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Chair

Mr. John Maloney

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• (1815)

[English]

The Chair (Mr. John Maloney (Welland, Lib.)): I'd like to call the meeting to order. We have our quorum. We're a little bit late from our scheduled time, so I'd like to try to move it along as quickly as we can.

Our witness this evening is Mr. Paul Fraser, co-author of the Fraser report. We very much appreciate your appearance tonight, Mr. Fraser.

I've informed you of our routine as far as opening statements and the questioning that will follow thereafter are concerned. We'll have seven-minute rounds from the members of Parliament, and then we'll go to three-minute rounds.

Mr. Fraser.

Mr. Paul Fraser (Lawyer and Chair of the Special Committee on Pornography and Prostitution, Department of Justice, from 1983 to 1985, As Individual): Thank you, Mr. Maloney, and good evening, members of the committee.

I'm grateful for the invitation you've given me on what is really an anniversary of sorts. It was 20 years ago that the report, which no doubt you've all read until your lips got tired, was written. After 20 years in this subject, it's nice to be invited to discuss it at all.

As you know, these are important matters. If one had wanted selfishly to preserve a legacy, one would have hoped that one's government might have been asked to study something else. My late and dear mother used to say, when her friends asked her what her son was up to 20 years ago, that as far as she was concerned, it had just to do with the meaning of life. And I agree with her.

In terms of what we do this evening, I hope you'll understand that I have not, since this report was written and delivered to the then Minister of Justice, John Crosbie, remained current in all of the debate that has surrounded these issues.

I did that—if it's important to record this—because it seems to me that if people are asked to do work in which public funds are expended, what they have to say about the subject should be fully and completely recorded, and they should then stand back on the debate and allow those who haven't been funded publicly and haven't been given the great benefit of producing a report like this to engage, and let the debate go on.

It's also the case that it would have been too easy to be, if you like, an institutional resource for anybody in the media or otherwise who wanted to talk about these issues as they arose. The job you all have is much more important than the one I had, because you, of course, have to actually do something about these issues.

One of the things, as a matter of process, that I thought was important—and my colleagues agreed with me—was that in areas as difficult at this, in terms of law reform and examination of the social fabric of a country, it isn't terribly helpful, I don't think, for people asked to study these things to simply say the law should be changed to reflect all of these values. I think it's much more helpful, if legislative change is to be recommended, that one impose the discipline on oneself of coming up with the actual legislation, so that what you say to the public is, this is what the law would look like, if you agree and if you accept the recommendations. And to the extent that we could, I think we have reflected that in the report.

In coming to talk about it now, I want to be careful, given the passage of time and the fact that I haven't stayed current, that I'm not seen to be telling you more than I know. What I know is what the situation was 20 years ago. What I have tried to do in the paper, which I think has only recently been given to you.... That's my fault. I wasn't able to get it to your clerk until Monday morning, and I apologize for the fact that the distribution has been late.

What I tried to do in that paper, with the able assistance of one of our law students, is to show you, as a resource perhaps, what the fate was of the recommendations we made, legislatively—the extent to which the recommendations were accepted, the extent to which they were not—in an effort, if you like, to have a bit of a box score in terms of what the present situation is.

• (1820)

I am going to assume, for the sake of what else I have to say, that at some stage you will have, if you're interested, an opportunity to read the chapter and verse of the submission that I've given to your clerk, and to the extent that it can be helpful, you'll have as part of the equipment the horsepower going forward that you'll need to deal with this difficult subject—the report.

I should tell you a bit, for those of you who may be coming to the work product more or less for the first time, what it was that we did as a process in an effort to do what we thought was the most important part of our mandate. That was to gauge public opinion and, more important perhaps, to get information from the public and use it as some kind of template to which we could apply the information we were getting from other institutional sources.

There were seven of us on this committee. And just so that you know and can perhaps identify biases simply by how we all made a living, the seven members of the committee consisted of four women and three men. We had a professional journalist; a sociologist, who was also a university dean; the former police chief of the city of Montreal, who was also a criminologist; a former law school dean; and three practising lawyers.

We had the terms of reference that are set out on page one of my piece to you, which were basically 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. To do that we were told we needed to ascertain public views on ways and means to deal with these problems and to consider the experience of other countries.

In coming to speak to you tonight, I looked at some of the things that we had to say going forward, because the establishment of the committee itself was very controversial. In political terms, the way it played was that the committee, it was said, was an attempt by the then government to effectively punt this issue into the air and have it talked about by the committee instead of Parliament and other places where it belonged. There were other people who had the view that the committee could be a useful resource to any government and that the committee should go forward.

There were particular concerns about street solicitation. There were business people, property owners, literally across the country, who were beside themselves with the antics of some of the folks on the street who were soliciting for prostitution purposes.

Standing back from it, and with the benefit of being older than probably all of you in this room, I state again for your record what we said in the preface, that in a sense the very fact that we were asked to discuss these issues publicly says something about the generation I am a member of, and perhaps it was the reluctance of the preceding generations to talk openly or at all about some of the manifestations of human sexuality that caused subjects such as pornography and prostitution to be just whispered about and not discussed.

It's also important to quote from what we had to say in terms of the at least double dimension of the work we did. In areas, we said, as complex as the ones that we were asked to undertake, it was difficult to be certain about anything. On one issue, however, we were certain that the answers to the problems raised by pornography and prostitution in Canada were not just legal answers; they were to be found instead in the social order of things and in the way in which Canadians practise the equality, dignity, and respect that our Constitution enshrines.

That, perhaps, is a description of the way in which we went forward or the view that we had going forward to try to report fairly on these issues.

• (1825)

After a period of almost two years, after reading something like 564 or 565 submissions that had been made from ordinary folks, institutions and organizations across the country, and after having four months of public hearings in a variety of cities and communities across the country, communities of varying size where the problems were sometimes the same and sometimes quite different, we came up with our recommendations.

We did that also taking into account private meetings we had arranged and meetings with people who were involved in the actual activity—and I'm speaking now directing my remarks only to the prostitution issue—so that we could do so in a way that was likely to get real information, as opposed to putting them in a situation where they would have to come forward in a formal way and provide evidence. We found it easier and certainly more successful to get information from them privately.

