

CUISR:

Community – University Institute for Social Research

*Saskatoon Charging and Disposition Pat-
terns Under Section 213 of the Criminal
Code of Canada*

by Leora Harlingten



Building Healthy Sustainable Communities

Community-University Institute for Social Research

CUI SR is a partnership between a set of community-based organizations (including Saskatoon District Health, the City of Saskatoon, Quint Development Corporation, the Saskatoon Regional Intersectoral Committee on Human Services) and a large number of faculty and graduate students from the University of Saskatchewan. CUI SR's mission is "to serve as a focal point for community-based research and to integrate the various social research needs and experiential knowledge of the community-based organizations with the technical expertise available at the University. It promotes, undertakes, and critically evaluates applied social research for community-based organizations, and serves as a data clearinghouse for applied and community-based social research. The overall goal of CUI SR is to build the capacity of researchers, community-based organizations and citizenry to enhance community quality of life."

This mission is reflected in the following objectives: (1) to build capacity within CBOs to conduct their own applied social research and write grant proposals; (2) to serve as a conduit for the transfer of experientially-based knowledge from the community to the University classroom, and transfer technical expertise from the University to the community and CBOs; (3) to provide CBOs with assistance in the areas of survey sample design, estimation and data analysis, or, where necessary, to undertake survey research that is timely, accurate and reliable; (4) to serve as a central clearinghouse, or data warehouse, for community-based and applied social research findings; and (5) to allow members of the University and CBOs to access a broad range of data over a long time period.

As a starting point, CUI SR has established three focused research modules in the areas of Community Health Determinants and Health Policy, Community Economic Development, and Quality of Life Indicators. The three-pronged research thrust underlying the proposed Institute is, in operational terms, highly integrated. The central questions in the three modules—community quality of life, health, and economy—are so interdependent that many of the projects and partners already span and work in more than one module. All of this research is focused on creating and maintaining healthy, sustainable communities.

Research is the driving force that cements the partnership between universities, CBOs, and government in acquiring, transferring, and applying knowledge in the form of policy and programs. Researchers within each of the modules examine these dimensions from their particular perspective, and the results are integrated at the level of the Institute, thus providing a rich, multi-faceted analysis of the common social and economic issues. The integrated results are then communicated to the Community and the University in a number of ways to ensure that research makes a difference in the development of services, implementation of policy, and lives of the people of Saskatoon and Saskatchewan.

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Saskatoon Charging and Disposition Patterns Under Section 213 of the Criminal Code of Canada

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ABSTRACT

This study examines court dockets and cross-references them with Saskatoon city police files to examine charging and sentencing patterns under section 213 of the *Criminal Code of Canada* (hereafter CC213), better known as the communication law regarding buying and selling sex.

The research objectives were to determine the number of women and men charged under CC213 in 2000, and the final disposition of their case. The study posed the following questions:

- How many women in Saskatoon were charged under CC213 in 2000?
- How many women were selling sexual services when charged?
- How many men in Saskatoon were charged under CC213 in 2000?
- How many men were selling sexual services when charged?
- What was the final disposition of the women's and men's cases?

The results, briefly, determined that:

- fifty-six women were charged with fifty-eight counts of CC213 violations in 2000;
- all fifty-six women were charged with selling sex;
- seventeen men in Saskatoon were charged under CC213 in 2000;
- none of these men were charged with selling sexual services; and
- women received forty-one more charges than did men.

Of the above women's group, three were given jail time (30 days, 3 months, and 90 days), while two were granted time served. Nineteen cases were undetermined, and bench warrants were issued for eleven of the undetermined cases. Four dispositions were conditional sentences. Eleven of the charges against women were suspended sentences at an average of 7.18 months probation. Twelve received fines averaging \$233. Seven charges were withdrawn. Four were confirmed as closed through successful mediation.

In the men's group, eight received fines averaging \$456.25 (with a mean of \$400). Two charges were withdrawn through successful mediation. Three men received conditional sentences averaging 6.25 months probation. Two cases were undetermined—one was waiting for sentence, the other adjourned for trial.

This report also looks at information from community organizations involved with individuals linked to the criminal justice system through the sex trade. It looks at new initiatives in Saskatoon and involves them in a discussion regarding this study's implications.

The Community-University Institute for Social Research at the University of Saskatchewan provided funding for the study on behalf of the Elizabeth Fry Society of Saskatchewan.

INTRODUCTION

This research aims to find out the number of women and men charged under CC213 in 2000 and the final disposition of their cases. The intent was to determine whether women and men were charged at the same rate and if their respective sentences were equivalent. This study aims to fill an information gap and assist agencies that advocate with and for women. It points to supports or diversion programs, if any, that the justice system uses in Saskatoon, and examines whether the issue of prostitution is dealt with in a simply punitive manner or incorporates social supports and/or harm reduction. It is hoped that this study's outcomes assist the Elizabeth Fry Society in their pursuit to bring about legislative change to the *Criminal Code of Canada* and assist in moving the sex trade issue from a legal environment to a social context.

BACKGROUND

This report is a result of a request made on behalf of the Elizabeth Fry Society of Saskatchewan to the Community-University Institute for Social Research (CUISR). In their application for research sponsorship, the Elizabeth Fry Society pointed to socio-economic factors, including poverty and abuse, that lead to prostitution and, too frequently, criminalization of women. The Elizabeth Fry Society works with and for women in conflict with the law and supports decriminalization of prostitution. Where the criminal justice system's aim is regulation of prostitution, the Elizabeth Fry Society strives for a broader focus of the context of women's lives. (See **Appendix A** for Principles of Canadian Association of Elizabeth Fry Societies (CAEFS)).

This study follows a Statistics Canada (1997) study that looked at differences in communication charges throughout Canada between 1995 and 1997. Statistics Canada's study referenced prostitution-related charges going back to 1985, when the communicating law replaced the law on soliciting (See **Appendix B** for The Daily Report on Street Prostitution). While Statistics Canada's study made comparisons across Canada, it dealt with a "limited number of jurisdictions" (3). Based on police reports, Regina had the highest communicating rate in Canada (3). Rates for Saskatoon were unavailable. Statistics Canada's report claimed that females accounted for just over half (55%) of

individuals charged under CC213 (1). That study, however, did not look at whether men were selling sex at the time of arrest or if women were buying sex. Therefore, it is unknown if Statistics Canada's conclusions would have been different if this information was included. It is doubtful that women would be charged with communicating for the purpose of prostitution while buying sex, but it is plausible that the men charged were selling sex.

