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Prostitution in Canada: International Obligations, Federal Law, and Provincial and Municipal Jurisdiction

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Laura Barnett

Legal and Social Affairs Division
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Federal Law, and Provincial and Municipal Jurisdiction*
(Background Paper)

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PROSTITUTION IN CANADA: INTERNATIONAL OBLIGATIONS, FEDERAL LAW, AND PROVINCIAL AND MUNICIPAL JURISDICTION

1 INTRODUCTION

Canada's approach to dealing with prostitution has always been a multifaceted one, involving a combination of criminal laws at the federal level, provincial/territorial laws and municipal solutions that highlight the various jurisdictional responsibilities at play. In general terms, while prostitution (consensual sex between two adults for money) is legal in Canada, most activities surrounding the act of prostitution – including public solicitation, pimping, operating a brothel, trafficking in persons and the commercial sexual exploitation of children – are prohibited. However, a recent Supreme Court of Canada decision struck down a number of these criminal law prohibitions as unconstitutional, giving the federal government one year to amend its laws.¹

This paper provides an overview of the legislation surrounding prostitution as it currently stands, including a discussion of Canada's international obligations in this regard, and provincial/territorial and municipal measures to deal with specific issues at a practical level.

2 INTERNATIONAL LAW

This section outlines international law pertaining to prostitution and examines Canada's compliance with that law. An important starting point for this discussion is the 1949 United Nations (UN) *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*.² Focusing on the problem of prostitution and procurement, article 1 of the Convention states that signatories must criminalize anyone who brings another person into prostitution, even if this is done with that person's consent. Article 16 states that all parties must agree to take measures for the prevention of prostitution, as well as for the rehabilitation and social adjustment of victims of prostitution, while article 6 strictly prohibits any kind of state regulation of prostitution.

In general terms, the 1949 convention introduced a broad recognition of the issue of prostitution as a human rights concern at the international level, and represents a strong statement in favour of protecting women from sexual exploitation, either as a result of trafficking in persons or prostitution. However, while the convention outlaws trafficking in persons, it also strongly condemns all forms of prostitution as a violation of individual dignity and welfare, whether that prostitution is voluntary or not.³ In 1949, as today, this position could not be reconciled with the law in Canada, where prostitution itself is legal and only offences associated with it are criminalized. The Canadian government did not condemn all forms of prostitution in such an absolute manner, and thus never signed the 1949 convention.

The 1979 UN *Convention on the Elimination of All Forms of Discrimination against Women*⁴ (CEDAW) was the next international convention that touched on the issue of prostitution. While this convention focused broadly on women's equality rights, article 6 specifies that states parties must take all appropriate measures to suppress trafficking in women and the "exploitation of prostitution of women." Thus, it was now the exploitation of prostitution that was condemned, rather than prostitution itself. Canada ratified CEDAW in January 1982.

In 1989, the UN *Convention on the Rights of the Child*⁵ was put in place to protect the human dignity and status of children, emphasizing the fundamental rights and best interests of children under 18. In particular, article 34 stated that signatories must protect all children from sexual abuse and exploitation by taking appropriate measures to prevent them from being forced into unlawful sexual activity and from being exploited through prostitution. Canada ratified the convention in December 1991.

This convention is complemented by the optional protocol to the *Convention on the Rights of the Child* on the sale of children, child prostitution and child pornography.⁶ Article 1 of the optional protocol calls on all parties to prohibit child prostitution, defining the term as "the use of a child in sexual activities for remuneration or any other consideration." States are required to penalize, under criminal law, the offering, obtaining, or providing of a child for child prostitution.⁷ Thus, this protocol explicitly outlaws any form of child prostitution and lays the emphasis on prosecuting those who exploit children rather than the children involved in prostitution themselves. Canada ratified the protocol in September 2005.

Focusing on women's rights, in 1995 the Fourth World Conference on Women resulted in the *Beijing Declaration and Platform for Action*.⁸ Paragraph 113(b) of this document highlighted the fact that forced prostitution is a form of violence against women, omitting the reference to voluntary prostitution that had characterized the 1949 convention. The declaration outlined its strategic objective of eliminating trafficking in women and assisting victims of violence arising from prostitution and trafficking.⁹ Signatories were called upon to support UN efforts to prevent and eradicate child prostitution, and to enact and enforce legislation to protect girls from all forms of violence, including child prostitution.¹⁰ The declaration recognized the element of choice involved in adult prostitution, focusing its attention on forced prostitution and child prostitution.¹¹ Canada committed itself to the Beijing Platform in September 1995.

In 1999, the international community returned to the issue of children's rights in the International Labour Organization's *Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*.¹² Articles 1 and 3(b) called on states parties to take measures to eliminate the worst forms of child labour, including the use, procurement and offering of children for prostitution. The convention does not call for prosecution of the child, but the individual who used, procured or offered the child. Canada ratified this convention in June 2000.

Finally, in 2000 the international community put forward the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime*.¹³ Article 5 called upon states parties to criminalize such trafficking, with the

exploitation of the prostitution of others included in the definition of “trafficking in persons.”¹⁴ In this way, trafficking in human beings, which is often integrally linked to the exploitation of the prostitution of others, was forcefully condemned in international law. Canada ratified the protocol in May 2002.

In reviewing this last half-century of international law, it becomes evident that today, international conventions avoid condemning all forms of adult prostitution in order to focus attention instead on criminalizing the exploitation of women through trafficking and forced prostitution. All forms of child prostitution, however, continue to be condemned.

3 FEDERAL LAW

In Canada, Parliament has used its criminal law power to exercise primary jurisdiction over prostitution-related concerns.¹⁵ Although adult prostitution is not in itself illegal in Canada, many activities surrounding the act of prostitution are prohibited. These specific prostitution-related offences are contained primarily in sections 210 to 213 of the *Criminal Code* (the Code);¹⁶ they outline offences related to keeping or using common bawdy-houses, transporting a person to a bawdy-house, procuring and public solicitation.

Over the last 30 years, these provisions have been examined and debated thoroughly in a variety of contexts,¹⁷ and in 1990, a constitutional challenge on the issue reached the Supreme Court of Canada. In *Reference re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.)*,¹⁸ the Lieutenant Governor in Council of Manitoba referred a question with respect to the bawdy-house prohibition and the communication for the purposes of prostitution provision to the Manitoba Court of Appeal. The Court held that those provisions violated neither the section 2(b) right to freedom of expression nor the section 7 right to life, liberty and security of the person set out in the *Canadian Charter of Rights and Freedoms*. The Supreme Court ultimately agreed.

Nevertheless, in 2010, a group of sex workers decided to tackle the question again and challenge the courts to revisit the Supreme Court’s 1990 decision. The applicants in *Bedford v. Canada*¹⁹ argued that sections 210 (bawdy-house), 212(1)(j) (living on the avails of prostitution) and 213(1)(c) (communication for the purposes of prostitution) violated sections 2(b) and 7 of the Charter. They argued that although prostitution is legal in Canada, the current laws made it impossible to engage in prostitution in a safe environment, as they could not legally operate indoors, or hire managers, drivers or security personnel. They also argued that the communication law meant that prostitutes must make hasty decisions without properly screening clients.

The judge at the Ontario Superior Court level agreed, ruling that the impugned provisions of the *Criminal Code* were unconstitutional.²⁰ On appeal, the Ontario Court of Appeal upheld the communication provision but struck down the bawdy-house provision (giving Parliament 12 months to draft a Charter-compliant provision), and held that the prohibition on living on the avails of prostitution infringed section 7 of the Charter by criminalizing non-exploitative commercial relationships between prostitutes and other people. The Court read in words of limitation so that the prohibition applied only to those who live on the avails of prostitution in circumstances of exploitation.²¹

The case was then appealed to the Supreme Court, which issued its decision in *Canada (Attorney General) v. Bedford (Bedford)* in December 2013, ultimately striking down all three provisions of the *Criminal Code* in a unanimous judgment, and giving the government one year to amend its laws. The discussion below highlights the historical interpretation and application of these *Criminal Code* provisions, as well as the effect of the *Bedford* decision.