The submissions were about evenly divided between the two subjects we had to study. The consultation process that we followed was with governments across the country and with agencies of government. It was fairly complete. At the same time as we were doing our work, the federal Department of Justice was conducting a variety of polling and surveying in these areas. There was a committee that some of you may remember, headed up by Dr. Badgley, which was looking at these issues through the prism of children only. We were effectively put into a tandem parallel process, and there was a cross-pollination between our work and theirs.

We didn't travel outside the country simply because for the most part we found, as I'm sure your research assistants have, that the legislation in other countries was relatively easy to come by, the subject matter was as controversial in other places as it was in Canada, and the information was documented to such an extent that it wasn't going to be necessary empirically for us to spend any time out of the country.

The process is a process that I have taken some time to mention because I wanted you to simply understand that we were as transparent as we could be in terms of gathering the views of members of the public. The survey information that we were being given, and which we tested from time to time with people who came forward as our constituents, either as members of audiences or as people who had submissions to make, was very informative.

For example, we were being told that 92% of the respondents to the government surveys, and by inference—although that may be a false inference—that 92% of Canadians thought prostitution would always be part of our society. Maybe we're surprised that it's 92% and not 100%, but that kind of information was of some interest to us. My point is that it was tested against what we were told at our public hearings.

From the survey material made available to us, we found that many Canadians, but by no means all, found prostitution morally unacceptable. The exchange of sex for money was considered morally wrong by 62% of those surveyed, but the figure dropped to 53% when sex was exchanged for benefits other than money. Men and residents of larger communities were the most accepting of prostitution. Again, the survey results are what they are. The quality of the survey I leave for others to decide.

● (1830)

The history of prostitution in the country is one thing we spent a little bit of time looking at, because it seemed to us—as it turned out, all of us—there was a misunderstanding in the land about whether prostitution was illegal. The reality is that prostitution in this country has not been illegal since 1972, when the then Vag C, or the vagrancy provision of the old streetwalkers legislation, was repealed. From 1972 on, the activity of prostitution has not been against the law of this country. The arrangements of the law have to do with how the prostitution is conducted, and largely have to do with the benefit and the exploitation that surround it—typically the exploitation that doesn't benefit prostitutes, but only those who shepherd them.

That history, in case your researchers are interested in quick references, is found particularly on page 404 of the second volume of the report, dealing only with prostitution. We found and recorded in our text that the dual elements, in the thinking of lawmakers, of the prostitute as both a moral and legal outcast and the need to somehow protect respectable women from the wiles of perverse males continued to influence the law and its enforcement through the 20th century. That is perhaps a little bit too melodramatic but, I suspect, quite accurate.

What is the law, then, if one had to characterize it with respect to the activity of prostitution? I've said the activity itself is not illegal. On page 404 of the report, we say that there are really three types of problems that the law, through the Parliament, has addressed. One is the institutionalization and commercialization of prostitution, that is to say the so-called bawdy house offences. Two is the general promotion of prostitution and the control and manipulation of prostitutes, sometimes referred to as procuring and living off the avails. Finally, there is the public nuisance effects of street prostitution, the so-called street soliciting.

We, of course, in 1985 were still looking to the courts to interpret aspects of the charter that had heavy impact on the way the criminal law was attempting, for its own policy purposes, to monitor the conduct of people. The Supreme Court of Canada had made some decisions by then, interpreting the charter.

We are now 20 years on, and we have the benefit now of being able to look at the constitutionality of some of the legislation that has come down. We had an eye on the constitutionality of the legislation that flowed from our recommendations, but we weren't cowed by it in the sense that we worried too much about that and not enough about trying to address what we thought was the need.

The charter, particularly the provisions of the charter having to do with freedom of expression, freedom of association, and the life, liberty, and security of the person, has an impact on all aspects of the legislation that no doubt you're examining.

● (1835)

I've given you the notes and the various cases. I say "I've given you", but you may notice that a very talented young law student has put this together. If the paper is found by you all to be a good paper, she will get the credit. If, for whatever reason, you find it to be wanting, I'll take the blame.

By and large, the Supreme Court of Canada, in all of the cases that have been taken up to it, including cases that challenge the constitutionality of the very legislation we recommended in our report—and three-quarters found that the legislation is constitutional—has invariably found that the legislation offends against the charter and its liberties, the ones I've identified, but the legislation has, for a variety of reasons, been found to be justified in our free and democratic society.

I think it's important in coming to look at our recommendations that you put them in some kind of context. So it's important in our intellectual fairness and honesty here to realize that recommendation 55 in our report reads: "the prostitution related activities of both prostitutes and customers should be removed from the Criminal Code, except insofar as they contravene non-prostitution related Code provisions and do not create a definable nuisance or nuisances". So essentially the bias we declared was that the activity should be decriminalized.

However, we ultimately recommended that the offences around the activity of prostitution that in our view were set up in an effort, albeit sometimes unsuccessful, to protect those people who were in the sex trade business should remain part of the Criminal Code and should be strictly enforced. And when you look through the provisions of the Criminal Code that we recommended, you will see that the largest part of our success.... I am trying, Mr. Chairman, with an eye on the clock, to now condense my remarks, because I know that most of your interest may be in having a colloquy between us.

We wanted to point out what we thought were obvious omissions from the law, as we found it. They had to do certainly with the way in which young people under 18—let's call them juveniles or minors—were being treated in the code and the extent to which there was not in the code, when we found it in 1983, the provision that ultimately there is now after our recommendations were accepted, so that conduct involving children under 18 has been said to be criminal. And the penalties are very severe indeed.

So our recommendations with respect to people who choose to live off the avails of juvenile prostitution were accepted and are now, as I indicate, in section 212 of the code. There's also an aggravated version of that activity in section 212 having to do with living off the avails of minors.

The committee's recommendations and concerns about sexual exploitation of street youth, making the purchase by adults of sexual services of minors an indictable offence, was new, and that was a recommendation that we made and that was accepted.