CANADIAN ASSOCIATION OF ELIZABETH FRY SOCIETY'S DECLARATION ON PROSTITUTION

In a Brief presented to the House of Commons and Legal Affairs Committee, CAEFS argued that, "There should be no legal prohibition enacted by any jurisdiction relating to soliciting in a public place for the purpose of prostitution" (Canadian Association of Elizabeth Fry Society, 1983: 1). CAEFS' argument was in response to the *Frazer Report on Prostitution* and a House of Commons recommendation to criminalize prostitution (Canadian Association of Elizabeth Fry Society, 1986/87). CAEFS supported their argument with a Law Reforms Commission recommendation of criteria for determining whether an issue is a crime. To determine whether an act was a crime within the *Criminal Code*, CAEFS proposed to ask the following:

- Does the act seriously harm other people?
- Does the act in some other way so seriously contravene our fundamental values as to be harmful to society?
- Are we confident that the enforcement measures necessary for using criminal law against the act will not themselves seriously contravene our fundamental values?
- Given that we answer "yes" to the above three questions, are we satisfied that criminal law can make a significant contribution to dealing with the problem?

An act should be prohibited as a criminal offence within the *Criminal Code* only if all four questions can be answered affirmatively (Canadian Association of Elizabeth Fry Society, 1983: 1-2; 1986/1987: 14).

CAEFS answered "no" to all four question and pointed to a need to continue using the Criminal Code to protect youth from sexual exploitation. They also highlighted the need to direct attention to policies that affect women's social and economic lives (Canadian Association of Elizabeth Fry Society, 1983; 1986/1987)

CONTEXT

The attention that the sex trade generally receives from both the public and law enforcement is directed at the buying and selling of sex on the street. According to a Saskatoon Legal Aid lawyer (Sims, 2001) and a member of Saskatoon Police Vice (Huisman, 2001), the street sex trade appears linked to issues of poverty, racism, and drug and alcohol abuse. These issues, however, do not garner the same attention.

Women who engage in survival sex or selling sex in order to ease their poverty cannot be said to have any meaningful choice in their decision to enter prostitution. When selling sex is the price paid for continued subsistence, criminalizing women in the sex trade becomes a revolving door that re-victimizes them and contributes to a cycle of structural abuse. Both globally and in Saskatoon, socio-economic factors put women at risk when social supports are inadequate for meeting basic needs. Prostitution is linked to women's exclusion from the cash economy and to a global economy that is increasing women's economic risk (Larkin, 2000: 137-140). Cuts to social programs increase women's risk to poverty and leads to homelessness, violence, unemployment, and prostitution (Larkin, 2000).

STATEMENT OF RESEARCH QUESTIONS

This study is limited to the street sex commerce in Saskatoon, Saskatchewan. The study focuses upon the criminalization of individuals under section 213 of the *Criminal Code of Canada*, defined as communicating "for the purpose of engaging in prostitution." CC213 reads as follows:

213. (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 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.

213(2) Definition of "public place"

(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.

This research examines the case of women and men over the age of eighteen who were charged in Saskatoon in 2000. It compares the charges and disposition rates between men and women. The objectives of the research are to determine:

- the number of women and men charged under CC213, and
- the final disposition of their case.

This study further seeks to understand the following:

- How many women in Saskatoon were charged under CC213 in 2000?
- How many women were selling sexual services when charged?
- How many men in Saskatoon were charged under CC213 in 2000?
- How many men were selling sexual services when charged?
- What was the final disposition of both groups' cases?

LITERATURE REVIEW

This review touches on some recurring issues and concerns in the literature. Decriminalization is seen as necessary because issues of abuse and poverty are linked to a social inequality that makes some women economically dependant on men. Criminalizing women who engage in survival sex punishes them for being poor and deepens potential exploitation. The English Collective of Prostitutes (1997) argued that criminalizing prostitutes drives them underground and increases their risk of violence by portraying them to others as criminals.

Women who sell sex highlight, to the extremes, issues of all women. Their lives demonstrate that the quickest way out of poverty is through connection to men, but that for any woman, this does not guarantee self-determination or freedom. Poverty needs to be explored in terms of oppression, exploitation, power, and inequality, so that we can “begin to see improvement in the status of women, and correspondingly, a reduction of what remain an intolerably high level of women’s poverty” (Thomas, 1994: Preface).

MONEY MATTERS

When reviewing literature on prostitution, discussions about money and women’s economic insecurity dominate. Women do not earn the same as men and face more obstacles to full-time employment (Townson, 2000: 5). Women are at greater risk of poverty than men, especially if they are a visible minority. A woman’s economic security is tied, first, to her connection to man/men, and, second, to her level of education (Lochhead and Scott, 2000: 41).

Prostitution is one way that sexuality is organized and produced for profit (Singer, 1993: 58). Sex is often the price that women pay for opportunities and survival when there are no alternatives to escape poverty (Larkin, 2000). Selling sex is a monetary reaction to gendered economic disparity and an economic system that “commodifies everything” (Ishida, 1994: 11). Prostitution is “resistance to poverty, which is based on the sexual division of labor and the expectation that she will attach herself to one man in

compulsory heterosexuality” (Ishida, 1994: 11). The state often benefits from prostitution as an alternative welfare program, a supplement to below-subsistence wages, and a source of tax money (Davidson, 1998: 193; Lowman, 1997).

When women are economically dependant on men, they are at increased risk of abandonment or violence, which, in turn, increases risks of poverty, survival sex, and AIDS (Larkin, 2000). Costs of violence, drug use, and AIDS are increasing on both individual and societal levels. Therefore, even if a sex trade worker can earn \$1,000-1,500 per night, she will still end up with little or nothing if she is drug dependant (Boklaschuk, 2001).

According to Highcrest (1997), women who work the streets are usually poorer and face increased risk of violence, exploitation, and exposure to sexually transmitted disease. They may be homeless or escaping abusive relationships or families. Indoor prostitutes (i.e. those who work through escort agencies) often make more money than women who work in more conventional occupations (Highcrest, 1997: 52-53). One-third to one-half of the female prostitutes in Shaver’s (1996) study were married or cohabitating and shared in the financial responsibility of another. “On the prairies,” Shaver found, “68% had children” (3).

Shaver (1996) found that female prostitutes often come from families who live in poverty, but not at a level that markedly sets them apart from the general population (4). In Canada, most prostitutes do not have more than a high school education, with male prostitutes having both the highest rate of poverty and lowest rate of education (Shaver, 1996). Shaver found that in 1989, 37% of the general population had less than a high school education. Those working in the sex trade had the same level of education as the general population (37%) except on the prairies. In Saskatchewan, the percentage of sex trade workers with less than high school was higher, ranging from 41% to 48% (Shaver, 1996: 4).