3.1 BAWDY-HOUSES

3.1.1 THE CURRENT LAW

Sections 210 and 211 of the *Criminal Code* contain the bawdy-house offences. Section 210 provides the following:

- (1) Every one who keeps a common bawdy-house is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.
- (2) Every one who
 - (a) is an inmate of a common bawdy-house,
 - (b) is found, without lawful excuse, in a common bawdy-house, or
 - (c) as owner, landlord, lessor, tenant, occupier, agent or otherwise having charge or control of any place, knowingly permits the place or any part thereof to be let or used for the purposes of a common bawdy-house,is guilty of an offence punishable on summary conviction.²²

Section 211 provides the following:

Every one who knowingly takes, transports, directs, or offers to take, transport or direct, any other person to a common bawdy-house is guilty of an offence punishable on summary conviction.

Section 197(1) of the Code defines the relevant terms. “Common bawdy-house” means a place that is kept or occupied, or resorted to by one or more persons, for the purpose of prostitution or to practise acts of indecency. Courts have interpreted this to mean that any defined space is capable of being a bawdy-house, from a hotel, to a house, to a parking lot – provided that there is frequent or habitual use of it for the purposes of prostitution or for the practice of acts of indecency,²³ and the premises are controlled or managed by individuals selling sexual services²⁴ or individuals with a right or interest in that space.²⁵ Further, the test used to determine whether an act is indecent is a community standard of tolerance.²⁶

Courts have also held that to be found guilty of keeping a common bawdy-house a person must have some degree of control over the care and management of the premises and must participate to some extent in the illicit activities that take place there – although this does not necessarily mean participating in sexual acts.²⁷ A sex worker may even be found guilty of keeping a common bawdy-house where he or she has used his or her own residence alone for the purposes of prostitution.²⁸

Alternatively, to be found guilty of being an “inmate” of a bawdy-house, a person must be a resident or a regular occupant of the premises. To be guilty of being “found in” a bawdy-house, a person must have no lawful excuse for his or her presence and must have been explicitly found there by the police at the time of the raid.²⁹ Courts have said that to be guilty of knowingly permitting the premises to be used for the purposes of a common bawdy-house, a person must have actual control of the place and must have either acquiesced to or encouraged its use for that purpose.³⁰

Finally, to be found guilty of transporting a person to a common bawdy-house, the accused must know that the location is a bawdy-house.

In 1990, the Supreme Court of Canada upheld the constitutional validity of what is now section 210. The Court held that although the bawdy-house provision infringed the *Canadian Charter of Rights and Freedoms*’ section 7 guarantee of life, liberty and security of the person, this infringement was in accordance with the principles of fundamental justice.³¹

3.1.2 IMPLICATIONS OF *BEDFORD*

Revisiting the question 23 years later in *Bedford*, however, the Supreme Court shifted its approach. The Court held that it could deviate from precedent because the 1990 judgment under section 7 was primarily based on the physical liberty interest rather than the new security of the person angle raised in *Bedford*. Also, it maintained that the principles of fundamental justice relied on in *Bedford* (that the law must not be arbitrary, that the law must not be broader than necessary to achieve its purpose, and that the harmful effects of the law must not be grossly disproportionate to the benefits gained) had only really been developed in the decades since the 1990 judgment and had thus not been dealt with in the earlier decision.

Consequently, with respect to bawdy-houses, the Court held that section 210 infringed the section 7 Charter rights of prostitutes by preventing them from:

- working at a fixed location;
- setting up indoor safeguards such as receptionists, bodyguards or other forms of monitoring that could help reduce the risks they face;
- benefiting from preventative health measures; and
- using safe houses to meet with clients.

This deprivation of security of the person was not in accordance with the principles of fundamental justice, as it was grossly disproportionate to the objective of preventing public nuisance. Chief Justice McLachlin stated that “Parliament has the power to regulate against nuisance, but not at the cost of the health, safety and lives of prostitutes.”³²

The Court struck down section 210 of the *Criminal Code*, but it suspended the declaration of invalidity for one year to allow Parliament time to respond. It also struck the word “prostitution” from the definition of “common bawdy-house” in section 197(1), as it applied to section 210 alone.

Although the Court did not discuss the issue of section 211, given that the transportation to a bawdy-house provision must be read in conjunction with section 210, it is unlikely to survive as a stand-alone provision.

3.2 PROCUREMENT

3.2.1 THE CURRENT LAW

The offence of procurement is contained in section 212 of the *Criminal Code* and carries the toughest penalty for prostitution-related offences under the Code, with potential imprisonment of up to 14 years for offences relating to minors.

Section 212(1) lists various methods of procurement and states that a person committing such crimes is guilty of an indictable offence and liable to imprisonment for a maximum term of 10 years. However, sections 212(2) and 212(2.1) expand this offence for situations dealing with minors. Under section 212(2), a person who lives on the avails of prostitution of a minor is guilty of an indictable offence and liable to imprisonment for a term of up to 14 years, but not less than two years.

Section 212(2.1) provides a further offence punishable by imprisonment for up to 14 years, but not less than five years, for a person who lives on the avails of prostitution of a minor and who, for the purposes of profit, aids, abets, counsels or compels the minor to engage in prostitution, and who uses, threatens to use or attempts to use violence, intimidation or coercion against the minor.

Finally, section 212(4) states that every person who obtains for consideration,³³ or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a minor, is guilty of an indictable offence and liable to imprisonment for a maximum term of five years.

Section 212(3) relates to the evidence necessary for a charge under section 212. Evidence that a person lives with or is habitually in the company of a prostitute or lives in a common bawdy-house is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution.

Procurement essentially refers to an act of persuasion. This accordingly excludes situations where the person whose sexual services are being sold is already or subsequently becomes involved in prostitution of his or her own free will.³⁴

Procurement encompasses the following situations:

- requiring or attempting to require an employee to have sexual intercourse with a client;³⁵
- enticing someone who is not a prostitute into a bawdy-house for the purposes of illicit sexual intercourse or prostitution (section 212(1)(b));
- procuring a person to enter or leave Canada for the purposes of prostitution (section 212(1)(g));
- controlling or influencing another person for gain in order to facilitate prostitution;³⁶

- intoxicating a person for the purpose of enabling anyone to have sexual intercourse with the intoxicated person (section 212(1)(i)); and
- living on the avails of prostitution (section 212(1)(j)).

On this last point, there is a rebuttable presumption that a person who lives with a sex worker, is in the habitual company of a sex worker or lives in a common bawdy-house lives on the avails of prostitution.³⁷ This offence connotes a form of parasitic living on a sex worker's earnings, where an accused must have directly received all or part of the prostituted person's proceeds from prostitution.³⁸

As noted above, the penalty for procurement offences is raised when the prostituted person is under 18, creating an additional offence for situations in which the procurer lives on the avails of a child involved in prostitution and uses threats or violence to compel such prostitution.

Most importantly, section 212(4) of the *Criminal Code* states that it is an offence to obtain or to communicate for the purpose of obtaining the sexual services of *any* person under 18 for consideration. Thus, solicitation of a minor is always illegal.³⁹ It is no defence to say that the accused believed the complainant was 18 years old.

