Discovery of Grounded Theory: Strategies for Qualitative Research. Chicago: Aldine Publishing Co.

Gray, J. (1971). Red Lights on the Prairies. New York: Signet Books.

Greenland, C. (1961). "Patterns of Prostitution Following the Wolfenden Report" Criminal Law Quarterly. Vol 4, p 202.

Henriques, F. (1963). Prostitution in Europe and the New World. New York: Grove Press Inc.

Hodgins, F. (1920). Report of the Royal Commission on the Care and Control of the Feebleminded. Toronto: King's Printer.

Hollis, P. (1979). Women in Public: The Women's Movement 1850 -1900. London: George Allen & Unwin.

Hopkins, J.C. (1919). Canada at War, 1914-1918. Toronto: Canadian Annual Review.

Ianni, F. (1980). "The New Mafia" in (Kelly, D. Ed.) Criminal Behavior. New York: St Martins Press.

Kohlmeyer, K. (1982) An Ethnography of Prostitution in Vancouver. Burnaby, B.C.: Simon Fraser University, Unpublished Masters Thesis.

Langdon, M.E. (1986) "Female Crime in Calgary, 1914-1921" Law and Justice in a New Land. (L. Knafla, Ed.) Toronto: The Carswell Company Ltd. p 293.

Lengermann, P. M. & J. Nugrugge-Bradley. (1990). "Contemporary Feminist Theory" in Sociological Theory. (G. Ritzer, Ed.) New York: Alfred Knorp. p 282.

Lowman, J. (1986) "Prostitution in Vancouver: Some Notes on the Genesis of a Social Problem" Canadian Journal of Criminology. Vol 28, pp 1-16.

Mancini, J. (1963). Prostitutes and their Parasites. London: Elek Books.

McLaren, J. (1986). "Chasing the Moral Evil: Moral Fervor and the Evolution of Canada's Prostitution Laws, 1867-1917", Canadian Journal of Law and Society. Vol 1, p 125.

McLaren, J. & J. Lowman, (1988). Prostitution Law Enforcement in Canada, 1892-1920: Unraveling Myth and Reality. Ottawa: Canadian Institute for Advanced Research, Unpublished Occasional Paper.

Mill, J.S. (1984). "The Subjugation of Women" in Feminist Frameworks. (A. Jaggar & P. Rothenberg, eds) New York: McGraw-Hill Book Company.

Parker, G. (1983a) "The Legal Regulation of Sexual Activity and the Protection of Females". Osgoode Hall Law Journal. Vol 21, p 187.

Parker, G. (1983b). Our Criminal Law (2nd. Edition). Toronto: Butterworths.

Patton, M. Q. (1987). How to Use Qualitative Methods in Evaluation Research. Beverly Hills: Sage Publications Ltd.

Prus, R. & S. Irini (1980). Hookers, Rounders and Desk Clerks: The Social Organization of the Hotel Community. Toronto: Gage Publishing Co.

O'Brien, M. (1981). The Politics of Reproduction. London: Routledge & Kegan Paul.

O'Callaghan, S. (1965). The White Slave Trade. London: R. Hale.

Ploscowe, M. (1951). Sex and the Law. New York: Prentice-Hall Inc.

Richards, D. A. J. (1982). Sex, Drugs, Death and the Law. New Jersey: Rowman and Littlefield.

Roby, P. (1973). "Politics and Prostitution" Criminology. Vol 10, p 425.

Rover, C. (1970). Love, Morals and the Family. London: Routledge and Kegan-Paul Ltd.

Rubin, G. (1984) "The Traffic in Women: Notes on the Political Economy of Sex" in Feminist Frameworks. (A. Jaggar & P. Rothenberg, Eds.) New York: McGraw Hill Book Company.

Sanger, W. (1937). The History of Prostitution. New York: Eugenics Publishing Co.

Scott, G. (1968). Ladies of Vice. London: Tallis Press.

Stacy, D.C. (1946). The Canadian Army, 1939-1945. Ottawa: King's Printer.

Thio, A. (1988). Deviant Behavior. New York: Harper & Row.

Sutherland, B. (1984). "Ladies of the Night" Herizons. October, p 34.

Terrot, C. (1960). Traffic in Innocents. New York: E. P. Dutton & Sons.

Tomasic, R. (1985). The Sociology of Law. London: Sage.

Walkowitz, J. R. (1980). Prostitution in Victorian Society: Women, Class and State. New York: Cambridge University Press.

Young, W. (1970). "Prostitution" in Observations of Deviance. (J.D. Douglas, Ed.) New York: Random House, p 64.