• (1840)

The soliciting provisions we recommended were to some extent accepted and to some extent not. The old section of the code talked about soliciting on the street and was the subject matter of the Supreme Court of Canada's decision in *Regina v. Hutt* as to the extent to which the conduct had to be pressing and persistent if it was going to be seen to be criminal and whether a car was a public place. All that sort of thing needed to be cleaned up because there was huge uncertainty in the law, and that happened ultimately in terms of the recommendations. So we now have section 213 whereas formerly we had section 195. And the soliciting provision, section 213, was found—as I notice in the paper—by the Supreme Court of Canada to be constitutional and its validity was upheld.

I've covered some of the successes without, hopefully, taking any credit for them. There were some very considerable failures, and they largely centred around the recommendations that were made with respect to bawdy houses and with respect to procuring. As some of you may remember, the recommendations with respect to bawdy houses were an Eldorado for the press. It was of course grist for the mill, and the report on our recommendations was basically that there would be red light districts everywhere and it would be wide open.

In fact, the recommendations were largely this. The view we had, to put it bluntly, proceeded from the proposition that if any person, male or female—and I should have said earlier that the law has now caught both genders, where it didn't before—for whatever reason has to or chooses to earn a living in prostitution, then the fruits of that labour should belong to them in this very difficult and cathartic existence and, as a matter of policy, there should never be a way in which the law could encourage anyone else to make money from their activity. We of course saw, as everybody does, the day-to-day violence that clearly exists, with the problems that are inherent in the pimping community and the way the parasites are successful and the prostitutes are not.

The comparative studies we did, apart from condemning politicians, lawmakers, clergypersons, and the rest of us as being hypocritical about these issues and not confronting them, showed us somewhat surprisingly that in 1982 in England, for example, the law had changed such that a single prostitute operating in her own residence—it was always "her" in those days—had an exemption from the brothel provisions of their criminal law. And the law there went on to say that whether or not that single prostitute could set up such a situation depended not on any federal legislation in their unitary state but rather on the zoning rules and regulations that existed locally.

• (1845)

Then we found in 1985 that the English Criminal Law Revision Committee was recommending the number should be increased from one to two, the theory being you could operate that kind of business in an area of the city or community that had been identified and bring a measure of safety to the activity, an activity that everybody was prepared to agree going in was likely to be inevitable. What you had

to do was try to make it safe and secure, and what you had to do was make a profit out of it to put into the hands of the prostitutes.

I can't tell you exactly what's happening in England today, even though I've tried to give you the benefit of the research we've done, but I have no doubt your talented researchers will find it. The English system I have described continues to exist and by all accounts has been successful.

Then we looked at Australia, and we found a very comprehensive licensing system in the majority of Australian states. In Australia there's legislation in Queensland, South Australia, Western Australia, and Tasmania that prohibits absolutely prostitution-related activities, and in that sense their law is like ours. But in the Northern Territory, in the Australian Capital Territory, in New South Wales—since 1978, incidentally—and in Victoria there are a range of legislative options allowing legitimate organized prostitution activities to be carried out.

So we weren't exactly pioneers, and the proposal was a relatively modest one if you understand it in the context of zoning and in the context of provincial legislatures and municipal legislators having to make what are fundamentally local decisions in an effort to keep people off the streets and make the activity safe. As I say, our recommendations were largely misunderstood.

I remember the late Jack Webster—who, as you probably all remember, used to go off like a rocket when he was convinced he was right, which was about 24 hours a day—telling me on air, every bit a Presbyterian—I don't think he ever observed the religion except on occasions like this—that he was offended by the notion of having red light districts and so on. He went on for about a minute and finally stopped, and the only thing I could think of to say to him was that I was going to put him down as being lukewarm about that recommendation. Fortunately, they went to commercial and that was the end of the discussion.

Anyway, I don't want to trivialize all of this, and I hope what I've had to say now has been to some extent helpful. It may have been more helpful to your researchers than it has been to you, but I'd be happy to enter into any kind of discussion you like.

Thank you, Mr. Chairman.

• (1850)

The Chair: We certainly appreciate that overview.

We'll go to seven-minute rounds. Mr. Hanger.

Mr. Art Hanger (Calgary Northeast, CPC): Thank you, Mr. Chairman, and thank you, Mr. Fraser, for coming before the committee.

It sounds as if the report you put together back in 1985 was very comprehensive. I don't have the complete report in front of me, but certainly it looks as if it touched on just about every facet of prostitution and how it affects a community. Plus, the research into other jurisdictions is rather interesting, to say the least.

I'm curious. When we talk about other jurisdictions, whether it's England or Australia, and then look south of the border to the area in and around Las Vegas, I'd have to say they pretty much have a legalized system of prostitution there. But they also have one of the greatest problems with child prostitution anywhere in North America and maybe even beyond that because of the legalized prostitution, and they can't get a handle on it, interestingly enough. In effect, society there has given its stamp of approval, saying the activity of prostitution is legal and acceptable.

Have you had any opportunity to look at that situation, given the fact that it is rather phenomenal in its impact on child prostitution especially? I don't think any place in Canada would want to repeat that here.

Mr. Paul Fraser: I think the spectre of the mustang ranch, as it used to be, and the commercialization of the activity and the spectacularization of it is lamentable obviously. We say, somewhere in the vicinity of I think pages 550 to 555 of the report itself, that we think that kind of play is not at all valuable in terms of the fibre of the country and in terms of those things the law should be designed to protect.

I suppose it comes down to this—and I'm now giving you a purely private view—the so-called freedom that comes with that kind of regime is ultimately, in my view, likely to be no freedom at all. It commercializes an activity and trivializes it and should cause all of us, to varying degrees, to worry. Inevitably, I suppose, if children see adults carrying on in a way that appears to please them, they will copy that. There's no question that this kind of regime is not what we had in mind. What we had in mind was trying to take the activity discreetly off the street and put it into a safe environment. We specifically say that if one was wanting to speculate that our recommendations countenanced the kind of mustang ranch approach, that was not at all what we had in mind.