3.2.2 IMPLICATIONS OF *BEDFORD*

In *Bedford*, the Supreme Court also struck down section 212(1)(j), the living on the avails of prostitution provision, as a violation of section 7 of the Charter. The Court found that, while this provision might be aimed at parasitic or exploitative relationships (such as a pimp living off the earnings of a prostitute), it made it a crime for anyone to supply a service to a prostitute because he or she made a living as a prostitute. The Court found that the provision was overbroad in that it captured non-exploitative relationships that were unconnected to the law's purpose. For example, prostitutes could not hire bodyguards, drivers or receptionists to make their workspace safer. Section 212(1)(j), then, was struck down as invalid, although the declaration of invalidity was suspended for one year.

3.3 OFFENCES IN RELATION TO PUBLIC SOLICITATION

3.3.1 THE CURRENT LAW

Offences related to the act of prostitution itself revolve around the issue of solicitation and the use of public space. Section 213 of the *Criminal Code* states:

- (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.

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(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.

The actual act of exchanging sexual gratification for consideration is not in itself illegal. However, section 213 makes it illegal to engage in prostitution or to obtain the sexual services of a prostitute in a public place. This restriction encompasses stopping or attempting to stop a motor vehicle, and communicating or attempting to communicate in any manner for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute.

Section 197(1) defines “public place” as any place to which the public has access as of right or by invitation, whether express or implied. This includes any place that is open to public view, including a car, even one in motion, that is on a public street.⁴⁰ However, a plainclothes police officer’s car is not considered a public place.⁴¹

In 1990, the Supreme Court of Canada upheld the constitutional validity of section 213(1)(c) (communicating for the purposes of prostitution). The Court held that although section 213(1)(c) does violate freedom of expression as guaranteed by section 2(b) of the *Canadian Charter of Rights and Freedoms*, this is a reasonable limit under section 1, given Parliament’s objective of eliminating street solicitation and the social nuisance it creates.⁴² As well, although the provision infringed the Charter’s section 7 guarantee of life, liberty and security of the person, this infringement was found to be in accordance with the principles of fundamental justice. Finally, the Court held that section 213(1)(c) of the Code violated neither the guarantee of life, liberty and security of the person provided in section 7 of the *Canadian Charter of Rights and Freedoms* nor the right to freedom of association provided in section 2(d) of the Charter.⁴³

3.3.2 IMPLICATIONS OF *BEDFORD*

Despite this precedent, the Supreme Court ultimately struck down section 213(1)(c) in *Bedford* as a violation of section 7 of the Charter. The Court highlighted the negative impact that section 213(1)(c) had on the security of the person, holding that:

[b]y prohibiting communicating in public for the purpose of prostitution, the law prevents prostitutes from screening clients and setting terms for the use of condoms or safe houses. In these ways, it significantly increases the risks they face.⁴⁴

Also, while section 213(1)(c) was designed to deal with the nuisance caused by street prostitution, the Court held that the “[t]he provision’s negative impact on the safety and lives of street prostitutes is a grossly disproportionate response” to the nuisance caused. Consequently, the law could not withstand the constitutional challenge and was struck down, although the declaration of invalidity was suspended for one year.

3.4 PROSTITUTION ABROAD

Section 7(4.1) of the *Criminal Code* extends the territorial reach of Canadian criminal law for 14 sexual and sex-related offences against minors in order to include sex tourism by Canadians within its scope:

Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that if committed in Canada would be an offence against section 151, 152, 153, 155 or 159, subsection 160(2) or (3), section 163.1, 170, 171, 171.1, 172.1, 172.2, or 173 or subsection 212(4) shall be deemed to commit that act or omission in Canada if the person who commits the act or omission is a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*.

Given that these offences deal with sex offences against minors, consideration for sexual services is not an issue under section 7(4.1); rather, the offence must simply be committed outside Canada by a Canadian citizen or permanent resident, and the act or omission must be an offence under the specified sections if committed in Canada. The consent of the Attorney General is required for prosecution under this section.⁴⁵

4 PROVINCIAL LAW

4.1 JURISDICTION

Complementing Parliament's direct jurisdiction over the criminal law on prostitution, section 92 of the *Constitution Act* provides the provinces with control over the administration of the criminal law.⁴⁶ Courts also sometimes recognize a legitimate overlap between federal and provincial criminal jurisdiction, thus validating provincial legislation that deals with criminal issues in particular situations.⁴⁷ Essentially, legislation that merely regulates morality and criminal conduct is considered to be under provincial jurisdiction, but legislation that creates an actual prohibition akin to criminal law falls under federal jurisdiction. The harsher the penalty, the more such provincial legislation is considered to trespass on federal jurisdiction.⁴⁸

Provinces have attempted to tackle prostitution from a number of angles in recent years, most often through legislation on highways and traffic, community safety and child protection. In the mid-1980s, however, before many such measures were implemented, some provinces also tried using injunctions to deal with prostitution.

4.2 INJUNCTIONS

Injunctions against public nuisances are one way for a province to try tackling prostitution without conflicting with federal jurisdiction over criminal law. The Attorney General, as the guardian of public interest, may bring an injunction against a public nuisance in order to restrict persons selling sexual services importuning pedestrians within a specified area.⁴⁹

In *British Columbia (Attorney General) v. Couillard*,⁵⁰ the British Columbia Attorney General applied for an injunction to restrain prostitution-related activity in the West End of Vancouver as a common law public nuisance. The B.C. Supreme Court granted an interim injunction that forbade sex workers from publicly offering or appearing to offer themselves, directly or indirectly, for the purposes of prostitution in the West End. The injunction also restrained other activities in relation to trespass and disturbance of the peace by sex workers. However, this injunction was ultimately rescinded by request of the Attorney General and, because of an amendment to the *Criminal Code* prostitution law enacted in 1985, a permanent injunction was never granted.⁵¹

In *Nova Scotia v. Beaver et al.*,⁵² the Nova Scotia Attorney General applied for an injunction to restrain the public nuisance occasioned by persons selling sexual services in downtown Halifax. In this case, the Nova Scotia Court of Appeal refused the application on the basis that the province was trying to use civil procedure to control a criminal matter, which came under federal jurisdiction.

From a legal perspective, the Nova Scotia Court of Appeal in *Beaver* stated that it is up to the trial judge's discretion whether an injunction of this kind should be granted. It said that the court must consider whether the injunction

is really necessary in light of other procedures available to accomplish the same end. [The judge] should consider, as well, the damages of eliminating criminal conduct without the usual safeguards of criminal procedure available to an accused. ... Only in very exceptional cases where by reason of lack of time or otherwise no other suitable remedy is available should such an injunction be granted to prevent the commission of a crime.⁵³

4.3 PROVINCIAL LEGISLATION

4.3.1 HIGHWAY AND TRAFFIC

Using the powers set out in section 92(13) of the *Constitution Act, 1867*, several provinces have amended their highway and traffic legislation to allow police to seize, impound and sell vehicles used in picking up persons selling sexual services on the street. In Alberta, Manitoba and Saskatchewan, legislation allows police to seize and impound vehicles used in prostitution-related offences.⁵⁴ Vehicles will be returned if the accused is either acquitted of the prostitution-related offence or attends a "john school" to learn about the ramifications of prostitution and its effect on its victims.⁵⁵ However, in Manitoba and Saskatchewan, only first-time offenders are offered the option of attending john school, and in Saskatchewan those charged with offences under section 212(2.1) or 212(4) of the *Criminal Code*, repeat offenders, and offenders with serious criminal records are also precluded from this alternative.⁵⁶ Further, in Manitoba and Saskatchewan, if an accused does not complete or fully comply with the john school conditions, his or her driver's licence is suspended.⁵⁷ Finally, in all three provinces, if the accused is convicted of the prostitution-related offence, he or she will forfeit the vehicle or deposit to the police.⁵⁸ In addition to providing for the impounding of vehicles, section 270 of Saskatchewan's *Traffic Safety Act* also specifies penalties for those who repeatedly drive or park their car in areas frequented by prostitutes.

