Globe editorial

**Prostitution: Should it be legal? Yes**

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So now what? A few days before Christmas, the Supreme Court of Canada handed the federal government a present that was about as welcome as a lump of coal: It struck down Canada’s prostitution laws. Ottawa was given one year to come up with new rules. The clock is now loudly ticking: There are fewer than 10 months remaining before the deadline.

Justice Minister Peter MacKay, who last week opened a public consultation period on the subject, has said that his Conservative government will deliver a new legal regime well before the end of the year. Given that his government has a majority, getting legislation passed won’t be difficult. But coming up with laws that actually work, and which can satisfy both voters and the judges of the Supreme Court? That’s going to be a challenge.

The choice for Canadians is between two ways of dealing with the oldest profession: the Nordic model vs. the Dutch model. The government appears to be favouring a version of the former, but the long-standing practice of Canadian law, and the approach the Supreme Court seemed to be leaning toward, are closer to the latter.

Under the Nordic approach, used in Sweden and several other European countries, prostitution is a crime – but the police target the buyers of sex, rather than the sellers. Under the Dutch model, the sale of sex is legal, and government regulates where and how it is sold. The Nordic model aims to eliminate prostitution, or at least greatly reduce its occurrence. The Dutch model legalizes it, with the goal of reducing harms.

“It is not a crime in Canada to sell sex for money.” That’s the first line of the Supreme Court judgment striking down the prostitution laws. Various activities surrounding sex work were against the law – the three pillars of the old legal regime made it illegal to run a brothel or to work in one, to be the manager or employee of a prostitute, or to solicit in a public place. But the sale of sex has long been entirely legal in Canada.

The Supreme Court rejected those three pillars of the old rules, while at the same time giving Ottawa the green light to come up with new rules – but any new laws must take into account the dangers of sex work for sex workers. The Court found that, because prostitution is legal, Ottawa doesn’t have the constitutional right to regulate it in ways that make it more dangerous. “Parliament has the power to regulate against nuisances,” said a unanimous court, “but not at the cost of the health, safety and lives of prostitutes.”

Prostitutes were breaking the law if they kept a regular place of business, hired a receptionist or security guard, or vetted clients in a public place. And that, said the court, was making their lives a lot more dangerous.

So Ottawa can regulate prostitution; it just can’t regulate in ways that increase its hazards – because it’s a legal business. Which invites a question: What if the federal government made it illegal?

That’s the Nordic model, and it may be where the Conservative government is headed. The Nordic approach tries to shut the business down, by going after the customers rather than the sellers. Selling sex in the Nordic model is legal – but buying it is not. Proponents say that’s as it should be, because the exchange of sex for money, in their view, is inherently degrading, and many sex workers are selling because they have no other choice, for reasons of addiction, poverty or worse.

The approach is increasingly popular in Europe, where just this week the European Parliament passed a resolution recommending that all EU countries consider adopting the Nordic model. If the Conservative government were to pass a law along these lines, it would find itself with interesting bedfellows. The Nordic model is a darling of the left.

Then again, the prostitution debate makes for surprising partners: Those opposed to the Nordic approach are a mix of feminists, liberals and libertarians, some of whom believe that selling sex shouldn’t be stigmatized, and others who simply think that sex work is the oldest profession for a reason, namely because demand exists and always will. That’s the Dutch model: Make it legal and regulate it, like alcohol or strip clubs.

The Supreme Court didn’t give the government an instruction manual on which types of regulations might pass constitutional muster, and which will not. All the court said was that if sex work is regulated, it has to be done in such a way as to make it less dangerous for sex workers. That suggests something like the Dutch approach.

The idea of keeping prostitution legal, but regulating it differently than under current laws, has a compelling logic to it. But coming up with new rules won’t be easy.

Should Canadian cities have red-light districts, like Amsterdam? What if a city didn’t want one? Would prostitutes have to be licensed? Would they be allowed to run their business out of their homes or apartments? Or would they only be allowed to operate in areas zoned for this activity? And should any of this even involve the federal government and criminal law, or is this a question for provinces and municipalities to deal with through zoning, licensing and health laws? None of this will be simple or cheap; it might not even be effective. It will put new burdens on police, municipalities and public health officials. It is fraught with challenges.

The old rules were imperfect, but they did function. Striking them down was easy for the Supreme Court; replacing them, a job it left to politicians, will not be. What comes next could be a better system, though it is guaranteed to be messy and far from perfect. But to govern is to choose. And on balance, we believe that legalization and regulation, not criminalization, are the way to go.