•(1855)

Mr. Art Hanger: In 1972 I was put on the street as a stick for the vice squad of the Calgary police department. My sole purpose was to catch prostitutes. In 1972 the law had just changed to, as you say, the vag, vagrancy laws, and then it became a soliciting law. Of course, there were precedent-setting court cases that followed as police departments tried to deal with the prostitution issue. My work with the vice-squad dealt with more than just street prostitution. We also looked at the bawdy houses, and the so-called escort services were just starting up around that time, too. With all, one thing was very clear—where the prostitutes were, so were the criminals, whether they be guys on the lam, needing a place to stay, and their connections to the pimps and so on and so forth. The circuit was that mix. The police departments throughout the country, probably throughout North America and beyond, knew that—where the prostitutes were, so were the criminals.

I don't know what this jurisdictional thing is like in Britain when it comes to these homes that they are operating out of. My experience with that kind of environment and the activity itself, the prostitution activity, is that I can't see how that would change if it were introduced into some community somewhere, because the same element would just be moved off into a residential area. This would, from my knowledge at least, change the face of the community. It could change the block of a residential area very quickly because of

the undesirable element that accompanies prostitution. I don't know if that's a facet that your committee looked at back in 1985 or that you have researched since that time.

Mr. Paul Fraser: No, I haven't done any real research at all since that time, and the provision, when we were dealing with it, was relatively new. I don't mind saying that much of what you've just said, sir, is what we heard from police officers who had been on the beat and had to deal with people on the street. You can understand, as I mentioned earlier, that when we saw that in the law, we actually were very surprised. We realized, on the basis of the information that was then in the papers, that, first of all, this activity had to be carried on in the prostitute's own residence, which meant that you couldn't go out and rent a storefront and just be there from 9 to 5. This had to be where you actually lived and it had to be registered in your name, not in someone else's. We were fascinated by all of that and wondered, frankly, whether it would ever be successful.

The sense that I have, though now I'm telling you more than I know, is that it's been quite successful indeed—to such an extent that, as I've said, they've moved the numbers up to two. I'd encourage you—and I look forward to seeing what you get—to talk to your colleagues in England, because one assumes that they must have had a huge amount of experience. There must have been all kinds of NIMBY concerns in any number of neighbourhoods. There must have been a lot of people saying they didn't want it anywhere near them and that they were worried about all of it. The fact that it has survived indicates to me that there must be something there we could all benefit from learning.

•(1900)

The Chair: Thank you, Mr. Hanger. We'll get to that in the next round.

Madam Brunelle.

[*Translation*]

Ms. Paule Brunelle (Trois-Rivières, BQ): Good evening, Mr. Fraser. It is a pleasure to meet you.

You tell us that the answer should come from society. It is true our committee will have to assess how our society perceives this problem before proposing solutions.

We can see now how same sex marriage is seen differently in Quebec where it is widely accepted or elsewhere in Canada. When you travelled in the various regions, did attitudes towards prostitution vary a lot in Canada? Can you explain those differences so I understand them better?

[*English*]

Mr. Paul Fraser: Yes, we did. There were some profound differences. I'm just looking here at the report, but I'm not going to be able to turn that up quickly. We found that there were certainly differences in approach, in orientation, in outlook.

If my memory serves me, we found that in British Columbia there was an approach to the issue that was entirely different from the approach we encountered even in Alberta and in the Prairies. I'm speaking now very generally, and perhaps that's a distortion, but the British Columbia approach was not unlike the Ontario approach. Quebec's approach was profoundly different. I would say that there was more concern, and it frankly led to some of the many recommendations that we made in the report about empirical studies going forward. There was a very large concern about the social impact of things. There was a large concern about what I'll call remedial solutions that were largely outside of the law and whose imperative was to help people to an understanding of their situation and to help legislators look at this problem as a matter of social justice. The views in the Maritimes tended to be traditional, if I can put it that way, and frankly not very much dissimilar to what we encountered in the prairie provinces.

Yes, your hypothesis is absolutely accurate.

[*Translation*]

Ms. Paule Brunelle: As spokesperson of my party on the status of women, I can tell you that violence against women, mainly against prostitutes, is a very much talked about in women's groups. Many aboriginal prostitutes have been killed. What type of strategy would you suggest? One of the mandates of our committee is to strengthen the safety of prostitutes and communities. Based on your experience, can you propose some avenues for possible solutions in that area?

I know that in Nevada there are houses where prostitutes feel secure. According to some studies done in Quebec, this would seem to be an interesting option. Prostitutes want to have access to houses where they would be secure from violence and from health hazards.

•(1905)

[*English*]

Mr. Paul Fraser: Yes. All I can say is that many of the points we've made, although perhaps not made as well as you've made them, found their way into the exposition of the problem as we saw it. We had a disagreement within the committee about whether there should be any law at all to control prostitution. One of our members dissented from the view that the rest of us held that effectively this activity should be able to find its own level, its own market, and its own form of expression, and the law was too clumsy a vehicle to try to regulate it. We were very conscious of the spectrum of the points of view.

It's difficult to simplify, though Albert Einstein said that we all had to simplify. As a generalization, I think it's fair to say that the more people involved in an activity where prostitution is practised as a business, the more people under one roof, the greater the problem becomes and, in a sense, the more people feel they're entitled to abuse the situation because of the safety of numbers.

We talked to people who had very disparate views within associations. We talked to the Status of Women in the national organizations. We talked to REAL Women, as it was called in those days. Their views could not have been more different. We didn't, however, have more than a handful of people who were prepared to say let the market find its own level, that market forces should determine how we deal with these issues. That was our experience.

The Chair: Okay.

Madam Davies.

Ms. Libby Davies (Vancouver East, NDP): Thank you very much.

First of all, Mr. Fraser, it's a real honour to have you here, to come and give us this historical overview about what I think was a very landmark report from 1985. When you go back to it and look at what you covered and what you recommended, it is still incredibly relevant and pertinent today, not only in terms of the research and the issues that you covered, but also the recommendations. Sometimes it takes a while for something to find its place.

We were just saying earlier...I was on Vancouver city council in 1985 at the time this report came out. We had some of the most raucous, contentious public meetings—hundreds of citizens debating these issues until two or three o'clock in the morning. I think your report has always been very significant, and my own perception is that we have actually made some progress since this report; you've pointed out that your recommendations around exploitation of juveniles were incredibly significant, and those legal changes were made.