Although the power to impound vehicles for prostitution-related offences has not been contested as a violation of the federal jurisdiction over criminal law, proportionality concerns have been raised, on the argument that such drastic measures should be saved for serious driving offences posing a real danger to the public or involving a clear lack of fitness to drive.⁵⁹ There is also some concern that impounding a car, only for it to be returned if the accused is acquitted, effectively nullifies the presumption of innocence inherent in Canada's criminal justice system.⁶⁰ Certainly, Alberta's law was proclaimed in force only after significant Charter compliance scrutiny on the part of the government.⁶¹

With regard to the issue of overlapping jurisdictions, although a province cannot enact street traffic legislation with the sole purpose of controlling prostitution,⁶² this does not appear to be the case with the vehicle impoundment legislation. The clash of jurisdictions argument does not seem to have been raised seriously in this context.

4.3.2 COMMUNITY SAFETY

Alberta, Manitoba, Yukon, Nova Scotia, Saskatchewan and New Brunswick have adopted another approach to dealing with prostitution at the provincial/territorial level, with their respective *Safer Communities and Neighbourhoods Acts* (SCAN).⁶³ These laws allow for the closure of buildings and properties in response to safety and prostitution-related concerns.

A person may make a complaint to the Director of Public Safety/Safer Communities and Neighbourhoods, stating his or her belief that a property is being habitually used for activities related to prostitution.⁶⁴ After investigation, the Director can attempt to resolve the matter through informal action (such as a letter) or may ask the court to make a community safety order.⁶⁵ In the latter case, if the court is satisfied that circumstances give rise to a reasonable inference that the property is being used for prostitution-related activities and that the community is adversely affected by those activities, it may make an order prohibiting anyone from causing or permitting those prostitution-related activities, and requiring the person in charge of the property to do everything reasonably possible to prevent those activities. In addition, the court can make an order to vacate the property, to terminate a lease agreement, or to temporarily close the property.⁶⁶ Thus the province, through the court, effectively has the power to close down properties relating to prostitution that cause harm to local communities. British Columbia and Newfoundland and Labrador have similar laws that have been assented to, but have not yet come into force.

The so-called SCAN laws thus far appear to have been effective, although some concerns have been raised about this expansion of provincial powers into an area of criminal law.⁶⁷ Nevertheless, the Nova Scotia SCAN law was upheld as a valid use of the province's powers over property in *Nova Scotia (Public Safety, Director) v. Cochrane*,⁶⁸ and each of the provinces with such laws have recorded numerous successful evictions.

4.3.3 CHILD PROTECTION

Perhaps the single most controversial method of regulating street prostitution used by provinces has been through child protection legislation. A number of tactics have been employed across Canada, from simply including prostitution among the criteria for classifying a child as in need of protection, to “secure care” legislation that authorizes the involuntary detention of minors engaged in prostitution.

Child welfare legislation is the most basic and the least controversial example of provinces asserting jurisdiction over the problem of children exploited through prostitution in this manner. Protection legislation in many provinces clearly states that welfare authorities have the power to remove children at risk of prostitution and to place them in the child welfare system. British Columbia, Alberta, Saskatchewan, Prince Edward Island and Yukon explicitly refer to prostitution,⁶⁹ allowing a child to be found in need of protection if the child has been or is likely to be sexually abused or exploited. Such will be the case where a child has been or is likely to be encouraged or coerced into engaging in prostitution,⁷⁰ is exposed to prostitution-related activities,⁷¹ or is harmed as a result of prostitution-related activities, and the parent has not protected the child.⁷² Once such a finding is made, then the child will enter the child welfare system, with the possibility of being apprehended and placed in a foster home.

In addition to these basic provisions, courts in British Columbia and Alberta have the power to issue a restraining order if there are reasonable grounds to believe that a person has encouraged or coerced, or is likely to encourage or coerce, a youth involved in the child welfare system to engage in prostitution.⁷³ The legislation also adds a term of imprisonment or fine for any person who abuses children through prostitution.⁷⁴

Supplementing its child welfare legislation, Saskatchewan has also implemented the *Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act*.⁷⁵ Under this law, police or social workers who have reasonable grounds to believe that a child has been or is likely to be sexually abused (including involvement in prostitution-related activities) may apply to a justice of the peace for an Emergency Intervention Order to keep the alleged offender from contacting or attempting to contact the child victim.⁷⁶ The law creates an offence for failure to report sexual abuse or for breach of an Emergency Intervention Order.⁷⁷ It also expands police powers to search vehicles and seize evidence of child abuse if an officer has reasonable grounds to believe that there is evidence in the vehicle of child sexual abuse, or if a vehicle is found in an area where a high incidence of child sexual abuse could reasonably be expected.⁷⁸

In 2011, Manitoba enacted legislation that is similar in scope to the child protection framework, but goes beyond it to deal with adults exploited through trafficking in persons as well. The *Child Sexual Exploitation and Human Trafficking Act*⁷⁹ allows a child or adult to be declared in need of protection if the child has been sexually exploited or if the child or adult has been trafficked (including for the purposes of prostitution or any other form of sexual exploitation). A justice of the peace may grant such a protection order if, on a balance of probabilities, it appears that the trafficking or sexual exploitation has occurred, there are reasonable grounds to believe that it

will continue to occur and there is a need for immediate protection.⁸⁰ The protection order can contain provisions that prevent the perpetrator of the abuse from communicating or being physically near the victim, and it remains in effect for three years or longer.⁸¹ Finally, the Manitoba law allows a trafficked person to sue his or her trafficker even where there is no proof of damage, potentially resulting in the award for damages or an injunction.⁸²

Although it is too soon for this Manitoba legislation to have been tested in the courts, a comparison with other provinces shows that few claims have arisen to challenge broader child welfare provisions focussing on prostitution and the consequential provincial power to interfere with the commercial sexual exploitation of children. The provinces have clear jurisdiction over child protection issues and, as a result, some degree of control over exploitation of children through prostitution.

4.3.4 SECURE CARE

One province, however, has moved beyond relatively standard child welfare legislation and taken a tougher stance on the commercial sexual exploitation of children. In 1999, provincial and territorial premiers met to affirm their commitment to providing for the safety of children and to recognizing children involved in prostitution as victims of abuse. At this meeting, leaders agreed to begin a review of their child welfare legislation with a view to harmonizing provincial laws with respect to the apprehension and protection of children engaged in prostitution. Since then, a number of provinces have considered implementing secure-care legislation, essentially allowing for the involuntary detention of children involved in prostitution.⁸³ This trend led to constitutional challenges as well as to criticism in news media and from legal experts across the country. Perhaps as a result, legislation passed in British Columbia and Ontario has never been proclaimed in force.⁸⁴

Thus far, Alberta is the only province to have implemented secure-care legislation. The *Protection of Sexually Exploited Children Act*⁸⁵ allows a police officer or a child welfare director who has reasonable grounds to believe that a child is in need of protection, to apply to the court for an order authorizing the police or the director to apprehend the child and either return him or her to a parent, or detain the child in a safe house for up to five days for assessment and counselling. However, if the police or director believes that the child's life or safety is in serious and imminent danger because the child is engaging in or attempting to engage in prostitution, then the police or director may detain the child without an order from the court.⁸⁶

After the initial five days of detention, the director can apply for a maximum of two additional confinement periods of up to 21 days each if he or she believes that the child would benefit from further assessment and counselling.⁸⁷ To safeguard the child's rights, however, the Director must appear before the court within three days of the initial apprehension to show why confinement is necessary, and the child must be informed of the time and place of the hearing, the reasons for the hearing, and his or her right to contact a lawyer and to attend the hearing. It is important to note that a child may also obtain these services voluntarily if the director agrees that the child is in need of protection.⁸⁸