CONTROL AND SELF-DETERMINATION

Edwards echoed the widespread debate around prostitution, questioning if prostitution is “systemic organized abuse” (1997: 70) or an occupation in need of empowering, so that women in the industry can control their means of livelihood. According to Davidson (1998), “[T]he capacity of individual prostitutes to deploy their subjective powers in ways which minimize the destructive effect of these forms of marginalization rest very much upon their age, their experience, and their personal psychobiography” (73). In contrast, Dworkin (1987) and Jeffereys (1997) argued that there is no difference between forced or chosen prostitution—levels of freedom and power do not exist. To make distinctions, Jeffereys (1997) suggested, is to say that there are reasonable forms of male abuse of women in prostitution (348). Women are vulnerable to coercion “because they are poor, or young, runaways, abandoned, addicted, etc., which leaves them without other choices in any meaningful way” (Singer, 1993: 57).

Davidson (1998) argued that prostitution is shaped by structural systems that determine differences and commonalities of prostitutes, customers, third party benefactors, and the form and activity of prostitution as it relates to culture, law, ideology, and politics (11). These structural mechanisms are linked to social and racial meanings that clients attach to prostitution, the dynamics of desire for someone deemed “the other,” and beliefs about community, contracts, and consent (12-16).

Singer (1993) compared the positions of women in marriage and prostitution, revealing a norm of female subordination. Women’s social currency is measured in physical attractiveness and fertility. They can be abandoned and left in poverty by men with whom their future in patriarchy is connected (50-51). The difference between prostitution and marriage is that the former is stigmatized and not legally sanctioned, and the risks to prostitutes are multiplied due to a sex worker’s availability to many men instead of one (Singer, 1993: 51-55). Conversely, a sex trade worker can openly bargain her assets, is clear about what she expects from the exchange, and is not expected to carry out additional duties (Singer, 1993: 53-54; English Collective of Prostitutes, 1997: 84).

Murray (1998) and Doezema (1998) argued that it is necessary to stop creating dichotomies around the sex industry and to emphasize the human rights of women in the sex trade. For example, dichotomies often translate into a representation of either a forced victim prostitute needing someone to explain what is good for her so that she can be saved, or the voluntary whore who gets what she deserves (Doezema, 1998: 47). These dichotomies are already incorporated and reinforced in social and economic structures (Murray, 1998: 63-64; Doezema, 1998: 47).

EXPLOITATION

The issue of abuse towards women is a large concern for social workers and others. Risks have the potential to multiply according to working conditions, lifestyle, and accessibility of police protection. Concerns about sex trade worker abuse extend to child sexual abuse because of the number of women and under-age girls on the street who have a history of sexual abuse.

According to the Prostitutes Education Network (PEN), statistics compiled in America through the 1980’s reflect current trends: “A study of 130 street workers (primarily homeless) who engaged in prostitution or survival sex found that 80% had been physically assaulted” (Prostitutes Education Network, 2001). More often than not, it is the prostitute who is held accountable for her safety and management of risks. Faugier and Sargeant (1997) pointed to a need for risk management in health that includes men and a greater awareness of pimps’ exploitation and prostitute abuse.

Shaver (1996) argued that making a link between childhood abuse and prostitution is problematic, but that, nevertheless, many sex workers may have been victims of abuse in childhood (4). According to Prostitutes Education Network (2001), “between

35 and 85% of prostitutes are survivors of incest or early sexual abuse.” PEN stressed, however, that these numbers depend on particular prostitute populations. Rates of childhood abuse—sexual and other forms—among prostitutes may not be higher than that of the general population. More research needs to be conducted before firmer conclusions can be drawn (Shaver, 1996: 4; Ishida, 1994: 11). According to Davidson (1998), there may be a psychological source for an individual’s involvement in the sex trade. For example, an abused person may float into prostitution as a continuation of the abuse, confirming a fatalist attitude to their experience.

DECRIMINALIZATION

In Canada, laws governing the street sex trade focus upon traffic flow and annoyance factors. These laws do not address root causes of the sex trade or the risks to which women on the street are exposed. Additionally, these laws often work as roadblocks to remedies and are discriminatorily enforced (O’Neill, 1997). Decriminalization would provide sex workers with real protection from people who rob, rape, assault, and harass them. Fear of arrest, outstanding warrants, and the likelihood of being treated as unreliable and uncredible witnesses keep sex workers from getting help when they have been victimized (Sex Workers Alliance of Vancouver, 1999: 1). The Sex Workers Alliance of Vancouver (1999) and the International Committee for Prostitutes Rights (1989) believe that criminalization prevents prostitutes from working together for greater security, organizing to improve working conditions, and stands in the way of their human rights and civil liberties.

Inadequately protected prostitutes become vulnerable to retaliation and bear the consequences when others have a strong motivation to avoid discovery (Sturdy, 1997). Critiquing a similar law in the UK, Edwards (1997) compared sex workers’ increased vulnerability to a bad date because prostitutes are under pressure and have no time to check out customers (65). Violent crimes committed against sex workers are often minimized by lack of offender prosecution (English Collective of Prostitutes, 1997: 93-96). Criminalization’s effects, such as the humiliation and consequent damage to one’s self-esteem, may lead to increased drug use. Greater sums of money are required to support drug habits, thereby keeping sex workers on the street (Davis and Shaffer, 1994: 7).

Davidson (1998) explained that the manner in which laws are constructed enhance power over prostitutes (41). There are a variety of ways that power is organized, including through the law. Dworkin (1987) saw sex laws as a form of political dominance that maintain male power and female inferiority. Breaking those laws can be a tool for men to eroticize sex (167).

Data from New York State’s *Uniform Crime Report* (1989) revealed “bias towards arrests of female prostitutes compared to male clients, and an extremely infrequent ar-

rest pattern on men of pimping charges” (Faugier and Sargeant, 1997: 134). Jeffreys (1997) made the point that penalizing male customers is logical when it is recognized that prostitution is a violation of women’s human rights. She argued that prostitution reform needs to focus upon the demand side of the sex trade.

Davis and Shaffer (1994) disputed “solving” the prostitution problem, but rather sought solutions through economic measure (6). Laws managing prostitution are directed at curbing public inconvenience. Legalizing, rather than decriminalizing, prostitution would place responsibility and consequences on the victims (Davis and Shaffer, 1994; Singer, 1993: 57). Policy decisions have perpetuated invisibility and isolation (Davis and Shaffer, 1994: 3; O’Neill, 1997).

The English Collective of Prostitutes (1997) supported “the abolition of the prostitution laws which punish women for refusing to be poor and/or financially dependant on men; for human, legal, economic and civil rights for prostitute women; and for higher welfare benefits and wages, student grants, housing and other resources so that no women, child or man is forced by poverty into sex with anyone” (83).