But in terms of consenting adults, it's very interesting, because your recommendation on section 195 was basically to make it clear that sexually offensive language in a public place should not be tolerated. What we actually ended up with was the communicating law, which basically said no communication is allowed. That section, in my opinion, has created enormous harm, so again you were very ahead of your time.

On page 9 in your brief here—an excellent brief, by the way—you say:

In combination, the proposed amendments reflected the Committee's position that the activities of prostitutes and customers should not be the concern of the criminal law unless they involve some form of criminal conduct that is independent of the agreement to engage in prostitution or the act of prostitution itself.

I think this very much getting at Madam Brunelle's point as well and how you responded. I feel that this is a very critical point as we struggle with this issue in terms of what the real role or purpose of legislation through the Criminal Code is.

I wanted to question you about the other recommendation you made, which you've spoken about briefly, which was the idea that a number of prostitutes could work out of their own home. I believe at the time you recommended...was it three or five? Maybe it was three. Up to three?

•(1910)

Mr. Paul Fraser: I'm going from memory now, but I think ultimately we said it was one. I think that in the course of the text we talked about how—in the way in which we saw the regime working—when you got beyond three, then effectively you were beyond the borders of what we were hoping to do.

Ms. Libby Davies: Okay.

In putting forward that recommendation...I'm curious to know, back then, based on the witnesses and the people who had come forward—still dealing with coercive, exploitative, criminal activities within the code, but also with other elements of the trade where it is not coercive, where it's about consent, and trying to minimize it in terms of limiting commercialization—whether or not you felt that you had some element of support for this idea of removing... whether or not you felt there was actually an appetite for that at that time. I feel there is now, and I'm curious to know if that's where it came from in 1985, or did you just sort of come at that out of the blue?

Mr. Paul Fraser: Well, I think it's fairly said that we were impressed by the courage, if I can put it that way, of the legislators in England.

We seemed convinced, and were convinced, that the regime satisfied a number of our imperatives having to do with safety, having to do with taking the profit away from others and giving it to the prostitutes. It catered to the view we'd had, which you've echoed, that in any event if there's a safe environment—an environment that doesn't create windfalls for others—the criminal law shouldn't have any interest in whatever moral decisions people make with respect to their relationships with each other. In a sense, all of that was accomplished. If you could take the activity and make it private, as long as making the activity private didn't cause harm in other ways to those people trying to live around them...hence the great concern we had about zoning and so on.

I'm sure today, in looking back on it, we thought it was a good idea that might work, that could work, but there was a fair amount of skepticism. Now, we had the advantage then of being able to put the notion that was inherent in the English legislation to people who came before us, as we did, and we were also able to say this licensing scheme, which is very comprehensive in Australia.... The Australian legislation, which I have and will leave with you if you like, is an inch and a half thick, and it's amazing; every last detail is dealt with. I think we were not clutching for a solution, but I think we were hoping that this was one we could study. And by and large, those people to whom we spoke whose concern was the public nuisance that was involved in soliciting, the safety of prostitutes and the activity around it, were, we thought, also looking for a solution, and they seemed to be as enthusiastic as some of us were about it.

The fact that it actually was happening anywhere meant that it was real and not just a concept that had been floated by a bunch of people who were being paid to go about the country reflecting on problems.

●(1915)

Ms. Libby Davies: Thank you.

The Chair: Okay, Ms. Davies.

Mr. Hanger.

Mr. Art Hanger: Thank you, Mr. Chair.

Do you think prostitution should be legalized totally? Should we make a business out of it?

Mr. Paul Fraser: Without picking nits here, Mr. Hanger, one of the concerns I've always had, because I'm kind of a simple thinker, is that when people talk about legalizing prostitution, it's a bit of an

oxymoron, because it's not illegal, as I mentioned. Was I then and am I now—if it matters—in favour of a regime that would make it possible for people, as prostitutes and as customers, to satisfy their needs and their desires in a setting that is off the street, where potential harm in terms of violence can't result and which can be discreetly handled, observing the requirements of safety and human decency and so on? The answer to that would be yes.

I'm clearly not in favour of a regime that would seek to commercialize, and in that sense legalize the acceptance, anyway, of the activity.

Mr. Art Hanger: You spoke in your report of a partial decriminalization. What do you mean by that?

Mr. Paul Fraser: I'm afraid you've got me on that one, in the sense that there we were, as lawyers, using terms of art and not science, and a partial decriminalization, for the reasons I've just mentioned, is itself an oxymoron. But what we meant by that was a decriminalization in the sense that the bawdy house provisions, which are clearly criminal, would be decriminalized to take into account the kinds of special circumstances we've just been describing. That's what we really meant by decriminalization.

Mr. Art Hanger: In the updated brief you've just submitted, you have indicated that some of your recommendations were actually legislated, and some were not. British Columbia just went through one of the most horrific serial murder cases, and it's still going through it, and it deals with prostitution—for the most part, street prostitutes. Do you think any of the recommendations, or present legislation that came out of your recommendations, would have any effect on a repeat situation like that, or on that particular case?

●(1920)

Mr. Paul Fraser: Well, I wouldn't want to comment on that particular case, because I don't know much about it other than what I read in the paper. As you know, for the most part there have been interdiction orders that keep us all from knowing as much as we'd like to.

But on the general proposition, if the law were such that street prostitution, or soliciting on the street, was discouraged and not encouraged; if it was, as a general proposition, the law to provide exemptions, so people could engage in the activity privately in the way we've been discussing it in reference to England; then I think logically, in that continuum, it would follow that people would be off the street and in a safer environment.

Mr. Art Hanger: I find that statement rather interesting, because in another jurisdiction, which happens to be New York, the opposite tack was taken. It has probably some of the toughest john laws in North America and prostitution is curbed as well. Pictures are taken. The johns are under substantial scrutiny from the authorities. With that has come a whole bunch of side benefits—tougher laws on prostitution, very tough laws against the johns, and they're cleaning up a real mess.

Now, that deals with enforcement. It doesn't deal with trying to manage the prostitution problem by relaxing the law or removing it, but then you become almost a kind of babysitter trying to make sure the prostitutes behave themselves, as opposed to the other side of it, just enforcing the laws against not only the activity itself but the customers who engage in the activity.