Finally, the legislation enhances provincial powers to penalize those encouraging the exploitation of children through prostitution. The director may apply for a restraining order if he or she has reasonable grounds to believe that a person has encouraged or is likely to encourage a child involved with the program to engage in prostitution.⁸⁹ Section 9 of the legislation also adds a further penalty for pimps and clients who deal with children involved in prostitution, by stating that any person who wilfully causes a child to be in need of protection is guilty of an offence and liable to a fine of not more than \$25,000, or to imprisonment for a period of not more than 24 months, or both. Between February 2001, when statistics began to be collected, and February 2009, 1,749 charges were commenced under section 9.⁹⁰

Between 2000 and the end of 2003, more than 700 children were apprehended in Alberta, although the numbers began to drop as early as 2002, perhaps indicating a drop in enforcement or in effectiveness.⁹¹ By 2013, a total of 1,204 children and youth had “been served”⁹² within the program. Since then, numerous concerns have been raised, challenging the legislation as a violation of children’s human rights as protected by the Charter. The most prominent example of this contention was played out in *Alberta v. K.B.*,⁹³ a decision by the Alberta Court of Queen’s Bench in December 2000. This case involved two girls detained without an order under section 2(9) of the *Protection of Children Involved in Prostitution Act*, and led to a challenge to the legislation as a violation of sections 7 (right to life, liberty, and security of the person) and 9 (protection from arbitrary detention) of the Charter.

The Court of Queen’s Bench upheld the legislation. Justice Rooke held that section 7 was not violated: although the girls were deprived of their liberty when they were confined to the safe house, this violation was in accordance with the principles of fundamental justice in the child welfare context. When dealing with child welfare issues, the Court said, the Charter allows for some degree of restraint on the liberty rights of both a parent and a child. Not only does the section 2(9) provision ensure that there is good reason for detention without a warrant, the 72-hour time frame⁹⁴ allowed for detention also does not violate any constitutional norms. Justice Rooke stated that children such as these need help, which the Alberta legislation provides without exceeding section 7 constitutional norms. For essentially the same reasons, the court found no violation of section 9, holding that section 2(9) ensures that officers have reasonable and probable grounds for their actions, and that the 72-hour time frame was neither arbitrary nor irrational, and in fact provided needed help to children on the streets.

Justice Rooke also found that section 1 of the Charter was satisfied. He said that the Alberta legislation was based on the pressing and substantial objective of stemming harm to a vulnerable group. Further, he asserted that apprehension, confinement and assessment are rationally connected to protecting children from sexual abuse, and the 72-hour time frame for counselling and assessment made sense within this context. Limiting the time frame to 72 hours was found not to be a major impairment of rights when balanced against the clear need for protection. In the end, Justice Rooke concluded that the legislation passed the Charter test of proportionality, as the objective of protecting children from sexual abuse by far outweighs the 72-hour limit, which is subject to judicial scrutiny.

Although the Court ultimately upheld the constitutionality of the Alberta law, the Alberta government had already reacted to a lower court ruling in the same case, which had held that the law was unconstitutional. To deal with this challenge, the government amended the Act to include the safeguards for children's legal rights mentioned above. (The director must appear before the court within three days of the initial apprehension, and the child must be informed of the time and place of the hearing, the reasons for the hearing, and his or her right to contact a lawyer and to attend the hearing.) The amendment also included measures to provide children with additional care and support. Chief among these was the provision for increasing the time that a child may be detained from 72 hours to five days.

Although this amendment provides further support for detained children, extending the initial time of detention from three to five days also potentially strengthens the challenge to the legislation under sections 7 and 9 of the Charter. It is unclear how courts will deal with challenges to this extended time frame. A further concern raised is that the detention, against their will, of children involved in prostitution does not necessarily address the real problem of their involvement in prostitution. If the provinces want to help children, then providing practical support such as housing and social assistance may be a more effective remedy, while involuntary detention could further alienate such children from society, driving them deeper into the world of organized crime and prostitution.⁹⁵

5 MUNICIPAL BY-LAWS AND PRACTICE

5.1 POWERS

Operating within this provincial framework, municipalities have independent power to control prostitution through municipal by-laws and other local measures. Municipalities are bound, however, by the restrictions on the regulation of prostitution that the overlap with federal criminal jurisdiction places on provincial powers. Accordingly, municipalities cannot create outright prohibitions of prostitution that would be akin to criminal legislation.

Local police are in fact more likely to use municipal by-laws to regulate prostitution than to lay charges under the *Criminal Code*, given that it is easier to issue tickets for an infraction of a by-law than to collect evidence for a criminal charge. By-laws can also be more easily moulded to fit a local context.⁹⁶

5.2 BY-LAWS

5.2.1 REGULATING THE USE OF STREETS

In the early 1980s, a number of Canadian cities passed by-laws regulating use of the streets, in a move that worked to effectively forbid street solicitation. Montréal and Calgary were prime examples of this trend. In 1980 and 1981 they enacted by-laws that essentially forbade the use of streets and other public areas to those engaging in prostitution, under penalty of substantial fines. These by-laws were passed under the

municipalities' power to regulate the use of streets and to restrict activity that encourages criminality.

In reaction to these new laws, two court challenges reached the Supreme Court of Canada. In *R. v. Westendorp*, the defendant was charged under the *Criminal Code* with communicating for the purposes of prostitution, and under Calgary's by-law with being on the street. This by-law had been enacted with the purpose of preventing violence and gatherings on the street. In 1983 the Supreme Court struck down the by-law as a municipal attempt to enact criminal sanctions – and thus as an infringement of federal jurisdiction. Similar reasoning followed in *Goldwax et al v. Montréal (City)*,⁹⁷ when the Supreme Court struck down the Montréal by-law. The impact of these two rulings effectively nullified similar by-laws enacted or proposed in Vancouver, Niagara Falls, Regina and Halifax.⁹⁸

However, although these two seminal cases have established a general principle ensuring that municipalities do not intrude on federal jurisdiction through by-laws on street use that effectively prohibit street prostitution, a number of municipalities have continued to enact similar by-laws that directly and indirectly affect street solicitation. In 1983, Montréal enacted a by-law to forbid selling services on city streets without a permit. As the city did not issue permits for soliciting, prostitution was essentially forbidden. This by-law has been upheld by the Quebec Superior Court.

A number of cities, including Winnipeg and Vancouver, have also enacted by-laws outlawing “obstructive solicitation,” thus prohibiting anyone from impeding pedestrian traffic in the course of solicitation and from harassing a pedestrian in the course of solicitation. Although primarily targeting pan-handling, these by-laws also have an impact on street-level sex workers. In 2003, Surrey, B.C., enacted a by-law giving police officers the power to issue tickets to anyone engaging in prostitution, whether client or prostitute, within 300 metres of a school or 20 metres of a residence. This by-law also makes it illegal for clients in motor vehicles or prostitutes to solicit on public roads.⁹⁹ Finally, police in most municipalities commonly use anti-jaywalking and loitering laws to hand out tickets in areas frequented by prostitutes.¹⁰⁰

5.2.2 REGULATING PROSTITUTION-RELATED SERVICES

In 1993, the Supreme Court of Canada handed down a seminal ruling interpreting the community standard of the tolerance test used to determine “indecent acts.” *R. v. Tremblay* allowed private dances in adult entertainment parlours, provided that there was no physical contact between the patron and dancer. In reaction, in August 1995, the City of Toronto passed a municipal by-law prohibiting physical contact between patrons and dancers; establishments risked a fine of \$50,000 and licence revocation for a violation. The Ontario Court of Appeal upheld the by-law in *Ontario Adult Entertainment Bar Association v. Metropolitan Toronto (Municipality)*,¹⁰¹ stating that it was enacted for valid provincial objectives relating to business regulation, including health, safety and crime prevention. The Court held that, accordingly, the by-law did not conflict with the *Criminal Code* or with federal jurisdiction over criminal matters. Further, the court held that the by-law did not violate dancers' freedom of expression under section 2(b) of the Charter because close-contact dancing does not amount to a constitutionally protected right. The ultimate result of this case was to leave municipalities with the power to regulate

aspects of prostitution-related activities, such as placing limits on exotic dances, despite the federal prerogative over criminal law.