Murray (1998) declared that states need to ratify and apply laws and conventions that protect individuals, especially children, from exploitation and abuse: “All states need to start decriminalizing prostitution (without creating new categories of good and bad prostitutes), applying occupational health and safety standards to workplaces (including provisions for street workers), and working toward eradicating discrimination” (63-64).

Davis and Shaffer (1994) advocated for feminists working in combination with prostitutes in order to promote their rights and work for reform. “Once this is achieved,” they wrote, “the debate as to whether prostitution is legitimate work or merely another aspect of male oppression may become moot, as those wishing to leave prostitution will be free to do so” (38).

METHODOLOGY

POPULATION

This study documented all individuals charged in Saskatoon, Saskatchewan in 2000 under CC213.

DATA COLLECTION PROCEDURES

Data was gathered at the Saskatoon Provincial Court House. Records that were at least six months old were looked at in anticipation of recording the final disposition. This aspect of the research entailed going through court records seeking references to CC213 charges and categorizing them by the charged person’s sex.

Initially, Saskatoon Provincial Court House records spanning a six-month period, from May to October 2000, were examined. At the study's start, it was assumed that all data would be obtained from court records, and that these would show charges and final dispositions. In the beginning, the data from 2000 revealed that many of the women's cases were incomplete. This necessitated cross-referencing Court House records with police arrest files. Police records included all CC213 arrests in 2000 and information about those being charged. The names and birth dates of persons charged were obtained from police files to expand and verify the numbers of individuals charged. This became important as some women use more than one name and come into court under different names. Court records were then once again consulted for dispositions of additional cases in 2000.

DATA ANALYSIS

Both court and police records were combined to form a list of all cases for 2000 inclusive. Charges were tabulated for women and men, and then categorized according to disposition typology. This enabled a comparison of both groups by their final dispositions and the charges' current status.

ETHICAL CONSIDERATIONS

Ethical issues concerning the study's effect on individuals' psychological welfare were minimal. The research project did not involve human subjects, only secondary sources of information. No identifying information, such as names, addresses or physical descriptions were put into the final report.

FINDINGS

THE NUMBER OF WOMEN AND MEN CHARGED UNDER CC 213

Seventy-three men and women were charged under CC 213 in 2000. All CC213 charges laid against women were for selling sex, while all charges laid against men were for buying sex. No men were charged with selling sex. More than three times as many women than men were charged (fifty-six women with fifty-eight offenses versus seventeen men) with communication for the purpose of prostitution (see **Figure 1**).

THE FINAL DISPOSITION OF THOSE CHARGED UNDER CC213 IN SASKATOON BY GENDER

Comparison of sentencing severity between men and women (see **Table 1**) is limited due to the difference in the numbers of persons charged in each group. Other factors, such as previous criminal records, other charges laid in conjunction with CC213, economic status, and failure to appear in court, may have influenced disposition outcomes.

Figure 1. Gender Comparison of CC213 Charges.

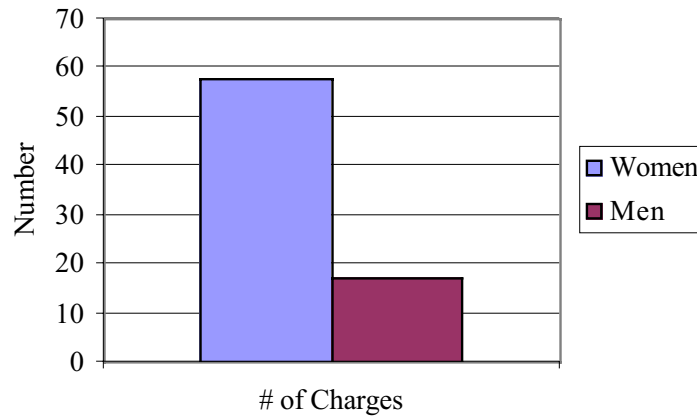
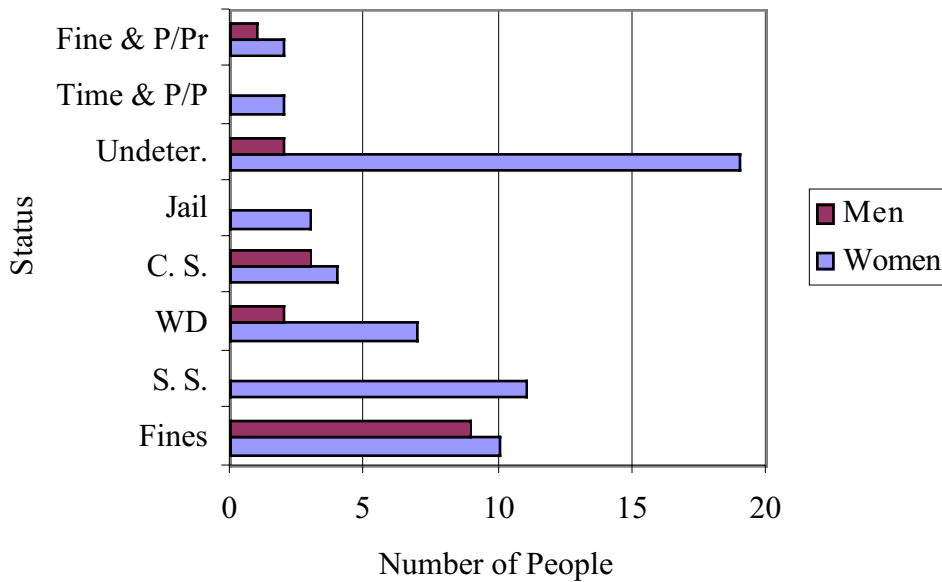


Figure 2 compares the difference in charges between women and men by percentage.

Figure 2. Disposition / Present Status of Charges by Percentage.



Fine & P/PR=Fine and probation and/or parole
 Time & P/P=Time served and probabtion and/or parole
 Undeter.=Undetermined
 C.S.=Conditional sentence
 WD=Withdrawn
 S.S.=Suspended sentence

Table 1. Status of Individual CC213 Charges Laid in 2000 (as of August, 2001).

Disposition	Women			Men		
	Number (n=58)	Percent	Average (days or \$)	Number (n=17)	Percent	Average (days or \$)
Jail time	3	5.2	70	0	0	0
Time served	2	3.4	3	0	0	0
Undetermined	19	32.8	Pending	2	11.8	Pending
Conditional sentences	4	6.9	*100	3	17.6	190
Suspended sentences	11	19	226.4	0	0	0
Fines	12	20.7	\$233.00	10	58.8	\$456.25
Withdrawn	7	12.1	0	2	11.8	Nil

*While four women received conditional sentences, the average was calculated using only three because information for the fourth was unavailable.