Mr. Paul Fraser: The activity on the street, which is what everyone is trying to control, speaks to what the problem is. If it's not on the street, then it seems to me, in law enforcement terms, it has to be easier to trying to control in a public setting the activity of both the customer and the provider.

Of course, when we came to the subject, we found that the only person in that equation who was at risk in law was the prostitute. Then, as a result of our recommendations, the so-called john became at risk.

The phenomenon in Europe that you've described was one that we saw, for example—I'm not sure if Ms. Davies will agree—in Vancouver. At one point in time the police were very aggressive in terms of charging johns, and it then became a bit of a game. The prostitutes were still on the street, but the johns were out looking for prostitute services; and then you're in winks and in nods, and you're putting police officers at risk by putting it underground. It's a very dangerous business.

I have to say, and it may or may not turn out to be your experience, that the United States, in terms of the empirical evidence, is of course a smorgasbord. There are 50 states, and because of the constitutional arrangements they have, each state has the right to legislate criminal law, whereas here only you folks can do it.

We simply couldn't rationalize the different regimes. What worked in one place didn't work in another. It seemed to me ultimately to be very much a local situation. I don't know whether the New York experience is one that has been shared or is even valuable outside its borders.

The Chair: Thank you, Mr. Hanger.

Madam Brunelle.

•(1925)

[*Translation*]

Ms. Paule Brunelle: When I look at all the activities in our society, I see that sexual activity has never been so visible. One can observe this on television, in advertising and one can even say we are being solicited twenty four hours a day. About the commercialisation of sexual activity, we see that people use more and more sophisticated methods, internet, for example. Do you think this acceptance of sexual activity modifies the situation for Parliament? Are we not already beyond that? Does this show a wider acceptance by society of commercialized sex or more hypocrisy?

[*English*]

Mr. Paul Fraser: It certainly demonstrates that people's curiosity is insatiable. You make an excellent point, and it's one that stale-dates a great deal of what's in our report, and that is the Internet phenomenon, which didn't exist then. The availability of images, the secrecy with which images were then transmitted, and the contraband that then existed has of course exploded today and the material is available easily. There are no borders, as we know. There is

nothing we can do in this country to keep our situation within our borders.

I guess all I can say in the context of this is that some good can come of it. With the Internet phenomenon can also come education and understanding, and we shouldn't be too pessimistic. It has to be the case, however, that much of the kind of activity we're talking about, when it becomes popular entertainment over the Internet, has an effect on young people that we wouldn't be very happy about—those people who can't sort out the intellectual and philosophical issues but who are driven largely by age and inexperience to respond to first impressions.

I'm not sure I'm being responsive to your question, except that I can see that the Internet could be an enormous tool and advantage in helping people, ironically, even to achieve some privacy, because if you had a service that could be discreetly published in Internet surroundings, that might be valuable, although it seems to me there are slippery slopes in all of this.

It's a phenomenon that we didn't then have to deal with. When I look now to the other aspect of our work—pornography—which fortunately we're not concerned about having to discuss tonight, it writes stale to all of this because the world has changed so much.

[*Translation*]

Ms. Paule Brunelle: Thank you.

[*English*]

The Chair: Go ahead if you have another question.

Ms. Libby Davies: Picking up on your earlier comments about visibility versus looking at a way to remove prostitution from a visible on-street operation where there's a huge amount of violence and concerns, one thing that has happened since your report came out is the enormous growth of things such as escort services and massage parlours, which I think many people know in most circumstances are fronts for prostitution.

At the time you did this report they were either just beginning or maybe they were in reaction to some of the legal cases. It's very interesting, because there's hardly any debate about those operations today. None of us actually really knows, if you look at percentages, how much prostitution is taking place in those venues vis à vis what's happening on the street. It becomes very contradictory, because of course there's still a lot of enforcement and emphasis on the visibility of on-street prostitution. It almost reinforces your argument, or the premise you made at the very beginning, that when you're able to remove something from the street and create an environment where there's licensing or some safety provision or inspection, then.... There may be some issues of exploitation there in terms of women who are being trafficked into Canada.

But it's a very interesting development that we don't pay attention to that conceivably as it's not seen as a problem. I wonder if you could comment on that.

•(1930)

Mr. Paul Fraser: First of all, I think everything you've said is correct. Twenty years ago, I don't think we would ever have been able to predict the level of tolerance that there is for escort service activity, which was one of your points. I remember one of the great concerns that were expressed was that escort services were going to be very difficult indeed. They were going to perhaps result in more, not less, exploitation of women. There was really no way of knowing. Of course, they were all underground. Today you pick up the yellow pages in any centre, and pages and pages are devoted to it.

Anyway, I agree with you that given the level of tolerance that exists for that activity, given the fact that we can only judge the quality of those operations, if I can put it this way, in terms of safety and so on, by what we have uncovered and see before us in media reporting, in over 20 years we frankly haven't seen profound concern about them at all. It has all been the other way. I think that empirically it supports the kind of small situations that we had in mind.

The Chair: Thank you, Mr. Fraser.

Mr. Hanger.

Mr. Art Hanger: I read in the paper recently that there was a raid on escort houses because of excessive prostitution taking place or prostitution activities taking place in those particular venues. I believe it was in Toronto. You're right. I don't know if it's a good example, at this stage of the game, to analyze the escort services and the massage parlours as safe havens for prostitution or related activities. I don't think the police have really paid a lot of attention to them, except when they get out of hand. It's a resource issue to set up and watch the activity that goes on in those particular places.

On the other outstanding part of your initial report, I don't necessarily agree with all your recommendations. But one issue that I think you really tackled was the issue of pornography—pornography as it relates to prostitution and, of course, even beyond that. It doesn't seem as though much of that was addressed in the Criminal Code changes. It has gone to unbelievable proportions at this point in time because of the Internet, which was almost non-existent in 1983 or 1985. In fact, it was non-existent.

Looking at it from that point of view and now, what would your analysis be when it comes to checking that insidious type of activity? It's a multi-jurisdictional situation now. I know that police forces across the world are trying to wrap their heads around this issue to combat it. They're having some success, but there's still a lot that needs to be done.