5.2.3 LICENSING PROSTITUTION-RELATED SERVICES

In addition to regulating the limits of prostitution-related activities, municipalities exercise broad power over the licensing of such activities. Cities such as Calgary, Edmonton, Saskatoon, Toronto, Victoria, Vancouver and Winnipeg have enacted by-laws that require dating and escort services, exotic entertainers, massage parlours and others to obtain business licences like other business establishments. Although such services are nominally not prostitution-related, it is widely believed that they are often a front for or segue into prostitution itself. To obtain a licence, such establishments must comply with various conditions, including requirements pertaining to location, hours of operation, advertising, certification, minimum age and police screening of escorts.¹⁰² Licensing by-laws are generally held to be within municipal jurisdiction, because business licences are of general application and are not specifically targeted as a prohibition of prostitution or as a regulation of public morality.¹⁰³

Nonetheless, a number of challenges have questioned the validity of certain by-laws in their application to prostitution-related activities. In 1988, the B.C. Supreme Court struck down a portion of the Vancouver licensing by-law, finding that the requirement for an escort service to provide records of all escort requests, with names and fee included, stretched beyond the city's power to regulate licensed businesses.¹⁰⁴ In 1999, the Ontario Superior Court struck down a portion of a Niagara Falls licensing by-law, finding that the lottery scheme used to award body-rub licences unduly limited competition, essentially creating an illegal monopoly.¹⁰⁵ In 2000, the Ontario Court of Appeal struck down a Richmond Hill licensing by-law, finding that the law's interaction with zoning restrictions in the town essentially created a full prohibition of adult entertainment and was thus outside municipal jurisdiction.¹⁰⁶ In 2004, the Ontario Superior Court struck down a portion of a Brampton licensing by-law, as it went beyond municipal jurisdiction by regulating morality and criminal law in prescribing dress and legislating physical contact.¹⁰⁷ Finally, in 2013, the Ontario Court of Justice struck down a portion of a Vaughan licensing by-law regulating hours of operation and dress, as these went beyond municipal jurisdiction in an attempt to legislate with respect to prostitution and nudity.¹⁰⁸

In a somewhat different vein, in 2002, the Manitoba Court of Queen's Bench acquitted a Winnipeg business owner of carrying on a dating and escort service without a licence. The court held that the services offered were not those of an escort service but were clearly prostitution services – “no licence of any sort is available to carry on prostitution”; rather, it is the *Criminal Code* that should apply.¹⁰⁹ In 2006, the Alberta Court of Queen's Bench acquitted a Calgary man of procurement charges, holding that the licence issued to him to operate an escort agency was vague and could have been interpreted as a licence to sell sex. The city's response was to drastically reduce its licensing fees for escort agencies and to revamp its escort by-laws. The new by-law requires applicants to sign a declaration stating that receiving a licence does not absolve him or her from criminal charges, and increases fees for non-compliance. Finally, in 2007, the Ontario Court of Appeal struck down part of a Windsor by-law setting out licensing fees for those working in adult entertainment

parlours. The court held that it was discriminatory to charge a higher fee in excess of the costs directly related to the administration and enforcement of the by-law.¹¹⁰

Concern has also been expressed that some licensing fees may be set so high as to make licences unattainable. Some even claim that collecting licensing fees for essentially prostitution-related activities could make the government guilty of living on the avails of prostitution.¹¹¹ In 2002, an Edmonton sex worker launched a civil suit to challenge overcharging for licensing fees. She demanded that the city lower the licensing fee for independent escorts on the basis that the City was effectively living on the avails of prostitution. In April 2003, the Alberta Court of Queen's Bench rejected this claim.¹¹²

5.2.4 ZONING

Zoning by-laws are another means of restricting prostitution. Cities such as Saskatoon, Niagara Falls, Moncton and Saint John have zoning by-laws to control the location of body-rub parlours and adult entertainment facilities in certain areas of the city.¹¹³ Like restrictions on licensing, zoning is generally considered to be within municipal jurisdiction, provided that it does not create a general prohibition of adult entertainment or is not actually regulating public morality, but merely limits it to certain areas.¹¹⁴

Essentially, by-laws facilitate policing of prostitution and are a mechanism for municipalities to have some control over the issue without violating federal jurisdiction. However, municipalities walk a fine line between federal and municipal/provincial jurisdiction and must be careful not to take any measures that might deal with actual prostitution.¹¹⁵ Part of this balancing act consists in maintaining the illusion that escort services and massage and adult entertainment parlours are not fronts for prostitution-related activities. Provided that municipal by-laws do not actually prohibit prostitution, they are generally upheld by the courts.

5.3 “JOHN-SHAMING”

“John-shaming” is another technique that is often used locally to combat prostitution. Without resorting to actual laws that could be open to challenge, john-shaming works as a form of public pressure to deter those who engage in prostitution. Examples of john-shaming include the publication in local newspapers of the names of clients charged with street prostitution offences.¹¹⁶ In Ottawa and Saint John, police send letters to the homes of motorists seen to frequent known areas of prostitution. In Winnipeg, for a brief time, police posted on a website photos of cars frequently seen in areas known for prostitution.

However, john-shaming measures do not necessarily lead to a decline in prostitution. Critics argue that such measures may only force prostitutes to move from one area to another, and can lead to family break-up and violent confrontations.¹¹⁷ In Ottawa, after police consultations with the Ontario Information and Privacy Commissioner's office, a policy of sending john-shaming letters in unmarked envelopes by registered mail was adopted.

5.4 COMMUNITY EFFORTS

A number of community-based methods have also been used to combat prostitution at the local level without resorting to legislation. Citizen patrols are one means of deterrence and neighbourhood protection. In 1987, Toronto residents organized “hooker patrols,” in which residents patrolled the streets, photographing clients, shining flashlights in cars, and recording licence numbers for the police. Citizen patrols made up of community volunteers and police, standing watch on street corners to force prostitutes and clients out of an area, have also been implemented in parts of British Columbia and Nova Scotia.¹¹⁸

Community mediation is another technique. In Vancouver, Crime Prevention Offices and neighbourhood associations approach outreach agencies to mediate problems in the community to ensure that persons selling sexual services stay out of certain areas, maintain certain areas litter-free and respect certain rules of conduct. A shorter-term solution is for residents to undertake neighbourhood enhancement measures to ensure that streets and parking lots are well-lit and open to public view in order to discourage prostitution.¹¹⁹

5.5 OTHER MUNICIPAL AND LOCAL MEASURES

A number of other measures exist at the municipal level to deal with prostitution. For example, the City of Ottawa implemented a traffic diversion program in the early 1990s to deter automobile traffic in an area frequented by persons selling sexual services. Under this program, police and the community worked in concert to identify and target cars that caused the most congestion by circulating in the neighbourhood. Community members recorded information such as licence plate numbers and the makes and models of the cars considered to be a nuisance. The police then used this information to target frequent visitors in sting operations.¹²⁰ Similar “report-a-john” programs have been established in Edmonton and Moncton. Some cities have established advertising campaigns to combat prostitution. In 2005, Edmonton and Saskatoon unveiled advertising campaigns aimed at dissuading clients of prostitution and educating the public about sexual exploitation.