Note: For the purpose of representing data, a disposition sentence of one month was converted to a measurement of 30 days. This practice was applied to all dispositions involving time.

Women

- three were given jail time—30 days, 3 months and 90 days
- two were granted time served (1 day and 5 days) with 12 months parole and 4 months probation, respectively
- nineteen cases were undetermined—eleven bench warrants, five adjourned for preliminary hearing, two adjourned for trial, and one to be sentenced
- four were given conditional sentences—one recorded as breached and concluded, one at 30 days, one at 6 months, one at 3 months consecutive (included other charges)
- eleven were given suspended sentences averaging 7.18 months probation—one for 4 months probation, six for 6 months, three for 9 months, and one for 1 year
- twelve received fines averaging \$233—one for \$500, one for \$400, three for \$300, two for \$200, two for \$150, and three for \$100.
- seven charges were withdrawn, with four confirmed closed via successful mediation

Men

- ten received fines averaging \$456.25 (mean \$400)—one for \$225, three for \$300, one for \$350, one for \$400, three for \$500 (one for \$500 had an additional 6 months probation) and one for \$1000
- two charges were withdrawn after successful mediation.
- three received conditional sentences averaging 6.25 months probation (4, 6, and 9 months)
- two cases were undetermined—one waiting for sentence and the other adjourned for trial

Figure 3 illustrates the dollar value of fines by percentage. Values are plotted according to actual dollars rather than by equal distribution.

Figure 3. Dollar Distribution of People Who Received Fines.

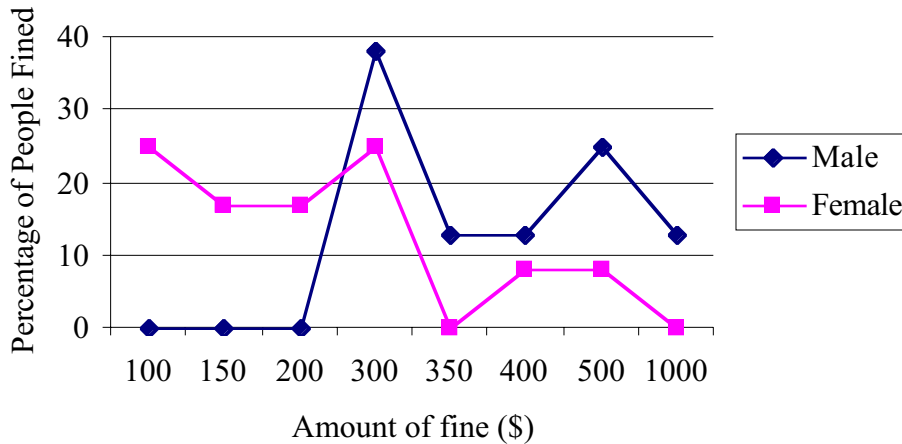
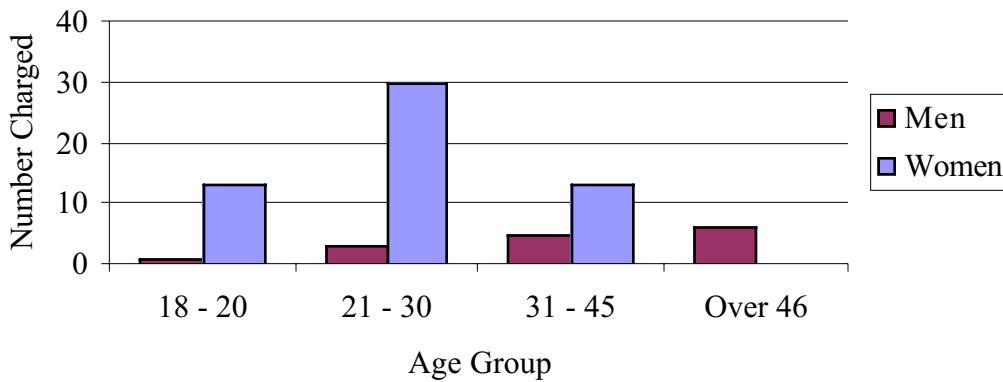


Figure 4 presents the ages of individuals, by gender, charged under CC213 in 2000. Girls under eighteen were not included. One nineteen-year old male was charged under CC213 under special circumstances.

Figure 4. Age and Gender of People Charged with CC213.



DISCUSSION

SYNOPSIS

Seventy-three men and women were charged under CC 213 in 2000. All CC213 charges laid against women were for selling sex, while all charges laid against men were for buying sex. In 2000, there were no men charged with selling sex. Fifty-six women were charged with fifty-eight offenses of communicating for the purpose of prostitution compared to seventeen charges laid against men—a rate of over three times as many charges laid against women as men.

These findings show that an overwhelming majority of people arrested for CC213 violations were women and that, overall, they received harsher sentencing. Some women, but no men, received jail time. Serving jail time compounds deleterious effects for women with children. The children are taken from their homes and placed with relatives or in the care of social services.

Amnesty International (2001) pointed to human rights violations of women in custody as they impact on their children. These violations include a likelihood that these children will enter a revolving door of foster care, juvenile incarceration, and prison, as well as the high cost of keeping women in jail and children in protective services. In the United States, 20% of these children end up living with their fathers, 60% with grandmothers who themselves are poor, and 15% in foster care (1). Amnesty International outlined the effects that incarcerating mothers has on children:

- Children often pay for a mother's crime through removal from home and school, and placement in foster care. Visits with their mother—brief and usually conducted through a barrier—are often restricted to children under fourteen years.
- Research has linked parental incarceration with a child's social, emotional, and cognitive delays. Florinda Andrews, director of the Children's Visitation Program in Ann Arbor, Michigan, noted that, "Many of the children have trouble eating, sleeping, succeeding in school. Some of them are angry at their mothers for going to jail and leaving them."
- Within the already intimidating prison environment, visiting children must face humiliating and degrading procedures such as strip searches (often not in the company of a family member), which increases the emotional distance between children and their mothers.
- Children face other adjustment difficulties, such as changes of residence and school. New rules of conduct in unfamiliar settings await them. Relatives may also resent taking on a new parenting role or lack sufficient health or finances to do so. Consequently, children may exhibit hyperactivity, attention deficits, delinquency, teenage pregnancy, withdrawal from social relationships, or retreat into denial (Amnesty International, 2001: 2).