•(1935)

Mr. Paul Fraser: The theme, really, of our recommendations on the pornography side—and you're right, virtually none of them found acceptance—was that there was likely no realistic and practical way that any of us could make that kind of material go away and cease to exist. If that was true then, it's manifestly true today in terms of the increased ability to communicate.

That led the committee to be practical—far too practical, I'm sure some of our critics would have said. Basically the regime we had in mind, Mr. Hanger, was that there should be a classification of

material, everything from how to classify *Playboy* magazine, which in my view then and now is as pernicious, but in a different way, as the hard core pornography, because it effectively gets people started. How do you classify this material? The reason it becomes important to do so, from the point of view of the recommendations we made, was that we said in terms of making it available for public consumption and sale, if you classify it in one way, then that will restrict the way in which you can present it for sale to the public, and the way in which, as lawmakers, you can try to avoid the subjects being seen by children.

Under the regime we had in mind—and to some extent, I think shopkeepers with a conscience now do this in a self-regulating way—material would be put in places where children can't easily see it. That's what we had in mind. It is not a suggestion that the Parliament in 1985 was prepared to take up and it is not a suggestion that any government, given the different stripes, has been prepared to deal with since then.

Now, you're perfectly right, I'm afraid we're in a situation where much of what we had to say isn't going to be of any help to you because of the Internet phenomenon.

Mr. Art Hanger: It probably would in some circumstances, if you could define clearly—which I noted was in your report—what pornography is and grade it accordingly. Nobody wants to do that today; it's all artistic merit and you name it, whatever decision came out of the Supreme Court and was interpreted.

Going back to those recommendations that were placed into legislation, such as tougher sentences, it's okay to say you have a tough sentence, but if a court does not deal with the offender in real terms and you can extend minimum sentences, and so on—if the court does not deal with it, then what good is a tougher sentence if you still have that loophole? Minimum sentences are a must, I think, in here for the court to be forced to deal with offenders.

Mr. Paul Fraser: That's a whole other discussion. I understand your point of view and I respect it. I also think, notwithstanding criticism that constantly barrages judges at all levels of courts, that taking judicial discretion away by prescribing sentences, except in some situations where people clearly agree....

For example, the Criminal Code requires that if you've been convicted of impaired driving a certain number of times, you have to go to jail. I don't see people demonstrating in the streets against that kind of law, but that law largely, in my recollection, came about as a result of a consensus that had developed over a period of time.

We made a modest contribution, I think, in the sense that we made, for example, activity as it related to juveniles criminal when it wasn't before—

•(1940)

Mr. Art Hanger: Right.

Mr. Paul Fraser: —and we recommended that the maximum sentences be increased so that at least lawmakers could indicate to the court, by what the maximum sentence was increased to, that Parliament took the offence seriously, or more seriously, and that this should be reflected correspondingly in sentences.

The Chair: Thank you, Mr. Fraser.

Madam Brunelle.

[*Translation*]

Ms. Paule Brunelle: How much time do I have?

[*English*]

The Chair: You have three minutes.

[*Translation*]

Ms. Paule Brunelle: Ok.

Your committee concluded in its report that social and economic reforms aimed at the real roots of prostitution should be made and that the government should commit itself to fighting social and economic inequalities between genders, among others. There should be social programs, etc. Looking back on that, do you think we really have made progress in that area? Has the government taken steps or adopted social measures to give people in prostitution a chance and to facilitate their rehabilitation in the community?

[*English*]

Mr. Paul Fraser: The report has a number of recommendations—more than a dozen, I think—that have to do with remedial work that governments could do in terms of helping people and educating them, and so on. I can say that I don't see reflected in government institutions any observance of those recommendations at all, and that's disappointing.

What isn't disappointing, though, and what I think is really quite important is that within the citizenry, in their views about these issues, people are engaging one another, and NGO organizations, as they're called, are making the kinds of contribution that perhaps, in a monolithic sense, governments can't easily make. The associations and the groups that have sprung up, in my view, have done a great deal of work—and good work—toward helping people to an understanding of how they can better their lives.

So perhaps our recommendations, when I look at it, were too paternalistic, too maternalistic, too much concerned with government involvement and strategies that would translate into infrastructure and that sort of thing. I think people have simply found in these issues so much to interest them and so much to concern them, and so many people have opened their hearts to help others that I think the public itself has undertaken the slack and is fully engaged.

I rejoice when I look across the country today and I see the number of people from all kinds of political sides coming together. Twenty years ago we had those groups pitted against each other, to some extent, and it was unfortunate. I alluded earlier to some of it. Now there seems to be, quite frankly, a better working together, and it's good to see.

● (1945)

The Chair: Ms. Davies.

Ms. Libby Davies: As just a quick point, I thought you might be interested to know this, because we had officials from the justice department here on Monday.

One of your key recommendations that was approved and did make it into a law change was the one that made it clear that it had to be enforced for both the prostitute and the customer, that enforcement had to go that way, and in actual fact that did happen, as you probably know.

They gave us statistics for 2004, and it was about fifty-fifty: 56% men and 44% women. But when it came to the custody, there's a huge gap again: 92% women and 17% men.

Mr. Paul Fraser: Going into custody as a result of being charged and convicted?

Ms. Libby Davies: Yes, being convicted and then incarcerated. It was 92% women and 17% men, who presumably were the customers. I just thought you would be interested in that.

The other thing is that they also raised the issue of one possible course of action. They used the example of gaming, which is illegal, but then through regulation and by delegation to the province, you're allowed certain exceptions. I just wondered whether or not you had looked at that as well as a possibility, and whether or not that could even be brought down to a municipal level. You still may have certain provisions overall, but then by regulation, where chosen in a particular jurisdiction, certain activities would be allowed.

Mr. Paul Fraser: In fact, that is the rationale we brought forward, that it should be by exemption. You enforce people to come and make the case that they can be good neighbours and that it's going to be beneficial.

It's by exception. That's essentially the regime you'll find in both Australia and in England, to my memory.

Ms. Libby Davies: Okay. We may decide to pursue that.

Mr. Paul Fraser: I hope you do. With the Australian legislation, the exemption process is very efficacious. You cannot operate one of those small situations we've been talking about tonight unless you have received a permit, and unless you have gone through a process that allows someone to make a judgment that you're entitled to an exemption. It's a rigorous process, apparently, looking at it on paper; it appears that it's not something that could easily be given.