More recently, and in light of the constitutional challenges to the *Criminal Code* provisions, the City of Vancouver and the Vancouver Police Department have adopted a more holistic approach to dealing with prostitution, focusing on safe neighbourhoods as well as the protection of sex workers. In this vein, the City established a Task Force on Sex Work and Sexual Exploitation in 2012 to address service gaps, prevent sexual exploitation of children, address housing issues, raise awareness and change by-laws and regulations to support the health and safety of sex workers and neighbourhoods. The Vancouver Police Department also adopted new Sex Work Enforcement Guidelines in early 2013,¹²¹ emphasizing that adult prostitution is not “an enforcement priority.” Instead, the department will focus on two areas: 1) building relationships with sex workers and community organizations to shift prostitution away from residential areas, parks and schools and 2) investigating cases of exploitation of youth and violence against sex workers.

6 CONCLUSION

A wide range of laws, regulations and other measures to deal with prostitution exist across the country. Although the international community places the emphasis on protecting the human rights of victims of trafficking and those exploited through prostitution, local communities highlight the importance of protecting their cities, homes and children from prostitution's side effects. Each level of Canadian government deals with the issue in different ways, according to its priorities and powers. The end result is a broad network of prostitution-related measures that generally complement one another and work to regulate prostitution at multiple levels.

However, although provinces and municipalities have significant powers for dealing with various aspects of prostitution, they are not immune to challenge. A number of the measures in place have been criticized as unconstitutional, and some have been brought before the courts, where issues of jurisdiction and human rights have been questioned.

The breaking point in the conflict between the need to protect communities with strong criminal laws and that of focusing on the safety of prostitutes themselves was finally reached in the *Bedford* decision. In December 2013, the Supreme Court of Canada sent a strong message to the government that the safety of sex workers is not a side issue in the prostitution debate. The Court gave Parliament until the end of 2014 to put forward legislation that respects prostitutes' rights, under the Charter, to life, liberty and security of the person while also appropriately handling the exploitation and harm to communities inherent in prostitution.

Parliament will have to come to grips with the diverse face of prostitution across the country and the range of proposals for dealing with the issue, as highlighted in the 2006 report of the House of Commons Subcommittee on Solicitation Laws.¹²² Any response chosen may have a profound impact on the way that provinces and municipalities tackle the problem within their own jurisdictions and is bound to incite lively debate across Canada.

NOTES

1. [Canada \(Attorney General\) v. Bedford](#), 2013 SCC 72 [*Bedford*].
2. United Nations [UN], [Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others](#), Resolution 317(IV), 2 December 1949.
3. Government of Quebec, Conseil du statut de la femme, *La Prostitution : Profession ou exploitation? Une réflexion à poursuivre*, May 2002, p. 94.
4. UN, [Convention on the Elimination of All Forms of Discrimination against Women](#), A/RES/34/180, 18 December 1979.
5. UN, [Convention on the Rights of the Child](#), A/RES/44/25, 20 November 1989.
6. UN, [Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography](#), A/RES/54/263, 25 May 2000.
7. *Ibid.*, art. 3.

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8. UN, *Report of the Fourth World Conference on Women*, [A/CONF.177/20](#) and [A/CONF.177/20/Add.1](#), September 1995.
9. UN, A/CONF.177/20 (1995), para. 130.
10. *Ibid.*, paras. 230(m) and 283(d).
11. Government of Quebec (2002), p. 95.
12. International Labour Organization, [Convention 182](#), *Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, 17 June 1999.
13. UN, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime*, in [United Nations Convention Against Transnational Organized Crime and the Protocols Thereto](#), 2000.
14. *Ibid.*, art. 3.
15. Federal jurisdiction over the criminal law is derived from section 91(27) of the *Constitution Act, 1867*, which states that the powers of Parliament include “[t]he Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.”
16. [Criminal Code](#), R.S.C. 1985, c. C-46.
17. For examples of such studies at the federal level, see the reports of the Special Committee on Pornography and Prostitution, *Pornography and Prostitution in Canada: Report of the Special Committee on Pornography and Prostitution*, 1985; and the House of Commons, Standing Committee on Justice and Human Rights, Subcommittee on Solicitation Laws, [The Challenge of Change: A Study of Canada's Criminal Prostitution Laws](#), December 2006.
18. [Reference re ss. 193 and 195.1\(1\)\(c\) of the Criminal Code \(Man.\)](#), [1990] 1 S.C.R. 1123.
19. [Bedford v. Canada](#), 2010 ONSC 4264.
20. *Ibid.*
21. [Canada \(Attorney General\) v. Bedford](#), 2012 ONCA 186.
22. Section 787 of the *Criminal Code* sets out the general penalty for summary conviction offences as not exceeding a \$5,000 fine or six months' imprisonment, or both.
23. *R. v. Patterson*, [1968] S.C.R. 157; *R. v. Sorko* (1969), 4 C.C.C. 214 (B.C. CA); *R. v. Rockert*, [1978] 2 S.C.R. 704; *R. v. Ikeda* (1978), 42 C.C.C. (2d) 195 (Ont. CA); *R. v. Lahaie* (1990), 55 C.C.C. (3d) 572 (Que. CA); *R. v. Labaye* (2004), 191 C.C.C. (3d) 66 (Que. CA); and *R. v. Kouri* (2004), 191 C.C.C. (3d) 42 (Que. CA).
24. The terms “sex worker,” “prostitute,” “person selling sexual services” and “prostituted person” are used interchangeably throughout this text, reflecting the terminology used in the literature.
25. *R. v. Pierce* (1982), 37 O.R. (2d) 721 (CA).

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26. Within this framework, the interpretation of indecency will depend on context, taking into account factors such as consent, the composition of any audience and the level of privacy of the room, community reputation of the place, and any harm caused. For example, if the room is private, or if there is no actual physical contact between a client and an entertainer, then an act is less likely to be labelled “indecent.” (See *R. v. Tremblay*, [1993] 2 S.C.R. 932; *R. v. Theirlynck* (1931), 56 C.C.C. 156 (SCC); *R. v. Mara*, [1997] 2 S.C.R. 630; and Government of Quebec (2002), pp. 121–124.) However, in *R. v. Pelletier*, [1999] 3 S.C.R. 863, the Supreme Court of Canada did allow sexual contact between an exotic dancer and her client, provided that this activity took place in a private room.
27. *Criminal Code*, s. 197(1); *R. v. Corbeil*, [1991] 1 S.C.R. 830.
28. *R. v. Worthington* (1972), 10 C.C.C. (2d) 311 (Ont. CA).
29. *R. v. Lemieux* (1991), 70 C.C.C. (3d) 434 (Que. CA).
30. *R. v. Wong* (1977), 33 C.C.C. (2d) 6 (Alta. CA); and *R. v. Corbeil*.
31. *Reference re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.)*.
32. *Bedford*, para. 136.
33. Consideration is the interest, benefit or advantage given in exchange for sex, such as money, food or shelter.
34. *R. v. Cline* (1982), 65 C.C.C. (2d) 214 (Alta. CA); and Government of Quebec (2002), p. 126.
35. *R. v. Deutsch*, [1986] 2 S.C.R. 2.
36. *R. v. Perrault* (1996), 113 C.C.C. (3d) 573 (Que. CA).
37. *R. v. Downey* (1992), 72 C.C.C. (3d) 1 (SCC); and Government of Quebec (2002), p. 125.
38. *R. v. Grilo* (1991), 64 C.C.C. (3d) 53 (Ont. CA); *R. v. Bramwell* (1993), 86 C.C.C. (3d) 418 (B.C. CA); and *R. v. Celebrity Enterprises Ltd.* (1998), 41 C.C.C. (2d) 540 (B.C. CA).
39. Government of Quebec (2002), p. 126.
40. *R. v. Smith* (1989), 49 C.C.C. (3d) 127 (B.C. CA).
41. *Hutt v. R.* (1978), 38 C.C.C. (2d) 418 (SCC).
42. *Reference re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.)*; and *R. v. Stagnitta* (1990), 56 C.C.C. (3d) 17 (SCC).
43. *Reference re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.)*; *R. v. Skinner*, [1990] 1 S.C.R. 1235; and *R. v. Stagnitta*.
44. *Bedford*, para. 71.
45. For a discussion of Canadian legislation dealing with trafficking in persons for the purposes of sexual exploitation, see Laura Barnett, [Trafficking in Persons](#), Publication no. 2011-59-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 30 September 2013.