The fines that men received were higher compared to women. This point, however, may be moot if the economic situation of the two groups is taken into account. We already know that the earning power of women is less than men. Townson (2000) said that the wage gap between women and men is narrowing, but percentages used to measure this are based upon average earnings and say nothing about women's place on the earning scale (4). Overall, women remain in the lowest earning categories. Improvements in earning levels are restricted to women 40 to 54 years old. Other age groups are unchanged (or worse), while men's position is static due to restructuring or loss of high paying jobs (Townson, 2000: 4-5). Women also work in more non-standard jobs and are increasingly employed part-time, compounded by family responsibilities and lack of affordable and accessible day-care. Considering that women are increasingly employed in lower paying non-standard employment, the wage gap is, in reality, increasing when earnings for all women and men are considered (Townson, 2000: 5). Lochhead and Scott (2000) found that women are at greater risk of poverty than men. Single-adult households have less income than two-adult households, with women the poorest, regardless of parental position or age. Single women and single mothers are the least likely to exit poverty, particularly if they are from a visible minority. Those with less than a high school education are more likely to be persistently poor (Lochhead and Scott, 2000: 41).

The average age of a woman arrested under CC213 in Saskatoon in 2000 was twenty-six years, while a man's average age was forty-nine years. This makes the men, on average, twenty-three years older than the women. The age difference would be wider if arrested women under eighteen years were factored in. This age difference may also impact women's ability to pay fines. For example, the younger the sex worker's age, the less employment experience she will have and more likely that her education will be insufficient to ably compete for work. Young people often do not possess necessary information to access resources and have no place to turn except to the streets. It then becomes obvious where these individuals will turn in order to pay fines.

Despite that court records and police files do not record the ancestry of individuals, women's names suggest that most are of Aboriginal ancestry. The men's names indicated that only two were possibly from backgrounds other than European. There was no indication that any of the men were Aboriginal.

LIMITATIONS AND BENEFITS

What these results do not show is prostitution's connection to broader social problems. For example, the study did not explore women's socio-economic status and the way that laws and social policies impact this. Additionally, these results did not address arrest records or the role that pimps play in sex trade workers' exploitation. It also did not explore arrests or disposition of people involved in other forms of prostitution, such as escort services or phone sex. Furthermore, technology's increasing role in the sex trade was not examined.

Objections connected to this study's conclusions might include difficulties in comparing two groups who likely have a very different historical relationship with the justice system, both individually and as a group. By highlighting these differences, systemic causes may make themselves known. In other words, it is hoped that incongruence will point to power differences rooted in sexism, poverty, racism, and how a society unconsciously relates to groups as "other" and renders them "invisible."

It is unknown if this comparison between men and women's charges and dispositions would be constant in other Canadian cities. These factors are susceptible to change over time and different locations. What the study demonstrates is the comparative enforcement and implementation of CC213 in Saskatoon in 2000. This research, however, could be a useful starting point for comparing rates with other Canadian regions and cities. For example, CC213 might be implemented differently in Ottawa or Vancouver. This could lead to an examination of the factors that determine why there is inconsistent enforcement. Additionally, further comparisons could indicate the advantages of one form of enforcement over another.

This study challenges laws related to prostitution as it questions compounding victimization of women. It could also provide a baseline for future comparisons of violence and murder rates against prostitutes since CC213's enactment. As an aside to the study, it may be useful to examine the possibility of links between street prostitution and institutional care in childhood. This would include foster care, correctional institutions, and psychological or economic abandonment.

ADDITIONAL INFORMATION FROM THE COMMUNITY

In order to get a clearer picture about the story behind the numbers, individuals at community agencies that deal with women in the sex trade charged under CC213 were contacted. This was to ascertain why women have such a high proportion of bench warrants, why more did not have their charges withdrawn through successful mediation, what happens to them between the time of arrest and their court appearance, and to gain an idea of how many women and girls are believed to work Saskatoon's streets. Information was accessible due to the willingness of individuals who work cooperatively and with genuine compassion towards the women who engage in survival sex in Saskatoon.

As indicated by Legal Aid lawyer Norma Sims (2001), women are often held in jails until their next court hearing. They are held overnight in RCMP cells in Saskatoon or in Prince Albert at Pine Grove prison. Women may wait for days until they appear in court. A woman arrested on Thursday night might have to wait until after the weekend for a bail hearing. Women are often released on their own recognizance, but this is problematic because some women charged with CC213 do not show up for court. Many have other issues with which to deal, most notably that they generally work in the eve-

nings and therefore have difficulty waking up in time for their court appointment. Their schedules are not favorable to accommodating what society at large refers to as reasonable meeting times, such as court appearances.

Sex trade workers frequently have additional “system generated” charges against them related to “the street” and/or addictions (Sims, 2001). According to Sims, these women are often given probation and breach prescribed conditions. For example, they may be prohibited by the court from consuming alcohol and/or drugs. They receive additional charges if found doing anything that breaches conditions of their release. This is also true if they fail to appear in court. So it follows that the courts, in effect, move further from providing social supports or risk management and deepen the criminalization of women in need.

According to unofficial Saskatoon City Police memos, most arrests take place on Saskatoon’s “stroll” on 21st Street, while others occur at a local truck stop:

Since October 30th, 1998, to January 2000, two hundred and sixty-one prostitutes have been checked. Sixty-one, are under the age of eighteen years as of this date. Eight of these persons are under the age of fourteen years of age.

The majority of the sixty-one prostitutes aren’t the so called regulars on the stroll. They may work to buy drugs, pay off a fine, or buy transportation back home. When checked many of these girls don’t have identification, thus they could use various names when checked by the police. This would result in figures not being completely accurate. The addresses of these people could be incorrect as they move frequently. It should be noted that a lot more girls under the age of eighteen have surfaced since October 1999 (Saskatoon Police Services, 2000).

Saskatoon Community Mediation Services (SCMS) has established a diversion program for sex trade workers. The program works towards establishing a circle of support for sex trade workers in order to link them to community resources and services. The Diversion Pilot Program for Sex Trade Workers began 1 November 1998, with first cases opened on 25 January 1999.

As stated by SCMS’s report, from 1 November 1998 to 19 September 2000, twenty-seven people charged under CC213 were referred to them. Of these cases, twenty-five were Aboriginal, one white, and one of unknown race. Eight were between the ages of 18 to 25, thirteen between 21 and 30, five between 31 and 40, and one between 41 and 50 years of age. Six cases were open at the time of this report, five successfully completed, and sixteen unsuccessful. Reasons given for case incompleteness were that eleven had bench warrants, two were recalled by the Crown, one was withdrawn by the Crown, and

two were referred back for not guilty pleas (SCMS, 2000: 6). This report did not specify the gender of persons in relation to the factors presented.