So thank you, as you've put better than I did the kind of regime that we had in mind.

The Chair: Members of the committee, I would suggest that perhaps we go until 8 o'clock. We were a little late starting, but that's perhaps a reasonable compromise other than cutting it off.

With that, we'll perhaps have another very quick round.

Mr. Hanger, would you like a very quick question; and perhaps a quick response, Mr. Fraser; and we'll all get another shot?

Mr. Art Hanger: I'm going to pass at this moment, if you wouldn't mind coming back.

The Chair: Madam Brunelle.

[Translation]

Ms. Paule Brunelle: I was a bit fazed, Mr. Chair, with the day we have had. I don't have questions either.

[English]

Ms. Libby Davies: I was going to ask if the researchers had any questions, as we had agreed at our last meeting, or if the chair does. I think it's perfectly fine that the chair ask some questions.

• (1950)

The Chair: The researchers can go first and then I do have a question.

Ms. Lyne Casavant (Committee Researcher): Thank you.

The presentation was—

Mr. Paul Fraser: That's clearly what a New Democrat does.

Ms. Libby Davies: We agreed the last time that we would this.

Ms. Lyne Casavant: We thought the presentation was very clear and informative. We didn't have any more questions at this point in time.

Thank you.

The Chair: A question that I have is, when you did your study, were you faced with the phenomenon of trafficking in people, of people being brought into this country from offshore or from wherever as part of the controlled pimping situation, with trafficking, perhaps interprovincially, from large major centres into smaller communities, say, from Montreal to Niagara Falls, Ontario? Were you presented with any of these situations?

Mr. Paul Fraser: We had some of that, Mr. Maloney. I can't say that it had such a profile that we were overly concerned about it. It seemed to be an incidental sort of situation and it seemed to be largely prevalent in the border communities, with people coming back and forth across the border, which was mentioned.

About the time we were doing our work, there was a push in Manitoba, and I think in a couple of other places, to have people concerned with these issues look beyond our borders and start to think of whether or not you could prosecute in Canada somebody who had committed an offence in some other country. As you know, we now have legislation that would prevent that.

But it was just starting. Certainly today, in the work you're doing, I have no doubt there will be some information available to you about whether there has in fact been an industry in the trafficking of people.

The Chair: Mr. Hanger, the final word.

Mr. Art Hanger: This committee, it appears, will be travelling to the Netherlands. I can't say that I've heard a whole lot that was positive about the liberalization of their prostitution laws. I know at one point in time there was an extreme amount of violence associated with it after they had liberalized things, and I'm not sure where the control is now. That's one jurisdiction. I noticed that was on your list of research locations, as was Sweden. My understanding is that Sweden went to a much tougher position, contrary to the direction that the Netherlands took.

I'm curious as to how that factored into some of your recommendations, when you looked at information about those two jurisdictions.

Mr. Paul Fraser: My memory is that the information we had from abroad was not as comprehensive as we would have wanted. My impression then and now is that some countries had become sort of famous for what they had done, in terms of creating strolls. Twenty years ago if people said to you, where in this world can you go and see people in the window beckoning to you and that conduct would be allowed, Amsterdam would have come to mind.

I have to say that my memory of real information, in terms of the kinds of things you're talking about, doesn't exist anymore, and everything we did was done just on the basis of information that was given to us.

We made the wrong decision. It wasn't a terribly courageous one, but we decided we would not ask the Government of Canada to let us do that. I wish we had somehow organized ourselves to get that information to have the benefit of seeing things first-hand. The problem with the process we followed was that you can't ask questions of a piece of paper; you can't cross-examine, if you like. You can't do very much to drill down to the real information that's important to you.

I would think both of those countries and, in my own view, England are places that you should go to or someone should go to on your behalf.

• (1955)

Mr. Art Hanger: How important do you think this initiative is that we're doing right now?

Mr. Paul Fraser: I think it's very important. How people live their lives and whether they can do so safely and in dignity is a responsibility that all of us have, and members of Parliament particularly. People who observe the scene and write reports such as we did are interested. To use the old Alberta metaphor, when you think of bacon and eggs, the chicken is interested but the pig is committed, and when you're a member of Parliament and you're asked to look at these things, you're expected to come up with something. So I don't envy you, but it's clear to me from the time we've had tonight that your very experience will hold you all in good stead.

We had the former police chief of Montreal, a wonderful person, who had been a "stick", as you say, on the beat and who had to move people along. He had his own way, I'm sure, of helping with the problem as it then was, sitting shoulder to shoulder with people who had never had that experience. It was because of our differences.... I guess, in a sense, it's like this country, that we can rejoice in our diversity.

So I'm sure the members of the committee will, by their own particular experiences and where they come from.... Ms. Davies is the member for a part of our country that is tortured by the byproduct of our neglecting these kinds of issues, and I'm glad the committee has decided to undertake this work. I think it's better done, if I may say so, in parliamentary committees than by hiring folks like me from the outside. The decisions that have been made to invest in the parliamentary committee process are the right kinds of decisions; and over the years, as somebody who has observed the process here, I've been able to see the anxiety of members who have not, for whatever reason, been able to get as involved as they would like to be.

So I think this is a very important effort you're making, and I wish you all kinds of luck. I can go back to my comfortable existence and leave the solution to these problems to you.

As someone said, if the role of the political leader is to comfort the oppressed, sometimes you have to oppress the comforted and get

people to come to grips with some of these problems, which for so many years have been left to be just whispered about.

Thank you very much.

• (2000)

The Chair: Mr. Fraser, thank you very much for your comments to the committee tonight. You've certainly been very insightful and very frank, and although 20 years may have elapsed since your report, you've certainly been a wealth of knowledge here today on the situation. We are very appreciative of your taking the time to journey here to Ottawa to help us with our studies.

Thank you very much.

Mr. Paul Fraser: Thank you all.

The Chair: Members of the committee, perhaps I could have a couple of words with you, perhaps in camera, as we wanted to review the witness list. We will proceed in camera just to review that.

[Proceedings continue in camera]

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