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46. *Constitution Act 1867*, s. 92:
- Exclusive Powers of Provincial Legislatures
 - 13. Property and Civil Rights in the Province
 - 14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
 - 15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
 - 16. Generally all Matters of a merely local or private Nature in the Province.
47. *Re Nova Scotia Board of Censors v. McNeil*, [1978] 2 S.C.R. 662; and *Rio Hotel Ltd. v. New Brunswick (Liquor Licensing Board)*, [1987] 2 S.C.R. 59.
48. *Rio Hotel Ltd. v. New Brunswick*; and *R. v. Hydro-Québec*, [1997] 3 S.C.R. 213.
49. Jeffrey Berryman, Chapter 9, "Injunctions to Enforce Public Rights," in *The Law of Equitable Remedies*, Irwin Law, Toronto, 2000, s. B.
50. *British Columbia (Attorney General) v. Couillard* (1984), 11 D.L.R. (4th) 567 (B.C. SC).
51. James R. Robertson, [Prostitution](#), Publication no. CIR 82-2E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 19 September 2003.
52. *Nova Scotia v. Beaver* (1985), 67 N.S.R. (2d) 281 (NS CA).
53. *Ibid.*, p. 293.
54. Alberta, *Traffic Safety Act*, R.S.A. 2000, c. T-6, s. 173.1; Manitoba, *Highway Traffic Act*, C.C.S.M., c. H. 60, s. 242.2(3); and Saskatchewan, *Traffic Safety Act*, S.S. 2004, c. T-18.1, s. 174(1).
55. Alberta, *Traffic Safety Act*, s. 173.1; Manitoba, *Highway Traffic Act*, s. 242.2(8); and Saskatchewan, *Traffic Safety Act*, ss. 183(1) and 185(1).
56. Saskatchewan, *Traffic Safety Act*, s. 183(2).
57. Manitoba, *Highway Traffic Act*, ss. 273.3(1), (2), and (5): The licence will be suspended until the accused is acquitted or convicted of the charge. Saskatchewan, *Traffic Safety Act*, s. 183(3): The licence will be suspended for one year.
58. Manitoba, *Highway Traffic Act*, ss. 242.2(26) and (28); and Saskatchewan, *Traffic Safety Act*, ss. 186 and 190.
59. Federal-Provincial-Territorial Working Group on Prostitution, *Report and Recommendations in respect of Legislation, Policy and Practices Concerning Prostitution-Related Activities*, December 1998.
60. "Cruising for a Better Law," *Calgary Herald*, 26 November 2003, p. A12.
61. Federal-Provincial-Territorial Working Group on Prostitution (1998).
62. *R. v. Westendorp*, [1983] 1 S.C.R. 43.
63. Alberta, *Safer Communities and Neighbourhoods Act*, S.A. 2007, c. S-0.5; Manitoba, *Safer Communities and Neighbourhoods Act*, C.C.S.M. 2001, c. S-5; Yukon, *Safer Communities and Neighbourhoods Act*, S.Y. 2006, c. 7; Nova Scotia, *Safer Communities and Neighbourhoods Act*, N.S.S. 2006, c. 6, s.1; Saskatchewan, *Safer Communities and Neighbourhoods Act*, S.S. 2004, c. S-0.1; and New Brunswick, *Safer Communities and Neighbourhoods Act*, S.N.B. 2009, c. S-0.5.

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64. Manitoba, *Safer Communities and Neighbourhoods Act*, s. 2(1); Nova Scotia, *Safer Communities and Neighbourhoods Act*, s. 3; Yukon, *Safer Communities and Neighbourhoods Act*, s. 2; Saskatchewan, *Safer Communities and Neighbourhoods Act*, s. 5; Alberta *Safer Communities and Neighbourhoods Act*, s. 4; and New Brunswick, *Safer Communities and Neighbourhoods Act*, s. 7.
65. Manitoba, *Safer Communities and Neighbourhoods Act*, ss. 3 and 4; Nova Scotia, *Safer Communities and Neighbourhoods Act*, ss. 4 and 5; Yukon, *Safer Communities and Neighbourhoods Act*, ss. 3 and 4; Saskatchewan, *Safer Communities and Neighbourhoods Act*, ss. 6; Alberta, *Safer Communities and Neighbourhoods Act*, s. 5; and New Brunswick, *Safer Communities and Neighbourhoods Act*, s. 8.
66. Manitoba, *Safer Communities and Neighbourhoods Act*, s. 6; Nova Scotia, *Safer Communities and Neighbourhoods Act*, s. 7; Yukon, *Safer Communities and Neighbourhoods Act*, s. 6; Saskatchewan, *Safer Communities and Neighbourhoods Act*, s. 8; Alberta, *Safer Communities and Neighbourhoods Act*, s. 7; and New Brunswick, *Safer Communities and Neighbourhoods Act*, s. 15.
67. Jen Gerson, "[New provincial laws have had great success shutting down drug dens, but critics question why they circumvent the criminal code.](#)" *National Post*, 28 February 2014.
68. *Nova Scotia (Public Safety, Director) v. Cochrane* (2008), 263 N.S.R. (2d) 159 (N.S. Sup. Ct.).
69. British Columbia, *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46; Alberta, *Child, Youth and Family Enhancement Act*, R.S.A. 2000, c. C-12; Saskatchewan, *Child and Family Services Act*, R.S.S. 1990, c. C-7.2; Prince Edward Island, *Child Protection Act*, R.S.P.E.I. 1988, c. C-5.1; and Yukon, *Child and Family Services Act*, S.Y. 2008, c. 1.
70. British Columbia, *Child, Family and Community Service Act*, s. 13(1.1); and Yukon, *Child and Family Services Act*, s. 21(2)(b).
71. Alberta, *Child, Youth and Family Enhancement Act*, s. 1(3)(c); Saskatchewan, *Child and Family Services Act*, s. 11(a)(iii); and Yukon, *Child and Family Services Act*, s. 21(2)(a).
72. Prince Edward Island, *Child Protection Act*, s. 9(g).
73. British Columbia, *Child, Family and Community Service Act*, s. 98; and Alberta, *Child, Youth and Family Enhancement Act*, s. 30.
74. Alberta, *Child, Youth and Family Enhancement Act*, s. 130; Saskatchewan, *Child and Family Services Act*, s. 81; and Prince Edward Island, *Child Protection Act*, s. 59.
75. Saskatchewan, *Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act*, S.S. 2002, c. E-8.2.
76. *Ibid.*, ss. 3, 5, 7 and 10.
77. *Ibid.*, s. 24.
78. *Ibid.*, s. 16.
79. Manitoba, *Child Sexual Exploitation and Human Trafficking Act*, C.C.S.M. 2011, c. C-94.
80. *Ibid.*, ss. 1(2), 1(3), and 6.
81. *Ibid.*, s. 7.
82. *Ibid.*, ss. 18-20.
83. Robertson (2003), p. 20.
84. The British Columbia *Secure Care Act*, S.B.C. 2000, c. 28 received Royal Assent in 2000 but was never proclaimed into force. The Ontario *Rescuing Children from Sexual Exploitation Act*, S.O. 2002, c. 5, never came into force and was repealed in December 2012.
85. Alberta, *Protection of Sexually Exploited Children Act*, R.S.A. 2000, c. P-30.3.

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