There are numerous barriers that prevent women in the sex trade from using mediation services, including the provision that makes sex trade workers eligible for mediation only on their first offence. Until 1 November 1998, individuals with a previous criminal record did not have the opportunity or choice of mediation. Another impediment was that in eleven of the sixteen unsuccessful cases “the accused failed to appear in court for sentencing” (SCMS, 2000: 1). Many female sex trade workers fail to appear in court because of transient lifestyles. Bench warrants are mailed to former addresses, which means that these women often do not receive them (SCMS, 2000).

NEW DEVELOPMENTS

The Saskatchewan government launched an all-party special committee aimed to “Prevent the Abuse And Exploitation of Children Through the Sex Trade.” The legislative committee’s final report came out in June, 2001. One of the most controversial ideas discussed was the option to direct fines paid by people who abuse children through the sex trade on behalf of those children (Special Committee, 2001: 12). Another suggestion was to draft legislation which would allow victims to sue pimps or customers who had abused them through the sex trade (13). Considering that many adult women’s involvement in the sex trade began when they were children, this raises some interesting questions, such as whether adult women could use this retroactively to lay child abuse charges against men who abused them through the sex trade when they were under the age of consent.

In Canada, the age of consent is fourteen years. Recommendation #14 of this committee is to amend the Criminal Code to raise the age of consent to sixteen (Special Committee, 2001: 19). Sexual exploitation of children is significant to prostitution because many women in the sex trade began prostituting themselves when they were less than eighteen. Many factors may be noteworthy in this context, including an individual’s developmental stage when they make life decisions or are in a particular life-style. Abuse and lack of family and/or social supports may contribute to personal boundaries from which an individual is able to draw. Their ability to seek alternatives is limited because some of these options are not present when growing up. This makes it more difficult to protect themselves from those who would take advantage of their naivety. All young people need guides and supports until they are developmentally ready to navigate the world.

As of July 2001, one recommendation enacted is to empower police in Saskatchewan to seize and impound vehicles of people communicating for the purpose of buying sex. The change is included in the *Highway Traffic Amendment Act* and allows for the return of vehicles if charges are dropped or if the accused enrolls in “john school” (pro-

grams to educate johns of their behaviour on the community) (Lang and Warwick, 2001). The same newspaper article's title stated that officials claimed that the "new law sends strong message to johns." Yet, if few buyers are arrested in the first place, how will the change have any impact or work towards meaningful change, other than appeasing the public? The amendment may also be easy to challenge because, at the time, there are no "john schools" operating in Saskatoon. It is also worthwhile contemplating what would become of a seized vehicle when charges are withdrawn through mediation or after court fines are paid.

Operation Help (OH) is a new operation initiated in Saskatoon in 2001. The project is implemented by the Saskatoon police services, the youth services organization Egadz, provincial Social Services, a representative from Legal Aid, an Aboriginal court worker, an Aboriginal Elder, and a survivor mentor. Its aim is rehabilitation, rather than criminalization. It seeks to address prostitution by dealing with its root causes instead of by regulation. The project's intention is to set up supports and resources for women arrested under CC213 and dissuade them from returning to the sex trade. It addresses sex trade workers' social needs from a holistic perspective.

Under OH, after a sex trade worker is arrested she is given the option of meeting with a support circle comprised of one member from each of the above stakeholders. Often, a member of the support circle will know the women in custody, so they will approach her after being brought into custody and explain *Operation Help*. If she agrees, a meeting is held in the library of the Saskatoon City Police station to offer supports and resources and to work out a case plan. While sex trade workers are arrested for committing an offense, no charges are laid. If they break their agreements, they are brought back into the circle to explain their actions. If they are again arrested under CC213 and there is no other option but to charge them, previous offenses do not incur charges. It is understood that criminalizing these women is not a useful way to help them. According to Huisman (2001) every effort is made to assist these women with social supports. When women end up in court, police recommend court-imposed Community Mediation. Saskatoon Police Vice representatives deliver relevant information to women from the court, including instructions from the prosecutor (Huisman, 2001).

In 2001 (as of 24 July), twenty-two women and two men have been arrested under CC213. Four females were under the age of eighteen. Although these women are given the opportunity to avoid criminalization through OH, the trend of focusing on women in the sex trade is still apparent. As with many initiatives, Operation Help has encountered obstacles with regards to accessing treatment programs (Huisman, 2001). Government cutbacks to social programs that guide accessibility to adequate resources and treatment facilities affect projects that strive to meet requirements of people in need.

Operation Help is a step in the right direction, but still addresses prostitution from a legal perspective. Constable Randy Huisman (2001) persuasively argued that the

value of CC213 is that it enables implementation of interventions on behalf of women and provides a means to prosecute predators who victimize women. OH is not punitive, but rather concentrates on harm reduction.

Within the existing legislation on prostitution, OH is the most progressive initiative enacted thus far. It makes use of available resources to the greatest advantage possible within legal boundaries. Operation Help can be regarded as opening a door to better options and supports for women in the sex trade.

On the other hand, legislation that criminalizes the sex trade clouds social and socio-economic issues linked to all women's equality, leaving the door open for structural abuse. As long as the sex trade is filtered through the justice system, sex workers are vulnerable to its associated stigma and risk punitive action for non-compliance. This reinforces the dichotomy of deserving versus undeserving women.

CONCLUSION

Legislative change directed at decriminalizing prostitution would not prevent the prosecution of individuals who break laws. In a democratic and pluralist society, laws are designed to protect individuals and communities, not to uphold moral values. The protection of all individuals' human rights and dignity are vital to a democratic society. Rather than punishing women through the legal system, it would be better to remedy systems that put people at risk and protect their human rights.

As a feminist I look forward to a time when we can experience greater individual autonomy *and* collective responsibility. In the meantime we need to ensure that women working as prostitutes are not criminalized, stigmatized, or treated as social junk. (O'Neill, 2001: 188)

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Appendix A. Principles of Canadian Association of Elizabeth Fry Societies

The strength of our federation is the freedom to meet the needs of our communities in unique and effective ways. As an Association, CAEFS develops policies and positions and acts on common interests affecting women. Member societies support the following principles:

- Every individual is equal before and under the law and has the right to equal benefit of the law without discrimination.
- Every individual has a right to legal counsel, due process and natural justice protection. Women have the right of access to equal opportunities and programs in the justice system; women have the right to justice without fear of prejudice or gender discrimination.
- Commitment to equality rights does not preclude any practice, program or activity of our association that has as its object the amelioration of the conditions of disadvantaged individuals or groups.
- Action is required in order to ensure quality programs, services and facilities for women in conflict with the law, based on individual needs.
- Responses of the justice system to individual behaviour should interfere with individual rights and freedoms only to the minimum extent necessary. The correction of the offender should take place in the community, unless there are compelling reasons to the contrary. Further, the offender should retain all the rights and privileges of an ordinary citizen, except those expressly removed by law.
- Because the community and all its members have the ultimate responsibility for the response of the system and the handling of offenders, it is essential that the community be involved in all aspects of the criminal justice system.
- The active participation of volunteers in all aspects of our organization is fundamental to attainment of the Association's goals.
- In pursuit of excellence and efficiency, CAEFS and its members shall always seek to improve their standards and programs, to identify and address the gaps and unmet needs and to seek changes through reforms of the law and penal and correctional regulations, practices and conditions.

Appendix B. The Daily Report on Street Prostitution

Thursday, February 13, 1997

For release at 8:30 a.m.

STREET PROSTITUTION

Between 1991 and 1995, 63 prostitutes were murdered in Canada. Sixty of them were female, including seven juveniles aged 15 to 17. During this period, known prostitutes accounted for 5% of all reported female homicides.

According to police records, 50 of the victims appeared to have been killed by customers. Eight others were suspected to have been murdered by a pimp or in a drug-related incident, while the remaining deaths were at the hands of a husband, common-law spouse or boyfriend.

On the other hand, over the five-year period, 18 prostitutes were charged in the deaths of 16 people, including 10 clients, 1 pimp and 5 others, mainly acquaintances.

MEN AND WOMEN CHARGED IN CLOSE TO EQUAL PROPORTIONS

In 1995, police charged 7,646 individuals - 4,158 females and 3,488 males - with prostitution-related offences, that is, communicating, procuring and bawdy-house violations.

Females accounted for just over half (55%) of the 6,710 persons charged with communicating to buy or sell the services of a prostitute. Although the data do not indicate whether the person was a prostitute or a client, it is generally recognized that most prostitutes are female and virtually all clients are male.

In addition, females represented 64% of all those accused of a bawdy-house offence in 1995, while 7 in 10 individuals charged with procuring were male.

Only 3% of those accused of a prostitution-related offence in 1995 were youths aged 12 to 17. This relatively small proportion may reflect the fact that police frequently divert juveniles to social service agencies instead of laying charges.

POLICE CHARGING PRACTICES VARY

In total, police reported 7,165 prostitution-related incidents in 1995. (The number of incidents is not equal to the number of individuals charged, since more than one person may be charged in an incident.) Over 9 in 10 incidents involved communicating; the remaining incidents concerned procuring (5%) or bawdy-house (3%) offences.

Prostitution incidents reported by police(*)

	All offences	Communicating	Bawdy-house	Procuring
1995	7,165	6,595	185	385
1994	5,575	5,090	164	321
1993	8,517	7,971	157	389
1992	10,137	9,616	212	309
1991	10,567	9,860	382	325
1990	10,273	9,686	256	331
1989	9,717	8,922	371	424
1988	10,721	9,965	297	459
1987	10,457	9,243	684	530
1986	7,426	6,439	614	373

(*) Excludes incidents where prostitution was not the most serious offence.

Source: Uniform Crime Reporting Survey

Note to readers

Juristat: Street prostitution in Canada was released today by the Canadian Centre for Justice Statistics. It deals with prostitution-related crime (that is, communicating, procuring and bawdy-house offences) from 1977 to 1995, with a focus on recent years.

Data on prostitution incidents, including prostitution-related homicides, were supplied by police agencies across the country.

Adult provincial court data were obtained from a limited number of jurisdictions: all criminal courts in Prince Edward Island, Ontario, Saskatchewan, Alberta, Yukon and the Northwest Territories, and some courts in Newfoundland, Nova Scotia and Quebec. The 1993 and 1994 calendar years are covered, except for Ontario, where the 1993/94 and 1994/95 fiscal years are combined.

The number of prostitution-related incidents in 1995 was 29% higher than the previous year. However, this increase came on the heels of steep declines between 1992 and 1994. Such fluctuations are common and usually reflect changes in the enforcement of the communicating law, rather than criminal activity. For example, if police conduct a few large crackdowns, the number of charges can be expected to rise temporarily.

POLICE TARGET CUSTOMERS

Since December 1985, when the communicating law replaced the soliciting law, there has been a shift towards more men being charged. For example, between 1986 and 1995, almost half (47%) of all individuals charged with communicating were male, compared with just over a third (36%) of those charged with soliciting between 1977 and 1985.

This increase may reflect changes in enforcement practices, in that some police agencies are charging more men in an attempt to hold customers more accountable for their participation in the sex trade. Also, since 1985, the law in force has clearly applied to clients as well as prostitutes.

ARRESTS ARE CONCENTRATED IN LARGE URBAN CENTRES

In 1995, almost two in every three reported incidents of prostitution originated in the Toronto, Montreal or Vancouver census metropolitan areas (CMAs). Only 4% of incidents were reported from areas outside CMAs.

Over half (55%) of the 1994 to 1995 increase in prostitution incidents was traced to a substantial rise in the number of communicating offences reported from Vancouver. However, this growth followed steep declines in Toronto, Edmonton and Calgary in 1994, and in Vancouver in 1993.

When comparing geographical areas with different population sizes, incident rates are more appropriate than counts. Based on police reports from all CMAs, the 1995 communicating rate was highest in Regina: 107 communicating incidents for each 100,000 individuals.

Vancouver came second with 66 incidents per 100,000, followed by Edmonton (49) and Halifax (48). Rates in the nation's two largest CMAs were somewhat lower - 42 in Toronto and 38 in Montreal.

CONVICTIONS RESULT IN A VARIETY OF SENTENCES

Communicating was the most serious offence in 7,062 reported adult court cases resulting in convictions in 1993 and 1994. Nine in ten cases involved a single charge.

While men aged 18 and over accounted for 56% of convicted communicating offenders, their female counterparts tended to receive tougher sentences. For example, a jail term was the most serious penalty administered to 39% of women convicted in 1993 or 1994, while for 22% it was probation. In contrast, only 3% of men were imprisoned and 13% were put on probation. It is possible that women were more likely than men to be sent to jail or given probation because of previous convictions or multiple charges.

The most severe penalty for men was usually a fine, which was levied in 56% of

cases. In comparison, only 32% of women were fined. The remaining offenders received some other penalty (such as a driver's licence suspension), or were given an absolute or conditional discharge.

When prison sentences were handed out for communicating, the median duration was the same for both men and women (30 days). However, when probation was the most severe penalty imposed, the median length of time was twice as long for women as for men (one year versus six months). In cases where a fine was administered, the median amount was \$200 for both sexes.

Juristat: Street prostitution in Canada, vol. 17, no. 2 (85-002-XPE, \$10/\$90) is now available. See *How to order publications*.

For further information on this release, contact Information and Client Services (613-951-9023; 1 800 387-2231), Canadian Centre for Justice Statistics.

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